Use these links to rapidly review the document
TABLE OF CONTENTS
Supernus Pharmaceuticals, Inc. Consolidated Financial Statements Years ended December 31, 2009, 2010 and 2011

Table of Contents

As filed with the Securities and Exchange Commission on March 15, 2012

Registration No. 333-171375

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

PRE-EFFECTIVE AMENDMENT NO. 4
to

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

SUPERNUS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**20-2590184**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jack A. Khattar
President and Chief Executive Officer
1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Paul M. Kinsella	**Gregory S. Patrick**	**Mitchell S. Bloom**
Ropes & Gray LLP	**Supernus Pharmaceuticals, Inc.**	**Edward A. King**
Prudential Tower	**Vice President, Chief Financial Officer**	**Goodwin Procter LLP**
800 Boylston Street	**1550 East Gude Drive**	**Exchange Place**
Boston, MA 02199-3600	**Rockville, MD 20850**	**Boston, MA 02109**
Telephone: (617) 951-7921	**Telephone: (301) 838-2500**	**Telephone: (617) 570-1000**
Facsimile: (617) 235-0822	**Facsimile: (301) 424-1364**	**Facsimile: (617) 523-1231**

Approximate date of commencement of proposed sale to public:
As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant

shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

SUBJECT TO COMPLETION, DATED MARCH 15, 2012

PRELIMINARY PROSPECTUS

Shares

Supernus Pharmaceuticals, Inc.

Common Stock
$ per share

This is the initial public offering of our common stock. We are selling shares of our common stock. We currently expect the initial public offering price to be between $ and $ per share of common stock.

We have granted the underwriters an option to purchase up to additional shares of common stock to cover over-allotments.

We have applied to list our common stock on the Nasdaq Global Market under the symbol "SUPN."

Investing in our common stock involves risks. See "Risk Factors" on page 9.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds to Supernus (before expenses)	$	$

The underwriters expect to deliver the shares to purchasers on or about , 2012 through the book-entry facilities of The Depository Trust Company.

Citigroup **Piper Jaffray**

Cowen and Company **Stifel Nicolaus Weisel**

, 2012.

We are responsible for the information contained in this prospectus. We have not authorized anyone to provide you with different information and we take no responsibility for any other information others may give you. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

TABLE OF CONTENTS

SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus. While this summary highlights what we consider to be the most important information about us, you should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, especially the risks of investing in our common stock which we discuss under "Risk Factors," the information set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes beginning on page F-1.

Unless the context requires otherwise, the words "Supernus," "we," "us" and "our" refer to Supernus Pharmaceuticals, Inc. and its subsidiary.

Supernus Pharmaceuticals, Inc.

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD, including ADHD patients with impulsive aggression. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists.

We use our proprietary technologies to enhance the therapeutic benefits of approved antiepileptic drugs, or AEDs, through advanced extended release formulations. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we submitted a new drug application, or NDA, that was accepted for filing by the U.S. Food and Drug Administration, or the FDA, in November 2011, and SPN-804 (extended release oxcarbazepine) for which we submitted an NDA that was accepted for filing by the FDA in February 2012. Our ADHD product candidates include SPN-810 (molindone hydrochloride), which is in a Phase IIb trial as a novel treatment for impulsive aggression in patients with ADHD, and SPN-812, which completed a Phase IIa trial as a novel non-stimulant treatment for ADHD. In addition to these four lead product candidates, we have several additional product candidates in various stages of development, including SPN-809, for which we submitted an investigational new drug application, or IND, in 2008. SPN-809 would represent a novel mechanism of action for the U.S. antidepressant market. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA accepted by FDA
SPN-804	Adjunctive therapy for epilepsy	NDA accepted by FDA
SPN-810	Impulsive Aggression in ADHD	Phase IIb
SPN-812	ADHD	Phase IIa
SPN-809	Depression	IND filed

Our Late-Stage Neurology Portfolio

Epilepsy is a chronic neurological disorder characterized by recurrent convulsive seizures resulting from hyperactivity in the brain cells. It is estimated to affect 50 million people worldwide[(1)] and

(1) Bialer, M., *Key factors in the discovery and development of new antiepileptic drugs*, published January 2010 in *Nature*.

2 million people in the United States.[2] Achieving reliable seizure control for patients, and avoiding the serious health and life dangers that can be associated with sudden unexpected, or breakthrough, seizures depends on patients being compliant and diligent in taking their medications. We believe there are a number of benefits associated with extended release products in epilepsy that create a significant market opportunity for us, including:

(2) U.S. Centers for Disease Control and Prevention, *Epilepsy Self-Management Tools* (citing DiIorio, C., *The Prevention Research Centers' Managing Epilepsy Well Network*, published September 2010 in *Epilepsy & Behavior*).

- Extended release products have been shown to improve compliance and reduce breakthrough seizures.[3]

(3) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews*.

- Extended release products have been shown to reduce side effects and improve tolerability.[4]

(4) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia*.

- Managed care plans have not limited the success of extended release products.[5]

(5) IMS Health data and Epilepsy Foundation, *Private Health Insurance and Medication Switching*.

- Extended release products generally have performed well in the market.[6]

(6) IMS Health data.

SPN-538 (extended release topiramate)

Our most advanced product candidate, SPN-538, is a novel oral once-daily extended release topiramate product for the treatment of epilepsy. Topiramate is marketed by Johnson & Johnson under the brand name Topamax and is available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. It works by enhancing the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocking the excitatory effect of the glutamate neurotransmitter, blocking the sodium channel and inhibiting the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions.

SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period, resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We have conducted fourteen clinical trials in support of the development of SPN-538 and one additional clinical trial is ongoing. The NDA for SPN-538 was accepted for filing by the FDA in November 2011. We are pursuing a regulatory strategy under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, which allows us to rely in our submission on the existing data and knowledge the FDA has from the NDA of Topamax.

SPN-804 (extended release oxcarbazepine)

Our second late-stage product candidate, SPN-804, is a novel oral once-daily extended release formulation of oxcarbazepine for which we submitted an NDA that was accepted for filing by the FDA in February 2012. Oxcarbazepine is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects that tend to limit its use. The side effects

associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting.

With a novel pharmacokinetic profile that delivers lower peak plasma concentrations, a slower rate of input, smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe SPN-804 has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. We have conducted nine clinical trials, including bioequivalence trials and a Phase III trial, and we are conducting two ongoing clinical trials to support the development of SPN-804. The NDA for SPN-804 was accepted for filing by the FDA in February 2012. We are pursuing a Section 505(b)(2) regulatory strategy, which allows us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal.

Our Psychiatry Portfolio

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6% to 9% of all school-age children and 3% to 5% of adults in the United States.(7) An estimated 60% to 80% of children with ADHD continue to meet the criteria for ADHD into adolescence, and as many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression.(8) In addition, approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression.(9)

(7) Dopheide, J.A., *Attention-Deficit-Hyperactivity Disorder: An Update*, published June 2009 in *Pharmacotherapy*.

(8) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(9) Jensen, P.S., *Consensus Report on Impulsive Aggression as a Symptom Across Diagnostic Categories in Child Psychiatry: Implications for Medication Studies*, published March 2007 in *Journal of the American Academy of Child and Adolescent Psychiatry*.

SPN-810 (molindone hydrochloride)

We are developing SPN-810 as a novel treatment for impulsive aggression in patients with ADHD. We initiated a Phase IIb trial of SPN-810 in the United States in June 2011 for which we expect results in the second half of 2012. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone hydrochloride is unusual among anti-psychotics in that it is less likely to be associated with weight gain.

We have completed four clinical trials for SPN-810, including a Phase IIa trial in which we tested the safety and tolerability of immediate release molindone hydrochloride in children with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram results. SPN-810 also showed improvements on the primary and secondary outcome measures, such as conduct problem and ADHD scales, across all four treatment groups.

SPN-812

We are developing SPN-812, which is currently in Phase II development, as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could

be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. We completed a proof-of-concept Phase IIa trial of SPN-812 in the first quarter of 2011, in which SPN-812 was well tolerated and demonstrated a statistically significant improvement over placebo as a treatment for ADHD. The trial was a randomized, double-blind, placebo-controlled trial in 52 adults with a current diagnosis of ADHD, with 26 subjects per treatment group. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity.

Our Proprietary Technology Platforms

We have a successful track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). These technologies create customized product profiles designed to meet efficacy needs, permit more convenient and less frequent dosing, enhance patient compliance and improve tolerability in certain specific applications. Our proprietary technologies have been used in the following approved and marketed products: Carbatrol (carbamazepine), Equetro (carbamazepine), Adderall XR (mixed amphetamine salts), Sanctura XR (trospium chloride), Oracea (doxycycline) and Intuniv (guanfacine). We do not expect these products to contribute to our future cash position as we have either monetized the future revenues associated with them or we developed them when we were formerly Shire Laboratories. In addition, we have used our proprietary technologies to develop an oral formulation of treprostinil diethanolamine, which is the subject of an NDA for pulmonary arterial hypertension submitted by United Therapeutics Corporation and accepted for filing by the FDA in February 2012.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and SPN-804.* We are currently focused on attaining regulatory approval for, and bringing to market, our two late-stage epilepsy product candidates, SPN-538 and SPN-804. As these product candidates progress towards U.S. regulatory approval, we intend to build our own targeted, specialty sales force to promote, if approved, SPN-538 and SPN-804 in the United States. We intend to direct our marketing efforts to high potential prescribers of both product candidates.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812.* As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, in June 2011 we initiated a Phase IIb trial of SPN-810 for impulsive aggression in patients with ADHD.

- *Develop differentiated products by applying our technologies to known drug compounds.* We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide.* We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that

we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Risks Associated With Our Business

Our ability to implement our business strategy is subject to numerous risks and uncertainties. As an early stage pharmaceutical company, we face many risks inherent in our business and our industry, as more fully described in the section entitled "Risk Factors" immediately following this summary, including the following:

- We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.
- Final marketing approval of SPN-538, SPN-804 or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.
- We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.
- If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or SPN-804, our business would be materially harmed.
- If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates may be adversely affected.

You should carefully consider all of the information set forth in this prospectus and, in particular, the information under the heading "Risk Factors," prior to making an investment in our common stock.

Corporate Information

We were incorporated in Delaware in 2005. Our principal executive office is located at 1550 East Gude Drive, Rockville, Maryland 20850. Our telephone number is (301) 838-2500.

We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®," and the registered Supernus Pharmaceuticals logo. All other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus are referred to without the ® and *TM* symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.

THE OFFERING

Common stock we are offering	shares
Common stock to be outstanding after this offering	shares
Over-allotment option	We have granted the underwriters an option for a period of up to 30 days to purchase up to additional shares of common stock at the initial public offering price.
Use of proceeds after expenses	We estimate that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full. We expect to use the net proceeds from this offering to fund our clinical trials and for other general corporate purposes.
Risk factors	You should read the "Risk Factors" section of this prospectus beginning on page 9 for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed NASDAQ Global Market symbol	SUPN

The number of shares of our common stock to be outstanding after this offering is based on 55,649,302 shares of common stock outstanding as of December 31, 2011 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of December 31, 2011 into 49,000,000 shares of our common stock at the closing of this offering.

The number of shares of our common stock outstanding immediately after this offering excludes:

- 2,392,470 shares of common stock issuable upon the exercise of options outstanding as of December 31, 2011, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.69 per share (of which options to acquire 1,050,284 shares of common stock were vested as of December 31, 2011);
- 1,958,228 additional shares of common stock reserved for future grants under our 2005 Stock Plan as of December 31, 2011;
- shares of common stock reserved for future issuance under our 2012 Equity Incentive Plan;
- shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan;
- 375,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding as of December 31, 2011 at an exercise price of $1.00 per share, which will convert into common stock warrants upon the closing of this offering; and
- 200,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding as of December 31, 2011 with an exercise price of $1.50 per share, which will convert into common stock warrants upon the closing of this offering.

Unless otherwise indicated, all information in this prospectus:

- assumes the issuance and sale of shares of our common stock in the offering at the initial public offering price of $ per share, the mid-point of the price range set forth on the cover page of this prospectus;
- assumes our planned -for- reverse stock split of our common stock to be effected in connection with this offering;
- assumes the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering; and
- assumes no exercise by the underwriters of their option to purchase up to shares of our common stock in this offering to cover over-allotments.

SUMMARY FINANCIAL DATA

We have derived the consolidated statements of operations data for the years ended December 31, 2009, 2010 and 2011 and the consolidated balance sheet data as of December 31, 2011 from our audited consolidated financial statements appearing elsewhere in this prospectus.

Our historical results are not necessarily indicative of future operating results. You should read this summary consolidated financial data in conjunction with the sections entitled "Capitalization," "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, all included elsewhere in this prospectus.

	Year Ended December 31,		
	2009	2010	2011
	(in thousands of dollars, except share and per share data)		
Consolidated Statement of Operations Data:			
Revenues			
Development and milestone revenues	$ 1,050	$ 106	$ 803
Royalty revenues	36,875	—	—
Total revenues	37,925	106	803
Costs and expenses			
Research and development	29,260	35,149	30,627
General and administrative	4,649	5,080	7,928
Total costs and expenses	33,909	40,229	38,555
Operating income (loss) from continuing operations	4,016	(40,123)	(37,752)
Other income (expense):			
Interest income	122	107	31
Interest expense	—	—	(1,866)
Other	—	542	117
Total other income (expense)	122	649	(1,718)
Income (loss) from continuing operations before income taxes	4,138	(39,474)	(39,470)
Income tax benefit	—	399	16,245
Income (loss) from continuing operations	4,138	(39,075)	(23,225)
Discontinued operations:			
Income (loss) from discontinued operations, net of tax	(3,678)	612	2,188
Gain on disposal of discontinued operations, net of tax	—	—	74,852
Income (loss) from discontinued operations	(3,678)	612	77,040
Net income (loss)	$ 460	$ (38,463)	$ 53,815
Cumulative dividends on Series A convertible preferred stock	$ (3,430)	$ (3,430)	(3,430)
Net income (loss) attributable to common stockholders	$ (2,970)	$ (41,893)	$ 50,385
Income (loss) per common share			
Basic			
Continuing operations	$ 0.12	$ (6.70)	$ (4.15)
Discontinued operations	(0.65)	0.10	12.00
Net income (loss)	(0.53)	(6.60)	7.85
Diluted			
Continuing operations	$ 0.08	$ (6.70)	$ (4.15)
Discontinued operations	(0.07)	0.10	12.00
Net income (loss)	0.01	(6.60)	7.85
Weighted average number of common shares			
Basic	5,653,506	6,351,883	6,421,312
Diluted	56,324,761	6,351,883	6,421,312
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(1)			
Continuing operations			$ (23,225)
Discontinued operations			$ 77,040
Net income			$ 53,815
Weighted-average number of shares used in calculating pro forma net income (loss) per share — basic and diluted (unaudited)(1)			55,421,312
Pro forma net income (loss) per share — basic and diluted(1)			
Continuing operations			$ (0.42)
Discontinued operations			$ 1.39
Net income			$ 0.97

(1) Pro forma net income (loss) per share basic and diluted have been calculated assuming the conversion of all outstanding shares of our Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma net income (loss) per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 3 to our consolidated financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the per share amounts.

The pro forma balance sheet data set forth below gives effect to the conversion of all outstanding shares of our Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering. The pro forma as adjusted balance sheet data set forth below gives further effect to the issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range listed on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	As of December 31, 2011		
	Actual	Pro Forma	Pro Forma as Adjusted
		(unaudited) (in thousands of dollars)	
Consolidated Balance Sheet Data:			
Unrestricted cash and cash equivalents, and marketable securities	$ 48,544	$ 48,544	$
Restricted cash and cash equivalents, and marketable securities	245	245	
Working capital	30,629	30,629	
Total assets	53,730	53,730	
Secured notes payable, including current portion	29,486	29,486	
Series A convertible preferred stock	49	—	
Accumulated deficit	(39,971)	(39,971)	
Total stockholders' equity	9,443	9,443	

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our common stock. These risks may result in material harm to our business and our financial condition and results of operations. In this event, the market price of our common stock may decline and you could lose part or all of your investment.

Risks Related to Our Business and Industry

We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.

To date, we have expended significant time, resources, and effort on the development of our product candidates, and a substantial majority of our resources are now focused on seeking marketing approval for and planning for potential commercialization of our two most advanced product candidates, SPN-538 and SPN-804, in the United States. All of our other product candidates are in earlier stages of development and subject to the risks of failure inherent in developing drug products. Accordingly, our ability to generate significant product revenues in the near term will depend almost entirely on our ability to successfully obtain marketing approval for and commercialize SPN-538 and SPN-804. Neither SPN-538 nor SPN-804 are approved for marketing in any jurisdiction and, therefore, unless they obtain regulatory approval, they may never be commercialized.

Our ability to successfully commercialize any of our products candidates will depend, among other things, on our ability to:

- successfully complete our clinical trials;
- produce, through a validated process, sufficiently large quantities of our product candidates to permit successful commercialization;
- receive marketing approvals from the FDA and similar foreign regulatory authorities;
- establish commercial manufacturing arrangements with third-party manufacturers;
- build and maintain strong sales, distribution and marketing capabilities sufficient to launch commercial sales of our product candidates;
- establish collaborations with third parties for the commercialization of our product candidates in countries outside the United States, and such collaborators' ability to obtain regulatory and reimbursement approvals in such countries;
- secure acceptance of our product candidates from physicians, health care payors, patients and the medical community; and
- manage our spending as costs and expenses increase due to clinical trials, regulatory approvals and commercialization.

There are no guarantees that we will be successful in completing these tasks. If we are unable to successfully complete these tasks, we may not be able to commercialize SPN-538, SPN-804 or any of our other product candidates in a timely manner, or at all, in which case we may be unable to generate sufficient revenues to sustain and grow our business. In addition, although we believe that we have already incurred the majority of the costs related to the development of SPN-538 and SPN-804, if we experience unanticipated delays or problems, these costs could substantially increase and our business, financial condition and results of operations will be adversely affected.

Final marketing approval of SPN-538, SPN-804 or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

Our business depends on the successful development and commercialization of our product candidates. We are not permitted to market any of our product candidates in the United States until we receive approval of an NDA from the FDA, or in any foreign jurisdiction until we receive the requisite approvals from such jurisdiction. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources. We cannot predict whether or when we will obtain regulatory approval to commercialize our product candidates and we cannot, therefore, predict the timing of any future revenues from these product candidates, if any.

With respect to our two most advanced product candidates, SPN-538 (extended release topiramate) and SPN-804 (extended release oxcarbazepine), we are pursuing a regulatory strategy pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, or FDCA, which allows us to rely in our submissions on the existing data from the NDAs of Topamax and Trileptal, respectively. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant or clinical trials demonstrating safety and effectiveness. The FDA could refuse to file our NDA submissions, request additional information before accepting our submissions for filing or require additional information to sufficiently demonstrate safety and effectiveness. For example, we initially submitted an NDA for SPN-538 in January 2011, but the FDA refused to file the NDA and raised questions relating to chemistry and manufacturing controls issues. The FDA accepted the NDA for filing in November 2011. In addition, in late December 2011, Upsher-Smith Laboratories, Inc., or Upsher-Smith, submitted a citizen petition to the FDA requesting that the FDA refrain from approving any application for extended-release topiramate that does not include an adequate and well-controlled clinical study demonstrating the safety and efficacy of the extended-release formulation. The citizen petition states that the FDA required Upsher-Smith to conduct such a study for its extended-release topiramate candidate and that it would be inequitable, in Upsher-Smith's opinion, for the FDA not to require other applicants for extended-release topiramate to conduct similar studies. To our knowledge, the FDA has not yet substantively responded to the citizen petition. If the FDA grants the petition and requires us to conduct a clinical study to demonstrate the safety or efficacy of SPN-538, the commercialization of SPN-538 could be delayed or prevented.

The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. For example, irrespective of Upsher-Smith's citizen petition with respect to SPN-538, the FDA:

- could determine that we cannot rely on Section 505(b)(2) for SPN-538 or SPN-804;
- could determine that the information provided by us was inadequate, contained clinical deficiencies or otherwise failed to demonstrate the safety and effectiveness of SPN-538, SPN-804 or any of our product candidates for any indication;
- may not find the data from bioequivalence studies and/or clinical trials sufficient to support the submission of an NDA or to obtain marketing approval in the United States, including any findings that the clinical and other benefits of our product candidates outweigh their safety risks;

- may disagree with our trial design or our interpretation of data from preclinical studies, bioequivalence studies and/or clinical trials, or may change the requirements for approval even after it has reviewed and commented on the design for our trials;
- may determine that we have identified the wrong reference listed drug or drugs or that approval of our Section 505(b)(2) application for SPN-538, SPN-804 or any of our other product candidates is blocked by patent or non-patent exclusivity of the reference listed drug or drugs;
- may identify deficiencies in the manufacturing processes or facilities of third party manufacturers with which we enter into agreements for the manufacturing of our product candidates;
- may approve our product candidates for fewer or more limited indications than we request, or may grant approval contingent on the performance of costly post-approval clinical trials;
- may change its approval policies or adopt new regulations; or
- may not approve the labeling claims that we believe are necessary or desirable for the successful commercialization of our product candidates.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) application that we submit. Any failure to obtain regulatory approval of our product candidates would significantly limit our ability to generate revenues, and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenues.

Our trials may fail to demonstrate acceptable levels of safety and efficacy of our product candidates, which could prevent or significantly delay regulatory approval.

We may be unable to sufficiently demonstrate the safety and efficacy of our product candidates to obtain regulatory approval. We must demonstrate with substantial evidence gathered in well-controlled studies, and to the satisfaction of the FDA with respect to approval in the United States (and to the satisfaction of similar regulatory authorities in other jurisdictions with respect to approval in those jurisdictions), that each product candidate is safe and effective for use in the target indication. The FDA may require us to conduct or perform additional studies or trials to adequately demonstrate safety and efficacy, which could prevent or significantly delay our receipt of regulatory approval and, ultimately, the commercialization of that product candidate.

In addition, the results from the trials that we have completed for our product candidates may not be replicated in future trials, or we may be unable to demonstrate sufficient safety and efficacy to obtain the requisite regulatory approvals for our product candidates. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced development, even after promising results in earlier trials. If our product candidates are not shown to be safe and effective, our clinical development programs could be delayed or might be terminated.

Our product candidates may cause undesirable side effects or have other properties that delay or prevent their regulatory approval or limit their commercial potential.

Undesirable side effects caused by any of our product candidates could cause us or regulatory authorities to interrupt, delay or halt development and could result in the denial of regulatory approval by the FDA or other regulatory authorities, and potential products liability claims. Immediate release topiramate and oxcarbazepine, drug compounds upon which our SPN-538 and SPN-804 product candidates are based, respectively, are known to cause various side effects, including dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive

problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. The use of SPN-538 and SPN-804 may cause similar side effects as compared to their reference products, or may cause additional or different side effects. Any undesirable side effects that are caused by any of our product candidates could have a material adverse effect upon that product candidate's development program and our business as a whole.

In addition, if any of our product candidates receive marketing approval, and we or others later identify undesirable side effects caused by the product candidate, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of the product candidate or otherwise require us to take the approved product off the market;
- regulatory authorities may require additional warnings, or a narrowing of the indication, on the product label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients;
- we may be required to modify the product in some way;
- the FDA may require us to conduct additional clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product;
- sales of approved product candidates may decrease significantly;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining the commercial success of our product candidates and could substantially increase commercialization costs.

If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or SPN-804, our business would be materially harmed.

Other third parties may seek approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States. If any of these parties obtain FDA approval before we do, they may be entitled to three years of marketing exclusivity. Such exclusivity would delay the commercialization of SPN-538 and SPN-804 and, as a result, we may never achieve significant market share for these product candidates. Consequently, revenues from product sales of these product candidates would be similarly delayed and our business, including our development programs, and growth prospects would suffer. For example, we are aware that Upsher-Smith is currently conducting a Phase III clinical trial for USL255 (extended release topiramate) and, in connection with our NDA submission for SPN-538, has filed a citizen petition with the FDA alleging that it would be inequitable, in Upsher-Smith's opinion, for the FDA not to require other applicants for extended-release topiramate to conduct similar studies. If the FDA grants the petition and requires us to conduct another clinical study of SPN-538, the approval of SPN-538 by the FDA could be delayed. If Upsher-Smith's USL255 product is approved by the FDA before SPN-538, then Upsher-Smith may obtain three years of marketing exclusivity based on its Phase III clinical trial, which would significantly delay our entry into the U.S. market. Even if SPN-538 is approved before USL255, we may not be entitled to any marketing exclusivity and, other than under circumstances in which third parties may infringe or are infringing our patents, we may not be able to prevent the submission or approval of another full NDA for any competitor's extended or controlled release topiramate product candidate, including USL255. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside

of the United States pursue or obtain approval of their products within the United States before we do, such competing products may be granted three year marketing exclusivity, which would significantly delay SPN-804's entry into the U.S. market. Such a delay would limit the potential success of SPN-804 in the United States, and our business and growth prospects would be materially impaired. Accordingly, if any third party is successful in obtaining approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from SPN-538 or SPN-804.

If we do not obtain marketing exclusivity for our product candidates, our business may suffer.

Under the Hatch-Waxman Amendments, three years of marketing exclusivity may be granted for the approval of new and supplemental NDAs, including Section 505(b)(2) applications, for, among other things, new indications, dosage forms, routes of administration, or strengths of an existing drug, or for a new use, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. This exclusivity, which is sometimes referred to as clinical investigation exclusivity, prevents the FDA from approving an application under Section 505(b)(2) for the same conditions of use associated with the new clinical investigations before the expiration of three years from the date of approval. Such exclusivity, however, would not prevent the approval of another application if the applicant submits a Section 505(b)(1) NDA and has conducted its own adequate, well-controlled clinical trials demonstrating safety and efficacy, nor would it prevent approval of a generic product or Section 505(b)(2) product that did not incorporate the exclusivity-protected changes of the approved drug product. Under the Hatch-Waxman Amendments, newly-approved drugs and indications may also benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Amendments provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, or NCE, meaning that the FDA has not previously approved any other drug containing the same active pharmaceutical ingredient, or active moiety. Although protection under the Hatch-Waxman Amendments will not prevent the submission or approval of another full Section 505(b)(1) NDA, such an NDA applicant would be required to conduct its own preclinical and adequate, well-controlled clinical trials to demonstrate safety and effectiveness. If we are unable to obtain marketing exclusivity for our product candidates including SPN-538, our competitors may obtain approval of competing products more easily than if we had such marketing exclusivity, and our future revenues could be reduced, possibly materially.

Delays or failures in the completion of testing of our product candidates would increase our costs and delay or limit our ability to generate revenues.

Delays or failures in the completion of clinical trials for our product candidates could significantly raise our product development costs. We do not know whether current or planned trials will be completed on schedule, if at all. The commencement and completion of clinical development can be delayed or halted for a number of reasons, including:

- difficulties obtaining regulatory approval to commence a clinical trial or complying with conditions imposed by a regulatory authority regarding the scope or term of a clinical trial;
- delays in reaching or failure to reach agreement on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- insufficient or inadequate supply or quantity of a product candidate for use in trials;
- difficulties obtaining institutional review board or ethics committee approval to conduct a trial at a prospective site;

- challenges recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including competition from other programs for the treatment of similar conditions;
- severe or unexpected drug-related side effects experienced by patients in a clinical trial;
- difficulty retaining patients who have initiated a clinical trial but may be prone to withdraw due to side effects from the therapy, lack of efficacy or personal issues; and
- clinical holds imposed by the FDA.

Clinical trials may also be delayed as a result of ambiguous or negative interim results. In addition, clinical trials may be suspended or terminated by us, an institutional review board or ethics committee overseeing the clinical trial at a trial site (with respect to that site), the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols;
- observations during inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities that ultimately result in the imposition of a clinical hold;
- unforeseen safety issues; or
- lack of adequate funding to continue the trial.

In addition, failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols may also result in the inability to use the data to support product approval. Additionally, changes in regulatory requirements and guidance may occur, and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to institutional review boards or ethics committees for reexamination, which may impact the costs, timing or successful completion of a clinical trial. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates. If we experience delays in completion of, or if we terminate any of our clinical trials, our ability to obtain regulatory approval for our product candidates may be materially harmed, and our commercial prospects and ability to generate product revenues will be diminished.

We expect intense competition and, if our competitors develop or market alternatives for treatments of our target indications, our commercial opportunities will be reduced or eliminated.

The pharmaceutical industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary therapeutics. We face competition from a number of sources, some of which may target the same indications as our product candidates, including large pharmaceutical companies, smaller pharmaceutical companies, biotechnology companies, academic institutions, government agencies and private and public research institutions. The availability of competing products will limit the demand and the price we are able to charge for any of our product candidates that are commercialized unless we are able to differentiate them. We anticipate that we will face intense competition when and if our product candidates are approved by regulatory authorities and we begin the commercialization process. For instance, there are over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat epilepsy. In addition, competition in the attention deficit hyperactivity disorder, or ADHD, market in the United States has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs such as Adderall XR. As a result, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from any commercialized product.

In addition to already marketed competing products, we believe certain companies are developing other products which could compete with our product candidates should they be approved by

regulatory authorities. For example, according to Datamonitor, as of April 2010, there were 47 compounds in preclinical and clinical development for epilepsy across the United States, Japan, France, Germany, Italy, Spain and the United Kingdom. Datamonitor reported that approximately 15 were in late-stage (Phase II or later) clinical trials as of April 2010. We are also aware that Upsher-Smith announced the initiation of a Phase III clinical trial for USL255 (extended release topiramate) for the management of epilepsy in adults. If successful, such competing product could limit the potential success of SPN-538, and our growth prospects would be materially impaired. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside of the United States obtain approval for their products within the United States prior to us, such competing products may obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market and limit the potential success of SPN-804. Further, new developments, including the development of other drug technologies, may render our product candidates obsolete or noncompetitive. As a result, our product candidates may become obsolete before we recover expenses incurred in connection with their development or realize revenues from any commercialized product.

Further, many competitors have substantially greater:

- capital resources;
- research and development resources and experience, including personnel and technology;
- drug development, clinical trial and regulatory resources and experience;
- sales and marketing resources and experience;
- manufacturing and distribution resources and experience;
- name recognition; and
- resources, experience and expertise in prosecution and enforcement of intellectual property rights.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit or block us from developing or commercializing our product candidates. Our competitors may also develop drugs that are more effective, more useful, better tolerated, subject to fewer or less severe side effects, more widely prescribed or accepted or less costly than ours and may also be more successful than us in manufacturing and marketing their products. If we are unable to compete effectively with the products of our competitors or if such competitors are successful in developing products that compete with any of our product candidates that are approved, our business, results of operations, financial condition and prospects may be materially adversely affected. Mergers and acquisitions in the pharmaceutical industry may result in even more resources being concentrated at competitors. Competition may increase further as a result of advances made in the commercial applicability of technologies and greater availability of capital for investment.

If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates would be adversely affected.

Once an NDA, including a Section 505(b)(2) application, is approved, the product covered thereby becomes a "listed drug" which can, in turn, be cited by potential competitors in support of approval of an abbreviated new drug application, or ANDA. The FDCA, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified, non-infringing versions of a drug to facilitate the approval of an ANDA or other application for generic substitutes. These manufacturers might only be required to conduct a relatively inexpensive study to show that their

product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use, or labeling, as our product candidate and that the generic product is bioequivalent to ours, meaning it is absorbed in the body at the same rate and to the same extent as our product candidate. These generic equivalents, which must meet the same quality standards as branded pharmaceuticals, would be significantly less costly than ours to bring to market and companies that produce generic equivalents are generally able to offer their products at lower prices. Thus, after the introduction of a generic competitor, a significant percentage of the sales of any branded product is typically lost to the generic product. Accordingly, competition from generic equivalents to our product candidates would materially adversely impact our revenues, profitability and cash flows and substantially limit our ability to obtain a return on the investments we have made in our product candidates.

We have limited sales and marketing experience and resources, and we may not be able to effectively market and sell our product candidates in the United States, if approved.

We are preparing the build-out of our commercial infrastructure to launch our product candidates within the United States. We have limited sales or marketing experience. To develop internal sales and marketing capabilities, we will have to invest significant amounts of financial and management resources, some of which will be committed prior to any confirmation that SPN-538, SPN-804 or any other of our product candidates will be approved. If the commercial launch of SPN-538 or SPN-804 is delayed for a protracted period of time as a result of FDA requirements or other reasons, we would incur significant expenses prior to being able to realize any revenues. Further, we could face a number of additional risks in establishing internal sales and marketing capabilities, including:

- we may not be able to attract talented and qualified personnel to build an effective marketing or sales force;
- the cost of establishing a marketing or sales force may not be justifiable in light of the revenues generated by any of our product candidates, if approved; and
- our direct sales and marketing efforts may not be successful.

If we are unable to establish adequate sales and marketing capabilities, we may not be able to generate product revenues and may never become profitable.

We intend to rely on third party collaborators to market and commercialize our product candidates outside of the United States, who may fail to effectively commercialize our product candidates.

Outside of the United States we currently plan to utilize strategic partners or contract sales forces, where appropriate, to assist in the commercialization of our product candidates, if approved. We currently possess limited resources and may not be successful in establishing collaborations or co-promotion arrangements on acceptable terms, if at all. We also face competition in our search for collaborators and co-promoters. By entering into strategic collaborations or similar arrangements, we will rely on third parties for financial resources and for development, commercialization, sales and marketing and regulatory expertise. Any collaborators may fail to develop or effectively commercialize our product candidates because they cannot obtain the necessary regulatory approvals, they lack adequate financial or other resources or they decide to focus on other initiatives. Any failure of our third party collaborators to successfully market and commercialize our product candidates outside of the United States would diminish our revenues and harm our results of operations.

Limitations on our patent rights relating to our product candidates may limit our ability to prevent third parties from competing against us.

Our success will depend on our ability to obtain and maintain patent protection for our proprietary technologies and our product candidates, preserve our trade secrets, prevent third parties from infringing upon our proprietary rights and operate without infringing upon the proprietary rights of

others. To that end, we seek patent protection in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business.

The strength of patents in the pharmaceutical industry involves complex legal and scientific questions and can be uncertain. Patent applications in the United States and most other countries are confidential for a period of time until they are published, and publication of discoveries in scientific or patent literature typically lags actual discoveries by several months or more. As a result, we cannot be certain that we were the first to conceive inventions covered by our patents and pending patent applications or that we were the first to file patent applications for such inventions. In addition, we cannot be certain that our patent applications will be granted, that any issued patents will adequately protect our intellectual property or that such patents will not be challenged, narrowed, invalidated or circumvented.

We also rely upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants that are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors. Any failure to adequately prevent disclosure of our trade secrets and other proprietary information could have a material adverse impact on our business.

In addition, the laws of certain foreign countries do not protect proprietary rights to the same extent or in the same manner as the United States, and therefore, we may encounter problems in protecting and defending our intellectual property in certain foreign jurisdictions.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business.

Our commercial success depends upon our ability and the ability of our collaborators to develop, manufacture, market and sell their approved products and our product candidates and use our proprietary technologies without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we and our collaborators are developing product candidates. As the pharmaceutical industry expands and more patents are issued, the risk increases that our collaborators' approved products and our product candidates may give rise to claims of infringement of the patent rights of others. There may be issued patents of third parties of which we are currently unaware, that may be infringed by our collaborators' approved products or our product candidates including SPN-538 and SPN-804, which could prevent us from being able to commercialize these product candidates. Because patent applications can take many years to issue, there may be currently pending applications which may later result in issued patents that our collaborators' approved products or our product candidates may infringe.

We may be exposed to, or threatened with, future litigation by third parties alleging that our collaborators' approved products or our product candidates infringe their intellectual property rights. If one of our collaborators' approved products or our product candidates is found to infringe the intellectual property rights of a third party, we or our collaborators could be enjoined by a court and required to pay damages and could be unable to commercialize the applicable approved products and product candidates unless we obtain a license to the patent. A license may not be available to us on acceptable terms, if at all. In addition, during litigation, the patent holder could obtain a preliminary injunction or other equitable relief which could prohibit us from making, using or selling our approved product candidates, pending a trial on the merits, which may not occur for several years.

There is a substantial amount of litigation involving patent and other intellectual property rights in the pharmaceutical industry generally. If a third party claims that we or our collaborators infringe its intellectual property rights, we may face a number of issues, including, but not limited to:

- infringement and other intellectual property claims which, regardless of merit, may be expensive and time-consuming to litigate and may divert our management's attention from our core business;
- substantial damages for infringement, which we may have to pay if a court decides that the product at issue infringes on or violates the third party's rights, and, if the court finds that the infringement was willful, we could be ordered to pay treble damages and the patent owner's attorneys' fees;
- a court prohibiting us from selling our approved product candidate, if any, unless the third party licenses its rights to us, which it is not required to do;
- if a license is available from a third party, we may have to pay substantial royalties, fees or grant cross-licenses to our intellectual property rights; and
- redesigning our product candidates so they do not infringe, which may not be possible or may require substantial monetary expenditures and time.

We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. For example, we are involved in the following matters related to Paragraph IV Certification Notice Letters that we have received in connection with our collaborators' products. In connection with an ANDA, a Paragraph IV Certification Notice Letter notifies the FDA that one or more patents listed in the FDA's Approved Drug Product List (Orange Book) is alleged invalid, unenforceable or will not be infringed by the ANDA product.

- *Sanctura XR Litigation*. We are involved in a patent infringement matter filed in response to three Paragraph IV Certification Notice Letters that we received in June 2009, November 2009 and April 2010 regarding an ANDA submitted to the FDA by each of Watson Laboratories, Inc., Sandoz Inc. and Paddock Laboratories, Inc., respectively, requesting approval to market and sell generic versions of Sanctura XR trospium chloride extended release capsules, a product that is manufactured and sold by Allergan, Inc., which is the marketing partner of Endo Pharmaceuticals Solutions Inc. The ANDA filers alleged in their respective original notice letters that U.S. Patent Number 7,410,978 issued to us is invalid, unenforceable and/or will not be infringed by the respective company's manufacture, use or sale of the product described in its ANDA submission. Our patent covers extended-release formulations containing trospium chloride and expires on February 1, 2025, and is licensed to Endo Pharmaceuticals Solutions Inc. Each of the ANDA filers subsequently amended their respective notice letters to include other

U.S. patents related to Sanctura XR trospium chloride (specifically, U.S. Patent Nos. 7,759,359; 7,763,635; 7,781,448; and 7,781,449). We intend to support Allergan, Inc. and Endo Pharmaceuticals Solutions Inc. in their efforts to contest this matter.

- *Oracea Litigation.* We are involved in a patent infringement matter filed in response to four Paragraph IV Certification Notice Letters that we received in November 2010, January 2011, April 2011 and September 2011 regarding an ANDA, submitted to the FDA by each of Lupin Limited, Sandoz Inc., Impax Laboratories, Inc. and Amneal Pharmaceuticals LCC, respectively, requesting approval to market and sell generic versions of Oracea doxycycline, a product that is manufactured and sold by Galderma Laboratories, L.P. The ANDA filers alleged in their respective original notice letters that the U.S. Patent Number 7,749,532 issued to us is invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in their ANDA submissions. In addition, we have received in October 2010, a complaint for Declaratory Judgment from Mylan alleging invalidity of the 7,749,532 patent. This matter was tried in July 2011. The District Court for the District of Delaware held that Mylan infringed certain claims of the patent, and that the claims are valid. Our patent covers once-daily formulations of doxycycline, including methods of their use in treating rosacea and processes regarding their preparation, and expires on December 19, 2027, and is licensed to Galderma Laboratories, L.P. We intend to support Galderma Laboratories, L.P. in this matter.

- *Intuniv Litigation.* We are involved in several patent infringement actions filed in response to Paragraph IV Certification Notice Letters that we received in March, April and October 2010, and February and October 2011, regarding ANDAs submitted to the FDA requesting approval to market and sell generic versions of Intuniv, a product that is manufactured and sold by Shire plc. The defendants in these cases are Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd; Actavis Elizabeth LLC and Actavis Inc.; Anchen Pharmaceuticals, Inc. and Anchen, Inc.; Watson Pharmaceuticals, Inc., Watson Laboratories, Inc. - Florida Watson Pharma, Inc. and ANDA, Inc.; Impax Laboratories, Inc.; and Mylan Pharmaceuticals Inc. and Mylan Inc. The ANDA filers allege that our U.S. Patent Numbers 6,287,599 and 6,811,794 are invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submissions. Our patents cover extended-release formulations containing guanfacine hydrochloride, with the latest patent expiration in 2022. Both of these patents are licensed to Shire plc. We intend to support Shire plc in its efforts to contest this matter.

Unless a court determines that our patents are invalid or unenforceable, we do not expect an adverse decision in any of the foregoing matters will have a material adverse effect on our business as we have monetized the future revenues associated with each of Sanctura XR, Oracea and Intuniv. However, in any infringement proceeding including the foregoing, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent application at risk of not issuing.

Interference proceedings brought by the U.S. Patent and Trademark Office, or USPTO, may be necessary to determine the priority of inventions with respect to our patents and patent applications or those of our collaborators. An unfavorable outcome could require us to cease using the technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if a prevailing party does not offer us a license on terms that are acceptable to us. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distraction of our management and other employees. We may not be able to prevent, alone or with our collaborators, misappropriation of our proprietary rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceeding or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. There can be no assurance that our product candidate will not be subject to same risks.

The commercial success of our product candidates, if approved, depends upon attaining market acceptance by physicians, patients, third party payors and the medical community.

Even if our product candidates are approved for sale by the appropriate regulatory authorities, physicians may not prescribe our approved product candidates, in which case we would not generate the revenues we anticipate. Market acceptance of any of our product candidates by physicians, patients, third party payors and the medical community depends on, among other things:

- our ability to provide acceptable evidence of safety and efficacy;
- acceptance by physicians and patients of each product candidate as a safe and effective treatment;
- perceived advantages of our product candidates over alternative treatments;
- relative convenience and ease of administration of our product candidates compared to existing treatments;
- any labeling restrictions placed upon each product candidate in connection with its approval;
- the prevalence and severity of the adverse side effects of each of our product candidates;
- the clinical indications for which each of our product candidates is approved, including any potential additional restrictions placed upon each product candidate in connection with its approval;
- prevalence of the disease or condition for which each product candidate is approved;
- the cost of treatment in relation to alternative treatments, including generic products;
- the extent to which each product is approved for inclusion on formularies of hospitals and managed care organizations;
- any negative publicity related to our or our competitors' products, including as a result of any related adverse side effects;
- the effectiveness of our or any current or future collaborators' sales, marketing and distribution strategies;
- pricing and cost effectiveness; and
- the availability of adequate reimbursement by third parties.

For example, new AEDs that were introduced in the market as new chemical entities, or NCEs, historically have not quickly gained significant market share against existing molecules in the epilepsy market, because physicians are often reluctant to change a stable patient's existing therapy (even for a NCE) and risk a breakthrough seizure in their patients. Although our epilepsy product candidates are not NCEs, if approved, they would be subject to the risk that they will not be able to gain significant market share against existing AEDs. If our product candidates do not achieve an adequate level of acceptance by physicians, third-party payors and patients, we may not generate sufficient revenues from these product candidates to become or remain profitable on a timely basis, if at all.

Even if our product candidates receive regulatory approval, they may be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on a product's indicated uses or marketing or impose ongoing requirements for potentially costly post-approval studies. Our product candidates would also be, and our collaborators' approved products are, subject to ongoing FDA requirements governing the labeling, packaging, storage, advertising, promotion, recordkeeping and submission of safety and other post-market information. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current good manufacturing practices, or GMP, regulations. If we, our collaborators or a regulatory authority discovers previously unknown problems with a product, such as side effects of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory authority may impose restrictions on that product or the manufacturer, including requiring withdrawal of the product from the market or suspension of manufacturing. If we, our collaborators, our collaborators' approved products or our product candidates, or the manufacturing facilities for our collaborators' approved products or our product candidates fail to comply with applicable regulatory requirements, a regulatory authority may:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing bioequivalence and/or clinical trials;
- refuse to approve pending applications or supplements to applications filed by us;
- impose restrictions on operations, including costly new manufacturing requirements, or suspension of production; or
- seize or detain products or require us to initiate a product recall.

In addition, if any of our product candidates are approved, our product labeling, advertising and promotion would be subject to regulatory requirements and continuing regulatory review. The FDA strictly regulates the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA as reflected in the product's approved labeling. If we receive marketing approval for our product candidates, physicians may nevertheless prescribe our product candidates to their patients in a manner that is inconsistent with the approved label. The FDA and other authorities actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant sanctions. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we are found to have promoted off-label uses, we may be enjoined from such off-label promotion and become subject to significant liability, which would have an adverse effect on our reputation, business and revenues, if any.

If we fail to produce our product candidates in the volumes that we require on a timely basis, or fail to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of our product candidates.

We do not currently own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party contract manufacturers for the supply of the active

pharmaceutical ingredients for our product candidates, including drug substance for our preclinical research and clinical trials. For SPN-538 and SPN-804, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third-party suppliers and manufacturers for the final commercial products. Any future curtailment in the availability of raw materials could result in production or other delays with consequent adverse effects on us. In addition, because regulatory authorities must generally approve raw material sources for pharmaceutical products, changes in raw material suppliers may result in production delays or higher raw material costs.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Pharmaceutical companies often encounter difficulties in production, particularly in scaling up production, of their products. These problems include manufacturing difficulties relating to production costs and yields, quality control, including stability of the product and quality assurance testing, shortages of qualified personnel, as well as compliance with federal, state and foreign regulations. In responding to the FDA's refusal-to-file letter for the SPN-538 NDA, we had to address chemistry and manufacturing controls issues. If we are unable to demonstrate stability in accordance with commercial requirements, or if our manufacturers were to encounter difficulties or otherwise fail to comply with their obligations to us, our ability to obtain FDA approval and market our product candidates would be jeopardized. In addition, any delay or interruption in the supply of clinical trial supplies could delay or prohibit the completion of our bioequivalence and/or clinical trials, increase the costs associated with conducting our bioequivalence and/or clinical trials and, depending upon the period of delay, require us to commence new trials at significant additional expense or to terminate a trial.

Manufacturers of pharmaceutical products need to comply with GMP requirements enforced by the FDA through their facilities inspection programs. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. Manufacturers of our product candidates may be unable to comply with these GMP requirements and with other FDA and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any of our product candidates is compromised due to failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for such product candidate or successfully commercialize such product candidate, and we may be held liable for any injuries sustained as a result. Any of these factors could cause a delay in clinical developments, regulatory submissions, approvals or commercialization of our product candidates, entail higher costs or result in our being unable to effectively commercialize our product candidates. Furthermore, for our two most advanced product candidates, SPN-538 and SPN-804, we are presently negotiating agreements with leading contract manufacturing organizations, or CMOs, headquartered in North America for the manufacture of the final commercial products. If we fail to obtain the required commercial quantities on a timely basis and at commercially reasonable prices, we may be unable to meet demand for our approved product candidates, if any, and would lose potential revenues.

We depend on collaborators to work with us to develop, manufacture and commercialize their and our product candidates.

We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of treprostinil diethanolamine, or treprostinil, for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. This oral formulation is the subject of an NDA for PAH submitted by United Therapeutics and accepted for filing by the FDA in February 2012. If United Therapeutics receives approval to market and sell this product candidate, we are entitled to receive single digit gross royalties based on worldwide net sales. We are also entitled to receive

milestones and royalties for use of this formulation in other indications. If we materially breach any of our obligations under the license agreement, however, we could lose the potential to receive any future royalty payments thereunder, which could be financially significant to us.

We also have a license agreement with Especificos Stendhal, S.A., DE C.V. and we may enter into additional collaborations in the future. Our future collaboration agreements may have the effect of limiting the areas of research and development that we may pursue, either alone or in collaboration with third parties. Much of the potential revenues from these future collaborations may consist of contingent payments, such as payments for achieving development milestones and royalties payable on sales of developed products. The milestone and royalty revenues that we may receive under these collaborations will depend upon our collaborators' ability to successfully develop, introduce, market and sell new products. Future collaboration partners may fail to develop or effectively commercialize products using our product candidates or technologies because they, among other things:

- may change the focus of their development and commercialization efforts or may have insufficient resources to effectively develop our product candidates. Pharmaceutical and biotechnology companies historically have re-evaluated their development and commercialization priorities following mergers and consolidations, which have been common in recent years in these industries. The ability of some of our product candidates to reach their potential could be limited if our future collaborators decrease or fail to increase development or commercialization efforts related to those product candidates;

- may decide not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite scientific expertise or limited cash resources, or the belief that other drug development programs may have a higher likelihood of obtaining marketing approval or may potentially generate a greater return on investment;

- may develop and commercialize, either alone or with others, drugs that are similar to or competitive with the product candidates that are the subject of their collaborations with us;

- may not have sufficient resources necessary to carry the product candidate through clinical development, marketing approval and commercialization;

- may fail to comply with applicable regulatory requirements;

- may not be able to obtain the necessary marketing approvals; or

- may breach or terminate their arrangement with us.

If collaboration partners fail to develop or effectively commercialize our product candidates for any of these reasons, we may not be able to replace the collaboration partner with another partner to develop and commercialize the product candidate under the terms of the collaboration. Further, even if we are able to replace the collaboration partner, we may not be able to do so on commercially favorable terms. As a result, the development and commercialization of the affected product candidate could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue development and commercialization of the product candidate on our own, which could adversely affect our results of operations.

We rely and will continue to rely on outsourcing arrangements for certain of our activities, including clinical research of our product candidates and manufacturing of our compounds and product candidates beyond Phase II clinical trials.

We rely on outsourcing arrangements for some of our activities, including manufacturing, preclinical and clinical research, data collection and analysis. We may have limited control over these third parties and we cannot guarantee that they will perform their obligations in an effective and timely

manner. Our reliance on third parties, including third-party CROs and CMOs entails risks including, but not limited to:

- non-compliance by third parties with regulatory and quality control standards;
- sanctions imposed by regulatory authorities if compounds supplied or manufactured by a third party supplier or manufacturer fail to comply with applicable regulatory standards;
- the possible breach of the agreements by the CROs or CMOs because of factors beyond our control or the insolvency of any of these third parties or other financial difficulties, labor unrest, natural disasters or other factors adversely affecting their ability to conduct their business; and
- termination or non-renewal of an agreement by the third parties, at a time that is costly or inconvenient for us, because of our breach of the manufacturing agreement or based on their own business priorities.

We do not own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party CMOs for all of our required raw materials and drug substance for our preclinical research and clinical trials. For SPN-538 and SPN-804, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third-party suppliers and manufacturers for the final commercial products. If any of these vendors is unable to perform its obligations to us, including due to violations of the FDA's requirements, our ability to meet regulatory requirements or projected timelines and necessary quality standards for successful manufacturing of the various required lots of material for our development and commercialization efforts would be adversely affected. For example, in responding to the FDA's refusal-to-file letter for the SPN-538 NDA, we had to address chemistry and manufacturing controls issues. Further, if we were required to change vendors, it could result in delays in our regulatory approval efforts and significantly increase our costs. Accordingly, the loss of any of our current or future third-party manufacturers or suppliers could have a material adverse effect on our business, results of operations, financial condition and prospects.

We do not have any current contractual relationships for the manufacture of commercial supplies of any of our product candidates. For our two most advanced product candidates, SPN-538 and SPN-804, we are presently negotiating agreements with leading CMOs headquartered in North America for the manufacture of the final commercial products. The number of third-party manufacturers with the expertise, required regulatory approvals and facilities to manufacture drug substance and final drug product on a commercial scale is limited. Therefore, we may not be able to enter into such arrangements with third-party manufacturers in a timely manner, on acceptable terms or at all. Failure to secure such contractual arrangements would harm the commercial prospects for our product candidates, our costs could increase and our ability to generate revenues could be delayed.

We have in-licensed or acquired a portion of our intellectual property necessary to develop certain of our psychiatry product candidates, and if we fail to comply with our obligations under any of these arrangements, we could lose such intellectual property rights.

We are a party to and rely on several arrangements with third parties, such as those with Afecta Pharmaceuticals, Inc., or Afecta, and Rune Healthcare Limited, or Rune, which give us rights to intellectual property that is necessary for the development of certain of our product candidates including SPN-810 and SPN-809, respectively. In addition, we may enter into similar arrangements in the future. Our current arrangements impose various development, royalty and other obligations on us. If we materially breach these obligations or if Afecta or Rune fail to adequately perform their respective obligations, these exclusive arrangements could be terminated, which would result in our inability to develop, manufacture and sell products that are covered by such intellectual property.

Even if our product candidates receive regulatory approval in the United States, we or our collaborators may never receive approval to commercialize our product candidates outside of the United States.

In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other jurisdictions regarding safety and efficacy. Approval procedures vary among jurisdictions and can involve product testing and administrative review periods different from, and greater than, those in the United States. The time required to obtain approval in other jurisdictions might differ from that required to obtain FDA approval. The regulatory approval process in other jurisdictions may include all of the risks detailed above regarding FDA approval in the United States as well as other risks. For example, legislation analogous to Section 505(b)(2) of the FDCA in the United States, which relates to the ability of an NDA applicant to use published data not developed by such applicant, may not exist in other countries. In territories where data is not freely available, we may not have the ability to commercialize our products without negotiating rights from third parties to refer to their clinical data in our regulatory applications, which could require the expenditure of significant additional funds.

In addition, regulatory approval in one jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory processes in others. Failure to obtain regulatory approvals in other jurisdictions or any delay or setback in obtaining such approvals could have the same adverse effects detailed above regarding FDA approval in the United States. As described above, such effects include the risks that any of our product candidates may not be approved for all indications requested, which could limit the uses of our product candidates and have an adverse effect on their commercial potential or require costly post-marketing studies.

Guidelines and recommendations published by various organizations can reduce the use of our product candidates.

Government agencies promulgate regulations and guidelines directly applicable to us and to our product candidates. In addition, professional societies, practice management groups, private health and science foundations and organizations involved in various diseases from time to time may also publish guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines suggesting the reduced use of our product candidates or the use of competitive or alternative products that are followed by patients and health care providers could result in decreased use of our product candidates.

We are subject to uncertainty relating to payment or reimbursement policies which, if not favorable for our product candidates, could hinder or prevent our commercial success.

Our ability or our collaborators' ability to commercialize our product candidates, including SPN-538 and SPN-804, successfully will depend in part on the coverage and reimbursement levels set by governmental authorities, private health insurers, managed care organizations and other third-party payors. As a threshold for coverage and reimbursement, third-party payors generally require that drug products have been approved for marketing by the FDA. Third-party payors also are increasingly challenging the effectiveness of and prices charged for medical products and services. Government authorities and these third-party payors have attempted to control costs, in some instances, by limiting coverage and the amount of reimbursement for particular medications or encouraging the use of lower-cost generic AEDs. We cannot be sure that reimbursement will be available for any of the products that we develop and, if reimbursement is available, the level of reimbursement. Reduced or partial payment or reimbursement coverage could make our product candidates, including SPN-538 and SPN-804, less attractive to patients and prescribing physicians. We also may be required to sell our

product candidates at a discount, which would adversely affect our ability to realize an appropriate return on our investment in our product candidates or compete on price.

We expect that private insurers and managed care organizations will consider the efficacy, cost effectiveness and safety of our product candidates, including SPN-538 and SPN-804, in determining whether to approve reimbursement for such product candidates and at what level. Because each third-party payor individually approves payment or reimbursement, obtaining these approvals can be a time consuming and expensive process that could require us to provide scientific or clinical support for the use of each of our product candidates separately to each third-party payor. In some cases it could take several months or years before a particular private insurer or managed care organization reviews a particular product, and we may ultimately be unsuccessful in obtaining coverage. Our competitors generally have larger organizations, as well as existing business relationships with third-party payors relating to their products. Our business would be materially adversely affected if we do not receive approval for reimbursement of our product candidates from private insurers on a timely or satisfactory basis. Our approved product candidates, if any, may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our product candidates on a profitable basis. Our business would also be adversely affected if private insurers, managed care organizations, the Medicare program or other reimbursing bodies or payors limit the indications for which our product candidates will be reimbursed to a smaller set than we believe they are effective in treating.

In some foreign countries, particularly Canada and the countries of Europe, the pricing of prescription pharmaceuticals is subject to strict governmental control. In these countries, pricing negotiations with governmental authorities can take six to 12 months or longer after the receipt of regulatory approval and product launch. To obtain favorable reimbursement for the indications sought or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies. If reimbursement for our product candidates is unavailable in any country in which reimbursement is sought, limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be materially harmed.

In addition, many managed care organizations negotiate the price of products and develop formularies which establish pricing and reimbursement levels. Exclusion of a product from a formulary can lead to its sharply reduced usage in the managed care organization's patient population. If our product candidates are not included within an adequate number of formularies or adequate payment or reimbursement levels are not provided, or if those policies increasingly favor generic products, our market share and gross margins could be negatively affected, which would have a material adverse effect on our overall business and financial condition.

We expect to experience pricing pressures due to the potential healthcare reforms discussed elsewhere in this prospectus, as well as the trend toward programs aimed at reducing health care costs, the increasing influence of health maintenance organizations and additional legislative proposals.

We face potential product liability exposure, and, if successful claims are brought against us, we may incur substantial liabilities.

The use of our product candidates in clinical trials and the sale of any of our product candidates for which we may obtain marketing approval expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, healthcare providers or others selling or otherwise coming into contact with our product candidates. If we cannot successfully defend ourselves against product liability claims, we could incur substantial liabilities. In addition, product liability claims may result in:

- decreased demand for any product candidate that has received approval and is being commercialized;

- impairment of our business reputation and exposure to adverse publicity;
- withdrawal of bioequivalence and/or clinical trial participants;
- initiation of investigations by regulators;
- costs of related litigation;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- loss of revenues; and
- the inability to commercialize any of our product candidates for which we obtain marketing approval.

Our product liability insurance coverage for our clinical trials is limited to $5 million per occurrence, and $10 million in the aggregate, and covers bodily injury and property damage arising from our clinical trials, subject to industry-standard terms, conditions and exclusions. Our insurance coverage may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses. If and when we obtain marketing approval for any of our product candidates, we intend to expand our insurance coverage to include the sale of commercial products; however, we may be unable to obtain this product liability insurance on commercially reasonable terms. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Our failure to successfully develop and market product candidates would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional product candidates. We are pursuing various therapeutic opportunities through our pipeline. We may spend several years completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;

- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

The U.S. government and other governments have shown significant interest in pursuing healthcare reform. Any government-adopted reform measures could adversely impact the pricing of healthcare products and services in the United States or internationally and the amount of reimbursement available from governmental agencies or other third party payors. The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of health care services to contain or reduce healthcare costs may adversely affect our ability to set prices for any approved product candidate which we believe are fair, and our ability to generate revenues and achieve and maintain profitability.

In both the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals and initiatives to change the health care system in ways that could affect our ability to sell any approved product candidate profitably. Some of these proposed and implemented reforms could result in reduced reimbursement rates for our potential products, which would adversely affect our business strategy, operations and financial results. For example, in March 2010, President Obama signed into law a legislative overhaul of the U.S. healthcare system, known as the Patient Protection and Affordable Care Act of 2010, as amended by the Healthcare and Education Affordability Reconciliation Act of 2010. This law, which we refer to as the PPACA, may have far reaching consequences for biopharmaceutical companies like us. As a result of this new legislation, substantial changes could be made to the current system for paying for healthcare in the United States, including changes made in order to extend medical benefits to those who currently lack insurance coverage. Extending coverage to a large population could substantially change the structure of the health insurance system and the methodology for reimbursing medical services and drugs. These structural changes could entail modifications to the existing system of private payors and government programs, such as Medicare and Medicaid, creation of a government-sponsored healthcare insurance source, or some combination of both, as well as other changes. Restructuring the coverage of medical care in the United States could impact the reimbursement for prescribed drugs, including our product candidates. If reimbursement for our approved product candidates, if any, is substantially less than we expect in the future, or rebate obligations associated with them are substantially increased, our business could be materially and adversely impacted.

In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk

evaluations and mitigation strategies approved by the FDA. The FDA's exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to assure compliance with post-approval regulatory requirements, and potential restrictions on the sale and/or distribution of any approved product candidates.

Future federal and state proposals and health care reforms could limit the prices that can be charged for the product candidates that we develop and may further limit our commercial opportunity. Our results of operations could be materially adversely affected by the PPACA by the possible effect of such current or future legislation on amounts that private insurers will pay and by other health care reforms that may be enacted or adopted in the future.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

We will need to manage our anticipated growth and increased operational activity. Our personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively execute our growth strategy requires that we:

- manage our regulatory approval trials effectively;
- manage our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors, collaborators and other third parties;
- develop internal sales and marketing capabilities;
- commercialize our product candidates;
- improve our operational, financial and management controls, reporting systems and procedures; and
- attract and motivate sufficient numbers of talented employees.

This future growth could place a strain on our administrative and operational infrastructure and may require our management to divert a disproportionate amount of its attention away from our day-to-day activities. We may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. We may not be able to make improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls. If our management is unable to effectively manage our expected growth, our expenses may increase more than expected, our ability to generate or increase our revenues could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to compete effectively will depend, in part, on our ability to effectively manage any future growth.

We may not be able to manage our business effectively if we are unable to attract and motivate key personnel or if we lose any of our current management team.

We may not be able to attract or motivate qualified management and scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to attract and motivate necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our objectives.

We are highly dependent on the development, regulatory, commercial and financial expertise of our management, particularly Jack A. Khattar, our President and Chief Executive Officer. We do not have any employment agreements with any member of our senior management team except

Mr. Khattar. If we lose any members of our management team, we may not be able to find suitable replacements in a timely fashion, if at all. For instance, following the resignation of our Senior Vice President, Chief Medical Officer, Dr. Paolo Baroldi, in March 2012, we intend to manage such responsibilities through existing personnel and services provided by Dr. Baroldi under a consulting arrangement. We cannot be certain that future management transitions will not disrupt our operations and generate concern among employees and those with whom we do business. For instance, since the October 2011 resignation of Russell P. Wilson, our Chief Financial Officer since 2009, we have had two Chief Financial Officers, including Gregory S. Patrick, our Chief Financial Officer since November 2011.

In addition to the competition for personnel, the greater Washington D.C. metropolitan area in particular is characterized by a high cost of living. As such, we could have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment efforts.

We also have scientific and clinical advisors who assist us in formulating our product development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us, or may have arrangements with other companies to assist in the development of products that may compete with ours.

We will need to obtain FDA approval of any proposed product names, and any failure or delay associated with such approval may adversely impact our business.

Any name we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. The FDA may object to any product name we submit if it believes the name inappropriately implies medical claims. We have in the past been required to change a proposed product name. If the FDA objects to any of our proposed product names, we may be required to adopt an alternative name for our product candidates. If we adopt an alternative name, we would lose the benefit of our existing trademark applications for such product candidate, and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

If we fail to comply with healthcare regulations, we could face substantial penalties and our business, operations and financial condition could be adversely affected.

As a manufacturer of pharmaceuticals, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. We could be subject to healthcare fraud and abuse and patient privacy regulation by both the federal government and the states in which we conduct our business. The regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid,

or other third-party payors that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;

- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;

- the federal transparency requirements under the PPACA requires manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests;

- the FDCA, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations could be costly. If our operations are found to be in violation of any of the laws described above or any governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

Our business involves the use of hazardous materials, and we must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our activities and our third-party manufacturers' and suppliers' activities involve the controlled storage, use and disposal of hazardous materials owned by us. We and our manufacturers and suppliers are subject to federal, state, city and local laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. Although we believe that the safety procedures we use for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations, including our commercialization and research and development efforts. Although we believe that the safety procedures utilized by our third-party manufacturers for handling and disposing of these materials generally comply with the standards prescribed by these laws and regulations, we cannot guarantee that this is the case or eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources. We do not currently maintain biological or hazardous materials insurance coverage.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

We employ individuals who were previously employed at other pharmaceutical companies, including our competitors or potential competitors and, as such, we may be subject to claims that we or these employees have used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such an event could cause interruption of our operations. For example, the loss of data from completed or ongoing bioequivalence and/or clinical trials for our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs. To the extent that any disruption or security breach were to result in a loss of or damage to our data, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of our product candidates could be delayed.

Provisions in our agreement with Shire impose restrictive covenants on us, which could limit our ability to operate effectively in the future.

In 2005, we purchased substantially all of the assets of Shire Laboratories Inc. Pursuant to this agreement, we agreed to perpetually refrain from engaging in any research, formulation development, analytical testing, manufacture, technology assessment or oral bioavailability screening that relate to five specific drug compounds (amphetamine, carbamazepine, guanfacine, lanthanum and mesalamine) and any derivative thereof. In addition, we have agreed not to provide any services to, license any intellectual property rights to, or otherwise perform any work for certain pharmaceutical companies primarily engaged in the development and marketing of generic products through 2012. Although these various restrictions and covenants on us do not currently impact our product candidates or business, they could in the future limit or delay our ability to take advantage of business opportunities that may relate to such compounds or such companies.

Risks Related to Our Finances and Capital Requirements

We have incurred significant operating losses since our inception and anticipate that we will incur continued losses for the foreseeable future.

In recent years, we have focused primarily on developing our current product candidates, with the goal of supporting regulatory approval for these product candidates. We have financed our operations primarily through private placements of convertible preferred stock, our collaboration and license

arrangements, the monetization of certain future royalty streams under our existing licenses for Oracea, Sanctura XR and Intuniv, and the sale of our subsidiary, TCD Royalty Sub LLC, or Royalty Sub, which held the license rights to Oracea and Sanctura XR. We have incurred significant operating losses since our inception in 2005. We incurred net losses of approximately $17.3 million, $33.5 million and $38.5 million in the years ended December 31, 2007, 2008 and 2010, respectively. We incurred net income of approximately $0.5 million and $53.8 million in the years ended December 31, 2009 and 2011, respectively, due to one-time items. As of December 31, 2011, we had an accumulated deficit of approximately $40.0 million. Substantially all of our operating losses resulted from costs incurred in connection with our development programs and from general and administrative costs associated with our operations. For example, the expenses that we have incurred relating to the research and development of SPN-538 and SPN-804 from inception to December 31, 2011 are approximately $28.4 million and $48.8 million, respectively. We expect our research and development costs to continue to be substantial and to increase with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when, or if, we will become profitable.

Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. Furthermore, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. In this regard, the report of our independent registered public accounting firm with respect to our consolidated financial statements as of and for the period ended December 31, 2011 contains an explanatory paragraph stating that there is substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern. However, even after giving effect to the expected net proceeds in this offering, we may need to obtain capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. In addition, the inclusion of a going concern statement by our auditors, our lack of cash resources and our potential inability to continue as a going concern may materially adversely affect our share price and our ability to raise new capital or to enter into critical contractual relations with third parties.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Developing product candidates, conducting clinical trials, establishing manufacturing relationships and marketing drugs are expensive and uncertain processes. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities and anticipated future product revenues, will be sufficient to fund our operations for at least the next months. We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements prior to any future profitability. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition.

In addition, unforeseen circumstances may arise, or our strategic imperatives could change, causing us to consume capital significantly faster than we currently anticipate, requiring us to seek to raise additional funds sooner than expected. We have no committed external sources of funds.

The amount and timing of our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our trials and other product development programs for our product candidates;
- the costs and timing of in-licensing additional product candidates or acquiring other complementary companies;
- the timing of any regulatory approvals of our product candidates;
- the costs of establishing sales, marketing and distribution capabilities; and
- the status, terms and timing of any collaborative, licensing, co-promotion or other arrangements.

Additional financing may not be available when we need it or may not be available on terms that are favorable to us. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. If adequate funds are not available to us on a timely basis, or at all, we may be required to delay, reduce the scope of or eliminate one or more of our development programs or our commercialization efforts.

We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.

Our ability to become profitable depends upon our ability to generate revenues from sales of our product candidates. To date, we have not generated any revenues from product sales of our own product candidates and have incurred significant operating losses. Our historical revenues have been generated through fees for development services and payment for the achievement of specified development, regulatory and sales milestones, as well as royalties, on product sales of Oracea, Sanctura XR and Intuniv licensed products. In May 2009, in exchange for one-time, lump-sum payment, we licensed all of our rights for Intuniv to an affiliate of Shire plc on a royalty-free, fully paid-up basis. In addition, in connection with our sale of all of our equity interests in Royalty Sub in December 2011, the purchaser acquired all of our license rights to Sanctura XR and Oracea. Accordingly, we no longer generate any revenues from those products.

Our ability to generate product revenues is dependent on our ability to receive regulatory approval of our product candidates, including SPN-538 and SPN-804, and to successfully commercialize these products. Our ability to successfully commercialize our product candidates depends on, among other things:

- our successful completion of ongoing and planned bioequivalence and clinical trials for our product candidates;
- our obtaining regulatory approvals for our product candidates, including SPN-538 and SPN-804; and
- if regulatory approvals are received, our manufacturing of commercial quantities of our product candidates at acceptable cost levels.

Even if any of our product candidates are approved for commercial sale, we anticipate incurring significant costs associated with commercialization. It is possible that we will never have sufficient product sales revenues to achieve profitability.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestones and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control.

Once we commercialize one or more of our product candidates, our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- the success of our bioequivalence and clinical trials through all phases of clinical development;
- any delays in regulatory review and approval of product candidates in clinical development;
- potential side effects of our future products that could delay or prevent commercialization or cause an approved drug to be taken off the market;
- any intellectual property infringement lawsuit in which we may become involved;
- our ability to establish an effective sales and marketing infrastructure;
- our dependency on third-party manufacturers to supply or manufacture our product candidates;
- competition from existing products or new products that may emerge;
- regulatory developments affecting our product candidates;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements;
- the achievement and timing of milestone payments under our existing collaboration and license agreements; and
- the level of market acceptance for any approved product candidates and underlying demand for that product and wholesalers' buying patterns.

Due to the various factors mentioned above, and others, the results of any prior quarterly periods should not be relied upon as an indication of our future operating performance. If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially.

We have operated as a private company and have no experience attempting to comply with public company obligations. Attempting to comply with these requirements will increase our costs and require additional management resources, and we still may fail to comply.

We will face increased legal, accounting, administrative and other costs and expenses as a public company. Compliance with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act of 2010, as well as rules of the Securities and Exchange Commission and Nasdaq, for example, will result in significant initial cost to us as well as ongoing increases in our legal, audit and financial compliance costs. The Exchange Act will require, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage.

As a public company, we expect to become subject to Section 404 of the Sarbanes-Oxley Act relating to internal controls over financial reporting. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Implementing any appropriate changes to our internal controls may require specific compliance training for our directors, officers and employees, entail substantial costs to modify our existing accounting systems, and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate consolidated financial statements or other reports on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. We cannot assure you that our internal controls over financial reporting will prove to be effective.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our consolidated financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

Our ability to use net operating loss and tax credit carryforwards and certain built-in losses to reduce future tax payments is limited by provisions of the Internal Revenue Code, and may be subject to further limitation as a result of the transactions contemplated by this offering.

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, contain rules that limit the ability of a company that undergoes an ownership change, which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss and tax credit carryforwards and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards and certain built-in losses is equal to the product of the applicable long term tax exempt rate and the value of the company's stock immediately before the ownership change. We may be unable to offset our taxable income with losses, or our tax liability with credits, before such losses and credits expire and therefore would incur larger federal income tax liability.

In addition, it is possible that the transactions described in this offering, either on a standalone basis or when combined with future transactions, including issuances of new shares of our common stock, will cause us to undergo one or more additional ownership changes. In that event, we generally would not be able to use our pre-change loss or credit carryovers or certain built-in losses prior to such ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383 and those attributes already subject to limitations as a result of our prior ownership changes may be subject to more stringent limitations. As of December 31, 2011, we had

approximately $37.5 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $5.0 million available to offset future taxable income. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. We have not completed a study to assess whether an ownership change has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study. Accordingly, our ability to utilize the aforementioned carryforwards and tax credits may be limited. As a result, we may not be able to take full advantage of these carryforwards or tax credits for federal and state tax purposes.

Risks Related to Our Indebtedness

Our level of indebtedness and debt service obligations could adversely affect our financial condition, and may make it more difficult for us to fund our operations.

In January 2011 we entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, which was subsequently amended in December 2011, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $30.0 million. On January 26, 2011, we drew down our initial $15.0 million of term loans under our secured credit facility and on December 30, 2011 we drew down the second $15.0 million. All obligations under our secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. This debt financing may create additional financial risk for us, particularly if our business or prevailing financial market conditions are not conducive to paying off or refinancing our outstanding debt obligations at maturity. This indebtedness could also have important negative consequences, including:

- we will need to repay our debt by making payments of interest and principal, which will reduce the amount of money available to finance our operations, our research and development efforts and other general corporate activities;
- we may have difficulty obtaining financing in the future for working capital, capital expenditures, acquisitions or other purposes; and
- our failure to comply with the restrictive covenants in our loan and security agreement could result in an event of default that, if not cured or waived, would accelerate our obligation to repay this indebtedness, and the lenders could seek to enforce their security interests in the assets securing such indebtedness.

To the extent additional debt is added to our current debt levels, the risks described above would increase.

We may not have cash available to us in an amount sufficient to enable us to make interest or principal payments on our indebtedness when due.

Since our inception in 2005, we have generated no revenue from product sales and have incurred significant operating losses. As of December 31, 2011, we had an accumulated deficit of $40.0 million. We expect to continue to incur net losses and have negative cash flow from operating activities for the foreseeable future as we continue to develop and seek marketing approval for our product candidates. As a result, we may not have sufficient funds, or may be unable to arrange for additional financing, to pay the amounts due on our outstanding indebtedness under our secured credit facility. Further, funds from external sources may not be available on economically acceptable terms, if at all. For example, if we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates or technologies, or to grant

licenses on terms that are not favorable to us. If adequate funds are not available when and if needed, our ability to make interest or principal payments on our debt obligations would be significantly limited, and we may be required to delay, significantly curtail or eliminate one or more of our programs.

Failure to satisfy our current and future debt obligations under our secured credit facility could result in an event of default and, as a result, our lenders could accelerate all of the amounts due. In the event of an acceleration of amounts due under our secured credit facility as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness. In addition, our lenders could seek to enforce their security interests in the collateral securing such indebtedness.

We are subject to a number of restrictive covenants which, if breached, could have a material adverse effect on our business and prospects.

Our secured credit facility imposes operating and other restrictions on us. Such restrictions will affect, and in many respects limit or prohibit our ability and the ability of our U.K. subsidiary and any future subsidiary to, among other things:

- dispose of certain assets;
- change our lines of business;
- engage in mergers or consolidations;
- incur additional indebtedness;
- create liens on assets, including our intellectual property;
- pay dividends and make distributions on or repurchase our capital stock; and
- engage in certain transactions with affiliates.

Our secured credit facility also includes certain customary representations and warranties and affirmative covenants. Our failure to comply with the restrictions contained in our secured credit facility, if not cured by us or waived by our lenders, could result in an event of default. All obligations under our secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. In the event of a default under our secured credit facility, our lenders could take various actions, including the acceleration of all amounts due under our secured credit facility and all actions permitted to be taken by a secured creditor, which could have a material adverse effect on our business or prospects.

In certain circumstances we could be required to pay damages if we fail to perform our obligations under the license agreements related to Sanctura XR and Oracea.

In December 2011, we sold 100% of our equity ownership interests in Royalty Sub. In accordance with the terms of the sale, we retained certain duties and obligations under two licensing agreements related to Sanctura XR and Oracea. If we fail to perform the continuing duties and obligations under these licensing agreements, we may be required to indemnify the purchaser of Royalty Sub for damages arising due to such failure. For example, pursuant to these agreements, we have an obligation to use commercially reasonable efforts to preserve, maintain, and maximize the commercial value of our licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep these patents in force. If we fail to pay such patent office maintenance fees, these patents may expire and Royalty Sub's royalty stream from such patents may terminate. In such a scenario, we may be called upon to pay damages to the purchaser of Royalty Sub

due to the loss of patent licensing revenue that Royalty Sub would have received from the sale of Sanctura XR and Oracea.

Risks Related to Securities Markets and Investment in Our Stock

The concentration of our capital stock ownership with our founders, directors, executives, employees and current holders of our preferred stock (and their affiliates) will limit your ability to influence certain corporate matters.

Upon completion of this offering and after giving effect to the conversion of the Series A convertible preferred stock into common stock, the current holders of our Series A convertible preferred stock will, in the aggregate, beneficially own % of our outstanding common stock (or approximately % if the underwriters exercise their over-allotment option in full). As a result, these stockholders will collectively be able to significantly influence and may be able to control all matters requiring approval of our stockholders, including the election of directors and approval of significant corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets. The concentration of ownership may delay, prevent or deter a change in control of our company even when such a change may be in the best interests of some stockholders, impede a merger, consolidation, takeover or other business combination involving us, or could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might adversely affect the prevailing market price of our common stock. Participation in this offering by existing holders of our Series A convertible preferred stock will further concentrate voting rights and may negatively impact liquidity for shares of our common stock.

Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control which could negatively impact the market price of our common stock.

Provisions in our certificate of incorporation and bylaws, as amended and restated upon the completion of this offering, may have the effect of delaying or preventing a change of control. These provisions include the following:

- Our board of directors is divided into three classes serving staggered three-year terms, such that not all members of the board will be elected at one time. This staggered board structure prevents stockholders from replacing the entire board at a single stockholders' meeting.

- Our board of directors has the right to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors.

- Our board of directors may issue, without stockholder approval, shares of preferred stock. The ability to authorize preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

- Stockholders must provide advance notice to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting. Furthermore, stockholders may only remove a member of our board of directors for cause. These provisions may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect such acquiror's own slate of directors or otherwise attempting to obtain control of our company.

- Our stockholders may not act by written consent. As a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions outside of a stockholders' meeting.

- Special meetings of stockholders may be called only by the chairman of our board of directors, our chief executive officer, our president or a majority of our board of directors. As a result, a

holder, or holders, controlling a majority of our capital stock would not be able to call a special meeting.

- A majority of the outstanding shares of common stock are required to amend our certificate of incorporation and a supermajority (75%) of the outstanding shares of common stock are required to amend our by-laws, which make it more difficult to change the provisions described above.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our certificate of incorporation, our bylaws and in the Delaware General Corporation Law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors.

There may not be a viable public market for our common stock.

Prior to this offering, there has been no public market for our common stock, and a regular trading market may not develop and continue after this offering. Furthermore, the market price of our common stock may decline below the initial public offering price. The initial public offering price has been determined through negotiations between us and the representatives of the underwriters and may not be indicative of the market price of our common stock following this offering. Among the factors considered in such negotiations were prevailing market conditions, certain of our financial information, market valuations of other companies that we and the representatives of the underwriters believed were comparable to us, estimates of our business potential and the present state of our business. See "Underwriting" for additional information.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the initial public offering price. We cannot predict the extent to which investor interest in our company will lead to the development of an active trading market on the Nasdaq Global Market or otherwise or how liquid that market might become. An active public market for our common stock may not develop or be sustained after the offering. If an active public market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you, or at all. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products, product candidates or technologies by using our shares of common stock as consideration.

As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your shares.

The initial public offering price of our common stock in this offering is considerably more than the net tangible book value per share of our common stock. Investors purchasing shares of common stock in this offering will pay a price that substantially exceeds the value of our tangible assets after subtracting liabilities. As a result, these investors will, as of December 31, 2011:

- incur immediate dilution of $ per share of common stock, based on the initial public offering price of $ per share of common stock; and

- contribute % of the total amount invested to date to fund our company based on the initial offering price of $ per share of common stock, but will own only % of the outstanding shares of common stock after the offering.

To the extent outstanding stock options and warrants are exercised, there will be further dilution to new investors.

As of December 31, 2011, we had options to purchase 2,392,470 shares of common stock outstanding, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.69 per share. Upon the vesting of each of these options, the holder may exercise his or her options, which would result in further dilution to investors.

As of December 31, 2011, we had outstanding warrants to purchase (i) 375,000 shares of Series A convertible preferred stock at an exercise price of $1.00 per share and (ii) 200,000 shares of Series A convertible preferred stock at an exercise price of $1.50 per share. Upon completion of this offering, the respective lender warrants will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable. You may experience dilution if we issue additional shares of common stock under the warrants that we issued to our lenders.

The price of our common stock may fluctuate substantially.

Following this offering, the market price for our common stock is likely to be volatile, in part because our common stock has not been previously traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, including:

- plans for, progress in and results from clinical trials of our product candidates generally;
- the results from our bioequivalence trials for SPN-538 and our bioequivalence and/or clinical trials, including our current Phase III clinical trials for SPN-804;
- FDA or international regulatory actions, including actions on regulatory applications for any of our product candidates;
- the commercial performance of any of our product candidates that receive marketing approval;
- announcements of new products, services or technologies, commercial relationships, acquisitions or other events by us or our competitors;
- market conditions in the pharmaceutical and biotechnology sectors;
- fluctuations in stock market prices and trading volumes of similar companies;
- variations in our quarterly operating results;
- changes in accounting principles;
- litigation or public concern about the safety of our potential products;
- actual and anticipated fluctuations in our quarterly operating results;
- deviations in our operating results from the estimates of securities analysts;
- additions or departures of key personnel;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- any third-party coverage and reimbursement policies for our product candidates, and
- discussion of us or our stock price in the financial or scientific press or in online investor communities.

The realization of any of the risks described in these "Risk Factors" could have a dramatic and material adverse impact on the market price of our common stock. In addition, class action litigation

has often been instituted against companies whose securities have experienced periods of volatility. Any such litigation brought against us could result in substantial costs and a diversion of management attention, which could hurt our business, operating results and financial condition.

Our management team may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a significant return, if any.

The net proceeds from this offering will be used to fund the continued development, commercialization and research and development of our product candidates and other general corporate purposes. Because of the number and variability of factors that will determine our use of the proceeds from the offering, their ultimate use may vary substantially from their currently intended use. You will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not increase our operating results or market value. Until the net proceeds are used, they may be placed in investments that do not produce significant income or investments that lose value. For a further description of our intended use of the proceeds of this offering, see "Use of Proceeds."

Future sales of our common stock may depress our stock price.

While we do not currently anticipate making additional offers of common stock, such sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock and impair our ability to raise adequate capital through the sale of additional equity securities. Immediately after this offering, we will have outstanding shares of common stock, based on the number of outstanding shares of common stock as of December 31, 2011 and after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of December 31, 2011 into 49,000,000 shares of our common stock at the completion of this offering. Of these outstanding shares, shares are being sold in this offering and will be freely tradable immediately after this offering, except for shares purchased by affiliates, and the remaining shares may be sold upon expiration of lock-up agreements 180 days after the date of this offering. In addition, as of December 31, 2011, we had outstanding options to purchase 2,392,470 shares of common stock that, if exercised, will result in these additional shares becoming available for sale upon expiration of the lock-up agreements. A large portion of these shares and options are held by a small number of persons and investment funds. Moreover, after this offering, the holders of shares of common stock will have rights, subject to some conditions, to require us to file registration statements covering the shares they currently hold, or to include these shares in registration statements that we may file for ourselves or other stockholders.

We also intend to register all common stock subject to options outstanding or reserved for issuance under our 2005 Plan, 2012 Equity Incentive Plan and 2012 Employee Stock Purchase Plan. Effective upon the closing of this offering, an aggregate of and shares of our common stock will be reserved for future issuance under the 2012 Equity Incentive Plan and the 2012 Employee Stock Purchase Plan, respectively. Once we register these shares, which we plan to do shortly after the closing of this offering, they can be freely sold in the public market upon issuance, subject to the lock-up agreements referred to above. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock. See "Shares Eligible for Future Sale" for a more detailed description of sales that may occur in the future.

We have never paid dividends on our capital stock, and because we do not anticipate paying any cash dividends in the foreseeable future, capital appreciation, if any, of our common stock will be your sole source of gain on an investment in our common stock.

We have paid no cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. We

do not anticipate paying any cash dividends on our common stock in the foreseeable future. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

If securities or industry analysts do not publish research or reports or publish unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who covers us downgrades our stock, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to regularly publish reports on us, interest in our stock could decrease, which could cause our stock price or trading volume to decline.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled "Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. All statements contained in this prospectus other than statements of historical fact are forward-looking statements. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "seek," "anticipate," "should," "could," "would," "potential," or the negative of those terms and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements include, among other things, statements about:

- our ability to achieve profitability;
- the implementation of our corporate strategy;
- our future financial performance and projected expenditures;
- our ability to enter into future collaborations with pharmaceutical companies and academic institutions or to obtain funding from government agencies;
- our product research and development activities, including the timing and progress of our clinical trials, and projected expenditures;
- our ability to receive, and the timing of any receipt of, regulatory approvals to develop and commercialize our product candidates;
- our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;
- our expectations regarding federal, state and foreign regulatory requirements;
- the therapeutic benefits, effectiveness and safety of our product candidates;
- the accuracy of our estimates of the size and characteristics of the markets that may be addressed by our product candidates;
- our ability to increase our manufacturing capabilities for our product candidates;
- our projected markets and growth in markets;
- our product formulations and patient needs and potential funding sources;
- our staffing needs;
- our use of the proceeds from this offering; and
- our plans for sales and marketing.

Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in "Risk Factors" and elsewhere in this prospectus. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, read this prospectus and the documents that we reference in this prospectus and have filed with the Securities and Exchange Commission as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements. You should also review the factors and risks we describe in the reports we will file from time to time with the Securities and Exchange Commission after the date of this prospectus. See "Where You Can Find Additional Information."

USE OF PROCEEDS

We estimate that the net proceeds from the sale of common stock that we are offering will be approximately $ million, or $ million if the underwriters exercise their over-allotment option in full. This projection is based upon an initial public offering price of $ per share, which is the midpoint of the range listed on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions as well as estimated offering expenses payable by us.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds from this offering by $ million, after deducting underwriting discounts, commissions, and estimated offering expenses payable by us, assuming that the number of shares offered, as set forth on the cover page of this prospectus, remains the same. Similarly, each increase (decrease) of one million shares in the number of shares of common stock offered by us would increase (decrease) the net proceeds from this offering by $ million, after deducting underwriting discounts, commissions, and estimated offering expenses payable by us, assuming that the assumed initial public offering price, remains the same.

We anticipate that we will use the net proceeds as follows:

- Approximately $ million for sales and marketing expenses in conjunction with the commercial launch of SPN-538 and SPN-804 in the marketplace, following approval by the FDA.
- Approximately $ million to fund the manufacture of validation batches for SPN-538 and SPN-804, and to pay mandated manufacturing site filing fees.
- Approximately $ million to fund the continued clinical development of SPN-810, including: preclinical carcinogenicity testing; process development for commercial bulk active pharmaceutical ingredient; and completion of current Phase II testing.
- Approximately $ million to fund the continued clinical development of SPN-812, including: preclinical carcinogenicity testing; process development for commercial bulk active pharmaceutical ingredient; continued Phase II testing; and formulation development.
- Approximately $ million to repay a portion of the term loans under our secured credit facility.
- The remainder, if any, for general corporate purposes including general and administrative expenses, capital expenditures and working capital.

As of December 31, 2011, we had $30.0 million of term loans outstanding under our secured credit facility, of which $15.0 million mature in August 2014 and $15.0 million mature in January 2015. The term loans bear interest at a fixed rate per annum of 11.0%. We used the proceeds of the terms loans to fund ongoing clinical trials for SPN-538, SPN-804 and SPN-810, to prepare for manufacturing validation of SPN-538 and SPN-804, to support formulation for various clinical stage products, to prepare commercial marketing of SPN-538 and for regulatory filing fees. After application of approximately $ million of the net proceeds from this offering to repay a portion of our indebtedness under our term loans, we expect that approximately $ million will be outstanding under the term loans.

Although we currently anticipate that we will use the net proceeds as described above, there may be circumstances where a reallocation of funds may be necessary. The amounts and timing of our actual expenditures will depend upon numerous factors, including the progress of our development and commercialization efforts, the progress of our clinical trials, whether or not we enter into strategic collaborations or partnerships and our operating costs and expenditures. Accordingly, our management will have significant flexibility in applying these net proceeds.

The costs and timing of drug development and commercialization and of regulatory approval, particularly conducting clinical studies, are highly uncertain, are subject to substantial risks and can often change. Accordingly, we may change the allocation of use of these proceeds as a result of contingencies such as the progress of research, progress of clinical trials, ability to secure approval of our products from the FDA, uptake of our products in the marketplace and competitive responses.

Pending use of the proceeds from this offering as described above or otherwise, we intend to invest the net proceeds in short-term, interest-bearing, investment-grade securities.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock and we do not currently anticipate declaring or paying cash dividends on our capital stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance operations. Additionally, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiary and us to pay dividends or make distributions, including restrictions under the terms of the agreements governing our indebtedness. For additional information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations." Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash and capitalization as of December 31, 2011:

- on an actual basis;
- on a pro forma basis, reflecting the conversion of all of our outstanding preferred stock into an aggregate of 49,000,000 shares of common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to further reflect our receipt of the estimated net proceeds from our sale of shares of common stock offered hereby at an assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with the sections of this prospectus entitled "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and with our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	As of December 31, 2011		
	Actual	Pro Forma	Pro Forma as Adjusted(1)
	(unaudited) (in thousands of dollars, except share and per share data)		
Balance Sheet Data:			
Unrestricted cash and cash equivalents and marketable securities	$ 48,544	$ 48,544	$
Restricted cash and cash equivalents and marketable securities	245	245	
Debt outstanding	$ 29,486	$ 29,486	$
Stockholders' equity:			
Series A convertible preferred stock, $0.001 par value—49,625,000 shares authorized, 49,000,000 shares issued and outstanding, actual; none, pro forma and pro forma as adjusted	49	—	
Common stock, $0.001 par value—62,625,000 shares authorized, 6,649,302 shares issued and outstanding, actual; 55,649,302 shares issued and outstanding, pro forma and shares issued and outstanding, pro forma as adjusted	7	56	
Additional paid-in capital	49,357	49,357	
Accumulated other comprehensive income (loss)	1	1	
Accumulated deficit	(39,971)	(39,971)	
Total stockholders' equity	9,443	9,443	
Total capitalization	$ 38,929	$ 38,929	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover page of this prospectus, would increase (decrease) each of additional unrestricted cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of unrestricted cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the assumed initial public offering price remains the same.

The table above does not include:

- 2,392,470 shares of common stock issuable upon the exercise of options outstanding as of December 31, 2011 at a weighted average exercise price of $0.69 per share;
- 1,958,228 additional shares of common stock reserved for future issuance under our 2005 Stock Plan;
- shares of common stock reserved for future issuance under our 2012 Equity Incentive Plan;
- shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan;
- 375,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding with an exercise price $1.00 per share, which will convert into common stock warrants upon the closing of this offering; and
- 200,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding as of December, 31, 2011 with an exercise price of $1.50 per share, which will convert into common stock warrants upon the closing of this offering.

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the public offering price per share you will pay in this offering and the pro forma net tangible book value per share of our common stock immediately after this offering.

Our net tangible book value as of December 31, 2011 was approximately $, or $ per share of common stock. Net tangible book value per share is equal to our total tangible assets minus total liabilities, all divided by the number of shares of common stock outstanding as of December 31, 2011.

Our pro forma net tangible book value per share as of December 31, 2011 was approximately $ per share. Pro forma net tangible book value per share gives effect to the conversion of all outstanding shares of our preferred stock as of December 31, 2011 into 49,000,000 shares of our common stock, upon the closing of this offering.

After giving effect to the sale of the shares of common stock we are offering based on an assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, less underwriting discounts and commissions and our estimated offering expenses, our pro forma as adjusted net tangible book value as of December 31, 2011 would have been approximately $, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share and an immediate dilution of $ per share to new investors. Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by a new investor. The following table illustrates this calculation on a per share basis (without giving effect to the over-allotment option granted to the underwriters):

Assumed initial public offering price per share[(1)]		$
Net tangible book value per share as of December 31, 2011	$	
Pro forma increase in net tangible book value per share attributable to conversion of preferred stock outstanding at December 31, 2011		
Pro forma net tangible book value per share of common stock as of December 31, 2011	$	
Increase per share attributable to the offering		
Pro forma as adjusted net tangible book value per share of common stock after this offering		
Pro forma dilution per share to new investors		$

(1) The mid-point of the price range set forth on the cover of this prospectus.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after giving effect to this offering by $ per share and would increase (decrease) the dilution in pro forma net tangible book value per share to investors in this offering by $ per share. This calculation assumes that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and is after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option in full, pro forma as adjusted net tangible book value will increase to $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors.

The following table summarizes, on a pro forma as adjusted basis as of December 31, 2011, after giving effect to this offering and the pro forma adjustments referred to above, the total number of shares of our common stock purchased from us and the total consideration and average price per share paid by existing stockholders and by new investors:

	Total Shares		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
	(in thousands of dollars, except share and per share data)				
Existing stockholders		%$		%$	
New Investors					
Total		%$		%	

If the underwriters exercise their over-allotment option in full, the following will occur:

- the pro forma as adjusted percentage of shares of our common stock held by existing stockholders will decrease to approximately % of the total number of pro forma as adjusted shares of our common stock outstanding after this offering; and
- the pro forma as adjusted number of shares of our common stock held by new public investors will increase to approximately % of the total pro forma as adjusted number of shares of our common stock outstanding after this offering.

The tables and calculations above are based on 55,649,302 shares of our common stock outstanding as of December 31, 2011 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of December 31, 2011 into 49,000,000 shares of our common stock at the closing of this offering and exclude:

- 2,392,470 shares of common stock issuable upon the exercise of options outstanding as of December 31, 2011 with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.69 per share (of which options to acquire 1,050,284 shares of common stock were vested as of December 31, 2011);
- 1,958,228 shares of our common stock available for future grants under our 2005 Stock Plan as of December 31, 2011;
- shares of common stock reserved for future issuance under our 2012 Equity Incentive Plan;
- shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan;
- 375,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding as of December 31, 2011 at an exercise price of $1.00 per share, which will convert into common stock warrants upon the closing of this offering; and
- 200,000 shares of common stock issuable upon the exercise of preferred stock warrants outstanding as of December, 31, 2011 at an exercise price of $1.50 per share, which will convert into common stock warrants upon the closing of this offering.

If all of our outstanding options as of December 31, 2011 were exercised, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors. In addition, we will need to obtain additional capital, and we may choose to raise such additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities would result in further dilution to our stockholders.

SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth selected consolidated financial data that is qualified in its entirety by and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto appearing elsewhere in this prospectus. The consolidated financial data as of December 31, 2011 and for the fiscal years ended December 31, 2009, 2010 and 2011 are derived from our audited consolidated financial statements appearing elsewhere in this prospectus. The consolidated financial data for the fiscal years ended December 31, 2007 and 2008 are derived from our audited consolidated financial statements not included in this prospectus.

Our historical results are not necessarily indicative of future operating results. You should read this selected consolidated financial data in conjunction with the sections entitled "Capitalization" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, all included elsewhere in this prospectus.

	Year Ended December 31,				
	2007	2008	2009	2010	2011
	(in thousands of dollars, except share and per share data)				
Consolidated Statement of Operations Data:					
Revenue:					
Development and milestone revenue	$ 1,405	$ 2,497	$ 1,050	$ 106	$ 803
Royalty revenue	2,828	1,512	36,875	—	—
Total revenues	4,233	4,009	37,925	106	803
Operating Expenses:					
Research and development	19,269	30,463	29,260	35,149	30,627
General and administrative	4,011	4,287	4,649	5,080	7,928
Total operating expenses	23,280	34,750	33,909	40,229	38,555
Operating income (loss) from continuing operations	(19,047)	(30,741)	4,016	(40,123)	(37,752)
Other income (expense):					
Interest income	1,773	1,036	122	107	31
Interest expense	—	—	—	—	(1,866)
Other	—	—	—	542	117
Total other income (expense)	1,773	1,036	122	649	(1,718)
Income (loss) from continuing operations before income taxes	(17,274)	(29,705)	4,138	(39,474)	(39,470)
Income tax benefit	—	—	—	399	16,245
Income (loss) from continuing operations	(17,274)	(29,705)	4,138	(39,075)	(23,225)
Discontinued operations:					
Income (loss) from discontinued operations, net of tax	—	(3,777)	(3,678)	612	2,188
Gain on disposal of discontinued operations, net of tax	—	—	—	—	74,852
Income (loss) from discontinued operations	—	(3,777)	(3,678)	612	77,040
Net income (loss)	$ (17,274)	$ (33,482)	$ 460	$ (38,463)	$ 53,815
Cumulative dividends on Series A convertible preferred stock	(3,430)	(3,430)	(3,430)	(3,430)	(3,430)
Net income (loss) attributable to common stockholders	$ (20,704)	$ (36,912)	$ (2,970)	$ (41,893)	$ 50,385

	Year Ended December 31,				
	2007	2008	2009	2010	2011
	(in thousands of dollars, except share and per share data)				
Income (loss) per common share:					
Basic					
Continuing operations	$ (4.21)	$ (5.93)	$ 0.12	$ (6.70)	$ (4.15)
Discontinued operations	—	(0.68)	(0.65)	0.10	12.00
Net income (loss)	(4.21)	(6.61)	(0.53)	(6.60)	7.85
Diluted					
Continuing obligations	$ (4.21)	$ (5.93)	$ 0.08	$ (6.70)	$ (4.15)
Discontinued obligations	—	(0.68)	(0.07)	0.10	12.00
Net income (loss)	(4.21)	(6.61)	0.01	(6.60)	7.85
Weighted average number of common shares:					
Basic	4,921,376	5,587,467	5,653,506	6,351,883	6,421,312
Diluted	4,921,376	5,587,467	56,324,761	6,351,883	6,421,312
Income (loss) used to compute pro forma income (loss) per common share—basic and diluted (1)					
Continuing operations					$ (23,225)
Discontinued operations					77,040
Net income					53,815
Weighted-average number of shares used in calculating pro forma income (loss) per share—basic and diluted (1)					55,421,312
Pro forma net income (loss) per common share—basic and diluted (1)					
Continuing operations					$ (0.42)
Discontinued operations					$ 1.39
Net income					$ 0.97

(1) Pro forma income (loss) per share basic and diluted have been calculated assuming the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma income (loss) per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 3 to our consolidated financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the per share amounts.

	Year Ended December 31,				
	2007	2008	2009	2010	2011
	(in thousands of dollars)				
Consolidated Balance Sheet Data:					
Unrestricted cash and cash equivalents and marketable securities	$ 25,592	$ 60,380	$ 66,524	$ 32,704	$ 48,544
Restricted cash and cash equivalents and marketable securities (1)	281	6,281	2,076	1,714	245
Working capital	22,674	61,183	62,847	24,607	30,629
Total assets	31,907	77,134	79,899	47,009	53,730
Notes payable, including current portion	—	—	—	—	29,486
Liabilities of discontinued operations	—	75,000	75,000	75,000	—
Series A convertible preferred stock	49	49	49	49	49
Accumulated deficit	(22,301)	(55,782)	(55,323)	(93,786)	(39,971)
Total stockholders' equity (deficit)	26,635	(6,747)	(6,156)	(44,320)	9,443

(1) Restricted cash and cash equivalents are included in assets of discontinued operations.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes appearing at the end of this prospectus. In addition to historical information, some of the information in this discussion and analysis contains forward-looking statements reflecting our current expectations and involves risk and uncertainties. For example, statements regarding our expectations as to our plans and strategy for our business, future financial performance, expense levels and liquidity sources are forward-looking statements. 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 and elsewhere in this prospectus.

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a standalone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy, attention deficit hyperactivity disorder, or ADHD, including ADHD patients with impulsive aggression. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we have submitted a new drug application, or NDA, that was accepted for filing by the FDA in November 2011, and SPN-804 (extended release oxcarbazepine), for which we submitted an NDA that was accepted for filing by the FDA in February 2012. Our ADHD product candidates include SPN-810 (molindone hydrochloride), which is in a Phase IIb trial as a novel treatment for impulsive aggression in patients with ADHD, and SPN-812 which completed a Phase IIa trial as a novel non-stimulant treatment for ADHD. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and SPN-804, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively, for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine are available in generic form and are marketed under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and SPN-804, which allows us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of SPN-538 and SPN-804 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and SPN-804, for the treatment of epilepsy. Extended release products have been shown to improve

compliance, increase seizure control,[1] reduce side effects and improve tolerability as compared to immediate release products.[2]

(1) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews.*

(2) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia.*

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is currently in a Phase IIb trial as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which completed a Phase IIa trial, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate, if studied in that specific patient population and is shown to be effective, may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression.[3] In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, which would represent a novel mechanism of action for the U.S. antidepressant market.

(3) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry.*

Historically, our revenues have been generated through research and development agreements, which included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv. Since our inception in 2005, we have generated no revenue from product sales and have incurred significant operating losses. As of December 31, 2011, we had an accumulated deficit of approximately $40.0 million and a total stockholders' equity of approximately $9.4 million. We expect to incur net losses and negative cash flow from operating activities for the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538 and SPN-804, as well as our other product candidates.

History of our Company

We have a successful track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), each of which is marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past six years on developing our own product candidates in neurology and psychiatry.

We have historically raised capital through private equity and the monetization of certain future royalty streams under our existing licenses for Oracea, Sanctura XR and Intuniv. In connection with the commencement of our operations, in December 2005 and February 2006, we raised approximately

$45.0 million through the sale of 45 million shares of Series A convertible preferred stock. We raised approximately $63.3 million in net proceeds in April 2008 through the monetization of future royalty payment rights and other license rights for both Oracea and Sanctura XR. In that deal, we transferred the license rights to both Oracea and Sanctura XR to Royalty Sub, which issued $75.0 million in non-recourse notes in a private placement to institutional investors. All milestone and royalty revenues due from net sales of Oracea and Sanctura XR were required to be used to satisfy the payment of principal and interest on the non-recourse notes. The non-recourse notes were non-recourse to our company and were secured by Royalty Sub's assets, which include the royalty payment rights and other rights related to net sales of Oracea and Sanctura XR. In addition, we entered into an agreement with an affiliate of Shire plc in May 2009, whereby the Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv.

Pursuant to a Unit Purchase Agreement executed on December 14, 2011, we sold 100% of our equity ownership interests in Royalty Sub to an entity affiliated with OrbiMed Advisors LLC, one of our stockholders, hereafter referred to as the "Purchase Transaction." The purchase price consisted of $27.0 million and a milestone payment of $3.0 million payable within 10 days of the occurrence of the earlier of the following conditions:

- the purchaser receives royalty payments equal to at least $35.1 million, the purchaser has not entered into a transaction to sell, refinance or monetize its equity interests in Royalty Sub, and no generic formulations of the products underlying the royalty payments and related license agreements have entered the market, or

- the purchaser receives proceeds in excess of the aggregate of (a) $27.0 million, plus (b) the purchase price paid by the purchaser, if any, to acquire a beneficial interest in one or more of the non-recourse notes, plus (c) the aggregate redemption price paid, if any, to redeem any of the non-recourse notes, from any transaction that refinances or liquidates the equity interests in Royalty Sub or the non-recourse notes.

The purchase price was determined through a competitive bidding process, involving more than one bidder and multiple rounds of negotiations between each potential buyer and us. We entered into the Purchase Transaction with an entity affiliated with OrbiMed Advisors LLC, which offered the highest purchase price.

Pursuant to the Purchase Transaction, we retained duties and obligations under the non-recourse notes and related agreements, including the Purchase and Sale Agreement, the Residual License Agreements and the Servicing Agreement, for so long as the non-recourse notes remain outstanding. For example, pursuant to the Purchase Transaction, we have an obligation to use commercially reasonable efforts to preserve, maintain, and maximize the commercial value of our licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep these patents in force.

We also retained certain duties and obligations under the ongoing Servicing Agreement. We will continue to perform these services in exchange for a quarterly fee of $10,000, or $40,000 annually. These retained duties consist of taking commercially reasonable steps to collect the royalty amounts due and enforcing the related provisions under the license agreements. Specifically, we are required to monitor receipt of the royalty payments due under the license agreements and to confirm that the payments are received on a timely basis, calculated properly and made available to the trustee.

At the time the non-recourse notes cease to be outstanding, the purchaser must make an election to either (1) terminate the Servicing Agreement and execute the New Servicing Agreement, which was contemplated and drafted at the time of the Purchase Transaction, or (2) obtain from us the assignment and transfer of all the licensed intellectual property and all of our rights and obligations under the license agreements subject to certain conditions described in the Unit Purchase Agreement.

We accounted for the Purchase Transaction as a sale of a subsidiary and recorded the resulting gain of approximately $74.9 million as "gain on disposal of discontinued operations, net of tax" in our consolidated statements of operations. The gain on disposal of discontinued operations was calculated as the aggregate of the fair value of the consideration and the carrying value of Royalty Sub's assets and liabilities, less our fees and expenses. Since the assets and liabilities of Royalty Sub had identifiable operations and cash flows that are independent from the company and we do not have a significant continuing involvement with Royalty Sub's operations, the sale of Royalty Sub is reported as discontinued operations in our consolidated statements of operations. Accordingly, the gain on the sale of Royalty Sub, as well as any results of operations related to Royalty Sub, are presented as discontinued operations for all periods presented. If we receive the milestone payment, the fair value of amounts received, less any related fees and expenses, will be recorded as "gain on disposal of discontinued operations, net of tax," a component of discontinued operations.

We also have a license agreement with United Therapeutics Corporation, or United Therapeutics, to use one of our proprietary technologies for an oral formulation of treprostinil for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. United Therapeutics has stated that this oral formulation of treprostinil diethanolamine, or treprostinil, is the subject of an NDA for PAH that it submitted in December 2011 and that was accepted for filing by the FDA in February 2012. Remaining milestone payments to us could total up to approximately $6.0 million, which includes milestone payments that could total $2.0 million for the satisfaction of development milestones of oral treprostinil in PAH. If United Therapeutics receives approval to market and sell this product candidate, we are entitled to receive single digit royalties based on worldwide net sales. We are also entitled to receive milestones and royalties for use of this formulation in other indications.

In January 2011 we entered into a secured credit facility pursuant to a loan and security agreement with certain lenders, which was subsequently amended in December 2011, providing for term loans of up to an aggregate of $30.0 million. On January 26, 2011 and December 30, 2011, we drew down $15.0 million and a second $15.0 million, respectively, of term loans under this secured credit facility. The term loans bear interest at a fixed rate per annum of 11.0%. The initial $15.0 million of term loans drawn down in January 2011 will mature on August 1, 2014. The second $15.0 million of term loans drawn down in December 2011 will mature on January 1, 2015. In connection with the initial drawdown in January 2011, we issued to the lenders warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. The warrants are immediately exercisable and expire on January 26, 2021. In connection with the drawdown of the second $15.0 million under our secured credit facility on December 31, 2011, we issued the lenders warrants to purchase an aggregate of 200,000 shares of our Series A convertible preferred stock at an exercise price of $1.50 per share. The warrants are immediately exercisable and expire on December 30, 2021. Upon completion of this offering, the respective lender warrants will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable.

All of our warrant holders are subject to lock-up agreements with the underwriters in this offering. These warrants are accounted for as a derivative liability, and as such, we reflect the liability at its estimated fair value in the consolidated balance sheets. The fair value of this derivative liability is re-measured at the end of every reporting period and the change in fair value is reported in the consolidated statements of operations as other income (expense).

See "Liquidity and Capital Resources—Financing History and Future Capital Requirements" for additional details regarding the foregoing transactions.

Financial Overview

Revenue

Our historical revenues have been generated through collaboration and research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products (i.e., Oracea, Sanctura XR, and Intuniv), which comprise our royalty revenues. Until such time that we begin generating revenues from the sales of our own approved product candidates, we expect that development, milestone and royalty revenues from licensed products other than Oracea, Sanctura XR, and Intuniv will continue to represent our primary sources of revenues.

We recognize development and milestone revenues related to research and development agreements pursuant to which various third parties have accessed our proprietary technologies. These arrangements generally provided for fees for research and development services rendered, including milestone payments at the conclusion of the research period upon achieving specified events. Over time, we do not expect these historical revenues relating to development and milestone revenues to be significant as we continue to focus on the development and potential commercialization of our own product candidates.

We recognize royalty revenues from our collaboration agreements. Royalty revenues consist of payments received from our various collaborative partners related to the sales of products that utilize our proprietary technologies under these collaboration agreements.

The table below summarizes the revenues that we have recognized from our collaboration arrangements.

	Year Ended December 31,		
	2009	2010	2011
	(in thousands of dollars)		
Continuing operations:			
Development and milestone revenues—collaboration arrangements	$ 1,050	$ 106	$ 803
Royalty revenues—Intuniv	36,875	—	—
Total continuing operations revenues	37,925	106	803
Discontinued operations:			
Development and milestone revenues—Oracea & Sanctura XR	500	—	—
Royalty revenues—Oracea & Sanctura XR	8,088	13,404	14,398
Total discontinued operations revenues	8,588	13,404	14,398
Total revenues	$ 46,513	$ 13,510	15,201

From and after April 15, 2008, all development and milestone revenues and royalty revenues due from net sales of Oracea and Sanctura XR were required to be used to satisfy the payment of principal and interest on the non-recourse notes of Royalty Sub. After the closing of the Purchase Transaction in December 2011, we no longer receive any revenues from such sales nor are we required to satisfy the payment of principal and interest on the non-recourse notes. We also received in May 2009, a one-time payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv and, as a result, we no longer will receive any royalty payments with respect to the net sales of Intuniv.

If we obtain regulatory approval for SPN-538, SPN-804 or any of our other product candidates, we would expect to begin to generate revenues from product sales and, over time, we expect that our future revenues would begin to be principally derived from product sales as compared to development and milestone revenues and royalty revenues.

Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestone revenues and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control. If we fail to complete the development of our product candidates in a timely manner or fail to obtain regulatory approval for them, our ability to generate future revenues, and our results of operations and financial position, would be materially adversely affected.

Research and Development Expense

Research and development expenses consist of costs incurred in connection with the development of our and our collaborators' product candidates. These expenses consist primarily of:

- employee-related expenses, which include salaries and benefits;
- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical studies;
- the cost of acquiring and manufacturing clinical trial materials;
- the cost of manufacturing validation tests, if these materials are manufactured prior to obtaining regulatory approval;
- costs related to facilities, depreciation and other allocated expenses;
- license fees for, and milestone payments related to, in-licensed products and technology;
- stock-based compensation expense to employees and consultants engaged in research and development activities; and
- costs associated with non-clinical activities and regulatory approvals.

We expense research and development costs as incurred. Non-refundable advance payments for goods and services that will be used in future research and development activities are initially recorded as prepaid expenses and expensed as the activity is performed or when the goods have been received.

Since our founding, we have developed and evaluated a series of CNS product candidates through Phase I pharmacokinetic trials. In 2008, we conducted a review of our portfolio of product candidates and rationalized the programs based on clinical profiles, expected required resources to complete development, intellectual property, existing treatment options and commercial opportunity. As a result of that review, we elected to concentrate on our two epilepsy product candidates and the product candidates that comprise our psychiatry portfolio. We intend to continue to strategically invest in our pipeline, and the commitment of funding for each subsequent stage of our development programs is dependent upon, among other things, the receipt of clear, positive data.

The majority of our external costs relate to later-stage product candidates, as costs associated with later-stage clinical trials are, in most cases, more significant than those incurred in earlier stages of our pipeline. For example, the external costs related to our SPN-804 program have been higher than our other programs in recent years because SPN-804 recently completed Phase III clinical trials that began in late 2008.

We track external development expenses and direct personnel expense on a program-by-program basis. Costs related to facilities, depreciation, employee benefits and bonuses, stock-based compensation, research and development management and research and development support services and supplies are not charged to specific programs, because the number of clinical and preclinical product candidates or development projects tends to vary from period to period and internal resources are utilized across and benefit multiple programs over any given period of time. The following table is

a summary of our research and development expenses for the years ended December 31, 2009, 2010 and 2011 and from our inception in late 2005 to December 31, 2011.

	Year Ended December 31,			From Inception to December 31,
	2009	2010	2011	2011
	(in thousands of dollars)			(unaudited)
SPN-538	$ 6,464	$ 9,864	$ 6,262	$ 28,436
SPN-804	10,027	12,664	10,959	48,794
SPN-810	3,333	2,150	4,152	14,025
SPN-812 and SPN-809	680	2,042	1,166	9,245
Other research and development programs	426	690	204	7,919
Development expenses—general	8,330	7,739	7,884	45,383
Total research and development expenses	$ 29,260	$ 35,149	$ 30,627	$ 153,802

The successful development of our product candidates is highly uncertain and subject to a number of risks including, but not limited to:

- The duration of clinical trials varies substantially according to the type, complexity and novelty of the product candidate;
- The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of therapeutic pharmaceutical products, typically requiring lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures;
- Data obtained from nonclinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activity. Data obtained from these activities also are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval;
- The duration and cost of nonclinical studies and clinical trials may vary significantly over the life of a product candidate and are difficult to predict;
- The costs, timing and outcome of regulatory review of a product candidate are uncertain; and
- The emergence of competing technologies and products and other adverse market developments could impede our commercial efforts.

Development timelines, probability of success and development costs vary widely. As a result of the uncertainties discussed above, we anticipate that we will make determinations as to which additional programs to pursue and how much funding to direct to each program on an ongoing basis in response to the scientific and clinical data of each product candidate, as well as ongoing assessments of such product candidate's commercial potential. Accordingly, we cannot currently estimate with any degree of certainty the amount of time or money that we will be required to expend in the future on our product candidates to complete current or future clinical or pre-commercial stages prior to their regulatory approval, if such approval is ever granted. As a result of these uncertainties surrounding the timing and outcome of any approvals, we are currently unable to estimate precisely when, if ever, SPN-538, SPN-804 or any of our other product candidates will generate revenues and cash flows.

We expect our research and development costs to continue to be substantial for the foreseeable future with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. We may elect to expand existing collaborative relationships or to seek new partnerships in order to provide us with a

diversified revenue stream and to help facilitate the development and commercialization of our product candidate pipeline.

General and Administrative Expenses

General and administrative expenses consist principally of salaries and related costs for personnel in executive, finance, business development, marketing, information technology, legal and human resources functions. Other general and administrative expenses include facility costs not otherwise included in research and development expenses, patent filing, prosecution and defense costs, professional fees for legal, consulting, auditing and tax services, and stock compensation expense for the personnel identified above.

We expect that our general and administrative expenses in 2012 will be higher than in 2010 and 2011 as we plan to continue to increase spending related to the build-out of our commercial infrastructure for the anticipated launch of both SPN-538 and SPN-804 in the United States. Upon approval of SPN-538, we would internally develop a sales force, initially consisting of a certain number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of SPN-804. Having two epilepsy products that can be promoted to the same physician audience by the same sales force would allow us to leverage our commercial infrastructure with these prescribers. Additionally, once we complete this offering, we would also expect to have greater expenses relating to our operations as a public company, including increased payroll and increased consulting, legal and compliance, accounting, insurance and investor relations costs.

Other Income and Expense

Other income and expense is comprised of interest income and expense, and other miscellaneous items.

Interest income consists of interest earned on our cash and cash equivalents and marketable securities. The primary objective of our investment policy is capital preservation.

Interest expense consists of interest on the notes issued under our secured credit facility, as well as the amortization of the related deferred financing costs and debt discounts. The balance of the secured notes payable was $30.0 million as of December 31, 2011. Interest expense for the year ending December 31, 2011 was approximately $1.9 million. Interest expense on the non-recourse notes includes amortization of the related deferred financing costs and was $12.3 million, $12.4 million and $11.7 million for fiscal years 2009, 2010 and 2011, respectively, and is included as an element of discontinued operations (see Note 8 to our consolidated financial statements).

Net Operating Losses and Tax Carryforwards

As of December 31, 2011, we had approximately $37.5 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $5.0 million available to offset future taxable income. U.S. tax laws limit the time during which these carryforwards may be utilized against future taxes. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. As a result, we may not be able to take full advantage of these carryforwards for federal and state tax purposes.

Net Income and Loss

We have incurred significant net losses since our inception in 2005, with the exception of 2009 and 2011, when we generated net income of $0.5 million and $53.8 million, respectively, due to one-time

items. The net income in 2009 was principally due to the one-time payment of $36.9 million that we received from Shire plc as consideration for a royalty-free, fully-paid-up license to Shire plc for Intuniv. The net income in 2011 was principally due to a gain on the sale of Royalty Sub of $74.9 million, which was reported as discontinued operations. We expect to continue to incur net losses for the foreseeable future as we continue to develop our product portfolio, seek regulatory approval, and, if such approval is obtained, commercialize SPN-538 and SPN-804 as well as our other product candidates.

Results of Operations

Comparison of the Year Ended December 31, 2011 and the Year Ended December 31, 2010

	Year Ended December 31,		Increase/ (decrease)
	2010	2011	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 106	$ 803	$ 697
Total revenues	106	803	
Operating Expenses:			
Research and development	35,149	30,627	(4,522)
General and administrative	5,080	7,928	2,848
Total operating expenses	40,229	38,555	
Operating loss from continuing operations	(40,123)	(37,752)	
Interest income and other income (expense), net	649	148	(501)
Interest expense	—	(1,866)	(1,866)
Loss from continuing operations before income taxes	(39,474)	(39,470)	
Income tax benefit	399	16,245	
Loss from continuing operations	($ 39,075)	($ 23,225)	15,850
Discontinued operations:			
Income from discontinued operations, net of tax	612	2,188	1,576
Gain on disposal of discontinued operations, net of tax	—	74,852	74,852
Income from discontinued operations	612	77,040	
Net income (loss)	$ (38,463)	$ 53,815	

Revenues. Our revenues were approximately $0.8 million for the year ended December 31, 2011 compared to approximately $0.1 million for the same period in 2010, representing an increase of $0.7 million. This increase was principally attributable to a one-time milestone payment of $750,000 in 2011 under our license agreement with United Therapeutics.

Research and Development. Our research and development expenses were $30.6 million for the year ended December 31, 2011 compared to $35.1 million for the same period in 2010, representing a decrease of approximately $4.5 million or approximately 13%. This decrease is attributable to a decrease in clinical trial costs of approximately $4.8 million as the Phase III trial for SPN-804 was substantially completed by the first quarter of 2011.

General and Administrative. Our general and administrative expenses were $7.9 million for the year ended December 31, 2011 compared to $5.1 million for the same period in 2010, representing an increase of approximately $2.8 million or approximately 56%. This increase is mainly due to an increase in marketing costs associated with preparing for launches of SPN-538 and SPN-804 during the year ended December 31, 2011.

Interest Income and Other Income (Expense), Net. Interest income and other income (expense), net was $0.1 million for the year ended December 31, 2011 compared to $0.6 million for the same period in 2010, representing a decrease of $0.5 million. The decrease is primarily the result of a federal grant credit received in 2010 under the federal Qualifying Therapeutic Discovery Project Program, which was created in March 2010 as part of the Patient Protection and Affordability Care Act of 2010.

Interest Expense. Interest expense was $1.9 million for the year ended December 31, 2011 which primarily consisted of interest expense associated with our secured credit facility, together with the amortization of the associated deferred financing costs and the debt discount arising from the allocation of fair value to the preferred stock warrants issued in connection with our term loans. There was no interest expense for the year ended December 31, 2010.

Loss from continuing operations. Loss from continuing operations was $23.2 million for the year ended December 31, 2011 compared to a loss of $39.1 million for the same period in 2010. This decrease was primarily due to the income tax benefit of $16.2 million in 2011, which was utilized to reduce income tax expense from discontinued operations income.

Income from discontinued operations. Income from discontinued operations was $2.2 million for the year ended December 31, 2011 compared to $0.6 million for the same period in 2010, representing an increase of approximately $1.6 million. This increase is mainly due to increased royalty revenues of approximately $1.0 million from Oracea and Sanctura XR for the year ended December 31, 2011. Additionally, in 2011 we realized a gain on sale of Royalty Sub of approximately $74.9 million, net of taxes, calculated as the aggregate of the fair value of consideration of $27.0 million and the carrying value of Royalty Sub's assets and liabilities, less its fees and expenses. Results for prior years have been restated for discontinued operations. For additional details on our discontinued operations, refer to Note 8 to our consolidated financial statements.

Comparison of Year Ended December 31, 2010 and Year Ended December 31, 2009

	Year Ended December 31,		Increase/ (decrease)
	2009	2010	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 1,050	$ 106	$ (944)
Royalty revenues	36,875	—	(36,875)
Total revenues	37,925	106	
Operating Expenses:			
Research and development	29,260	35,149	5,889
General and administrative	4,649	5,080	431
Total operating expenses	33,909	40,229	
Operating income (loss) from continuing operations	4,016	(40,123)	
Interest income and other income (expense), net	122	649	527
Income (loss) from continuing operations before income taxes	4,138	(39,474)	
Income tax benefit	—	399	
Income (loss) from continuing operations	4,138	(39,075)	(43,213)
Discontinued operations:			
Income (loss) from discontinued operations, net of tax	(3,678)	612	
Income (loss) from discontinued operations	(3,678)	612	4,296
Net income (loss)	$ 460	$ (38,463)	

Revenues. Our revenues were approximately $0.1 million for the year ended December 31, 2010 compared to approximately $37.9 million for the same period in 2009, representing a decrease of $37.8 million. This decrease was principally attributable to the one-time, lump-sum payment of approximately $36.9 million that we received in May 2009 from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv. We also generated lower development and milestone revenues for the year ended December 31, 2010 of approximately $106,000 as compared to approximately $1.0 million in the same period in 2009 due to our focus on the development of our own product candidates as opposed to developing product candidates for third parties.

Research and Development. Our research and development expenses were $35.2 million for the year ended December 31, 2010 compared to $29.3 million for the same period in 2009, representing an increase of approximately $5.9 million, or approximately 20%. This increase is primarily attributable to an increase in clinical trial costs of approximately $4.6 million, the largest portion of which was due to the costs for our Phase III clinical trial for SPN-804, and higher manufacturing costs of approximately $0.9 million principally associated with pre-validation work performed by our commercial manufacturers for both SPN-538 and SPN-804.

General and Administrative. Our general and administrative expenses were $5.1 million for the year ended December 31, 2010 compared to $4.6 million for the same period in 2009, representing an increase of approximately $0.5 million or approximately 11%. This increase is primarily the result of costs incurred in connection with the development of our sales and marketing infrastructure and higher compensation expenses resulting from higher stock compensation expense and the hiring of additional employees, partially offset by lower patent and outside consulting fees incurred during the year ended December 31, 2010.

Interest Income and Other Income (Expense), Net. Interest income and other income (expense), net was $0.6 million for the year ended December 31, 2010 compared to $0.1 million for the same period in 2009, representing an increase of $0.5 million. The $0.5 million increase is primarily the result of our receipt of approximately $0.5 million in November 2010 for qualifying 2009 development expenses under the federal Qualifying Therapeutic Discovery Project Program.

Income (Loss) from continuing operations. Loss from continuing operations was $39.1 million for the year ended December 31, 2010 compared to net income of $4.1 million for the same period in 2009, representing a decrease of approximately $43.2 million. This decrease is principally a result of approximately $36.9 million that we received in May 2009 from Shire plc as consideration for a royalty-free, fully paid-up license for Intuniv as well as higher research and development costs of approximately $5.9 million incurred in 2010 associated with the continued development of our most advanced product candidates, SPN-538 and SPN-804.

Income (loss) from discontinued operations. Income from discontinued operations was $0.6 million for the year ended December 31, 2010 compared to a loss of $3.7 million for the same period in 2009, representing an increase of approximately $4.3 million. This increase is mainly due to increased royalty revenues of approximately $5.3 million from Oracea and Sanctura XR for the year ended December 31, 2010.

Liquidity and Capital Resources

In December 2005, we acquired substantially all of the assets of Shire Laboratories Inc. from Shire plc in exchange for a cash payment of approximately $0.8 million and the issuance of 4 million shares of our Series A convertible preferred stock at a value of $1.00 per share. In connection with the commencement of our operations, in December 2005 and February 2006, we raised approximately $45.0 million through the sale of 45 million shares of Series A convertible preferred stock. To date, we have not generated any revenues from product sales. Since our inception in 2005, we have funded our

operations largely through venture capital equity and other financings, such as the monetization of future royalties due to us from existing license agreements with Endo Pharmaceuticals Solutions Inc., Galderma Laboratories, L.P. and Shire plc pursuant to which we have received net proceeds of approximately $100.2 million through December 31, 2011. Additionally, in each of January 2011 and December 2011, we drew down $15.0 million under our secured credit facility, which charges interest at a fixed rate of 11.0% per annum. The initial $15.0 million of term loans drawn down in January 2011 will mature in August 2014. The second $15.0 million of term loans drawn down in December 2011 will mature in January 2015. As of December 31, 2011, we had unrestricted cash, cash equivalents and marketable securities of approximately $48.5 million.

Financing History and Future Capital Requirements

Non-recourse Notes. In April 2008, we raised approximately $63.3 million in net proceeds (i.e., net of financing costs and a required interest reserve of $8.0 million) through a private placement to institutional investors of $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 (the "Non-recourse Notes") issued by Royalty Sub. As part of the transaction, pursuant to a Purchase and Sale Agreement and Residual License Agreements executed by us and Royalty Sub, we transferred to Royalty Sub our payment rights and other license rights related to two products that utilize our proprietary technologies: Oracea, which is marketed by Galderma as a treatment for rosacea; and Sanctura XR, which is marketed by Allergan as a treatment for overactive bladder. The Non-recourse Notes are secured by these royalty payments and other license rights, as well as by the pledge of the outstanding equity interest in Royalty Sub. While the Non-recourse Notes are outstanding, all royalty and milestone payments due from net sales of Oracea and Sanctura XR go to the payment of interest, and when available, to the principal on such Non-recourse Notes. Pursuant to the Unit Purchase Agreement executed on December 14, 2011, where we sold 100% of our equity ownership interests in Royalty Sub for a purchase price consisting of $27.0 million, assumption of all assets and liabilities and a milestone payment of $3.0 million payable upon certain events, we retained certain duties and obligations under the Non-recourse Notes and related agreements, including the Purchase and Sale Agreement, the Residual License Agreements and the Servicing Agreement.

Until the Purchase Transaction, Royalty Sub made quarterly debt service payments on the Non-recourse Notes. Applicable royalties received by Royalty Sub on net sales of Oracea and Sanctura XR for any quarter that exceeded the interest payments and expenses due for that quarter were applied to the repayment of principal on the Non-recourse Notes. In April 2011 and October 2011, Royalty Sub paid approximately $182,000 and $364,000, respectively, in principal on the Non-recourse Notes. As of December 14, 2011, the date of the sale of Royalty Sub, the principal balance outstanding on the Non-recourse Notes was approximately $74.5 million.

In connection with the Non-recourse Note transaction, an $8.0 million interest reserve was established to fund potential interest shortfalls or, if none, for repayment of principal due under the Non-recourse Notes. These funds came out of the debt proceeds and were restricted. In the first quarter of 2010, the $8.0 million interest reserve was exhausted. As a result, all subsequent interest payments were made by Royalty Sub solely from royalty payments received. Under the terms of the Non-recourse Notes, Royalty Sub was not in default for payment of interest unless it failed to make payment in full on the interest payment by the next succeeding payment date. Through December 14, 2011, Royalty Sub was able to make up all interest shortfalls in full before the next succeeding payment date. In the event of a default for failure to pay interest on a timely basis, the holders of the Non-recourse Notes do not have recourse to our company as the Non-recourse Notes are non-recourse beyond Royalty Sub, are not convertible into any other of our securities, and have not been guaranteed by our company.

The syndication costs to complete the Non-recourse Note transaction were approximately $4.4 million for investment banking, legal, consulting, accounting, and printing fees. These costs were funded from the debt proceeds and were being amortized to interest expense over 16.2 years, the term of the Non-recourse Notes. In connection with the Purchase Transaction, the remaining balance of $3.4 million in deferred financing costs was eliminated from our consolidated balance sheets. See Note 8 to our consolidated financial statements for further information.

In connection with the Non-recourse Note transaction, we executed a Servicing Agreement with Royalty Sub. The Servicing Agreement provided for a servicing fee of $10,000 per quarter to be paid to us for performance of services. We retained certain duties under the Servicing Agreement following the Purchase Transaction, including taking commercially reasonable steps to collect the royalty amounts due and enforcing the related provisions under the license agreements. Specifically, we are required to monitor receipt of the royalty payments due under the license agreements and to confirm that the payments are received on a timely basis, calculated properly and made available to the trustee.

Sale of Intuniv Royalties. In May 2009, we entered into an agreement with an affiliate of Shire plc, whereby a Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv, which is a novel ADHD product marketed by Shire plc which utilizes one of our proprietary technologies. As a result, we will not receive any future royalty payments from Shire plc with respect to Intuniv.

Secured Credit Facility. In January 2011 we entered into a secured credit facility pursuant to a loan and security agreement with certain lenders which was subsequently amended in December 2011, providing for term loans of up to an aggregate of $30.0 million. In connection with the initial drawdown of $15.0 million under our secured credit facility on January 26, 2011, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. The warrants are immediately exercisable and expire on January 26, 2021. In December 2011, in connection with the drawdown of the second $15.0 million under our secured credit facility, as amended, we issued to the lenders warrants to purchase an aggregate of 200,000 shares of our Series A convertible preferred stock at $1.50 per share. The warrants are immediately exercisable and expire on December 30, 2021. Upon completion of an initial public offering, the respective lender warrants will be exercisable into one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible prior to the initial public offering at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable. We have primarily used the proceeds of the term loans under our secured credit facility to fund ongoing clinical trials for SPN-538, SPN-804 and SPN-810, to prepare for manufacturing validation of SPN-538 and SPN-804, to support formulation for various clinical stage products, to prepare commercial marketing of SPN-538 and for regulatory filing fees. The term loans bear interest at a fixed rate per annum of 11.0%. The initial $15.0 million of term loans drawn down in January 2011 will mature in August 2014. The second $15.0 million of term loans drawn down in December 2011 will mature in January 2015. In March 2011, we made the first of twelve monthly interest-only payments on the initial $15.0 million of term loans drawn down in January 2011. Thereafter, beginning in March 2012, which is the amortization date for these term loans, we will make principal and interest payments to fully amortize the balance over the term of these term loans. In February 2012, we made the first of six monthly interest-only payments on the second $15.0 million of term loans drawn down in December 2011. Thereafter, beginning in August 2012, which is the amortization date for these term loans, we will make principal and interest payments to fully amortize the balance over the term of these term loans.

We may voluntarily prepay all, but not less than all, outstanding term loans under our secured credit facility at any time, subject to the payment of a premium. With respect to any prepayment, the premium is 5.0% if such prepayment is made before the amortization date, 2.0% if such prepayment is made during the 15-month period after the amortization date and 1.0% if such prepayment is made

thereafter. Upon the maturity of any outstanding term loans or the acceleration or prepayment thereof, we will also be required to make a final payment equal to 2.5%, or $750,000, of the aggregate principal amount of the term loans borrowed under our secured credit facility. This payment is being recorded as additional interest expense over the life of the loan.

All obligations under our secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. Our secured credit facility includes negative covenants that, subject to certain exceptions, limit our ability and the ability of our subsidiaries to, among other things, dispose of certain assets, change our lines of business, engage in mergers or consolidations, incur additional indebtedness, create liens on assets (including our intellectual property), pay dividends and make distributions on or repurchase our capital stock or engage in certain transactions with affiliates. Our secured credit facility also includes certain customary representations and warranties, affirmative covenants and events of default, which, among other things, include payment defaults, covenant defaults, a material adverse change in our business, certain events of bankruptcy, cross-defaults to certain indebtedness, material judgments, breach of representations and warranties and the revocation, rescission, suspension or other adverse modification of a governmental approval. Upon the occurrence of an event of default, the lenders under our secured credit facility will be entitled to take various actions, including the acceleration of all amounts due under our secured credit facility and all actions permitted to be taken by a secured creditor.

We incurred debt financing costs of approximately $498,000, which included the payment of an upfront fee and the reimbursement of certain of the lenders' related expenses, and these expenses have been recorded as deferred financing costs in our consolidated balance sheet. Additionally, the fair value of the warrants upon issuance of $612,000 has been recognized as a discount on the term loan as of December 31, 2011. The deferred financing costs and the debt discount are being amortized to interest expense over the term of the related loans.

United Therapeutics License. We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of Remodulin for the treatment of PAH, and potentially for additional indications. United Therapeutics has stated that this oral formulation of treprostinil diethanolamine, or treprostinil, is the subject of an NDA for PAH that was submitted in December 2011, and accepted for filing by the FDA in February 2012. Through December 31, 2011, we have received $1.5 million in pre-commercial milestone payments under the agreement. Remaining milestone payments to us could total up to approximately $6.0 million, which includes milestone payments that could total $2.0 million based on the satisfaction of development milestones of oral treprostinil in PAH and up to approximately $4.0 million for the development of additional treprostinil products for a second inidication. If United Therapeutics receives approval to market and sell oral treprostinil for additional indications and/or any additional combination products that utilizes our technologies, we will receive royalties in the single digits based on net sales worldwide. Any revenues received under this agreement will fluctuate as a result of the timing and amount of milestone and other payments received under this agreement, and the amount and timing of payments that we receive upon the sale of covered products, to the extent any are successfully commercialized by United Therapeutics or its sub licensees. Our license agreement with United Therapeutics will expire, on a country-by-country and product-by-product basis, 12.5 years from the first commercial sale of each product in such country. United Therapeutics may terminate the agreement for a technical, strategic or market-related cause after giving us a reasonable opportunity to cure. We may terminate the agreement if, after having launched a product in a country, United Therapeutics or its sub-licensee discontinues the sale of such product for a prolonged period of time for reasons unrelated to force majeure, regulatory or safety issues. In addition, either party may terminate the agreement for the material, uncured breach by the other party and in certain events of bankruptcy or insolvency of the other party.

Stendhal License

In August 2011, we executed a Development and Licensing Agreement with Especificos Stendhal, S.A., DE C.V. (Stendhal) that provided Stendhal an exclusive license to our licensed intellectual property underlying our SPN-804 product, in Mexico, Venezuela, Colombia and other select markets in Central and South America. The agreement included the right to our patents, proprietary information, and know-how of our drug-delivery technology and pharmaceutical product underlying our SPN-804 product. Stendhal is responsible for all costs associated with clinical development, approval, commercialization and distribution of the product in the defined territory, which may be expanded upon certain events. We have received $750,000 from Stendhal, which is being recognized as revenue on a straight-line basis over the substantive obligation period until approval, which is estimated to be December 2014. We monitor this estimate on a quarterly basis to determine if facts and circumstances may have changed that would require a prospective adjustment of the recognition period. We may receive up to $3.0 million in additional milestone payments, based on certain regulatory and commercial milestones defined in the agreement. As of December 31, 2011, $697,000 remained recorded as deferred revenue.

Funding Requirements

As of December 31, 2011, we had unrestricted cash, cash equivalents and marketable securities of $48.5 million. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities, and anticipated future product revenues, will be sufficient to fund our operations for at least the next months. Successful transition to profitability is dependent upon achieving a level of revenues adequate to support our cost structure, which we do not expect in the near term, if at all. We cannot assure you that we will ever be profitable or generate positive cash flow from operating activities.

We expect to continue to incur substantial additional operating losses for the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538, SPN-804 and our other product candidates. If we obtain marketing approval for SPN-538 or SPN-804, we will incur significant sales, marketing and outsourced manufacturing expenses. In addition, we expect to incur additional expenses to add operational, financial and information systems and personnel, including personnel to support our planned product commercialization efforts. We also expect to incur significant costs to comply with corporate governance, internal controls and similar requirements applicable to us as a public company following the closing of this offering. In this regard, the report of our independent registered public accounting firm with respect to our consolidated financial statements as of and for the year ended December 31, 2011 contains an explanatory paragraph stating that there is substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern. However, even after giving effect to the net expected net proceeds of this offering, we may need to obtain additional financing through equity offerings, debt financings and/or payments under new or existing licensing and research and development collaboration agreements.

Our future use of operating cash and capital requirements will depend on many forward-looking factors, including the following:

- The timing and outcome of the FDA's review of the NDA for SPN-538;
- The timing and outcome of the FDA's review of the NDA for SPN-804;
- The extent to which the FDA may require us to perform additional clinical trials or pre-commercial manufacturing activities for SPN-538 or SPN-804;

- The timing and success of this offering;
- The costs of our commercialization activities for SPN-538 and/or SPN-804, if either is approved by the FDA;
- The cost of purchasing manufacturing and other capital equipment for our potential products;
- The scope, progress, results and costs of development for our other product candidates;
- The cost, timing and outcome of regulatory review of our other product candidates;
- The extent to which we acquire or invest in products, businesses and technologies;
- The extent to which we choose to establish collaboration, co-promotion, distribution or other similar agreements for product candidates; and
- The costs of preparing, submitting and prosecuting patent applications and maintaining, enforcing and defending intellectual property claims.

We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. We expect that our progress in the development of our product candidates may provide sufficient value inflection milestones, based on which we will be able to seek additional funding. The type, timing, and terms of financing, if required, will depend upon our cash needs, the availability of financing sources and the prevailing conditions in the financial markets. There can be no assurance that such financing will be available to us at any given time or available on favorable terms, if at all. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition. In addition, additional debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Any debt financing or additional equity that we raise may contain terms, such as liquidation and other preferences, that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish valuable rights to our technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to us.

Cash Flows

The following table sets forth the major sources and uses of cash for the periods set forth below:

	Years Ended December 31,		
	2009	2010	2011
		(in thousands)	
Net cash provided by (used in):			
Operating activities:			
From continuing operations	$ 6,845	$ (32,192)	$ (38,206)
From discontinuing operations	(4,211)	(352)	2,021
Investing activities:			
From continuing operations	(28,385)	25,823	8,295
From discontinuing operations	—	—	25,607
Financing activities:			
From continuing operations	20	(1,341)	29,054
From discontinuing operations	4,260	397	(1,967)
Net increase (decrease) in cash and cash equivalents	$ (21,471)	$ (7,665)	$ 24,804

Operating Activities

Net cash used in operating activities from continuing operations for the year ended December 31, 2011 compared to the same period in 2010 increased by $6.0 million. This change in cash flows from operating activities was primarily the result of a decrease of $5.7 million between the two periods related to net changes in working capital and a decrease of approximately $0.4 million in non-cash items. The largest portion of the net changes in working capital related to a $5.2 million increase in cash provided by higher account payables and accrued expenses in 2010 as compared to a $1.1 million decrease in cash provided due to lower account payables and accrued expenses in 2011. This was partially offset by recognition of deferred revenue under the Stendhal agreement as well as cash reimbursements for tenant improvements which are recorded as deferred rent.

Net cash used in operating activities from continuing operations for the year ended December 31, 2010 compared to the same period in 2009 decreased by $39.0 million. This difference was driven by the recognition of royalty revenues in 2009 of approximately $36.9 million related to a license agreement with Shire plc for Intuniv. In addition, we incurred higher research and development costs of approximately $5.9 million for the year ended December 31, 2010 compared to the same period in 2009 primarily to support our clinical programs relating to SPN-538 and SPN-804. This decrease in cash flows from operating activities was partially offset by an increase of $4.3 million between the two periods related to net changes in working capital. The largest portion of the increase in working capital related to a $3.6 million year-over-year increase in cash provided by higher account payables and accrued expenses, principally relating to the increased clinical trial and pre-validation manufacturing expenses for SPN-538 and SPN-804 incurred during the 2010 period.

Net cash used in operating activities from discontinued operations for the year ended December 31, 2011 compared to the same period in 2010 increased by $2.4 million. This change in cash flows from operating activities was primarily the result of $1.6 million in increased income between the two periods, offset by decreased interest payable of $0.5 million in 2011. This was augmented by year over year increase in receivables of $1.3 million. Net cash used in operating activities from discontinued operations for the year ended December 31, 2010 compared to the same period in 2009 increased by $3.9 million. This change in cash flows from operating activities was primarily the result of $4.7 million in increased income between the two periods offset by increased receivables of $0.8 million.

Investing Activities

Our investing activities from continuing operations are principally driven by cash provided by our financing activities and cash generated by operations, if any. We invest excess cash in accordance with our investment policy. Marketable securities consist of investments in U.S. Treasuries and various government agency debt securities, which generally mature in one year or less. Fluctuations in investing activities between periods relate exclusively to the timing of marketable security purchases and the related sale and maturities of these securities.

Net cash provided by investing activities from continuing operations for the year ended December 31, 2011 compared to the same period in 2010 decreased by $17.5 million. This decrease was primarily the result of a $32.0 million decrease in the cash received from the sales and maturities of marketable securities, partially offset by a $14.9 million decrease in the cash used to purchase marketable securities. We also used an additional $0.4 million to purchase property and equipment for the year ended December 31, 2011 compared to the same period in 2010.

Cash provided by investing activities from discontinued operations of $25.6 million in 2011 relates to cash proceeds net of transaction costs from the sale of Royalty Sub.

The increase of $54.2 million in net cash provided by investing activities for the year ended December 31, 2010 compared to the same period in 2009 was primarily the result of a $30.3 million increase in cash received from the sales and maturities of marketable securities, partially offset by a $23.5 million decrease in cash used to purchase marketable securities. This increase in cash provided by investing activities was augmented by a $0.4 million decrease in cash used for the purchase of property and equipment for the year ended December 31, 2010 compared to the same period in 2009.

Financing Activities

Net cash provided in financing activities from continuing operations for the year ended December 31, 2011 compared to the same period in 2010 increased by $30.4 million. This increase was primarily due to the drawdown of $30.0 million under our secured credit facility in 2011, as well as a decrease in deferred financing costs of $0.4 million.

Net cash provided by financing activities from continuing operations decreased by $1.4 million for the year ended December 31, 2010 compared to the same period in 2009. This decrease was primarily due to $1.3 million of deferred financing costs incurred in 2010 in connection with this initial public offering.

Net cash used in financing activities from discontinued operations decreased by $2.4 million in 2011, compared to the same period in 2010. This decrease was mainly due to lower balances of restricted cash and cash equivalents of $1.5 million used to fund interest and $0.5 million in principal payments on the Non-recourse Notes. This was offset by an increase in restricted cash of $0.4 million in 2010. Net cash used in financing activities from discontinued operations decreased by $3.9 million in 2010, compared to net cash used in financing activities for the same period in 2009. This decrease was primarily due to the drawdown in 2009 of approximately $4.3 million in the interest reserve account that was established to fund potential shortfalls in interest payments for the Non-recourse Notes. This was offset by an increase in restricted cash of $0.4 million in 2010.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of December 31, 2011 (except as noted below):

Contractual Obligations	Less than 1 Year	1 - 3 Years	3 - 5 Years	Greater than 5 Years	Total
			($ in thousands)		
Secured Credit Facility[1]	$ 6,775	$ 23,225	$ —	$ —	$ 30,000
Interest on Secured Credit Facility[1]	3,013	3,150	—	—	6,163
Operating leases[2]	971	1,951	2,029	1,399	6,350
Purchase obligations[3]	6,247	—	—	—	6,247
Total[4]	$ 17,006	$ 28,326	$ 2,029	$ 1,399	$ 48,760

(1) Annual interest expense is currently $3.0 million on $30.0 million of principal outstanding currently.

(2) Our commitments for operating leases relate to our lease of copiers and office and laboratory space as of December 31, 2011.

(3) Relates primarily to agreements and purchase orders with contractors for the conduct of clinical trials and other research and development and marketing activities.

(4) This table does not include (a) any milestone payments which may become payable to third parties under license agreements as the timing and likelihood of such payments are not known, (b) any royalty payments to third parties as the amounts, timing and likelihood of such payments are not known and (c) contracts that are entered into in the ordinary course of business which are not material in the aggregate in any period presented above.

We have obtained exclusive licenses from third parties for proprietary rights to support the product candidates in our psychiatry portfolio. Under license agreements with Afecta, we have an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. We do not owe any future milestone payments for SPN-810. We will also be obligated to pay royalties to Afecta based on net sales worldwide of our product candidates in the low-single digits. We have also entered into a purchase and sale agreement with Rune, where we obtained the exclusive worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If we receive approval to market and sell any products based on the Rune product concept for SPN-809, we will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate these estimates and judgments, including those described below. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities and amounts recorded as revenues and expenses that are not readily apparent from other sources. Actual results and experiences may differ materially from these estimates.

While a summary of significant accounting policies are more fully described in Note 3 to our consolidated financial statements appearing at the end of this prospectus, we believe that the following accounting policies are the most critical to aid you in fully understanding and evaluating our reported financial results and affect the more significant judgments and estimates that we use in the preparation of our consolidated financial statements.

Revenue Recognition

Our revenues have been generated through collaboration and research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv, which comprise our royalty revenue. We record any amounts received in advance of services performed as deferred revenue and recognize them as revenue if and when earned.

Multiple Element Arrangements

For multiple element arrangements, we evaluate the components of each arrangement as separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. We recognize revenues when persuasive

evidence of an arrangement exists, delivery has occurred or services have been rendered, the fee is fixed and determinable, and collection is reasonably assured.

Our development revenues have been earned under contracts that were less than one year in duration. Development contracts generally take the form of fee-for-service arrangements based on an annual contractual full time equivalent billing rate. In cases where performance spanned multiple accounting periods, we recognized revenue as services were performed, measured on a proportional-performance basis. We used output measures, specifically labor hours, to measure performance as they reflect our pattern of performance over the contractual term.

In January 2011, we adopted ASU No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force*. ASU No. 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available; third-party evidence, if VSOE is unavailable; and estimated selling prices if neither VSOE or third-party evidence is available. In addition, ASU No. 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. The adoption of ASU No. 2009-13 did not impact our consolidated financial statements, as we did not enter into any multiple element arrangements during 2011. We will evaluate new or materially modified multiple element arrangements pursuant to the guidance in ASU No. 2009-13.

Milestone Payments

Milestone payments have been recognized as revenue when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone. In January 2011, we adopted ASU 2010-17, *Revenue Recognition-Milestone Method*. Under this guidance, management may recognize revenue contingent upon the achievement of a milestone in its entirety in the period in which the milestone is achieved only if the milestone meets all the criteria identified in the guidance to be considered substantive. Substantive milestone payments are recognized upon achievement of the milestone only if all of the following conditions are met:

- the milestone payments are non-refundable;
- achievement of the milestone involves a degree of risk and was not reasonably assured at the inception of the arrangement;
- substantive effort is involved in achieving the milestone;
- the amount of the milestone payment is reasonable in relation to the effort expended or the risk associated with achievement of the milestone; and
- a reasonable amount of time passes between the up-front license payment and the first milestone payment as well as between each subsequent milestone payment.

Determination as to whether a payment meets the aforementioned conditions involves management's judgment. If any of these conditions are not met, the resulting payment would not be considered a substantive milestone, and therefore the resulting payment would be considered part of the consideration for the single unit of accounting and recognized as revenue when services have been rendered and there are no further performance obligations. The adoption of ASU 2010-17 did not have a material impact on our consolidated results of operations, financial position, or liquidity.

Royalty Revenues

We record royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and

analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). We maintain regular communication with licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period in which they are collected, typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent we do not have sufficient ability to accurately estimate revenue, we record revenue when received.

In 2009, we recognized approximately $36.9 million in royalty revenues related to an amendment to a license agreement with Shire plc for Intuniv, which is a novel ADHD product marketed by Shire plc and utilizes one of our proprietary technologies. Under the terms of the license amendment, the parties agreed to delete all provisions regarding milestone and royalty payments and replaced those provisions with, among other things, (1) a commitment by Shire plc to make a one-time payment of $36.9 million within 15 days of signing the amendment, (2) an acknowledgement by us that no other sums would be payable to us, then or in the future, under the amended license; and (3) a statement that the amended license was permanent, irrevocable and fully paid. We concluded that immediate revenue recognition was appropriate because (1) the executed contract constituted persuasive evidence of an arrangement, (2) the delivery of the license amendment had occurred and Shire plc had assumed all risks and rewards regarding Intuniv, and we had no current or future performance obligations, (3) the total consideration for the license amendment was fixed and known at the time of its execution and there were not any extended payment terms or rights of return, and (4) collection was reasonably assured as we determined that Shire plc was creditworthy and had the financial ability to make the payment in accordance with the terms of the license amendment.

Accrued Expenses

As part of the process of preparing the consolidated financial statements, we may be required to estimate accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our accrued expenses as of each consolidated balance sheet date in our consolidated financial statements based on facts and circumstances known to us. We confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued expenses include:

- fees paid to contract research organizations, or CROs, in connection with clinical trials;
- fees paid to investigative sites in connection with clinical trials;
- fees paid to contract manufacturers in connection with the production of clinical trial materials; and
- professional service fees.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and CROs that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical trial milestones. In accruing the related service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we will adjust the accrual accordingly. If we do not identify costs that we have begun to incur or if we underestimate or

overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. We do not anticipate the future settlement of existing accruals to differ materially from our estimates.

Stock-Based Compensation

We recognize as compensation expense the estimated fair value of stock options and non-vested stock awards over the requisite service periods, which are typically the vesting periods. Equity instruments issued to non-employees are recorded at their estimated fair value and are re-measured each reporting period as the equity instruments vest and the related expense is recognized ratably over the related service period.

Stock-based compensation expense includes stock options and non-vested stock granted to employees and non-employees and has been reported in our consolidated statements of operations as follows:

	Years Ended December 31,		
	2009	2010	2011
	(In Thousands)		
Research and development	$ 28	$ 53	$ 63
General and administrative	83	244	(145)
Total	$ 111	$ 297	$ (82)

Historically, stock-based compensation has not been material to our consolidated results of operations or financial position. Because the determination of the estimated fair value of share-based payments inherently includes the use of subjective assumptions and the potential that the related expense may be material in the future, we have included stock-based compensation as a significant accounting policy.

We calculate the fair value of stock-based compensation awards using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the input of subjective assumptions, including stock price volatility, assumed dividend yield, the expected term of stock options and a risk-free interest rate. We calculate expected volatility based on reported data for selected reasonably similar publicly traded companies, or our guideline peer group, for which historical information is available. We will continue to use the guideline peer group volatility information until the historical volatility of our common stock is relevant to measure expected volatility for future option grants. The assumed dividend yield is based on our expectation of not paying dividends in the foreseeable future. We determine the average expected term of stock options according to the "simplified method" as described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the contractual term. We determine the risk-free interest rate by reference to implied yields available from U.S. Treasury securities with a remaining term equal to the expected term assumed at the date of grant. The assumptions used in the Black-Scholes option-pricing model for the years ended December 31, 2009, 2010 and 2011 are set forth in our consolidated financial statements appearing at the end of this prospectus.

Forfeitures are not an assumption that impacts the Black-Scholes option-pricing model; however, it is an estimate that impacts the amount of stock compensation expense recognized. We estimate forfeiture rates based on our historical analysis of actual stock option forfeitures.

There is a high degree of subjectivity involved when using option-pricing models to estimate stock-based compensation. There is currently no market-based mechanism or other practical application to verify the reliability and accuracy of the estimates stemming from these valuation models, nor is there a means to compare and adjust the estimates to actual values. Although the estimated fair value of

employee stock-based awards is determined using an option-pricing model, that value may not be indicative of the fair value observed in a market transaction between a willing buyer and willing seller. If factors change and we employ different assumptions when valuing our options, the compensation expense that we record in the future may differ significantly from what we have historically reported.

Our board of directors estimated the fair value for our common stock, with input from management. Given the absence of an active market for our common stock, our board of directors contemporaneously estimated the fair value of our common stock with the assistance of a third-party valuation firm on the dates of grant. These contemporaneous valuations were performed in accordance with applicable methodologies, approaches and assumptions of the technical practice aid issued by the American Institute of Certified Public Accountants Practice Aid entitled *Valuation of Privately-Held Company Equity Securities Issued as Compensation* (AICPA Practice Aid), considering numerous objective and subjective factors to determine common stock fair market value at each option grant date, including but not limited to the following factors:

- our stage of development and business strategy;
- our financial condition, operating results and book value;
- economic and competitive elements affecting us, our industry and our target markets;
- our projected operating results;
- a comparative analysis of our financial condition and operating results with those of publicly-owned companies engaged in similar lines of business;
- the current and historical relationship between the reported stock prices and revenues and earning levels of selected publicly traded companies engaged in similar lines of business;
- important developments relating to the results of our clinical trials;
- the likelihood of achieving a liquidity event for our outstanding shares of stock; and
- the price per share at which our Series A convertible preferred stock was issued to investors including the rights, preferences and privileges of the preferred stock relative to the common stock. In considering the rights and preferences of our Series A convertible preferred stock relative to our common stock, we considered the following rights and preferences:

    - The holders of our Series A convertible preferred stock are entitled to receive a cumulative annual dividend of $0.07 per share, when and if declared by the board of directors; and
    - The holders of our Series A convertible preferred stock are entitled to a liquidation preference. The aggregate amount of liquidation preferences, has increased from $55.8 million as of December 31, 2007 to $69.5 million as of December 31, 2011. In the event of liquidation, dissolution or winding up of our company, the liquidation preference for each Series A convertible preferred share equals the original purchase price of $1.00 per share, plus accumulated unpaid dividends.

The following table includes stock option grant information from January 1, 2009 through the date of this prospectus, including the estimated fair value of the option grant as determined by the

Black-Scholes option-pricing model for options granted in 2009 and 2010, or by the probability-weighted expected return method, or PWERM, for options granted in 2011 and 2012.

Grant Date	Number of Options	Exercise Price	Estimated Fair Value	Intrinsic Value
January 19, 2009	225,000	$ 0.40	$ 0.23	$ —
December 15, 2009[1]	257,200	$ 1.76	$ 1.03	$ —
February 10, 2010	52,500	$ 0.84	$ 0.49	$ —
April 16, 2010	32,750	$ 0.84	$ 0.49	$ —
July 20, 2010	38,500	$ 0.84	$ 0.48	$ —
October 15, 2010	15,000	$ 0.64	$ 0.37	$ —
November 2, 2010	880,000	$ 0.64	$ 0.41	$ —
November 16, 2010	35,000	$ 0.64	$ 0.41	$ —
October 14, 2011	35,000	$ 1.06	$ 0.67	$ —
December 30, 2011	544,000	$ 1.47	$ 0.92	$ —
January 17, 2012	22,750	$ 1.47	$ 0.92	$ —
Total	2,137,700			

(1) On November 2, 2010, 255,000 of these options were repriced from $1.76 to $0.64 per share.

The intrinsic value of all outstanding vested and unvested options as of December 31, 2011 based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and the exercise price of the outstanding options are as follows:

	Number of Options	Intrinsic Value
Unvested	1,342,186	$ —
Vested	1,050,284	$ —

Our board of directors has made only one grant of non-vested stock. This grant was made in December 2005 for 3,500,000 shares of common stock. The estimated fair value of those shares as of the date of grant was $0.10 per share.

In November 2010, our board of directors repriced 255,000 of the options granted on December 15, 2009 from a per share exercise price of $1.76 to $0.64. In addition, our board of directors approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of non-vested stock awarded to our chief executive officer. The vesting of all of these share-based awards was contingent upon the filing and the FDA's acceptance of the company's first NDA on or before December 22, 2010, and the board of directors extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of the board of directors' actions, there was no immediate charge related to the repriced and modified options. We recognized approximately $190,000 of stock-based compensation related to the modified performance vesting options during the period January 1, 2010 through February 2011. As of March 31, 2011, the performance condition was not met and all performance vesting options expired. As a result, all previously recorded compensation expense related to the performance vesting options was reversed.

All contemporaneous valuations were prepared consistent with the AICPA Practice Aid. For valuations dated January 19, 2009 through November 16, 2010, we considered the use of market, income and asset valuation approaches. We lacked relevant financial metrics to utilize the market approach and the asset approach was not utilized because the majority of our assets are intangible, accordingly we used an income approach for each valuation. The income approach values a business based upon the future benefits that will accrue to it with the value of the future economic benefits discounted back to a present value at some appropriate discount rate. Implicit in the market price of all publicly traded securities is a consensus forecast of earnings and financial condition. The consensus

forecast results from the information made available to the investing public by us and from the numerous forecasts prepared by financial analysts. We have replicated this approach through the preparation of an operating forecast and the use of discounted cash flow analysis. The discount rate reflects all the risk of ownership and the associated risks of realizing the prospective economic income stream. Given that we have Series A convertible preferred stock outstanding, it was also necessary to allocate our company's value to the various classes of stock. As provided in the AICPA Practice Guide, there are several approaches for allocating equity value of a privately-held company among the securities in a complex capital structure, including the current value method, the probability weighted expected return method and the option pricing method. The current value method was not employed because a liquidity event, in the form of an acquisition or dissolution, was not imminent. The probability weighted expected return method was not utilized because of the nature of drug development and our stage of development estimating the probability and value of various liquidity events is highly speculative. We used the option-pricing method to allocate the estimated value of our equity to the classes of securities. The value of our common stock was then discounted for lack of marketability, or the inability to readily sell shares, which increases the owner's exposure to changing market conditions and increases the risk of ownership. The discount for lack of marketability was derived using a protective put calculation using the Black-Scholes option pricing model.

For the valuations performed as of September 30, 2011 and December 30, 2011, we used the PWERM described in the AICPA Practice Aid to allocate the enterprise values to the common stock. Under this method, the value of our common stock is estimated based upon an analysis of future values for our company assuming various future outcomes, the timing of which is based on the plans of our board of directors and management. Under this approach, share value is based on the probability-weighted present value of expected future investment returns, considering each of the possible outcomes available to us, as well as the rights of each share class.

Stock Option Grants on January 19, 2009

Our board of directors granted stock options on January 19, 2009, with each having an exercise price of $0.40 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2007 provided by management in determining the fair value of our common stock on January 19, 2009. We considered this valuation relevant in our determination of the estimated fair value of the common stock primarily because the deterioration of the overall financial markets in the second half of 2008 overshadowed progress on our clinical pipeline and the financing from the Non-recourse Notes. Our board of directors considered that in the face of the credit and liquidity crisis and the resulting uncertainties, the prospects for a liquidity event in the foreseeable future were significantly lower.

In the December 31, 2007 valuation, we used the income approach, specifically a discounted cash flow analysis, to estimate our company's equity value. The first step in that process was to calculate the present value of our discrete net cash flows for the periods projected. Next, the present value of our terminal net cash flow was calculated. The sum of these two present values, utilizing a cost of capital discount rate of 21.2%, determined the total market value capitalization on a minority basis to approximate $59.5 million. We added free cash (cash remaining after all investments and commitments that could potentially be available for debt service or shareholders dividends without impairing operations) in the amount of $25.9 million to estimate the market value of the total equity on a minority interest basis to approximate $85.4 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 25.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2007 of $0.40 per share. Our board determined this valuation analysis to be reasonable and, on the basis of the factors described above, that the estimated fair value of our common stock on January 19, 2009 was $0.40 per share.

Stock Option Grants on December 15, 2009

Our board of directors granted stock options on December 15, 2009, with each having an exercise price of $1.76 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of July 16, 2009 provided by management in determining the fair value of our common stock on December 15, 2009. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. In addition, to the non-risk adjusted forecast, we also considered a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our product candidates' clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 18.9%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us on a minority interest basis of approximately $122.9 million. We added free cash in the amount of $80.6 million to estimate the market value of the total equity, on a minority interest basis, to be approximately $203.5 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at July 16, 2009 of $1.76 per share. Based on the foregoing, we concluded the fair value of our common stock as of December 15, 2009 was $1.76 per share. No significant changes had come to our attention between July 16, 2009 and the December 15, 2009 grant date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The increase in the estimated fair value of the common stock relative to the December 31, 2007 valuation relates to several items. First, we had an additional $55.0 million of free cash on hand as a result of the monetization of certain future royalty streams under our licenses for Oracea, Sanctura XR and Intuniv. In addition, we had completed in-depth market research in mid-2009 that indicated a substantially greater commercial potential for our two epilepsy product candidates.

Stock Option Grants on February 10, April 16 and July 20, 2010

Our board of directors granted stock options on February 10, April 16 and July 20, 2010, with each having an exercise price of $0.84 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2009 provided by management in determining the fair value of our common stock on each of February 10, April 16 and July 20, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We considered a non-risk adjusted forecast and risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our product candidates' clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 15.7%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us, on a minority interest basis, of approximately $53.0 million. We added free cash in the amount of $66.7 million to estimate the market value of the total equity on a minority interest basis to be approximately $119.7 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2009 of $0.84 per share. Based on the foregoing, we concluded the fair value of our common stock as of February 10, 2010 was $0.84 per share. We further determined the fair value of the common stock as of April 16 and July 20, 2010 to be $0.84 per share. No significant changes had come to our attention between December 31, 2009 and each of the foregoing grants date to warrant a

revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the July 16, 2009 valuation principally relates to information regarding the announcement in December 2009 by a competitor of the initiation of a Phase III clinical trial for a once-a-day, extended-release topiramate product to treat epilepsy that could compete head-to-head with SPN-538, and, if approved before SPN-538, would have three years of market exclusivity.

Stock Option Grants on October 15, November 2 and November 16, 2010

Our board of directors granted stock options on October 15, November 2 and November 16, 2010, with each having an exercise price of $0.64 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of October 1, 2010 provided by management in determining the fair value of our common stock on each of October 15, November 2 and November 16, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We utilized a non-risk adjusted forecast and a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our product candidates' clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 22.0% and 14.2%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine our total market value of capitalization on a minority interest basis of approximately $64.4 million. We added free cash in the amount of $45.8 million to estimate the market value of the total equity on a minority interest basis to be approximately $110.2 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 20.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at October 1, 2010 of $0.64 per share. Based on the foregoing, we concluded the fair value of our common stock as of October 15, November 2 and November 16, 2010 was $0.64 per share. No significant changes had come to our attention between October 1, 2010 and each of the foregoing grant dates to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the December 31, 2009 valuation principally relates to a reduction of $20.8 million of free cash and a further refinement in the market estimates for our two epilepsy products based on additional market research on the dynamics of the market for epilepsy products and our expected product profiles upon approval.

Stock Option Grants on October 14, 2011

Our board of directors granted stock options on October 14, 2011 having an exercise price of $1.06 per share. Our board of directors considered the valuation performed as of September 30, 2011 provided by management in determining the fair value of our common stock on October 14, 2011. In the September 30, 2011 valuation, we used the PWERM to value our common stock. We estimated the fair value of our common stock using a probability-weighted analysis of the present value of the returns afforded to our stockholders under each of five possible future scenarios. All five of the scenarios

assumed a shareholder exit, either through an initial public offering or a merger/acquisition of our company. The five scenarios and their respective probabilities as assigned by management:

Scenario	Probability
1. An initial public offering in late 2011	0%
2. Royalty monetization in 2011 with an initial public offering in the first half of 2012	5%
3. Preferred equity financing in 2011, royalty monetization 2011, and an initial public offering in the second half of 2012	5%
4. Preferred equity financing in 2011 with an initial public offering in the first half of 2012	60%
5. Merger or other sale transaction in late 2011	30%

We indicated scenario 4 was most likely given our greater control over the timing of a preferred equity financing (compared to a royalty monetization) and since scenario 4 provided more flexibility regarding the timing of an initial public offering. Management also considered that the initial public offering would occur after the NDA for SPN-538 was accepted for filing by the FDA and after the NDA was submitted for SPN-804 in 2011.

The merger or other sale transaction scenario was weighted strongly as well given the increased volatility in the public markets which made a merger or other sales transaction more probable.

The lowest probability was applied to scenario 1. Due to timing of SEC filings and initiating a road show, as well as given the limited initial public offering activity for life sciences companies in the third quarter, increased volatility, and ongoing economic concerns, the prospect of an initial public offering in late 2011 was not considered likely.

Considering scenarios 2 and 3, management had projected a monetization of SPN-538 royalties and an initial public offering. However, as mentioned, we had no control over the timing of a royalty monetization, and the valuation of the royalty monetization is dependent on the terms for including SPN-538 and/or SPN-804 in any proposal.

In the September 30, 2011 valuation, we applied a discount for lack of marketability of 12.1% to reflect the fact that our shares have no immediate path to liquidity and there is no market mechanism to sell these shares. A common stockholder would have to wait for a liquidity event such as an initial public offering or a sale of our company to enable the sale of the common stock. We used an option pricing model to determine the value of this lack of marketability.

Stock Option Grants on December 30, 2011 and January 17, 2012

Our board of directors granted stock options on December 30, 2011 and January 17, 2012 having an exercise price of $1.47 per share. Our board of directors considered the valuation performed as of December 30, 2011 provided by management in determining the fair value of our common stock on December 30, 2011 and January 17, 2012. In the December 30, 2011 valuation, we used the PWERM to value our common stock. We estimated the fair value of our common stock using a probability-weighted analysis of the present value of the returns afforded to our stockholders under each of five possible future scenarios. All five of the scenarios assumed a shareholder exit, either through an initial

public offering or a merger/acquisition of our company. The five scenarios and their respective probabilities as assigned by management:

Scenario	Probability
1. An initial public offering in early 2012	50%
2. Preferred equity financing in the second quarter of 2012 with an initial public offering in the third quarter of 2012	30%
3. Preferred equity financing in the second quarter of 2012, royalty monetization in the fourth quarter of 2012, and an initial public offering in the third quarter of 2013	10%
4. Preferred equity financing in the second quarter of 2012, royalty monetization in the fourth quarter of 2012, SPN-810 Partnership in the first quarter of 2013, and an initial public offering in the second quarter of 2013	5%
5. Merger or other sale transaction in early 2012	5%

Management had indicated scenario 1 was most likely given we had more control over the timing of an initial public offering and given the recent positive trends in the U.S. initial public offering and equity markets. The initial public offering would be occurring as we prepared to launch SPN-538 and as the NDA for SPN-538 and SPN-804 were under review. Moreover, given that the number and size of initial public offering transactions had increased to the highest level since May 2011 and the volatility in the market had decreased, the prospects of an initial public offering improved.

We applied the second highest weighting to scenario 2, in which we would complete a Series B financing in June 2012 and then undertake an initial public offering in the third quarter of 2012. Management had indicated our investors would be willing to commit to a Series B financing, which would bridge the short-term funding gap until an initial public offering and provide more flexibility regarding the timing of the initial public offering.

The lowest probability was applied to scenarios 4 and 5 (5%). Scenario 4 consisted of a Series B financing in June 2012, an oral Remodulin® royalty monetization in October 2012, a partnership with a large cap pharma or biotech company for SPN-810 in February 2013 and finally an initial public offering in June 2013. While we had more control over the timing of a Series B financing and the financing can provide more flexibility regarding the timing of a royalty monetization and initial public offering, we cannot control the timing of a royalty monetization and we cannot control the timing of a partnership for the development of SPN-810 through Phase III trials. In addition, management indicated there were no discussions pending and therefore the probability or occurrence at this juncture is low.

In the December 30, 2011 valuation, we applied a discount for lack of marketability of 13.5% to reflect the fact that our shares have no immediate path to liquidity and there is no market mechanism to sell these shares. A common stockholder would have to wait for a liquidity event such as an initial public offering or a sale of our company to enable the sale of the common stock. We used an option pricing model to determine the impact of lack of marketability.

Lender Warrants

In connection with the initial $15.0 million drawdown under our secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. The warrants became exercisable upon issuance and will expire on January 26, 2021. In December 2011, in connection with the drawdown of the second $15.0 million under our secured credit facility, the lenders received from us ten-year warrants to purchase 200,000 shares of our Series A convertible preferred stock at an exercise

price of $1.50 per share. The warrants became exercisable upon issuance and will expire on December 30, 2021. Upon completion of an initial public offering, the respective lender warrants will be exercisable for one share of our common stock for each share of our Series A preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable.

The terms of the warrant agreements provide for "down-round" anti-dilution adjustment for the warrants in certain situations whereby the company sells or issues (a) shares at a price per share less than the exercise price of the warrants, or (b) equity-linked financial instruments with strike prices less than the exercise price of the warrants. As a result of this "down round" provision, the warrants will continue to be classified as derivative liabilities upon completion of an initial public offering (at which time the shares underlying the warrants are converted from Series A Preferred Stock to common stock).

The warrants are classified as liabilities in accordance with ASC 815-40—*Derivatives and Hedging—Contracts in an Entity's Own Equity*. The value of the warrants has been recorded as a derivative liability at a discount to the notes payable, and will be marked to market at each reporting period. The discount attributable to the notes will be amortized to interest expense over the expected term of the loans. Upon consummation of this offering, the warrants will continue to be recorded as a derivative liability.

Change in fair value of warrant liability represents non-cash (expense) income associated with changes in the fair value of the warrants to purchase preferred stock issued to the lenders under our secured credit facility. The warrant obligation is adjusted to fair value at the end of each reporting period. The fair values of the preferred stock warrants are estimated in accordance with the AICPA Practice Aid. Several objective and subjective factors are considered when valuing each equity security and related warrant at a valuation date. With assistance from a third party valuation firm, we utilized the PWERM to estimate the fair value of the preferred stock warrants. Under the PWERM, the value of each equity security and warrant is estimated based upon an analysis of future values for the entire equity instrument assuming various future outcomes. Share value is based upon the probability-weighted present value of the expected outcomes, as well as the rights of each class of preferred and common stock. A probability is estimated for each possible event based on the facts and circumstances as of the valuation date. We will continue to adjust the warrant liability for changes in fair value until the earlier of the exercise or expiration of the warrants. Subsequent to the completion of an initial public offering, the fair value of the warrants will be determined using either a risk-neutral lattice methodology within a Monte-Carlo analysis or a Black-Scholes model within a Monte-Carlo framework. The Monte-Carlo simulation is a generally accepted statistical method used to estimate fair value based on the application of subjective assumptions, consistently applied for each period, including the probability, timing and magnitude of our issuance of additional common stock in future financings. This valuation is computed at the end of each fiscal quarter until the warrants are exercised or they expire to reflect conditions at each such valuation date. Under either methodology, in addition to assumptions regarding future equity financings, consideration is also given to the current stock price, anticipated stock volatility going forward, and the anti-dilution provisions embedded in the warrant agreements.

Recent Accounting Pronouncements

In June 2011, the FASB issued ASU No. 2011-05*, Comprehensive Income (ASC Topic 220): Presentation of Comprehensive Income,* which amends current comprehensive income guidance. This accounting update eliminates the option to present the components of other comprehensive income as part of the statement of stockholders' equity. Instead, a company must report comprehensive income in either a single continuous statement of comprehensive income which contains two sections, net income and other comprehensive income, or in two separate but consecutive statements. ASU 2011-05 will be effective during the interim and annual periods beginning after December 15, 2011 with early adoption

permitted. We intend to adopt ASU 2011-05 in the first quarter of fiscal year 2012. We do not believe that the adoption of ASU 2011-05 will have a material impact on our condensed consolidated financial statements.

In May 2011, the FASB issued ASU No. 2011-04, *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs*. ASU 2011-04 created a uniform framework for applying fair value measurement principles and clarified existing guidance in GAAP. ASU 2011-04 will be effective for the first annual reporting period beginning after December 15, 2011 and must be applied prospectively. We will adopt ASU 2011-04 in the first quarter of fiscal year 2012. We do not believe that the adoption of ASU 2011-04 will have a material impact on our condensed consolidated financial statements.

Quantitative and Qualitative Disclosure About Market Risk

The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. Our exposure to market risk is confined to our cash and cash equivalents. As of December 31, 2011, we had unrestricted cash, cash equivalents and marketable securities of $48.5 million. We do not engage in any hedging activities against changes in interest rates. Because of the short-term maturities of our cash and cash equivalents, we do not believe that an increase in market rates would have any significant impact on the realized value of our investments. We do not have any foreign currency or other derivative financial instruments.

We contract with contract research organizations and investigational sites globally. We may be subject to fluctuations in foreign currency rates in connection with these agreements, primarily with respect to Euro denominated currencies. We do not hedge our foreign currency exchange rate risk. A hypothetical 10% appreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have increased our net loss by approximately $488,000 for the year ended December 31, 2011. Conversely, a hypothetical 10% depreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have decreased our net loss by approximately $488,000 for the year ended December 31, 2011. We do not believe that inflation and changing prices over the years ended December 31, 2009, 2010 and 2011 had a significant impact on our consolidated results of operations.

BUSINESS

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD, including ADHD patients with impulsive aggression. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which our submitted NDA was accepted for filing by the U.S. Food and Drug Administration, or FDA, in November 2011, and SPN-804 (extended release oxcarbazepine), for which we submitted an NDA that was accepted for filing by the FDA in February 2012. Our ADHD product candidates include SPN-810 (molindone hydrochloride), which is in a Phase IIb trial as a novel treatment for impulsive aggression in patients with ADHD and SPN-812, which completed a Phase IIa trial as a novel non-stimulant treatment of ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our diversified and broad portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and SPN-804, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively, for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine, are available in generic form and are marketed by Johnson & Johnson and Novartis under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and SPN-804, which allows us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of each of SPN-538 and SPN-804 is designed to improve patient compliance and to provide a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and SPN-804, for the treatment of epilepsy. Extended release products have been shown to improve compliance, reduce side effects and improve tolerability[(1)] as compared to immediate release products, which can lead to increased seizure control.[(2)]

(1) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia*.

(2) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews*.

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is in a Phase IIb trial, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which completed a Phase IIa trial, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than

other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate, if studied in that specific patient population and is shown to be effective, may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression.[3]

(3) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry*.

In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, for which we submitted an investigational new drug application, or IND, in 2008 and which would represent a novel mechanism of action for the U.S. antidepressant market.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA accepted by FDA
SPN-804	Adjunctive therapy for epilepsy	NDA accepted by FDA
SPN-810	Impulsive Aggression in ADHD	Phase IIb
SPN-812	ADHD	Phase IIa
SPN-809	Depression	IND filed

We have a successful track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. We are continuing to expand our intellectual property portfolio to provide additional protection for our technologies and our product candidates. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past six years on successfully developing our own product candidates in neurology and psychiatry.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and SPN-804*. We are currently focused on attaining regulatory approval for, and bringing to market our two late-stage epilepsy products, SPN-538 and SPN-804, to market. As these product candidates progress towards U.S. regulatory approval, we intend to build our own targeted, specialty sales force to promote, if approved, SPN-538 and SPN-804 in the United States. We intend to direct our marketing efforts to high potential prescribers of both products.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812*. As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, in June 2011 we initiated a Phase IIb trial for SPN-810 for impulsive aggression in patients with ADHD.

- *Develop differentiated products by applying our technologies to known drug compounds*. We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide*. We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Epilepsy

Overview

Epilepsy is a complex neurological disorder characterized by spontaneous recurrence of unprovoked seizures, which are sudden surges of electrical activity in the brain that impair a person's mental or physical abilities. Epilepsy, which is typically diagnosed by a neurologist, is estimated to affect 50 million people worldwide[(4)] and 2 million people in the United States.[(5)] According to IMS Health, U.S. sales of AEDs were approximately $4.0 billion in 2010. The annual cost of epilepsy to the healthcare system is estimated to be $12.5 billion.[(6)]

(4) Bialer, M., *Key factors in the discovery and development of new antiepileptic drugs*, published January 2010 in *Nature*.

(5) U.S. Centers for Disease Control and Prevention, *Epilepsy Self-Management Tools* (citing DiIorio, C., *The Prevention Research Centers' Managing Epilepsy Well Network*, published September 2010 in *Epilepsy & Behavior*).

(6) Epilepsy Foundation, *Cost Study Shows Divide in Treatment Effects*, published April 2000.

(7) Citizen Petition of UCB, Inc. to U.S. Food and Drug Administration, submitted October 3, 2006 (citing Schmidt, D., *Uncontrolled epilepsy following discontinuation of antiepileptic drugs in seizure-free patients: a review of current clinical experience*, published December 2005 in *Epilepsia*).

(8) Citizen Petition of UCB, Inc. to U.S. Food and Drug Administration, submitted October 3, 2006 (citing Tomson, T., *Sudden unexpected death in epilepsy: a review of incidence and risk factors*, published May 2005 in *Acta Neurologica Scandinavia*).

Epileptic seizures can cause a person to experience severe muscle jerking, to lose consciousness and fall, or to suffer from distorted vision, all potentially leading to physical injuries or hospitalization. Until reliable seizure control has been achieved, patients are forced to adjust their lifestyles to avoid activities that a seizure can significantly disrupt or render life threatening. A breakthrough seizure is a sudden, unexpected seizure experienced by a patient who previously had achieved reliable seizure control. Even when no physical injury occurs, breakthrough seizures often result in significant social, legal and developmental consequences for patients such as loss of driver's license, loss of employment, disruption of school attendance, academic underachievement, and disruption of social networks. In addition, a single breakthrough seizure can lead to permanent loss or reduction in overall seizure control. Data suggest that a significant proportion of patients who experience a breakthrough seizure have a lower chance of achieving reliable seizure control.[(7)] In certain cases, a single breakthrough seizure can develop into *status epilepticus*, a prolonged seizure or series of repeated seizures, and eventually result in brain damage or death. Data indicate that the risk of sudden unexpected death in epilepsy was 23 times higher in patients who had at least one breakthrough seizure compared to patients who had achieved seizure control.[(8)]

Current Treatment Options

Once a patient is diagnosed with epilepsy, the goal of the neurologist is to find the particular drug or combination of drugs, and appropriate dosing, that will lead the patient to reliable seizure control while minimizing side effects. There are currently over 15 approved AEDs marketed in the United States. Side effects play a major role in altering treatment in epilepsy as they can limit the usefulness of AEDs. AEDs are generally associated with the incidence of numerous side effects that can adversely impact the quality of life for epileptic patients. Such side effects may include dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. To address these side effects and help patients tolerate their AEDs, neurologists typically initiate treatment with a single AED as monotherapy at a low dose then increase the dose to a higher level until the patient reaches the most efficacious dose with an acceptable tolerance of side effects.

Many patients develop refractory epilepsy, which refers to inadequate control of seizures despite treatment, thereby requiring treatment with multiple AEDs. Patients taking more than one AED at a time are susceptible to side effects associated with each of the multiple drugs and with drug interactions. Despite the introduction of new AEDs in the past few years, drug therapy remains ineffective for seizure control in up to 30% of patients with epilepsy.(9) Many patients fail drug therapy either because the drugs do not control their seizures or because they cannot tolerate the side effects.

Dynamics of the Epilepsy Market

There are several important dynamics that play a major role in the treatment of epilepsy and that differentiate epilepsy from many other diseases:

- ***Compliance is Critical to the Reduction in Breakthrough Seizures***

Compliance with drug treatment regimens is critically important to achieving effective therapy for patients with epilepsy where the consequences of non-compliance can be life threatening. Patient non-compliance with AED therapy is a serious issue and remains one of the most common causes of breakthrough seizures. Not only is taking all prescribed doses critical for epileptic patients, but the timing of when patients take their prescribed doses is also important. Typically, non-compliance is caused by frequent or multiple dosing, serious side effects, or a lack of tolerability. A 2002 survey undertaken by neurologists in the United States found that, at least once per month, 71% of patients with epilepsy forgot to take their AED, and it was evident that the chances of a patient missing a dose increased with the number of tablets prescribed.(10) Of patients that missed a dose, 45% reported a breakthrough seizure. Patients taking a larger number of tablets/capsules further increased their odds of having a breakthrough seizure after a missed dose by 43%. Other studies also have shown reduced rates in breakthrough seizures as a result of improved compliance with AED treatment regimens. In addition, a non-compliant patient can cost the healthcare system approximately an additional $16,300 per year when compared to a compliant patient.(11)

---

(9) World Health Organization, *Epilepsy: aetiogy, epidemiology and prognosis*, Fact Sheet No. 165, revised February 2001.

(10) Cramer, J.A., *The relationship between poor medication compliance and seizures*, published August 2002 in *Epilepsy & Behavior*.

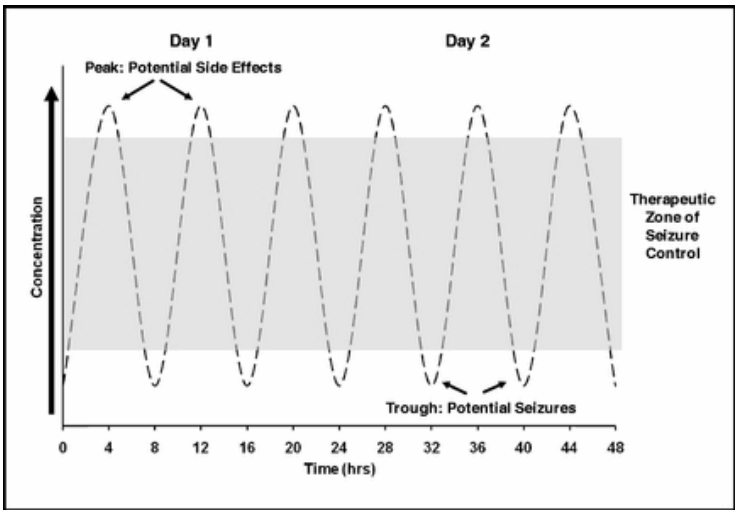
(11) Faught, R.E., Weiner, J.R., Guérin, A. et al., *Impact of nonadherence to antiepileptic drugs on healthcare utilization and costs: Findings from RANSOM study*, published March 2009 *Epilepsia*; 50:501-9.

- ***Immediate Release Products Have Serious Side Effects and Lack of Tolerability***

The FDA has recognized AEDs as being "critical dose drugs," drugs in which a comparatively small difference in dose or concentration may lead to serious therapeutic failures and/or serious side effects. Immediate release formulations of AEDs necessitate frequent administration to maintain appropriate drug concentrations. However, these immediate release formulations cause wide

fluctuations of blood levels of the active drug during the day, with peak concentrations when the drug is released and potentially sub-therapeutic concentrations thereafter. At least one study has shown that complaints of side effects typically occur when blood levels exceed certain concentrations, particularly at high doses, and the risk of breakthrough seizures can occur when blood levels are below certain minimum effective levels, as indicated in the chart below.

Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

- ***Generic Substitution Can Cause an Increase in Breakthrough Seizures***

Patients today are most typically switched from branded drugs to generics, or from one generic drug to another, mainly to reduce cost. In most states, unless a physician explicitly writes "dispense as written" or "no substitution," pharmacists can switch a patient to a lower-cost generic drug without the consent of either the patient or the physician. Epilepsy patients are particularly vulnerable to changes in their drugs. Slight variations in the blood concentrations of these drugs could lead to the occurrence of breakthrough seizures. Accordingly, despite existing regulatory criteria to ensure the bioequivalence of generic drugs, the "switch-back" rates of AEDs (that is, the frequency of an individual being returned to his or her previous branded product under a physician's guidance) is much higher than for many other drug products. For example, the rates of patients switching back from generics to branded drugs because of adverse events were found to be 20.8% to 44.1% for AEDs compared to 7.7% to 9.1% for non-AEDs.[12]

(12) J. LeLorier, *Clinical consequences of generic substitution of lamotrigine for patients with epilepsy*, published October 2008 in *Neurology*.

A number of epilepsy advocacy groups such as the Epilepsy Foundation, the American Academy of Neurology, the Centers for Medicare and Medicaid Services and several regulatory agencies around the world, including the UK National Institute for Health and Clinical Excellence (NICE), Sweden's Medical Products Agency (MPA) and other European agencies, have all acknowledged that AED generic substitutions for non-therapeutic reasons can be harmful and should either be limited or not permitted, and have issued guidelines, recommendations or taken affirmative steps to limit such substitutions. While we are not aware of any well-controlled studies conducted to establish unequivocal scientific evidence that generic substitutions cause increased incidence of breakthrough seizures, the

FDA is currently considering stricter standards of bioequivalence for generics and its Pharmaceutical Science and Clinical Pharmacology Advisory Committee voted 11-2 that the current bioequivalence standards are insufficient for critical dose drugs such as AEDs.

- ***Physicians are Reluctant to Switch to New Chemical Entities***

In the epilepsy market, new chemical entities, or NCEs, generally lack the same appeal that would typically be associated with a new drug for other indications. Based on IMS Health prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market penetration characterized by a 0.58% to 1.1% market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in the patient. Despite the introduction of several NCEs over the past decade, a significant number of epileptic patients continue to lack reliable seizure control. Many NCEs continue to be associated with several side effects. Therefore, many older and existing drugs continue to be prescribed and their prescription levels have either been maintained since their peak or declined very slowly.

Benefits of Extended Release Products in the Epilepsy Market

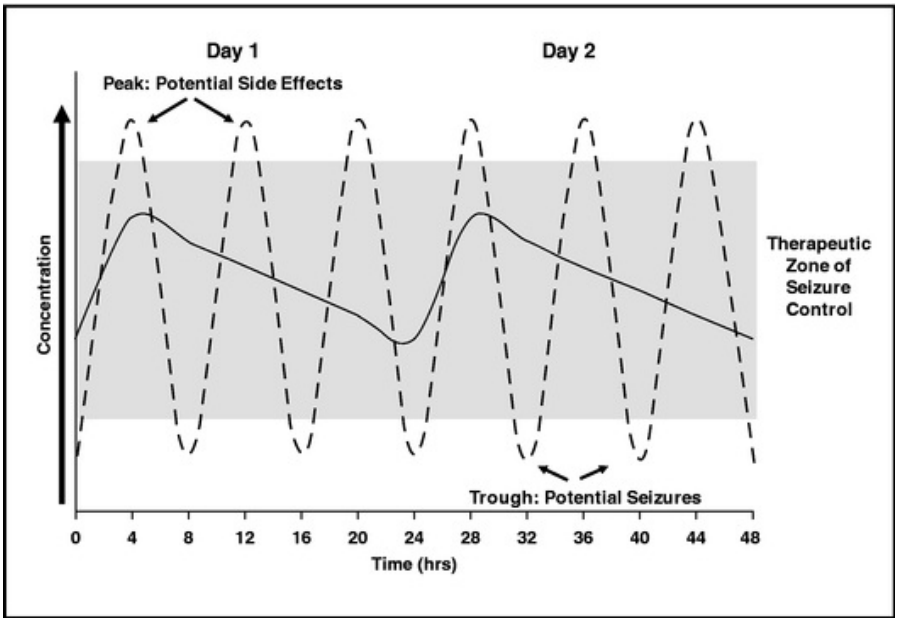
- ***Extended Release Products Improve Compliance and Reduce Breakthrough Seizures***

Achieving reliable seizure control for patients and avoiding the serious health and life dangers that can be associated with breakthrough seizures depends on patients being compliant and diligent in taking their medications. Frequent and multiple dosing, side effects and lack of tolerability of the immediate release products can significantly contribute to patients forgetting doses or skipping them. Even taking a second or third dose later than the scheduled time may place a patient at an increased risk of a breakthrough seizure because the drug level in the patient's blood could drop below the minimum effective therapeutic level that prevents such seizures. We believe increased patient compliance can be achieved with extended release products that offer once-daily dosing, reduced side effects and improved tolerability. We believe physicians understand that the release profiles of extended release products can produce more consistent and steadier blood levels as compared to immediate release products, resulting in fewer side effects and better tolerability that further help patients to be compliant, have fewer breakthrough seizures and, correspondingly, enjoy a better quality of life.

- ***Extended Release Products Reduce Side Effects and Improve Tolerability***

When extended release formulations are used appropriately, drug levels remain within the patient's therapeutic zone, thereby reducing patient exposure to fluctuating drug levels, which may exacerbate side effects or induce breakthrough seizures. Because extended release formulations can reduce peak concentrations, it may also be possible to adjust doses upward to a more efficacious level without exacerbating side effects associated with peak concentrations. Extended release formulations can also reduce the frequency and the extent of the troughs, or lower concentrations of the drug in the blood, thereby avoiding concentrations below the minimum effective concentrations that can increase the risk of breakthrough seizures.

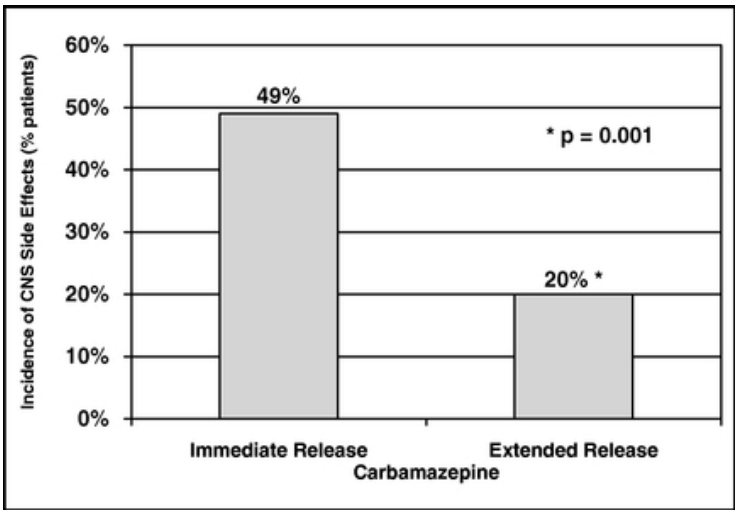
Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release and Extended Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

The enhanced safety profile of extended release products as compared to similar immediate release products has been supported by several studies. For example, in a 2004 published trial conducted by physicians at Johns Hopkins, Carbatrol, an anti-epileptic extended release carbamazepine product that uses our Microtrol technology, and Tegretol XR, another extended release carbamazepine product, demonstrated better tolerability and side effect profiles than comparable immediate release products. The trial reported that 49% of patients had side effects during treatment with immediate release carbamazepine such as sedation, double-vision, confusion, ataxia, dizziness or poor coordination, whereas with extended release carbamazepine treatments, only 20% of patients reported these side effects.

Reduction in CNS Side Effects Following Conversion to Carbamazepine Extended Release from Immediate Release Preparation



Source: Miller AD et al., Acta Neurol. Scand 2004: 109: 374-377

Equally as important, the patients in the trial tolerated high doses of extended release carbamazepine significantly better than high doses of immediate release carbamazepine. Specifically, 63% of patients treated with 1200 mg or more per day of immediate release carbamazepine developed side effects, yet only 12% of patients experienced side effects while taking similar doses of extended release carbamazepine. The investigators surmised that the improved tolerability of extended release carbamazepine at high doses may provide a treatment option for patients previously discontinuing immediate release carbamazepine because of dose-limiting side effects.

Other products where reductions in side effects were reported by patients when switching from immediate release to extended release formulations include Depakote ER (divalproex sodium extended release) and Keppra XR (levetiracetam extended release).

- ***Managed Care Does Not Limit Success of Extended Release Products***

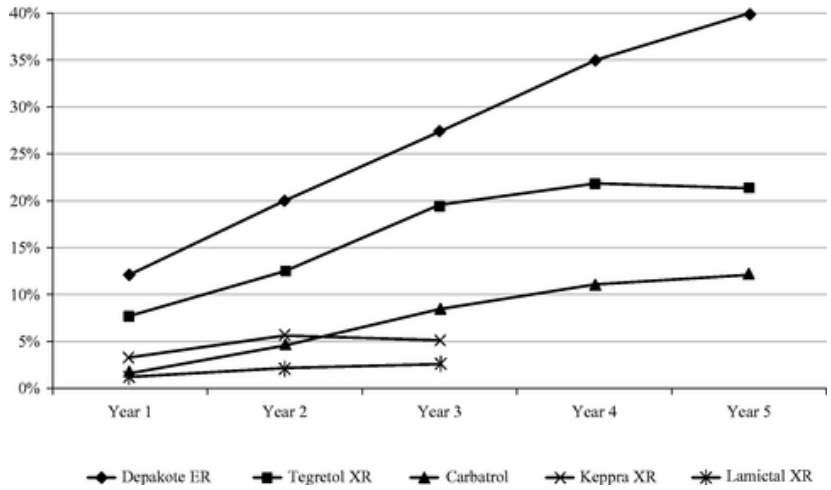
Given the serious nature of epilepsy and the key dynamics in the epilepsy market, we believe managed care plans acknowledge the important benefits of extended release AED products and, therefore, have not limited the success of such products even when lower cost generic immediate release products are available. For example, according to industry data, the recent launches of extended release products Keppra XR and Lamictal XL have enjoyed acceptance rates by managed care plans that are similar to those of the corresponding immediate release products. Most managed care plans also acknowledge the position of several patient advocacy groups and the American Academy of Neurology regarding the risks of generic substitution of AEDs, including potential for breakthrough seizures. Although switching to a low-cost generic AED may initially offer some cost savings, we believe they also recognize that the risk and cost of one breakthrough seizure outweighs the potential savings from generics. For example, the healthcare costs associated with the treatment of patients who experience breakthrough seizures, which may run in excess of $26,000 per patient on an annual basis, is significantly greater than any cost savings per patient that may be achieved through switching to a low-cost generic AED. According to a 2009 survey, the total healthcare costs for patients using branded topiramate products were approximately 20% lower than for patients using multiple generic topiramate products.[13]

(13) Duh, M.S., *The risks and costs of multiple-generic substitution of topiramate*, published June 2009 in *Neurology*.

- ***Extended Release Products Perform Well in the Market***

Extended release products have generally performed well in the epilepsy market, even in the face of immediate release generic products. Moreover, IMS Health prescription data for seizure disorder drugs from 1994 to 2005 shows that extended release products perform better than NCEs during the first five years of their launch. Currently, there are five extended release AEDs on the market (Tegretol XR, Carbatrol, Depakote ER, Lamictal XR, Keppra XR), as reflected in the chart below, with Depakote ER gaining almost 40% of all divalproex prescriptions, including immediate release versions of Depakote and generic divalproex, in its fifth year after launch. We believe that the modest conversion of the corresponding molecule prescriptions of the recent launches of Keppra XR and Lamictal XR was due to limited promotional support behind both products.

Comparison of Molecule Conversion of Extended Release Anti-Epilepsy Drugs (measured as percentage of total prescriptions for each individual molecule)



Source: IMS Health

Our Late-Stage Neurology Portfolio

We are developing a promising epilepsy product portfolio consisting of SPN-538 and SPN-804 that utilize our proprietary technologies, Microtrol and Solutrol, respectively, each of which has been proven and validated through use in products that are currently on the market. Among them is Carbatrol, an AED that has been shown to reduce side effects compared to immediate release carbamazepine products. We believe that our 20 years of history and portfolio of technologies have enabled us to develop highly-customized product candidates that overcome challenges with the molecules' pharmacokinetic profiles. Our differentiated approach to product development and the strength of our technologies have allowed us to develop SPN-538 with what we believe to be a unique pharmacokinetic profile and to develop a once-daily formulation of oxcarbazepine with SPN-804 where others have failed.

SPN-538 and SPN-804 are novel extended release formulations of two well known and approved AEDs, topiramate and oxcarbazepine, respectively. Both product candidates are designed to offer epilepsy patients effective therapy, reduced side effects and improved compliance with once-per-day dosing. We believe that by delivering more consistent and steady maintenance of blood level concentrations of topiramate and oxcarbazepine, our product candidates can potentially reduce adverse side effects and improve tolerability of the drugs, which can improve compliance and enable patients to

benefit from better seizure control and fewer breakthrough seizures as compared to similar immediate release products. Given that SPN-538 and SPN-804 are based on different drug compounds and different mechanisms of action, they would target different market segments and patient populations within the epilepsy market.

The FDA accepted our NDA for SPN-538 for filing in November 2011 and our NDA for SPN-804 for filing in February 2012. The development and regulatory strategy for both products follows a Section 505(b)(2) pathway, which allows us to rely upon FDA's previous findings of safety and efficacy for two known and approved products, Topamax and Trileptal. Therefore, our NDAs are not required to have the same amount of safety or efficacy data as would be required in the case of an NCE, and each NDA could contain different types of clinical trials and clinical data.

SPN-538 (extended release topiramate)

Our most advanced product candidate is SPN-538, a novel oral once-daily extended release topiramate product for the treatment of epilepsy. We initially submitted the NDA for this product candidate in January 2011 and resubmitted it in September 2011 to address refusal-to-file questions raised by the FDA, relating to chemistry and manufacturing controls issues. We addressed these questions to the FDA's satisfaction and, consequently, the FDA issued an acceptance of the NDA for filing in November 2011. We have conducted fourteen clinical trials in support of the development of SPN-538 and one additional clinical trial is ongoing. SPN-538 delivers topiramate, one of the most effective AEDs, which is marketed by Johnson & Johnson under the brand name Topamax and is also available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. Topamax reached peak worldwide sales of $2.7 billion in 2008, before generic products entered the U.S. market in March 2009.[(14)] With approximately 9.6 million total topiramate prescriptions in 2010 and trending at 10.1 million prescriptions in 2011, topiramate continues to represent a significant portion of prescriptions with approximately 9.7% of total prescriptions, according to data from IMS Health. Topiramate is believed to work in epilepsy through various mechanisms. It enhances the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocks the excitatory effect of the glutamate neurotransmitter, blocks the sodium channel and inhibits the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions. We believe that this creates an opportunity for us to offer patients SPN-538 as an alternative therapy to immediate release topiramate with an improved once-per-day profile.

(14) Based on sales data as reported in Johnson & Johnson's Annual Report on Form 10-K for the fiscal year ended January 3, 2010.

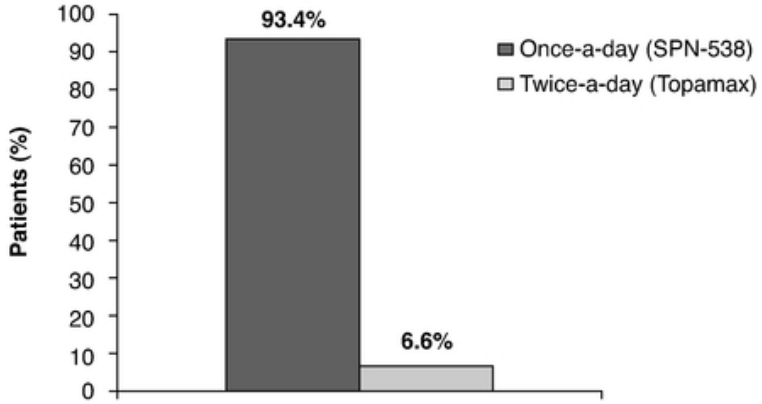
SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We believe such a profile avoids blood level fluctuations that are typically associated with many of the side effects or breakthrough seizures that patients can suffer when taking immediate release products. These side effects can lead patients to skipping doses, and such non-compliance could place them at higher risk for breakthrough seizures.

SPN-538 was studied in a U.S. Phase II, multicenter, open-label, sequentially-designed conversion clinical trial among patients between the ages of 18 and 65 having partial-onset or primary generalized seizures. Prior to enrolling in the study, patients were taking topiramate twice-a-day immediate release products with total daily regimen that ranged from 200mg-400mg. Patients were first converted to

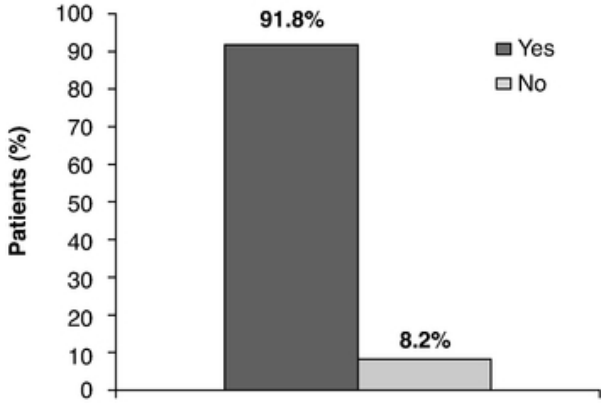
equivalent Topamax twice-a-day immediate release doses for two weeks and then converted to an equivalent once daily dose of SPN-538 for two more weeks. The study successfully met its primary objective of showing that SPN-538 is bioequivalent to Topamax immediate release in epilepsy patients. SPN-538 was also well tolerated and the majority of the patients (85.5%) converted from Topamax immediate release to SPN-538 with no treatment related AEs. There were no serious AEs or deaths and all reported AEs were mild to moderate. There were no notable differences in seizure frequency between the treatments.

When asked two questions at the end of the study about their preference, the sixty-one (61) subjects who completed the study responded as follows:

Which treatment do you prefer? The once-a-day treatment or twice-a-day treatment?



Does the once-a-day treatment (SPN-538) help you to be more compliant in taking your medication?



SPN-538 Development Program

We have conducted fourteen clinical trials in support of the development of SPN-538 and one additional clinical trial is ongoing. The NDA for SPN-538 was accepted by the FDA in November 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which allows us to rely in our filing on the FDA's findings of safety and effectiveness of Topamax. The various clinical trials conducted on SPN-538 were designed to select the best extended release once-per-day formulation that delivers equivalent levels of topiramate compared to the immediate release twice-per-day Topamax product, as well as to

test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We believe that the data generated by our studies support our Section 505(b)(2) regulatory strategy of establishing SPN-538 as bioequivalent to Topamax. We also have scaled up production of the product candidate at our commercial contract manufacturing facility and have conducted studies that confirm that the commercial scale product is bio-equivalent to the clinical product that was initially developed at our research laboratories.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we believe that SPN-538 will be the first once-daily topiramate product approved for the monotherapy and adjunct therapy of epilepsy. We believe that SPN-538 could, over time, capture a significant share of the topiramate prescriptions, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. Upon the launch of SPN-538, we plan to build a small specialty sales force primarily targeting neurologists to promote the use of SPN-538 in epilepsy in the United States. This physician group is responsible for a substantial portion of the prescriptions for the treatment of epilepsy and, accordingly, provides an attractive, focused market opportunity for us.

SPN-804 (extended release oxcarbazepine)

Our second late-stage product candidate, SPN-804, formerly referred to as Epliga, is a novel oral once-daily extended release formulation of oxcarbazepine, for which we submitted an NDA in December 2011 that was accepted for filing by the FDA in February 2012. To date, we have conducted nine clinical trials, including bioequivalence trials and a Phase III trial, and we are conducting two clinical trials to support the development of SPN-804.

SPN-804 delivers oxcarbazepine, another effective AED, which is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal was initially developed and approved in the United States in 2000. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. It reached peak worldwide sales of $721 million in 2006, before generic products entered the U.S. market in October 2007.[(15)] With approximately 3.4 million total oxcarbazepine prescriptions in 2010 and trending at 3.5 million prescriptions in 2011, oxcarbazepine represents a portion of prescriptions with approximately 3.4% of total prescriptions, according to data from IMS Health. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects that tend to limit its use. The side effects associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting. SPN-804 has been designed to reduce side effects, resulting in improved patient compliance and tolerability.

(15) Based on sales data as reported in Novartis AG's Annual Report on Form 20-F for the fiscal year ended December 31, 2006 and in a media release issued by Novartis International AG on January 21, 2008.

With its novel pharmacokinetic profile that delivers lower peak plasma concentrations, slower rate of input and smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe SPN-804 has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. This could enable more patients to effectively tolerate higher doses of oxcarbazepine, which would permit them to benefit from the resulting efficacy and greater seizure control that have been previously reported in patients at higher doses. In addition, SPN-804's once-per-day dosing is designed to improve patient compliance compared to the current immediate release products that are taken multiple times per day.

SPN-804 Development Program

We have conducted nine clinical trials, including bioequivalence trials and a Phase III trial, and we are conducting two ongoing clinical trials to support the development of SPN-804. We submitted the NDA for SPN-804 that was accepted for filing by the FDA in February 2012. We submitted an IND for SPN-804 in 2007. We are pursuing a Section 505(b)(2) regulatory strategy, which allows us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal. The various clinical trials conducted on SPN-804 were designed to select the best extended release once-per-day formulation that delivers equivalent levels of oxcarbazepine compared to immediate release twice-per-day Trileptal, as well as to test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We also have scaled up our production of the product candidate at our commercial contract manufacturing facility, which has produced clinical supplies to conduct our Phase III trial.

In our pilot clinical trial in 32 healthy subjects, which took place in Canada, SPN-804 demonstrated a superior adverse event profile when compared to the immediate release oxcarbazepine therapy Trileptal. In this trial, a single center, open-label, randomized, two-way crossover, two-sequence trial, we compared multiple dose administration of SPN-804 tablets and Trileptal tablets in 32 healthy adult volunteers under fasting conditions. While the steady-state crossover comparison trial was designed to evaluate the steady-state bioavailability of the different formulations of oral oxcarbazepine at 1200 mg doses, the trial also assessed the safety and tolerability of repeat oral dosing of SPN-804 tablets in healthy subjects at 1200 mg in comparison to Trileptal.

In this trial, the adverse events were observed in 30 healthy subjects using a total daily dose of 1200 mg of each of Trileptal and SPN-804. There were 190 total adverse events reported for Trileptal, while SPN-804 generated a total of only 120 adverse events, a reduction of 37%. Of these, a total of 197 adverse events were considered by the principal investigator to be possibly drug related: 131 for Trileptal and 66 for SPN-804. More specifically, Trileptal demonstrated a 36.7% occurrence rate of dizziness as compared to SPN-804 which demonstrated a 0.0% occurrence rate in our trial. In other trials, SPN-804 demonstrated higher occurrence rates of dizziness. The results from these trials and the pilot clinical trial are preliminary and based on small populations.

In the pivotal Phase III trial for Trileptal, refractory patients had increasing reductions in seizures as dose levels increased, including 50% median reduction in seizures at the highest dose of 2400 mg. However, Trileptal is not without a host of side effects at the highest doses, which result in many subjects discontinuing treatment. Approximately 67% of subjects at the 2400 mg dose of Trileptal and 36% of subjects at the 1200 mg dose discontinued their participation in the trial because of the adverse events associated with the drug.

We have discussed our Phase III trial for SPN-804 with the FDA in the form of a Special Protocol Assessment, or SPA. The Phase III protocol assessed the safety and effectiveness of SPN-804 as an adjunctive therapy in patients with a diagnosis of simple partial seizures and complex partial seizures with or without secondarily generalized seizures as confirmed by the 1981 and 1989 International League Against Epilepsy Classifications. We met with the FDA in July 2008 regarding the Phase III protocol. We revised the clinical protocol to address the FDA's comments and submitted a protocol amendment to the FDA in October 2008. We have not had any further discussions with the FDA relating to trial design after we submitted the amended protocol and proceeded with our study design in the absence of further discussion or confirmation from the FDA. The FDA has substantial discretion in the drug approval process and could determine that the amended protocol is inadequate, requiring us to revise our trial design or conduct a new trial and delaying approval of SPN-804.

Epilepsy can be broadly characterized into partial and generalized seizures. Partial seizures occur in a specific location of the brain, affecting the physical or mental activity controlled by that particular area of the brain, whereas generalized seizures occur throughout both hemispheres of the brain at

once. Partial seizures may be further subdivided into both simple and complex seizures. This refers to the effect of such a seizure on consciousness; simple seizures cause no interruption to consciousness (although they may cause sensory distortions or other sensations), whereas complex seizures interrupt consciousness to varying degrees.

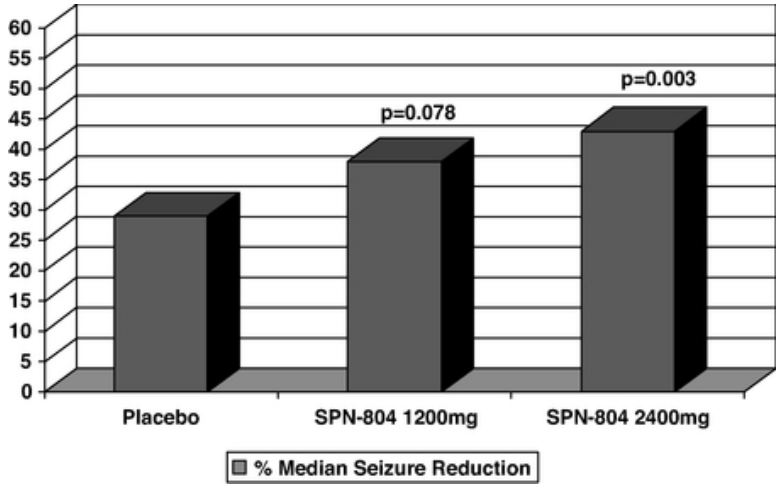
The Phase III trial was a multi-center, multiple-dose, randomized (1:1:1 ratio), double-blind, placebo-controlled, three-arm, parallel group trial in male and female subjects (18 to 65 years of age, inclusive) with refractory partial epilepsy on at least one and up to three concomitant AEDs. The trial was completed with 366 patients comprising the intent-to-treat (ITT) population and 248 completing the study across 8 different countries in North America and Europe. Patients were randomized to one of three treatment groups, and took either SPN-804 (1200 mg/day or 2400 mg/day) or placebo.

The primary objective of the trial was to evaluate the efficacy of SPN-804 as an adjunctive therapy in the treatment of seizures of partial origin in adults with refractory epilepsy on at least one and up to three other AEDs. The secondary objectives were to primarily assess the safety and tolerability of adjunctive SPN-804 in the treatment of seizures of partial origin in subjects with refractory epilepsy on at least one and up to three other AEDs.

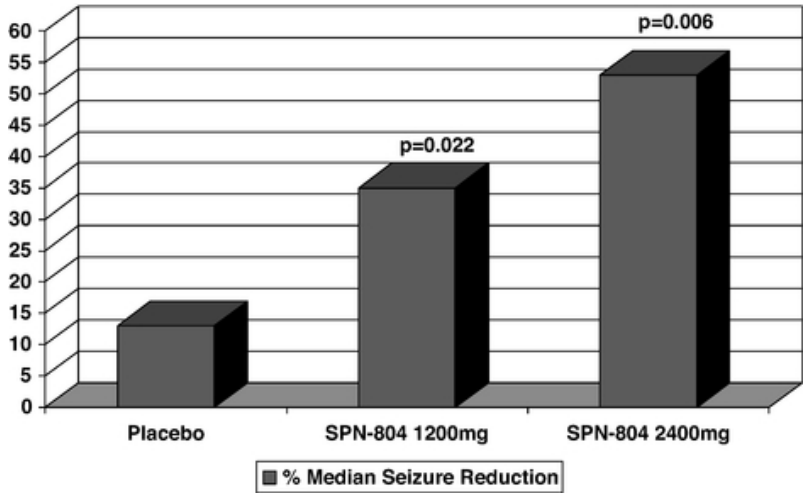
The primary endpoint was the median percentage change from baseline in partial seizure frequency per 28 days. Seizure frequency was assessed at baseline over 4-8 weeks. Patients had to have experienced a minimum of 3 seizures in a 28-day period to be included in the study. Drug titration to 1200mg or 2400mg occurred over 4 weeks using increments of 600 mg/week, and then was maintained between 12 and 13 weeks.

The median seizure reduction achieved in the study was 43% for SPN-804 2400 mg/day with a *P*value (p) of 0.003 versus placebo (123 patients), 38% for SPN-804 1200 mg/day with p= 0.078 versus placebo (122 patients), and 29% for placebo (121 patients). In North America, the median reduction was 53% (35 patients) for SPN-804 2400 mg/day with p=0.006 versus placebo, 35% (40 patients) for SPN-804 1200 mg/day with p=0.022 versus placebo, and 13% for placebo (41 patients).

Percent Median Seizure Reduction per 28 Days: All Countries



Percent Median Seizure Reduction per 28 Days: North America



Secondary endpoints included treatment response (i.e., how many responders had 50% reduction in partial seizure frequency), and how many patients were seizure-free. At 2400 mg/day, SPN-804 provided significant treatment response (p=0.018) and seizure-free rates during treatment (p=0.013) and maintenance (p=0.008) periods versus placebo.

Treatment Response and Seizure-Free Rates (ITT Population)

	SPN-804 1200 mg/day (n=122)	SPN-804 2400 mg/day (n=123)	Placebo (n=121)
Treatment response			
n	109	111	117
Responder, n (%)	44 (36.1)	50 (40.7)	34 (28.1)
Non-responder, n (%)	65 (53.3)	61 (49.6)	83 (68.6)
Pvalue versus placebo	0.075	0.018	
Seizure-free rates (treatment phase)			
Subjects with valid diary entry	109	111	117
Seizure free, n (%)	6 (4.9)	14 (11.4)	4 (3.3)
Pvalue versus placebo	0.528	0.013	
Seizure-free rates (maintenance phase)			
Subjects with valid diary entry	97	88	109
Seizure free, n (%)	4 (3.3)	17 (13.8)	7 (5.8)
Pvalue versus placebo	0.546	0.008	

Safety assessments were conducted throughout the study. AE rates were similar for patients receiving placebo and SPN-804 1200 mg/day (55.4% and 56.6%, respectively); AE rates were slightly higher in patients receiving SPN-804 2400 mg/day (69.1%). The most frequently reported AEs with SPN-804 were dizziness, somnolence, headache, nausea, double vision, and vomiting. Serious AEs occurred in 8.1%, 5.7%, and 5.8% of those on SPN-804 2400 mg/day, SPN-804 1200 mg/day, and placebo, respectively. One death (resulting from ovarian cancer) occurred on placebo and no deaths occurred on SPN-804 therapy. AEs led to study discontinuation in 12.4% (n=15) of patients receiving placebo, 16.4% (n=20) of patients receiving SPN-804 1200 mg/day, and 30.1% (n=37) of patients receiving SPN-804 2400 mg/day.

In summary, SPN-804 2400 mg/day significantly reduced partial seizure frequency from baseline versus placebo. Seizure frequency reduction with SPN-804 1200 mg/day was greater than but did not separate from placebo. This finding may be explained by the high placebo response rate noted in this study and is consistent with a general trend of higher placebo response rates observed in pivotal studies of other new AEDs. Both SPN-804 doses were generally well tolerated with no new safety signals observed. The improved tolerability of SPN-804, especially at doses up to 2400 mg/day, may translate to improved adherence and better patient outcomes.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we expect SPN-804 to be the only once-daily oxcarbazepine product indicated for the treatment of epilepsy as an adjunctive therapy and to compete against the existing immediate release oxcarbazepine products on the market. We believe that SPN-804 could, over time, capture a significant share of the oxcarbazepine prescription market, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. To support the commercial launch of SPN-804, we plan to further expand our U.S. specialty sales force in epilepsy to promote both SPN-538 and SPN-804.

ADHD

Overview

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6% to 9% of all school-age children and 3% to 5% of adults in the United States.[16] An estimated 60% to 80% of children with ADHD continue to meet criteria for ADHD into adolescence.[17] In 2008, the U.S. market for ADHD prescription drugs was more than $4 billion, according to data from IMS Health.

Diagnosis of ADHD requires a comprehensive clinical evaluation based on identifying patients who exhibit the core symptoms of inattention, hyperactivity, and impulsivity. Generally, behavior is sufficiently severe and persistent to cause functional impairment. Although many children may be inattentive, hyperactive or impulsive, the level of severity and degree of functional impairment, as well as considerations of what may be behind the underlying symptoms, determine which children meet the diagnosis and are treated for ADHD. It is estimated that the annual societal cost of illness for ADHD is more than $36 billion.[18]

---

(16) Dopheide, J.A., *Attention-Deficit-Hyperactivity Disorder: An Update*, published June 2009 in *Pharmacotherapy*.

(17) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(18) Pelham, W.E., *The Economic Impact of Attention-Deficit/Hyperactivity Disorder in Children and Adolescents*, published July 2007 in *Journal of Pediatric Psychology*.

Current Treatment Options

Since Ritalin was introduced, stimulant therapies have grown to become the most common form of treatment for ADHD. Studies indicate that approximately 80% of ADHD patients respond to stimulants.[19] A key difference between older and newer oral stimulants is the duration of action. Most of the older stimulants, representing approximately 35% of total oral stimulant prescriptions based on IMS Health data, are immediate release products that last approximately four hours, requiring multiple administrations throughout the day. In contrast, most of the recently launched products, representing approximately 65% of total oral stimulant prescriptions based on IMS Health data, are extended release formulations that last up to twelve hours or more.

(19) Swanson, J.M., *Attention-deficit hyperactivity disorder and hyperkinetic disorder*, published February 1998 in *The Lancet* and Budur, K., *Non-Stimulant Treatment for Attention Deficit Hyperactivity Disorder*, published July 2005 in *Psychiatry*.

While stimulant treatments calm and improve the concentration of ADHD patients, these drugs have been shown to have various side effects including loss of appetite, insomnia and, to a lesser degree, cardiovascular effects. Stimulant treatments are controlled substances and can be associated with social stigma and the potential for abuse. Approximately 30% of patients with ADHD are non-responsive to or non-tolerant of treatment with stimulants.(20) Non-stimulants offer physicians an alternative ADHD therapy, including for patients who have coexisting conditions, such as conduct disorder, major depressive disorder, or bipolar disorder, that are contraindicated for stimulant use based on the risk for stimulant abuse.

(20) Wigal, S.B., *Efficacy and Safety Limitations of Attention-Deficit Hyperactivity Disorder Pharmacotherapy in Children and Adults*, published August 2009 in *CNS Drugs* and Budur, K., *Non-Stimulant Treatment for Attention Deficit Hyperactivity Disorder*, published July 2005 in *Psychiatry.*

Coexisting Conditions

Studies show that as many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression.(21) In addition, it has been estimated that approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression.(22) Untreated, these serious conduct problems can place patients at risk of persistent aggressive and anti-social behavior, such as knowingly destroying property, physically attacking people and bullying. These patients also face an increased risk of suicidal behavior, and are at high risk of entering the juvenile justice system and developing substance abuse problems later in adulthood.

(21) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(22) Jensen, P.S., *Consensus Report on Impulsive Aggression as a Symptom Across Diagnostic Categories in Child Psychiatry: Implications for Medication Studies*, published March 2007 in *Journal of the American Academy of Child and Adolescent Psychiatry.*

Aggression is usually divided into two subtypes: predatory (i.e., "cold") aggression, which can be described as goal-oriented, controlled and/or planned, and impulsive or affective ("hot") aggression, which can be described as reactive, unplanned and/or uncontrolled. Patients with ADHD who exhibit aggression commonly demonstrate the "hot," or impulsive, type of aggression. For these patients, this "hot" aggression is generally recurrent, occurs outside of a justifiable social context, has intensity, frequency, duration or severity that is disproportionate to its triggers and causes distress and impairment to the patient. Impulsive aggression represents a broad category of maladaptive, aggressive behaviors that can complicate the management of ADHD, autism, bipolar disorder, post-traumatic stress disorder and other psychiatric disorders.

Current Treatments for Impulsive Aggression in Patients with ADHD

Currently, there are no approved medications for treating impulsive aggression in patients with ADHD. The current treatment options for impulsive aggression in patients with ADHD include psychosocial interventions, such as school- or family-based behavioral therapies, which are usually not wholly effective. In the large, multisite Multimodal Treatment Study of Children with ADHD,(23) a seminal clinical trial designed by experts from key stakeholder communities such as the National Institute of Mental Health, researchers observed that after 14 months of either ADHD medication-only or a regimen that combined ADHD medication with behavioral interventions, 44% of those children with ADHD (or 26% of the total sample size in the trial) who exhibited initial aggression still had what can be described as impulsive aggression at the end of the trial, demonstrating that psychosocial interventions may not work for a large percentage of children with ADHD who exhibit aggressive behaviors.

(23) The MTA Cooperative Group, *A 14-month randomized clinical trial of treatment strategies for attention-deficit/hyperactivity disorder*, published December 1999 in *Archives of General Psychiatry.*

In response, doctors have also tried to address this group with off-label use of prescription medicines, such as mood stabilizers, stimulants and anti-psychotic drugs. Results have varied, but anti-psychotic drugs appear to have the best therapeutic potential. Unfortunately, many of these agents are associated with adverse effects including obesity, lipid abnormalities, and diabetes, which is of particular concern when treating pediatric populations.

Our Psychiatry Portfolio

Our psychiatry portfolio includes three product candidates for the treatment of ADHD or its coexisting conditions and one product candidate for depression, each of which is designed to bring important advancements in therapy.

SPN-810 (molindone hydrochloride)

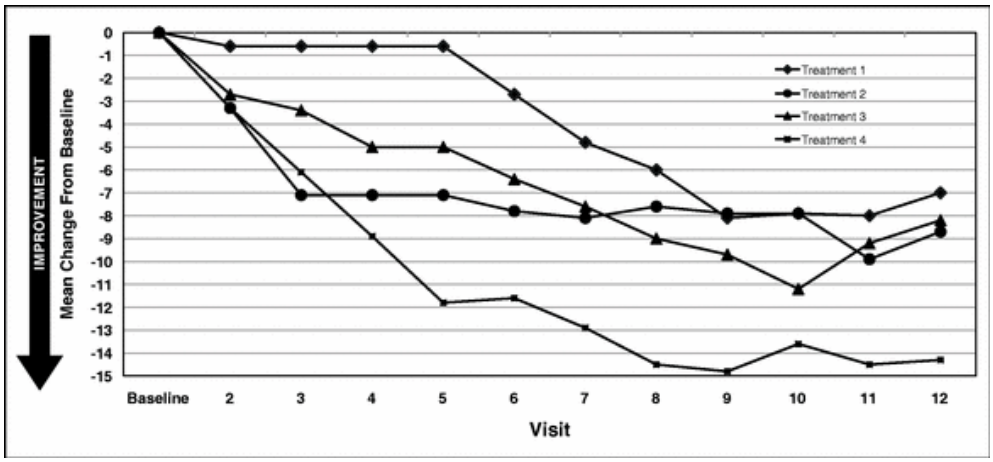
We are developing SPN-810 as a novel treatment for impulsive aggression in patients with ADHD. We initiated a Phase IIb trial of SPN-810 in the U.S. in June 2011. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. We submitted INDs for SPN-810 in 2008 and 2009.

We are studying SPN-810, which contains molindone hydrochloride, as a treatment of impulsive aggression in patients with ADHD. Molindone hydrochloride was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone hydrochloride is unusual among anti-psychotics in that it is less likely to be associated with weight gain. In addition, we believe the lower doses tested for the proposed indication of impulsive aggression should be more easily tolerated than the higher doses approved to treat schizophrenia. SPN-810's low potential to cause weight gain leads us to believe that SPN-810 could be an attractive candidate among the anti-psychotic drugs for the effective treatment of impulsive aggression in patients with ADHD. Although initially we are developing SPN-810 as a treatment of impulsive aggression, if we are successful in demonstrating the effectiveness of SPN-810 for the treatment of impulsive aggresion in patients with ADHD, we may then look to develop the product candidate for the treatment of other patient populations that have impulsive aggression, such as autism and bipolar disorder.

SPN-810 Development Program

We have completed four clinical trials for SPN-810, including a Phase IIa U.S. trial in which we tested the safety and tolerability of SPN-810, immediate release molindone hydrochloride, in patients with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial, with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram (ECG) results. Besides safety and tolerability assessments, the primary outcome measure was the change in the Nisonger Child Behavior Rating Form-Typical Intelligence Quotient (NCBRF-TIQ) conduct problem subscale scores from baseline to endpoint in the ITT population. NCBRF-TIQ is a known instrument that has been used for assessing child and adolescent behavior. Scores improved after baseline in all treatment groups. By visit 12, after 6 weeks of treatment, the mean reduction from baseline for each treatment group was 7.0, 8.7, 8.2 and 14.3, in groups 1, 2, 3, and 4, respectively, representing decreases of 34%, 34%, 32% and 55%, respectively. In addition, the difference between group 1 and group 4 was statistically significant ($p \leq 0.041$) at all time points except visit 2 and the greatest improvement in scores on the NCBRF-TIQ conduct problem subscale was seen in group 4, which was the highest-dose group (14.8 mean

reduction). The below chart summarizes the mean change in NCBRF-TIQ conduct problem subscale observed in our Phase IIa trial.



NCBRF-TIQ Conduct Problem Subscale:
Mean Change from Baseline in ITT Population

Secondary outcomes included changes in other ADHD and conduct problem scales, as described in the table below. SPN-810 demonstrated improved scores over time in all treatment groups, with more marked improvements in higher-dose groups than in lower-dose groups as set out in greater detail in the table below.

% Improvement from Baseline to Last Visit,
Secondary Outcome Measures (ITT Population)

	Treatment Groups			
Outcome Measure	Group 1 n=20	Group 2 n=19	Group 3 n=19	Group 4 n=20
CGI-S				
% Improvement	23%	21%	27%	36%
SNAP-IV Subscales				
ADHD Inattention				
% Improvement	24%	31%	34%	39%
ADHD Hyperactivity/Impulsivity				
% Improvement	28%	27%	28%	41%
ADHD-Combined				
% Improvement	26%	29%	31%	40%
ODD				
% Improvement	34%	33%	28%	51%

CGI-S=Clinical Global Impression-Severity Scale, an assessment tool to rate the severity of the condition; ODD=Oppositional Defiant Disorder, a coexisting condition of ADHD; SNAP-IV=Swanson, Nolan and Pelham Questionnaire, a commonly used scale to measure ADHD.

In June 2011, we initiated in the U.S. a Phase IIb multicenter, randomized, double-blind, placebo-controlled trial in pediatric subjects 6 to 12 years of age diagnosed with ADHD and impulsive

aggression that is not controlled by optimal stimulant and behavioral therapy. The primary objective is to assess the effectiveness of SPN-810, extended release, at three different doses in reducing impulsive aggression after at least three weeks of treatment. Secondary objectives include measurement of the effectiveness of SPN-810 on Clinical Global Impression and ADHD scales as well as evaluation of the safety and tolerability of the drug. In addition, we will be exploring the potential added advantages of an extended-release formulation, such as greater compliance and, therefore, effectiveness in school-age children and lower unwanted side effects or interpatient variability. Patients who complete the study are offered the opportunity to continue into an open-label phase of six months duration.

SPN-812

We are developing SPN-812, which is currently in Phase II development as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. The active ingredient in SPN-812 has an extensive safety record in Europe, where it was previously marketed for many years as an antidepressant. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity. We submitted one IND for SPN-812 in 2010.

SPN-812 would provide an additional option to the few non-stimulant therapies currently available. We believe that SPN-812 could be more effective than other non-stimulant therapies due to its different pharmacological profile. Due to its demonstrated efficacy as an antidepressant, SPN-812, if studied in that specific patient population and is shown to be effective, may exhibit increased benefit in up to an estimated 40% of ADHD patients who also suffer from major depression.[24] We are developing an intellectual property position around the novel synthesis process for this product candidate, its novel use in ADHD and its novel delivery with extended release.

(24) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry*.

SPN-812 Development Program

We completed a proof-of-concept Phase IIa U.S. clinical trial of SPN-812 in adults for the treatment of ADHD in 2011, in which SPN-812 was well tolerated and demonstrated a statistically significant improvement over placebo as a treatment for ADHD. The trial met the primary endpoints of safety and tolerability, and showed statistically significant median reduction versus placebo in both investigator-rated and patient-rated ADHD symptom scores. The trial was a randomized, double-blind, placebo-controlled trial in 52 adults with a current diagnosis of ADHD (26 subjects per treatment group).

Patients in the active arm were administered SPN-812 at a single dose level three times a day over five weeks, after a one-week titration phase. The primary endpoint was safety, and SPN-812 was shown to be safe and well tolerated by patients. The secondary endpoints included: the efficacy of SPN-812 as measured by Total ADHD Symptom Score on the Conners' Adult ADHD Rating Scale, or CAARS, a commonly-used measurement for ADHD in adults, as rated by each of the investigators and the patients, and the effectiveness of SPN-812 when compared to placebo as determined by changes in the Clinical Global Impressions—Improvement, or CGI-I, score. Patients in the active group achieved overall significant median reductions from baseline in investigator-rated CAARS total ADHD symptom scores by study end, of 11.5 points versus 6.0 points for placebo (p=0.0414) and in self-rated CAARS total symptom scores by study end, of 10.5 points versus 1.0 for placebo (p=0.0349). With respect to the other secondary endpoint of CGI-I scores, patients exhibited a trend, although not statistically significant, toward larger median reductions in scores from baseline versus placebo.

Given the positive results of this Phase IIa trial, we are focused on developing an extended release formulation that will be the subject of a future Phase IIb trial.

SPN-809

We are developing SPN-809 as a novel once-daily product candidate for the treatment of depression. SPN-809 is based on the same active ingredient as our SPN-812 product candidate. We currently have an open IND for SPN-809 as a treatment of depression, the indication for which the active ingredient in SPN-809 was approved and marketed in Europe for many years. Depression is a serious and common disease affecting approximately 121 million people worldwide.(25) Based on IMS Health data, the worldwide market for antidepressants is approximately $12 billion.

(25) World Health Organization, *Epilepsy: aetiogy, epidemiology and prognosis*, Fact Sheet No. 165, revised February 2001.

SPN-809 is a norepinepherine reuptake inhibitor that represents an opportunity to offer a differentiated treatment option for patients suffering from depression in the United States. Initial market research suggests that psychiatrists would like to have such a once-daily option at their disposal to treat various patients. Because SPN-809 contains the same active ingredient as SPN-812, we expect that many of our activities related to the development of SPN-812 will also benefit the development of SPN-809.

Other Product Candidates

We have additional product candidates in various stages of early development that cover a range of CNS disorders.

Our Proprietary Technology Platforms

We have a successful track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol, Solutrol and EnSoTrol. These technologies create customized product profiles designed to meet efficacy needs, more convenient and less frequent dosing, enhanced patient compliance, and improved tolerability in certain specific applications. Our broad portfolio of technologies and extensive expertise in this area, which have been built over the past 20 years, enable us to develop products that are technically difficult to formulate or by design are made harder to be copied by others. We have employed our technologies in the development of our legacy products, as well as our current product portfolio.

Microtrol (multiparticulate delivery platform)

Microtrol is based on the use of coated and uncoated multi-particulates that can be filled into capsules, administered as a sprinkle, or compressed into tablets as varying ratios to achieve customized release profiles. The following approved and marketed products incorporate our Microtrol technology:

- Sanctura XR (trospium chloride), a treatment for overactive bladder;
- Oracea (doxycycline), a treatment for inflammatory lesions of rosacea;
- Carbatrol (carbamazepine), an anti-epilepsy treatment;
- Equetro (carbamazepine), a treatment for bipolar disorder; and
- Adderall XR (mixed amphetamine salts), a stimulant ADHD treatment.

We do not expect the above products to contribute to our future cash. Carbatrol, Equetro and Adderall XR are legacy products that were developed by us when we were formerly Shire Laboratories. In addition, in April 2008, we monetized the revenues underlying the future royalty streams relating to

Sanctura XR and Oracea by transferring certain of our royalty payment rights and other license rights for such products to Royalty Sub in exchange for $63 million. We primarily reinvested the proceeds from this transaction into our research and development activities. In December 2011, we sold 100% of our equity ownership interests in Royalty Sub. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—History of our Company" for additional details regarding the sale of Royalty Sub.

Solutrol (matrix delivery platform)

Solutrol is a matrix delivery system that can deliver poorly soluble, highly soluble, and pH dependent compounds in a reproducible and complete manner. Solutrol has been incorporated into Intuniv (guanfacine), a nonstimulant ADHD treatment, which is currently licensed to and marketed by Shire plc. In April 2009, this license became fully paid up when we sold to Shire the right to receive royalties and milestone payments owed to us for $36.9 million, which we primarily reinvested into our research and development activities.

EnSoTrol (osmotic delivery system)

EnSoTrol is comprised of a solubility enabled core and other agents surrounded by a semi-permeable membrane with a laser-drilled hole. When EnSoTrol is introduced to the contents of the gastrointestinal tract, it will induce solubilization of the core contents via fluid intake across the membrane coating. The solubilized core contents are then released through the laser-drilled hole along the osmotic gradient, thus yielding a surface-area controlled constant release profile. EnSoTrol has been tested in several clinical trials, including Phase III trials being conducted by United Therapeutics for an oral formulation of treprostinil diethanolamine, or treprostinil. Such oral formulation of treprostinil is the subject of an NDA that was accepted by the FDA for filing in February 2012.

In June 2006, we entered into a license agreement with United Therapeutics for the worldwide development and commercialization of an oral formulation of treprostinil, which utilizes EnSoTrol for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. Under the terms of the license agreement, we have received pre-commercial milestone payments of $1.5 million. Remaining milestone payments to us could total up to approximately $6.0 million, which includes milestone payments that could total $2.0 million based on the satisfaction of development milestones of oral treprostinil in PAH and up to approximately $4.0 million for the development of additional treprostinil products for a second indication. If United Therapeutics receives approval to market and sell an oral formulation of treprostinil, we will be entitled to receive royalties in the single digits based on net sales worldwide. Our license agreement with United Therapeutics will expire, on a country-by-country and product-by-product basis, 12.5 years from the first commercial sale of each product in such country. United Therapeutics may terminate, at its option, the agreement for a technical, strategic or market-related cause after giving us a reasonable opportunity to cure. We may terminate the agreement if, after having launched a product in a country, United Therapeutics or its sublicensee discontinues the sale of such product for a prolonged period of time for reasons unrelated to force majeure, regulatory or safety issues. In addition, either party may terminate the agreement for the material, uncured breach by the other party and in certain events of bankruptcy or insolvency of the other party.

Other Technologies

We also have proprietary techniques for identifying lead molecules and optimizing their oral delivery consisting of ProScreen, ProPhile and OptiScreen technologies. ProScreen is a predictive screen for lead candidates that warrant oral delivery. ProPhile is a suite of in silico modeling tools that enables multivariate analysis and pharmacokinetic prediction. OptiScreen is a technology for formulation optimization including solubility or permeability enhancement leading to oral bioavailability

improvement. We believe that this suite of technologies enables us to optimize the delivery and the development of existing chemical entities and marketed products.

Sales and Marketing

We are preparing the build-out of our commercial infrastructure to launch both SPN-538 and SPN-804 in the United States. Upon approval of SPN-538, we would hire a small specialty sales force, initially consisting of a limited number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of SPN-804. Having two epilepsy products that can be promoted to the same physician audience would allow us to leverage our commercial infrastructure with these prescribers. Once we have obtained approval for any of our product candidates in our psychiatry portfolio, we anticipate adding additional sales force members who will be dedicated towards marketing our psychiatry products.

Manufacturing

We do not own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party contract manufacturing organizations, or CMOs, for all of our required raw materials and drug substance for our preclinical research and clinical trials. We do not have any current contractual relationships for the commercial manufacture of any of our product candidates. For SPN-538 and SPN-804, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third-party suppliers and manufacturers for the final commercial products. We currently employ internal resources and as needed third-party consultants to manage our manufacturing contractors.

For our two most advanced product candidates, SPN-538 and SPN-804, we are presently negotiating agreements with leading CMOs headquartered in North America for the manufacture of the final commercial products. These CMOs offer a comprehensive range of contract manufacturing and packaging services and have successfully handled the scale up of the two product candidates to a commercial production scale in preparation for the commercialization of both product candidates.

Competition

The biotechnology and pharmaceutical industries are highly competitive. A number of multinational pharmaceutical companies as well as large biotechnology companies are pursuing the development of or are currently marketing pharmaceutical products in the anti-epilepsy and ADHD markets on which we are focusing.

Epilepsy

There are currently over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat some form of epilepsy. Several NCEs are expected to enter the epilepsy market in the next few years. Based on IMS Health prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market penetration characterized by a 0.58% to 1.1% market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in their patients. If approved, SPN-538 (extended release topiramate) will compete with all immediate release topiramate products including Topamax and related generic products. We are aware that Upsher-Smith announced the initiation of a Phase III clinical trial for an extended release topiramate product, which it has described as an internally developed program for the management of epilepsy in adults using its proprietary formulation technology. If this product candidate

is approved by the FDA before SPN-538, then Upsher-Smith could obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market.

In late December 2011, Upsher-Smith submitted a citizen petition to the FDA, stating that the FDA refrain from approving any application for extended-release topiramate that does not include an adequate and well-controlled clinical study demonstrating the safety and efficacy of an extended release topiramate product. The citizen petition states that the FDA required Upsher-Smith to conduct such a study for its extended-release topiramate candidate and that it would be inequitable, in Upsher-Smith's opinion, for the FDA not to require other applicants for extended-release topiramate to conduct similar studies. The Federal Food, Drug, and Cosmetic Act provides that the FDA shall not delay approval of a pending Section 505(b)(2) application on the basis of a citizen petition unless such delay is necessary to protect the public health. To our knowledge, the FDA has not yet substantively responded to the citizen petition.

If approved, SPN-804 (extended release oxcarbazepine) will compete with all immediate release oxcarbazepine products including Trileptal and related generic products. We are not aware of any other company that is currently developing an extended release oxcarbazepine product in the United States. In addition, we believe that SPN-804's once-daily formulation solves a drug delivery challenge specific to oxcarbazepine that must be overcome by all potential competitors. We are aware of companies who have modified-release oxcarbazepine products that are marketed outside of the United States but, to our knowledge, such products are not being pursued for the U.S. market. These modified-release oxcarbazepine products include Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration.

ADHD

Competition in the U.S. ADHD market has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs, such as Adderall XR. Shire plc is one of the leaders in the U.S. ADHD market with three products: Adderall XR, an extended release stimulant treatment designed to provide once-daily dosing; Vyvanse, a stimulant prodrug product launched in 2007; and Intuniv, a non-stimulant treatment launched in November 2009. Other stimulant products for the treatment of ADHD in the U.S. market include the following once-daily formulations: Concerta; Metadate CD; Ritalin LA; Focalin XR; and Daytrana. Other non-stimulants are Strattera and Clonicel. We are also aware of clinical development efforts by several large pharmaceutical companies including Shire plc, GlaxoSmithKline plc, Eisai Inc., AstraZeneca plc and Abbott Laboratories to develop additional treatment options for ADHD.

Intellectual Property and Exclusivity

Overview

We have been building and continue to build our intellectual property portfolio relating to our product candidates, including SPN-538 and SPN-804. We seek patent protection, where appropriate, in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position. We cannot be sure that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications filed by us in the future, nor can we be sure that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for the technologies and products we consider important to our business, defend our patents, preserve the confidentiality of our trade secrets and operate our business without infringing the patents and proprietary rights of third parties.

We have established and continue to build proprietary positions for SPN-804, SPN-538, our pipeline product candidates and technologies in the United States and abroad.

Patent Portfolio

Our oxcarbazepine patent portfolio currently includes three issued U.S. patents, two of which will cover SPN-804, one allowed U.S. continuation patent application and certain pending foreign patent applications that relate to the issued U.S. patents or the allowed U.S. continuation patent application. The issued U.S. patents will expire in 2027. We own all the issued patents and the pending applications.

In addition to the patents and patent applications relating to SPN-804, we currently have one pending U.S. non-provisional patent application, two pending U.S. continuation patent applications and certain pending foreign counterpart patent applications in Europe, Canada and other countries, which are directed to SPN-538. The U.S. patent applications, if issued, could expire in 2027. We own all of these pending applications.

Our patent portfolio also contains patent applications relating to our other pipeline products. We have a pending U.S. non-provisional patent application and pending foreign patent applications relating to our SPN-810 product candidate. Patents, if issued, from the applications could have terms expiring in 2029. With regard to our SPN-812 product candidate we have a pending U.S. non-provisional patent application and pending foreign patent applications. The U.S. patent application, if issued as a patent, would expire in 2029.

The U.S. patent system permits the filing of provisional and non-provisional patent applications. A non-provisional patent application is examined by the U.S. Patent and Trademark Office, or USPTO, and can mature into a patent once the USPTO determines that the claimed invention meets the standards for patentability. A provisional patent application is not examined for patentability, and automatically expires 12 months after its filing date. As a result, a provisional patent application cannot mature into a patent. The requirements for filing a provisional patent application are not as strict as those for filing a non-provisional patent application. Provisional applications are often used, among other things, to establish an early filing date for a subsequent non-provisional patent application. The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a non-provisional patent application. In the United States, a patent's term may be lengthened by patent term adjustment, or PTA, which compensates a patentee for administrative delays by the USPTO in granting a patent. In view of a recent court decision, the USPTO is under greater scrutiny regarding its calculations where the USPTO erred in calculating the patent term adjustment for the patents in question denying the patentee a portion of the patent term to which it was entitled. Alternatively, a patent's term may be shortened if a patent is terminally disclaimed over another patent.

The filing date of a non-provisional patent application is used by the USPTO to determine what information is prior art when it considers the patentability of a claimed invention. If certain requirements are satisfied, a non-provisional patent application can claim the benefit of the filing date of an earlier filed provisional patent application. As a result, the filing date accorded by the provisional patent application may supersede information that otherwise could preclude the patentability of an invention.

The term of a patent that covers an FDA-approved drug may also be eligible for patent term extension, or PTE, which permits patent term restoration as compensation for the patent term lost during the FDA regulatory review process. The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, permits a PTE of up to five years beyond the expiration of the patent. The length of the PTE is related to the length of time the drug is under regulatory review. Patent extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be

extended. Similar provisions are available in Europe and other foreign jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our pharmaceutical products receive FDA or other regulatory approval, we may be able to apply for PTEs on patents covering those products. Depending upon the timing, duration and specifics of FDA approval of SPN-804, SPN-538 and our other product candidates, one or more of our U.S. patents may be eligible for limited patent term restoration.

Other Intellectual Property Rights

We seek trademark protection in the United States and internationally where available and when appropriate. We have filed for trademark protection for several marks, which we use in connection with our pharmaceutical research and development collaborations as well as products. We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®" and the registered Supernus Pharmaceuticals logo.

From time to time, we may find it necessary or prudent to obtain licenses from third party intellectual property holders. Where licenses are readily available at reasonable cost, such licenses are considered a normal cost of doing business. In other instances, however, we may use the results of freedom-to-operate inquiries and internal analyses to guide our early-stage research away from areas where we are likely to encounter obstacles in the form of third party intellectual property. For example, where a third party holds relevant intellectual property and is a direct competitor, a license might not be available on commercially reasonable terms or available at all. We strive to identify potential third party intellectual property issues in the early stages of research of our research programs, in order to minimize the cost and disruption of resolving such issues.

To protect our competitive position, it may be necessary to enforce our patent rights through litigation against infringing third parties. Litigation to enforce our own patent rights is subject to uncertainties that cannot be quantified in advance. In the case of an adverse outcome in litigation, we could be prevented from commercializing a product or using certain aspects of our technology platforms as a result of patent infringement claims asserted against us. This could have a material adverse effect on our business. In addition, litigation involving our patents carries the risk that one or more of our patents will be held invalid (in whole or in part, on a claim-by-claim basis) or held unenforceable. Such an adverse court ruling could allow third parties to commercialize products or use technologies that are similar to ours, and then compete directly with us, without payment to us. See "Risk Factors—If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business."

In-Licensing Arrangements

Afecta Pharmaceuticals, Inc.

We have entered into two license agreements with Afecta Pharmaceuticals, Inc., or Afecta, pursuant to which we obtained an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. Under the terms of the license agreements, we have paid Afecta $550,000 in license fees and milestone payments and may pay up to an additional $300,000 upon the achievement of certain milestones. If a product candidate is successfully developed and commercialized, we will be obligated to pay royalties to Afecta based on net sales worldwide in the low-single digits. Unless terminated by us or Afecta for material breach or bankruptcy, by Afecta for our discontinuation of development and commercialization activities, or by us for convenience, the license agreements will continue in full force

and effect on a country-by-country basis until six months from the discontinuation of the commercial sale and collection of revenues for the Afecta product.

Rune Healthcare Limited

In June 2006, we entered into a purchase and sale agreement with Rune Healthcare Limited, or Rune, where we obtained the exclusive worldwide rights to a product concept from Rune for SPN-809. Under the terms of the agreement, we have paid Rune a £25,000 up-front fee. If we receive approval to market and sell any products based on the Rune product concept, we will be obligated to pay royalties to Rune based on net sales worldwide in the low-single digits. Unless terminated by us or Rune for material breach, by Rune for our discontinuation of development or commercialization activities relating to a product based on the Rune product concept, we will be obligated to pay royalties to Rune on a country-by-country basis until the earlier of (a) ten years from the date of first commercial sale of a product based on the Rune product concept or (b) the market entry in such country of any product utilizing the Rune product by any entity other than us, our affiliates or our licensees.

Confidential Information and Inventions Assignment Agreements

We require our employees, temporary employees and consultants to execute confidentiality agreements upon the commencement of employment, consulting or collaborative relationships with us. These agreements provide that all confidential information developed or made known during the course of the relationship with us be kept confidential and not disclosed to third parties except in specific circumstances. The agreements provide that all inventions resulting from work performed for us or relating to our business and conceived or completed by the individual during employment or assignment, as applicable, shall be our exclusive property to the extent permitted by applicable law.

We seek to protect our product candidates and our technologies through a combination of patents, trade secrets, proprietary know-how, FDA exclusivity and contractual restrictions on disclosure.

Government Regulation

Product Approval

Government authorities in the United States at the federal, state and local level, and other countries, extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, export and import of products such as those we are developing. Our product candidates, including SPN-538 and SPN-804, must be approved by the FDA before they may legally be marketed in the United States.

U.S. Drug Development Process

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, and implementing regulations. The process of obtaining regulatory approvals and ensuring compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process, or after approval, may subject an applicant to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal

penalties. The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices regulations;
- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials according to Good Clinical Practices, or GCP, to establish the safety and efficacy of the proposed drug for its intended use;
- submission to the FDA of an NDA for a new drug;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current Good Manufacturing Practices, or cGMP; and
- FDA review and approval of the NDA.

The testing and approval process require substantial time, effort and financial resources and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all.

Once a pharmaceutical product candidate is identified for development, it enters the preclinical testing stage. Preclinical tests include laboratory evaluations of product chemistry, toxicity, formulation and stability, as well as animal studies. An IND sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data and any available clinical data or literature, to the FDA as part of the IND. The sponsor must also include a protocol detailing, among other things, the objectives of the initial clinical trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated if the initial clinical trial lends itself to an efficacy evaluation. Some preclinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the clinical trial on a clinical hold within that 30-day time period. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Clinical holds also may be imposed by the FDA at any time before or during trials due to safety concerns or non-compliance.

All clinical trials must be conducted under the supervision of one or more qualified investigators in accordance with GCP regulations. These regulations include the requirement that all research subjects provide informed consent. Further, an institutional review board, or IRB, must review and approve the plan for any clinical trial before it commences at any institution. An IRB considers, among other things, whether the risks to individuals participating in the trials are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the information regarding the clinical trial and the consent form that must be provided to each clinical trial subject or his or her legal representative and must monitor the clinical trial until completed.

Once an IND is in effect, each new clinical protocol and any amendments to the protocol must be submitted to the IND for FDA review, and to the IRBs for approval. Protocols detail, among other things, the objectives of the clinical trial, dosing procedures, subject selection and exclusion criteria, and the parameters to be used to monitor subject safety.

Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- *Phase I.* The product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for severe or life-threatening diseases, especially when the product may be too

inherently toxic to ethically administer to healthy volunteers, the initial human testing may be conducted in patients.

- *Phase II.* Phase II trials involve investigations in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage and schedule.

- *Phase III.* Clinical trials are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical trial sites. These trials are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for regulatory approval and product labeling.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and safety reports must be submitted to the FDA and the investigators for serious and unexpected side effects. Phase I, Phase II and Phase III testing may not be completed successfully within any specified period, if at all. The FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

Concurrent with clinical trials, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the product and finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

During the development of a new drug, a sponsor may be able to request a Special Protocol Assessment, or SPA, the purpose of which is to reach agreement with the FDA on the Phase III clinical trial protocol design and analysis that will form the primary basis of an efficacy claim. An SPA is intended to provide assurance that if the agreed upon clinical trial protocol is followed, the clinical trial endpoints are achieved, and there is a favorable risk-benefit profile, the data may serve as the primary basis for an efficacy claim in support of an NDA. However, SPA agreements are not a guarantee of an approval of a product candidate or any permissible claims about the product candidate. In particular, SPAs are not binding on the FDA if previously unrecognized public health concerns arise during the performance of the clinical trial, other new scientific concerns regarding product candidate's safety or efficacy arise, or if the sponsoring company fails to comply with the agreed upon clinical trial protocol.

U.S. Review and Approval Processes

The results of product development, preclinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the drug, proposed labeling and other relevant information, are submitted to the FDA as part of an NDA for a new drug, requesting approval to market the product.

As an alternate path to FDA approval, particularly for modifications to drug products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference.

The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant, including bioavailability or bioequivalence studies, or clinical trials demonstrating safety and effectiveness. The FDA may then approve the new product candidate for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant.

The submission of an NDA is subject to the payment of a substantial user fee; a waiver of such fee may be obtained under certain limited circumstances. For example, the agency will waive the application fee for the first human drug application that a small business or its affiliate submits for review.

In addition, under the Pediatric Research Equity Act of 2003, or PREA, which was reauthorized under the Food and Drug Administration Amendments Act of 2007, an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any drug for an indication for which orphan designation has been granted.

Section 505(b)(2) New Drug Applications. To the extent that a Section 505(b)(2) NDA relies on clinical trials conducted for a previously approved drug product or the FDA's prior findings of safety and effectiveness for a previously approved drug product, the Section 505(b)(2) applicant must submit patent certifications in its Section 505(b)(2) application with respect to any patents for the approved product on which the application relies that are listed in the FDA's publication, Approved Drug Products with Therapeutic Equivalence Evaluations, commonly referred to as the Orange Book. Specifically, the applicant must certify for each listed patent that (1) the required patent information has not been filed; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is not sought until after patent expiration; or (4) the listed patent is invalid, unenforceable or will not be infringed by the proposed new product. A certification that the new product will not infringe the previously approved product's listed patent or that such patent is invalid or unenforceable is known as a Paragraph IV certification. If the applicant does not challenge one or more listed patents through a Paragraph IV certification, the FDA will not approve the Section 505(b)(2) NDA application until all the listed patents claiming the referenced product have expired. Further, the FDA will also not approve, as applicable, a Section 505(b)(2) NDA application until any non-patent exclusivity, such as, for example, five-year exclusivity for obtaining approval of a new chemical entity, three year exclusivity for an approval based on new clinical trials, or pediatric exclusivity, listed in the Orange Book for the referenced product, has expired.

If the Section 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the owner of the referenced NDA for the previously approved product and relevant patent holders within 20 days after the Section 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement suit against the Section 505(b)(2) applicant. Under the FDCA, the filing of a patent infringement lawsuit within 45 days of receipt of the notification regarding a Paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA for 30 months beginning on the date the patent holder receives notice, or until a court deems the patent unenforceable, invalid or not infringed, whichever is earlier. Moreover, in cases where a Section 505(b)(2) application containing a Paragraph IV certification is submitted after the fourth year of a previously approved drug's five year exclusivity period and the patent holder brings suit within 45 days of notice of certification, the 30-month period is automatically extended to prevent approval of the Section 505(b)(2) application until the date that is seven and one-half years after approval of the

previously approved reference product. The court also has the ability to shorten or lengthen either the 30 month or the seven and one-half year period if either party is found not to be reasonably cooperating in expediting the litigation. Thus, the Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its product only to be subject to significant delay and patent litigation before its product may be commercialized. Alternatively, if the NDA applicant or relevant patent holder does not file a patent infringement lawsuit within the specified 45 day period, the FDA may approve the Section 505(b)(2) application at any time.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) NDA that we submit.

We are pursuing a regulatory strategy pursuant to Section 505(b)(2) in connection with our NDA submissions for SPN-538 and SPN-804. In the NDA submissions for our other product candidates, we intend to follow the development and approval pathway permitted under the FDCA that we believe will maximize their commercial opportunities.

FDA Review of New Drug Applications. The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be re-submitted with the additional information. The re-submitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality and purity. Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA may refer the NDA to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. An advisory committee is a panel of independent experts who provide advice and recommendations when requested by the FDA on matters of importance that come before the agency. The FDA is not bound by the recommendation of an advisory committee.

The approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical trials are not always conclusive and the FDA may interpret data differently than we interpret the same data. The FDA will issue a complete response letter if the agency decides not to approve the NDA in its present form. The complete response letter usually describes all of the specific deficiencies that the FDA identified in the NDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical trials. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, withdraw the application, or request an opportunity for a hearing.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications,

warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical trials designed to further assess a drug's safety and effectiveness after NDA approval and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent and within sixty days of approval of the drug. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration dates, depending on the expected length of the clinical trials and other factors involved in the filing of the relevant NDA.

Market exclusivity provisions under the FDCA can also delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active pharmaceutical ingredient, or active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, the FDCA will not prevent the submission or approval of another full Section 505(b)(1) NDA, but such an NDA applicant would be required to conduct its own preclinical and adequate, well-controlled clinical trials to demonstrate safety and effectiveness. Further, a Section 505(b)(2) application may be submitted after four years if it contains a Paragraph IV certification. The FDCA also provides three years of marketing exclusivity for an NDA, Section 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application. Such clinical trials may, for example, support new indications, dosages, routes of administration or strengths of an existing drug, or for a new use, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. This exclusivity, which is sometimes referred to as clinical investigation exclusivity, prevents the FDA from approving an application under Section 505(b)(2) for the same conditions of use associated with the new clinical investigations before the expiration of three years from the date of approval. Such three-year exclusivity, however, would not prevent the approval of another application if the applicant submits a Section 505(b)(1) NDA and has conducted its own adequate, well-controlled clinical trials demonstrating safety and efficacy, nor would it prevent approval of a generic product or Section 505(b)(2) product that did not incorporate the exclusivity-protected changes of the approved drug product. The FDCA, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified, non-infringing versions of a drug to facilitate the approval of an ANDA or other application for generic substitutes.

Pediatric exclusivity is another type of exclusivity in the United States. Pediatric exclusivity, if granted, provides an additional six months of exclusivity to be attached to any existing exclusivity (e.g., three or five year exclusivity) or patent protection for a drug. This six month exclusivity, which runs from the end of other exclusivity protection or patent delay, may be granted based on the voluntary completion of a pediatric trial in accordance with an FDA-issued "Written Request" for such a trial. The current pediatric exclusivity provision was reauthorized in September 2007.

Post-Approval Requirements

Any drugs for which we receive FDA approval are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements. In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA strictly regulates labeling, advertising, promotion and other types of information on products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. Further, manufacturers of drugs must continue to comply with cGMP requirements, which are extensive and require considerable time, resources and ongoing investment to ensure compliance. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

Drug manufacturers and other entities involved in the manufacturing and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. The cGMP requirements apply to all stages of the manufacturing process, including the production, processing, sterilization, packaging, labeling, storage and shipment of the drug. Manufacturers must establish validated systems to ensure that products meet specifications and regulatory standards, and test each product batch or lot prior to its release. We rely, and expect to continue to rely, on third parties for the production of clinical quantities of our product candidates. Future FDA and state inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution or may require substantial resources to correct.

The FDA may withdraw a product approval if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Further, the failure to maintain compliance with regulatory requirements may result in administrative or judicial actions, such as fines, warning letters, holds on clinical trials, product recalls or seizures, product detention or refusal to permit the import or export of products, refusal to approve pending applications or supplements, restrictions on marketing or manufacturing, injunctions or civil or criminal penalties.

From time to time, legislation is drafted, introduced and passed in Congress that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. In addition to new legislation, the FDA regulations and policies are often revised or reinterpreted by the agency in ways that may significantly affect our business and our product candidates. It is impossible to predict whether further legislative or FDA regulation or policy changes will be enacted or implemented and what the impact of such changes, if any, may be.

Foreign Regulation

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our product candidates to the extent we choose to clinically evaluate or sell any products outside of the United States. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country. As in the United States, post-approval regulatory requirements, such as those regarding product manufacture, marketing, or distribution would apply to any product that is approved outside the United States.

Third Party Payor Coverage and Reimbursement

In both the United States and foreign markets, our ability to commercialize our product candidates successfully, and to attract commercialization partners for our product candidates, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations, and private health insurers. Medicare is a federally funded program managed by the Centers for Medicare and Medicaid Services, or CMS, through local fiscal intermediaries and carriers that administer coverage and reimbursement for certain healthcare items and services furnished to the elderly and disabled. Medicaid is an insurance program for certain categories of patients whose income and assets fall below state defined levels and who are otherwise uninsured that is both federally and state funded and managed by each state. The federal government sets general guidelines for Medicaid and each state creates specific regulations that govern its individual program. Each payor has its own process and standards for determining whether it will cover and reimburse a procedure or particular product. Private payors often rely on the lead of the governmental payors in rendering coverage and reimbursement determinations. Therefore, achieving favorable CMS coverage and reimbursement is usually a significant gating issue for successful introduction of a new product. The competitive position of some of our products will depend, in part, upon the extent of coverage and adequate reimbursement for such products and for the procedures in which such products are used. Prices at which we or our customers seek reimbursement for our product candidates can be subject to challenge, reduction or denial by the government and other payors.

The United States Congress and state legislatures may, from time to time, propose and adopt initiatives aimed at cost containment, which could impact our ability to sell our product candidates profitably. For example, in March 2010, President Obama signed into law the Patient Protection and Affordable Care Act and the associated reconciliation bill, which we refer to collectively as the Health Care Reform Law, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. Effective October 1, 2010, the Health Care Reform Law revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states once the provision is effective. Further, beginning in 2011, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may require us to modify our business practices with healthcare practitioners. We will not know the full effects of the Health Care Reform Law until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Health Care Reform Law, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory

burdens and operating costs. Moreover, in the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our product candidates.

The cost of pharmaceuticals continues to generate substantial governmental and third party payor interest. We expect that the pharmaceutical industry will experience pricing pressures due to the trend toward managed healthcare, the increasing influence of managed care organizations and additional legislative proposals. Our results of operations could be adversely affected by current and future healthcare reforms.

Some third party payors also require pre-approval of coverage for new or innovative devices or drug therapies before they will reimburse healthcare providers that use such therapies. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, the announcement or adoption of these proposals could have a material adverse effect on our ability to obtain adequate prices for our product candidates and operate profitably.

Other Healthcare Laws and Compliance Requirements

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services, other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, and state and local governments. These regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other government reimbursement programs that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;

- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;

- the federal transparency requirements under the Health Care Reform Law requires manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests;

- the FDCA, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

Legal Proceedings

From time to time and in the ordinary course of business, we are subject to various claims, charges and litigation. For example, we may be required to file infringement claims against third parties for the infringement of our patents. For additional information regarding the patent litigation matters in which we are involved, please see "Risk Factors—We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful."

Although the outcome of litigation cannot be predicted with certainty and some lawsuits, claims or proceedings may be disposed of unfavorably to us, we do not believe the outcome of any such litigation, individually or in the aggregate, will have a material adverse effect on our financial condition, results of operations or cash flows.

Employees

As of December 31, 2011, we employed 71 full-time employees. None of our employees are represented by a labor union.

Facilities

Our principal executive offices are located at 1550 East Gude Drive, Rockville, Maryland 20850, where we occupy approximately 44,500 square feet of laboratory and office space. Our lease term expires in April 30, 2018 with an option for a five year extension. We believe that our existing facilities are sufficient for our present and future operations, and we currently have no plans to lease additional space.

MANAGEMENT

Executive Officers, Directors And Key Employees

The following table sets forth the names and ages of our executive officers, directors and key employees as of the date of this prospectus.

Name	Age	Position(s)
Jack A. Khattar	50	President & Chief Executive Officer, Director
Gregory S. Patrick	60	Vice President, Chief Financial Officer
Jones W. Bryan, Ph.D.	47	Vice President of Business Development
Padmanabh P. Bhatt, Ph.D.	54	Senior Vice President, Intellectual Property, Chief Scientific Officer
Tami T. Martin, R.N., Esq.	56	Vice President of Regulatory Affairs
M. James Barrett, Ph.D.(2)	69	Director and Chairman of the Board
Michael Bigham(3)	54	Director
Frederick M. Hudson(1)	66	Director
Charles W. Newhall, III(3)	67	Director
William A. Nuerge(1)(2)	59	Director
Michael B. Sheffery, Ph.D.(2)	61	Director
John M. Siebert, Ph.D.(1)	72	Director

(1) Member of Audit Committee

(2) Member of Compensation Committee

(3) Member of Governance Committee

Jack A. Khattar is the founder of our company and has served as our President and Chief Executive Officer and Director since 2005. From 1999 to 2005, Mr. Khattar served in various positions during that time as a Board member, President and CEO of Shire Laboratories Inc., the drug delivery subsidiary of Shire plc. From 1999 to 2004, he also served as a member of Shire plc's Executive Committee. Prior to that, Mr. Khattar served as an Executive Officer and the Chairman of the Management Committee at CIMA, a drug delivery company that is currently a division of Cephalon. At CIMA, he was also responsible for business development, including the licensing of CIMA's technologies, corporate alliances and strategic planning. Prior to joining CIMA in 1995, Mr. Khattar held several marketing and business development positions at Merck & Co., Novartis, Playtex and Kodak in various locations, including the United States, Europe and the Middle East. Mr. Khattar earned his degrees in Marketing with a BBA from American University of Beirut and an MBA from the Wharton School of the University of Pennsylvania. He is currently a director of Rockville Economic Development Inc. Mr. Khattar's leadership, executive, managerial, business and pharmaceutical company experience, along with his more than 20 years of industry experience in the development and commercialization of pharmaceutical products and drug delivery technologies, qualify him to be a director.

Gregory S. Patrick has served as our Chief Financial Officer since November 2011. From 2010 to 2011, he served as Chief Financial Officer for ROI2. From 2008 to 2010, Mr. Patrick was the Chief Financial Officer at another privately held life sciences company, Bionor Immuno. From 2004 to 2008, he served as the Chief Financial Officer of Sopherion Therapeutics. From 2001 through 2004, he served as Chief Financial Officer for Medimmune, and from 1999 to 2001, as Chief Financial Officer of Ventiv Health. Mr. Patrick served in a variety of positions at Merck & Co. from 1985 through 1999, including Vice President and Controller of Merck's Manufacturing Division, Executive Director of Corporate Planning and Reporting, and Executive Director of Financial Evaluation. He started his career with Exxon Chemical Company in engineering, and subsequently joined Booz, Allen Hamilton as a

management consultant. He holds BS and ME degrees from Rensselaer Polytechnic Institute in Environmental Engineering, and an MBA in Finance from New York University.

Jones W. Bryan, Ph.D., has served as our Vice President of Business Development since 2005. From 2000 to 2005, he served as Vice President Business Development for Shire Laboratories Inc. Prior to that, Dr. Bryan was Director of Business Development for Pharmaceutics and Clinical Supply Manufacturing for AAI. He began his career with Schering Plough in Pharmaceutics and Formulation Development. Dr. Bryan earned his B.S. degree in Zoology from Clemson University, Ph.D. degree in Pharmaceutics from the Medical University of South Carolina and Executive Management Certificate from the University of North Carolina Kenan-Flagler Business School. He is a member of the Licensing Executives Society and serves on Clemson University's Spiro Institute Entrepreneurship Advisory Board.

Padmanabh P. Bhatt, Ph.D., has served as our Senior Vice President of Intellectual Property and Chief Scientific Officer since March 2012. Prior to that he served as our Vice President of Pharmaceutical Sciences since 2005. From 2003 to 2005, Dr. Bhatt was Vice President of Advanced Drug Delivery at Shire Laboratories Inc. From 2001 to 2003, Dr. Bhatt served as Vice President of Research and Development and Chief Technology Officer at Point Biomedical Corporation. From 1996 to 2001, he served at ALZA Corporation (now a Johnson & Johnson company) in various positions from Product Development Manager to Director of Technical Development. Prior to that time, Dr. Bhatt has held positions as Research Specialist and Group Leader of Novel Drug Delivery at Dow Corning Corporation (from 1992 to 1996) and Senior Scientist at Hercon Laboratories (from 1989 to 1992). Dr. Bhatt earned his B.Pharm. and M.Pharm. degrees from the University of Bombay, India. He also holds M.S. and Ph.D. degrees in Pharmaceutical Chemistry from the University of Kansas.

Tami T. Martin, R.N., Esq., has served as our Vice President of Regulatory Affairs since 2008. She has previously held positions as Vice President of Regulatory Affairs at Shire Pharmaceuticals (6 years), and Manager to Sr. Director of Regulatory Affairs at Otsuka America Pharmaceuticals (7 years). Ms. Martin has also consulted privately for domestic and international clients as President and CEO of Pyramid Regulatory Consulting. Earlier in her career, Ms. Martin held legal positions at Hogan & Hartson as a member of the Food and Drug Practice Group, and with the Department of Health and Human Services as a staff attorney. Ms. Martin previously served as an instructor for the Johns Hopkins University Masters of Biotechnology and Regulatory Affairs Graduate Degree program, and teaches a portion of the United States Regulatory Module for TOPRA (The Organization for Professionals in Regulatory Affairs) leading to a MSc in Regulatory Affairs through the University of Wales. Ms. Martin earned her Bachelor of Science in Nursing from Albright College and a Juris Doctorate degree from Suffolk University. Ms. Martin is a member of the Pennsylvania Bar.

M. James Barrett, Ph.D., has served as the Chairman of our Board since 2005. Since September 2001, Dr. Barrett has been a general partner of New Enterprise Associates, or NEA, which is a venture capital firm that focuses on the medical and life sciences and information technology industries. He is currently a member of the board of directors of each of the publicly-traded companies Amicus Therapeutics, Inc., Inhibitex, Inc. and Targacept, Inc., within the past five years, he served on the board of directors of each of the publicly-traded companies Iomai Corporation (acquired by Intercell AG), MedImmune, LLC (acquired by AstraZeneca), Pharmion Corporation (acquired by Celgene Corporation) and YM Biosciences, Inc. As a result of Dr. Barrett's tenure as a general partner of New Enterprise Associates, he has served on numerous boards of directors of both public and private companies in the healthcare sector and brings to the Board significant first-hand experience in shaping strategic direction as a pharmaceutical company matures from a private venture-backed company to a development-stage public company and then to a product revenue-generating company. Dr. Barrett's substantial experience with public and private companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

Michael Bigham has served as a member of our Board since 2006. Since 2002, Mr. Bigham has been a general partner of Abingworth, a leading international venture capital firm concentrating in life sciences. From December 2002 to March 2004, he served as Vice Chairman of Corixa Corporation, and was President and Chief Executive of Coulter Pharmaceuticals from July 1996 until it merged into Corixa in December 2000. Previously, he was an early employee at Gilead Sciences where he spent eight years serving in various capacities, including Executive Vice President of Operations and Chief Financial Officer. Before joining Gilead, Mr. Bigham was a partner at Hambrecht & Quist where he became Co-Head of Healthcare Investment Banking. He currently chairs the compensation committee of the board of directors of Avila Therapeutics, Inc. and he previously chaired the audit committee of the board of directors of Valeritas, Inc. He is also a director of Secure EDI Holdings, Inc. He has previously served as a director of Hydra Biosciences, Inc., Magellan Inc., PrimeraDx, Inc., Xenogen Corporation and SED, Inc. Prior to February 23, 2009, Mr. Bigham was also a non-executive director of Dynogen Pharmaceuticals Inc., a private clinical stage pharmaceutical company that, on that date, filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts. Mr. Bigham earned his B.S. Degree with distinction from the University of Virginia and holds an MBA from Stanford University Graduate School of Business. Mr. Bigham is also a Certified Public Accountant. Mr. Bigham's significant operational and investment banking experience in life science companies qualify him to serve as a director.

Frederick M. Hudson has served as a member of our Board since 2010. Mr. Hudson retired as a partner in charge of the health care audit practice for the Washington—Baltimore business unit of the accounting firm of KPMG, LLP on January 1, 2006 after a 37-year career with the firm. He is a graduate of Loyola University Maryland and currently serves in a board capacity with the Board of Financial Administration of the Catholic Archdiocese of Baltimore and the Board of Trustees of the Maryland Historical Society. He chairs the audit committees of each of the boards of directors of Paradigm Management Services LLC (a provider of catastrophic care services), Woodhaven Holding Corporation, d/b/a Remedi Senior Care (an institutional pharmacy service provider), GBMC Healthcare, Inc. and its affiliate, and the Greater Baltimore Medical Center. He is also a director of Maxim Health Care Services, Inc. Mr. Hudson's extensive accounting and health care audit experience qualify him to serve as a director.

Charles W. Newhall, III has served as a member of our Board since 2005. In 1977, Mr. Newhall co-founded NEA, a venture capital firm that focuses on the medical and life sciences and information technology industries. To date, Mr. Newhall has served as a director of over 40 venture-backed companies. He also started several healthcare information technology companies like PatientKeeper, TargetRx and LifeMetrix. Some of his current board memberships include Vitae Pharmaceuticals, TargetRx, Sensors for Medicine and Science, and BrainCells Inc. In 1986, he founded the Mid-Atlantic Venture Capital Association, or MAVA, which now has over 80 venture capital firms that are members, and is one of the most active regional venture associations in the country. He is Chairman Emeritus of MAVA. Before NEA, Mr. Newhall was a Vice President of T. Rowe Price. He served in Vietnam commanding an independent platoon including an initial reconnaissance of Hamburger Hill. His decorations include the Silver Star and Bronze Star V (1st OLC). He earned an Honors Degree in English from the University of Pennsylvania and an MBA from Harvard Business School. Mr. Newhall's substantial experience with companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

William A. Nuerge has served as a member of our Board since 2006. Since 2007, Mr. Nuerge has been a managing partner of Fortress Pharms Advisors, LLC. From 2004 to 2007, Mr. Nuerge served as a director and President and CEO of Xanodyne Pharmaceuticals. From 1997 to 2004, he served as President and CEO of Shire US, Inc. Prior to that, Mr. Nuerge served as Chief Operating Officer of Richwood Pharmaceuticals Company, Inc., which subsequently merged with Shire plc in 1997.

Mr. Nuerge earned his Bachelor of Science degree from Purdue University and his MBA from Wesleyan University. He has also previously served as a director of Cutanogen Corporation. Mr. Nuerge's significant operational and business experience with life science companies qualify him to serve as a director.

Michael B. Sheffery, Ph.D., has served as a member of our Board since 2005. Dr. Sheffery is a founding General Partner of OrbiMed Advisors, LLC, a healthcare investment firm, and Co-Head of Private Equity at OrbiMed. Dr. Sheffery was formerly Head of the Laboratory of Gene Structure and Expression at Memorial Sloan-Kettering Cancer Center. Dr. Sheffery joined Mehta and Isaly, an investment firm, in 1996 as a Senior Analyst covering the biotechnology industry. He earned both his Ph.D. in Molecular Biology and his B.A. in Biology from Princeton University. He is currently a Director of Affimed Therapeutics AG and Pieris AG. Dr. Sheffery's background and expertise in private equity and investment banking, combined with his scientific experience, qualify him to serve as a director.

John M. Siebert, Ph.D., has served as a member of our Board since 2011. Dr. Siebert has over 30 years experience in the pharmaceutical industry. Since 2011, Dr. Siebert has been Chief Operating Officer of New Rhein Healthcare Investors, LLC, a healthcare-based private equity group. Since 2009, Dr. Siebert has been Chairman and CEO of Compan Pharmaceuticals, LLC, a veterinary specialty pharmaceutical company. From 2004 to 2009, Dr. Siebert served as Chairman and CEO at CyDex Pharmaceuticals Inc., a specialty pharmaceutical company. From 1995 through 2003, Dr. Siebert served as President and CEO of CIMA LABS, Inc., an innovative oral drug delivery company. Dr. Siebert started his career at Procter & Gamble. He currently chairs the audit committees of each of the boards of directors of Primus Pharmaceutical Company and Aradigm, Inc. Dr. Siebert's substantial operational and business experience with companies in the healthcare sector, combined with his scientific experience, qualify him to serve as a director.

Composition of Our Board of Directors

Our board of directors currently consists of seven members. All of our directors were elected pursuant to the board composition provisions of our stockholders voting agreement. Our nominating and corporate governance committee and board of directors may consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity, which is not limited to race, gender or national origin. We have no formal policy regarding board diversity. Our nominating and corporate governance committee's and board of directors' priority in selecting board members is identification of persons who will further the interests of our stockholders through their established records of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, and professional and personal experiences and expertise relevant to our growth strategy.

Director Independence

We have applied to have our common stock listed on the Nasdaq Global Market. Under Rules 5605 and 5615 of the Nasdaq Marketplace Rules, a majority of a listed company's board of directors must be comprised of independent directors within one year of listing. In addition, the Nasdaq Marketplace Rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees be independent and that audit committee members also satisfy independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Under Rule 5605(a)(2) of the Nasdaq Marketplace Rules, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Upon the completion of this offering, we expect that the composition and functioning of our board of directors

and each of our board committees will comply with all applicable rules and regulations of the Securities and Exchange Commission, or the SEC, and the Nasdaq Global Market. There are no family relationships among any of our directors or executive officers.

Board Leadership Structure and Board's Role in Risk Oversight

Our board of directors has elected to separate the roles of Chief Executive Officer and Chairman of the board. Mr. Khattar serves as President and Chief Executive Officer and Dr. Barrett serves as Chairman of the board. The Chief Executive Officer and Chairman work closely together to execute the strategic plan of the Company.

We believe the combination of Mr. Khattar as President and Chief Executive Officer and Dr. Barrett as Chairman is an effective leadership structure for Supernus. The division of duties allows our Chief Executive Officer to focus on our day-to-day business, while allowing our Chairman of the board to lead the board of directors in its fundamental role of providing advice to, and independent oversight of, management. Our board of directors recognizes the time, effort and energy that the Chief Executive Officer is required to devote to his position in the current business environment, as well as the commitment required to serve as our Chairman, particularly as the board of directors' oversight responsibilities continue to grow. Our board of directors also believes that this structure ensures a greater role for the independent directors in the oversight of our company and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of our board of directors.

Management is responsible for the day-to-day management of risks that we face, while our board of directors, as a whole and through its committees, has responsibility for the oversight of risk management. In its risk oversight role, our board of directors has the responsibility to satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as designed. Our board of directors is actively involved in oversight of risks that could affect us. This oversight is conducted primarily through the full board of directors who has generally retained responsibility for general oversight of risks. Our board of directors satisfies this responsibility through reports directly from officers responsible for oversight of particular risks within our company as our board of directors believes that full and open communication between management and the board of directors is essential for effective risk management and oversight.

Committees of Our Board of Directors

Our board of directors has established a compensation committee, audit committee and governance committee. Our board of directors recently approved our audit committee charter, and we expect that the compensation committee and governance committee will also operate under charters approved by our board of directors, all of which will be effective upon the closing of this offering.

Compensation Committee

The current members of our compensation committee are Dr. Barrett, who is the chair of the committee, Mr. Sheffery and Mr. Nuerge. We expect that upon completion of this offering, each of the members of our compensation committee will be independent under the applicable rules and regulations of the SEC, the Nasdaq Global Market and the Internal Revenue Service. Our compensation committee reviews and recommends policies relating to compensation and benefits of our officers and employees. The compensation committee's responsibilities will include:

- reviewing and approving corporate goals and objectives relevant to the compensation of our chief executive officer and other executive officers;
- evaluating the performance of these officers in light of those goals and objectives;

- setting the compensation of these officers based on such evaluations;
- reviewing and approving the terms of any employment agreements with our chief executive officer and other executive officers;
- administering the issuance of stock options and other awards under our stock plans; and
- reviewing and evaluating, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter.

Audit Committee

The current members of our audit committee are Mr. Hudson, who is the chair of the committee, Dr. Siebert and Mr. Nuerge. We expect that upon completion of this offering, all members of our audit committee will meet the requirements for financial literacy under the applicable rules and regulations of the SEC and the Nasdaq Global Market. Our board has determined that Mr. Hudson is an audit committee financial expert as defined under the applicable rules of the SEC and has the requisite financial sophistication as defined under the applicable rules and regulations of the Nasdaq Global Market. Mr. Hudson, Dr. Siebert and Mr. Nuerge are independent directors as defined under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The audit committee will operate under a written charter that satisfies the applicable standards of the SEC and the Nasdaq Global Market. Our audit committee's responsibilities will include:

- overseeing our corporate accounting and financial reporting process;
- evaluating the independent auditors' qualifications, independence and performance;
- determining the engagement of the independent auditors;
- reviewing and approving the scope of the annual audit and the audit fee;
- discussing with management and the independent auditors the results of the annual audit and the review of our quarterly financial statements;
- approving the retention of the independent auditors to perform any proposed permissible non-audit services;
- monitoring the rotation of partners of the independent auditors on our engagement team as required by law;
- reviewing our critical accounting policies and estimates;
- overseeing our internal audit function; and
- annually reviewing the audit committee charter and the audit committee's performance.

Governance Committee

The current members of our governance committee are Mr. Newhall, who is the chair of the committee, and Mr. Bigham. We expect that upon completion of this offering, each of the members of our governance committee will be independent under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The governance committee's responsibilities will include:

- making recommendations to our board of directors regarding candidates for directorships and the size and composition of our board;
- overseeing our corporate governance guidelines; and
- reporting and making recommendations to our board concerning governance matters.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting.

Executive Compensation

Compensation Discussion and Analysis

Introduction. *This section discusses our executive compensation policies and arrangements as they relate to our named executive officers who are listed in the compensation tables set forth below. The following discussion should be read together with the compensation tables and related disclosure set forth below.*

Our named executive officers, or NEOs, for the year ended December 31, 2011 are listed in the table below.

Name	Title
Jack A. Khattar	Chief Executive Officer, President
Gregory S. Patrick(1)	Vice President, Chief Financial Officer
Peter L. Buzy(2)	Former Vice President, Chief Financial Officer
Russell P. Wilson(3)	Former Vice President, Chief Financial Officer
Paolo Baroldi, M.D, Ph.D.(4)	Senior Vice President, Chief Medical Officer
Padmanabh Bhatt, Ph.D.	Senior Vice President, Intellectual Property, Chief Scientific Officer
Jones W. Bryan, Ph.D.	Vice President, Business Development

(1) Mr. Patrick joined as the Vice President, Chief Financial Officer in November 2011.

(2) Mr. Buzy served as the Vice President, Chief Financial Officer from October 2011 through November 2011.

(3) Mr. Wilson resigned as the Vice President, Chief Financial Officer in October 2011.

(4) Dr. Baroldi resigned as the Senior Vice President, Chief Medical Officer in March 2012. He has agreed to continue to serve as a consultant to the Company until September 2012.

With respect to these NEOs, our board of directors determined initial compensation for these persons based primarily on negotiations between our board and our NEOs prior to their being hired and our board's past practices and experiences with companies such as ours.

We expect that following the completion of this offering, our Compensation Committee will undertake a substantial review of our existing compensation programs, objectives and philosophy and determine whether such programs, objectives, and philosophy are appropriate after we have become a

public company. In addition, as we gain experience as a public company, we expect that the specific direction, emphasis and components of our executive compensation program will continue to evolve.

Executive Compensation Objectives and Philosophy

The key objectives of our executive compensation programs are (1) to attract, motivate, reward and retain superior executive officers with the skills necessary to successfully lead and manage our business; (2) to achieve accountability for performance by linking annual cash incentive compensation to the achievement of measurable performance objectives; and (3) to align the interests of our executive officers and our equity holders through short- and long-term incentive compensation programs. For our NEOs, these short- and long-term compensation are designed to accomplish these objectives by providing a significant correlation between our results of operations and total compensation.

We expect to provide our NEOs with a significant portion of their compensation through cash incentive compensation contingent upon the achievement of operational and personal performance metrics, as well as through equity compensation. These two elements of executive compensation are aligned with the interests of our stockholders because the amount of compensation ultimately received will vary with our company's financial and operational performance. Equity compensation derives its value from our equity value, which in the future is likely to fluctuate based on our financial and operational performance.

We seek to apply a consistent philosophy to compensation for all executive officers. Our compensation philosophy is based on the following core principles.

To Pay for Performance

Individuals in leadership roles are compensated based on a combination of total company and individual performance factors. Total company performance is evaluated primarily on the degree to which pre-established operational objectives are met. Individual performance is evaluated based upon several individualized leadership factors, including:

- individual contribution to attaining specific operational objectives;
- building and developing individual skills and a strong leadership team; and
- developing an effective infrastructure to support business development and growth.

To Pay Competitively

We are committed to providing a total compensation program designed to retain our highest performing employees and attract strong leaders to our company. We have established compensation levels that we believe are competitive based on our board's experience with pay practices and compensation levels for companies such as ours.

To Pay Equitably

We believe that it is important to apply generally consistent guidelines for all executive officer compensation programs. In order to deliver equitable pay levels, our board considers depth and scope of accountability, complexity of responsibility, qualifications and executive performance, both individually and collectively as a team.

In addition to short- and long-term compensation, we have found it important to provide certain of our executive officers with competitive post-employment compensation. Post-employment compensation consists primarily of severance pay and benefits continuation. We believe that these benefits are important considerations for our executive officer compensation package, as they afford a

measure of financial security in the event of certain terminations of their employment and also enable us to secure their cooperation following termination. We have sought to ensure that each combined compensation package is competitive at the time the package is negotiated with the executive officer. We elect to provide post-employment compensation to our executive officers on a case-by-case basis as the employment market, the qualifications of potential employees and our hiring needs dictate.

Compensation Committee Review of Compensation

We expect that following this offering, our Compensation Committee will review compensation elements and amounts for NEOs on an annual basis and at the time of a promotion or other change in level of responsibilities, as well as when competitive circumstances or business needs may require. We may, but do not currently, use a third party consultant to assist us with determining compensation levels. We expect that each year our management will compile a report of benchmark data for executive positions for similar companies, including summaries of base salary, annual cash incentive plan opportunities and awards and long-term incentive award values. We have not yet determined the companies that we will benchmark our compensation packages against, but we expect that the Compensation Committee will determine this list after completion of this offering and that it will compare our pay practices and overall pay levels with other leading industry organizations and, where appropriate, with non-industry organizations when establishing our pay guidelines.

We expect that the CEO will provide compensation recommendations to the Compensation Committee for executives other than himself based on this data and the other considerations mentioned in this Compensation Discussion and Analysis. We expect that the Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at the median of the peer group and competitive with other organizations similar to ours. The Compensation Committee will then discuss these recommendations with the CEO and will make a recommendation to the board, which the board will consider and approve, if appropriate.

We expect that the Compensation Committee will consider input from our CEO and CFO when setting performance objectives for our incentive plans. We also expect that the Compensation Committee will consider input from our CEO and CFO, regarding benchmarking and recommendations for base salary, annual incentive targets and other compensation awards. The Compensation Committee will likely give significant weight to our CEO's and CFO's judgment when assessing performance and determining appropriate compensation levels and incentive awards for our other NEOs.

Elements of Compensation

As discussed throughout this Compensation Discussion and Analysis, the compensation policies applicable to our NEOs are reflective of our pay-for-performance philosophy and encourage executive officers to enhance equity holder value over the long term.

The elements of our compensation program are:

- base salary;
- performance-based cash incentives;
- equity incentives; and
- certain additional employee benefits.

Base salary, performance-based cash incentives and long-term equity-based incentives are the most significant elements of our executive compensation program and, on an aggregate basis, they are intended to substantially satisfy our program's overall objectives. Historically, our board of directors has, and following the offering, the Compensation Committee will seek to, set each of these elements of compensation at the same time to enable it to simultaneously consider all of these elements collectively and their impact on compensation as a whole. Taking this comprehensive view of all compensation components allows us also to make compensation determinations that will reflect the principles of our compensation philosophy with respect to allocation of compensation among certain of these elements and total compensation. We strive to achieve an appropriate mix between the various elements of our compensation program to meet our compensation objectives and philosophy; however, we do not apply any rigid allocation formula in setting our executive compensation, and we may make adjustments to this approach for various positions after giving due consideration to prevailing circumstances, the individuals involved and their responsibilities and performance.

Base Salary

We provide a base salary to our executive officers to compensate them for their services during the year and to provide them with a stable source of income. The base salaries for our NEOs in 2010 and 2011 were established by our board of directors, based in large part on the recommendation of our management and our board's review of other factors, including:

- the individual's performance, results, qualifications and tenure;
- the responsibilities associated with the position;
- pay mix (base salary, annual cash incentives, equity incentives and employee benefits);
- prevailing market conditions; and
- our financial position.

The annual base salaries in effect in 2010, 2011 and 2012 for each of our NEOs employed by us during fiscal year 2010 or fiscal year 2011, are as follows.

	Base Salary		
Name	2010	2011	2012
Jack A. Khattar	$ 407,942	$ 420,180	$ 432,786
Gregory S. Patrick(1)	—	29,767	265,000
Peter L. Buzy(2)	—	31,644	—
Russell P. Wilson(3)	265,172	219,250	—
Paolo Baroldi, M.D., Ph.D(4)	293,292	302,091	61,378
Padmanabh Bhatt, Ph.D	266,200	274,186	290,639
Jones W. Bryan, Ph.D.	210,542	216,858	223,364

(1) Reflects the pro rated salary for 2011 for Mr. Patrick, who joined as the Chief Financial Officer on November 21, 2011.

(2) Reflects the pro rated salary for 2011 for Mr. Buzy, who served as Chief Financial Officer from October 17, 2011 through November 28, 2011.

(3) Reflects the pro rated salary for 2011 for Mr. Wilson, who resigned his employment with the Company effective October 21, 2011.

(4) Reflects the pro rated salary for 2012 for Dr. Baroldi, who resigned as an executive officer of the Company effective March 13, 2012.

In early 2010, in connection with setting the 2010 base salaries for our NEOs, our board considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salary of each of our NEOs by 3.0% over their 2009 base salaries; provided, however, that the 2010 base salaries for Mr. Wilson and Dr. Baroldi were prorated because they only joined us in 2009. In setting the 2011 and 2012 base salaries for our NEOs, our board considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salaries of our NEOs by 3.0% over their prior year base salaries; provided, however, that the 2012 base salary for Mr. Patrick was not increased because he only joined us in November 2011.

In the future, we expect that salaries for executive officers will be reviewed annually, as well as at the time of a promotion or other change in level of responsibilities, or when competitive circumstances or business needs may require. As noted above, we expect that following completion of the offering, our Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at market median of our to-be-determined peer group.

Performance-Based Cash Incentives

We pay annual performance-based cash incentives or bonuses in order to align the compensation of our NEOs with our short-term operational and performance goals and to provide near-term rewards for our NEOs to meet these goals. From time to time, our board has exercised its discretion in determining cash incentive amounts and making individual awards, but generally our performance-based cash incentives are made under our annual cash incentive plan. Our annual cash incentive plan for our CEO is based on the attainment by our company of objective operational goals and for all other NEOs is based on two components: the attainment by our company of non-financial operational goals and the achievement by each NEO of personal and often subjective performance goals. The final evaluation made by our board combines often subjective assessments of each of our company's operational goals and each NEO's personal goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Each of these components allows us to establish appropriately aggressive performance expectations and incentives that align business performance expectations to the prevailing market and economic conditions.

Currently, our board has determined that the target bonus for our CEO under our annual cash incentive plan is based 100% on the achievement of our company objectives. The annual performance bonuses for the other NEOs are currently based 60% on the achievement of company objectives and 40% on the achievement of individual performance objectives. Our board establishes our company objectives for each fiscal year prior to the end of the first quarter of the year and determines a separate weighting for each of our company objectives.

We do not disclose our company operational goals component of our annual cash incentive plan. We believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance because the components of our performance goals contain highly sensitive data, such as regulatory, strategic partnering and other non-financial operational goals. These goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

The personal performance goals vary for each NEO whose bonus is based in part on personal performance goals and are based on specific priorities in the NEO's area of responsibility. Each year, our CEO and each NEO jointly determine what the NEO's performance priorities will be for the year, and our CEO makes a recommendation to our Compensation Committee. Our Compensation Committee reviews these recommendations, may have further discussions with our CEO or the NEO

and then makes a final determination as to the personal performance goals. For fiscal year 2011, the personal performance goals were as follows:

- Gregory S. Patrick: Supporting our CEO in financing activities, improving financial controls, financial management budgeting and forecasting, and management of information technology;
- Paolo Baroldi: Completion of all clinical activities required to support and file our NDAs, the initiation of a Phase IIb study on SPN-810, planning and initiation of preclinical activities as applicable on SPN-810 and SPN-812;
- Padmanabh Bhatt: Completion of all pharmaceutical sciences activities in support of our NDA filings, planning and preparation for the validation activities for our lead product candidates, and managing our intellectual property portfolio and supporting our licensees; and
- Jones W. Bryan: Identifying and negotiating partnerships with third parties regarding rights on our product candidates in areas that are outside our focus, identifying in-licensing opportunities for product candidates that complement our portfolio, and executing supply agreements as related to our lead product candidates with contract manufacturing organizations.

For fiscal year 2011, our Compensation Committee determined that Mr. Patrick, Dr. Baroldi, Dr. Bhatt and Dr. Bryan achieved approximately 100%, 94%, 95% and 95%, respectively, of their individual performance objectives.

After our fiscal year 2011, our board reviewed the Company goals that were attained and determined that the company performance component of our annual cash incentive plan was 100% achieved. This decision was primarily due to the submission and acceptance for filing of our NDA for SPN-538, submission of our NDA for SPN-804, initiation of a Phase IIb clinical study for SPN-810 and securing financing for our company. Concurrently, each of our NEOs prepared an assessment of his performance against his personal performance goals and discussed them with our CEO, who then made a recommendation to our board. Our board reviewed these recommendations and made a determination of overall performance against these goals for each NEO. Taking into account the relative weighting of the corporate and personal performance objectives, with 60% for corporate objectives and 40% for individual performance objectives for each NEO, other than our CEO, we paid each NEO the following 2011 annual performance bonus in 2012:

	2011 Annual Performance Bonus		
Name	Target Bonus Percent (%)	Target Bonus Amount ($)	Actual Bonus Payout ($)
Jack A. Khattar	40%	$ 168,072	$ 168,072
Gregory S. Patrick(1)	25	7,442	7,442
Peter L. Buzy(2)	—	—	—
Russell P. Wilson(3)	—	—	—
Paolo Baroldi, M.D., Ph.D.	25	75,523	73,559
Padmanabh Bhatt, Ph.D.	25	68,547	67,176
Jones W. Bryan, Ph.D.	25	54,215	53,130

(1) Mr. Patrick joined as the Chief Financial Officer in November 2011, so his target annual performance bonus amount for 2011 was prorated.

(2) Mr. Buzy resigned as the Chief Financial Officer in November 2011 and he was not entitled to a bonus for 2011.

(3) Mr. Wilson resigned as the Chief Financial Officer in October 2011 and he was not entitled to a bonus for 2011.

We expect that following this offering, our Compensation Committee will more directly assess the performance of our NEOs. Many of the personal performance goals either are qualitative in nature or have a single value or accomplishment as the determinant. Accordingly, the final evaluation made by our board often combines subjective assessments of each of the NEO's goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Our board ultimately determines a single percentage representing overall performance against each NEO's personal goals in the aggregate.

The target bonus percentages for our NEOs under our annual cash incentive plan for 2012 are the same as under the annual cash incentive plan for 2011. Because the components of our performance goals contain highly sensitive data, such as regulatory, strategic partnering and other nonfinancial operational goals, we believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance. Our performance goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

Equity Incentives

All of our NEOs have received equity incentive grants under our 2005 Stock Plan, which is described below, in the form of restricted stock and/or stock options. To date, we have primarily used stock option grants as our principal form of equity incentives because we believe they are an effective means to align the long-term interests of our executive officers with those of our stockholders. The offer of restricted stock and/or options attempts to achieve this alignment by providing our NEOs with equity incentives that vest over time or upon the occurrence of certain events. The restricted stock and options serve also to reward our NEOs for performance.

Prior to this offering, we have used stock options and, to a very limited degree, restricted stock, as the primary long-term equity incentive vehicle. In 2005, we made our only grant of restricted stock when the fair value of our stock was lower and the awards had less income tax consequence to the executive upon vesting. Since then, we have made option grants to executive officers who are newly hired, and generally made stock option grants to existing executives at times when the board deemed appropriate in accordance with the compensation principles outlined above.

The value of an option is at risk for the NEO and is entirely dependent on the value of a share of our stock above the option's strike price. The value of our stock is dependent in many ways on management's success in achieving our goals. If the price of our common stock drops, for any reason, over the option's vesting period, the value of the option to the executive will drop and could become worthless if the price of the underlying stock remains below the option's strike price. In determining the number of stock options to be granted to executives, we take into account the individual's position, scope of responsibility, ability to affect profits and shareholder value, the individual's historic and recent performance and the value of stock options in relation to other elements of the individual executive's total compensation.

We may in the future grant other forms of equity incentives, such as restricted stock or performance shares (shares that vest only upon achievement of performance goals established at the time of grant), subject to the Compensation Committee's discretion, to ensure that our executives are focused on long-term stockholder value. We expect that following completion of the offering, the Compensation Committee will periodically review the equity awards previously awarded to management, the performance of our business and the performance of our stock. We expect that the Compensation Committee will establish levels of equity incentive holdings for our NEOs such that the portion of overall compensation that is variable is consistent with our pay-for-performance philosophy and competitive within our industry. The Compensation Committee is expected to determine appropriate levels of equity awards based on these factors and may make additional grants.

Stock options granted by us to date have an exercise price equal to or greater than the fair market value of our common stock on the date of grant and generally expire ten years after the date of grant. Stock options are subject to vesting, and most of our options vest over time at a rate of 25% of the total grant on the each of the first four anniversaries of the vesting start date, although we have granted some performance options that vest upon attaining certain predetermined company objectives.

The amount of each of these awards was designed to establish a desired percentage ownership level for each of our NEOs that our board believed was commensurate with their respective roles and responsibilities and based on similarly situated employees of other companies that members of our board had experience with.

Additional Employee Benefits

We provide our executive officers with employee benefits that the board believes are reasonable and in the best interests of the company and its stockholders, which consist of the following benefits:

- health insurance;
- vacation and sick days;
- long-term disability; and
- a 401(k) plan.

We have no structured perquisite benefits, such as club memberships or company vehicles, for any executive officer, including our NEOs. We believe the benefits we provide are generally equivalent to the benefits provided by comparable companies.

Accounting and Tax Considerations

In determining which elements of compensation are to be paid, and how they are weighted, we will take into account whether a particular form of compensation will be deductible under Section 162(m) of the Code. Section 162(m) generally limits the deductibility of compensation paid to our NEOs to $1 million during any fiscal year unless such compensation is "performance-based" under Section 162(m). However, under a Section 162(m) transition rule for compensation plans or agreements of corporations which are privately held and which become publicly held in an initial public offering, compensation paid under a plan or agreement that existed prior to the initial public offering will not be subject to Section 162(m) until the earliest of (1) the expiration of the plan or agreement; (2) a material modification of the plan or agreement; (3) the issuance of all employer stock and other compensation that has been allocated under the plan; or (4) the first meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the year of the initial public offering. We refer to the earliest of these events to occur as the "Transition Date." After the Transition Date, otherwise eligible performance-based rights or awards granted under such a plan will not qualify for the "performance-based compensation" exception under Section 162(m) unless the relevant material terms of such plan are approved by our stockholders and the awards are granted and administered in accordance with the regulations prescribed under Section 162(m).

In determining awards as part of our compensation program, we expect to consider the availability of a tax deduction as one element in designing compensation programs that are intended to reward our executive officers for their contribution to the success of the Company, but the tax impact is not the only element we will consider. We may grant awards that do not qualify for an exemption from the deduction limitations under Section 162(m) or that may otherwise be limited as to tax deductibility.

Many other Code provisions, SEC regulations and accounting rules affect the payment of executive compensation and are generally taken into consideration as we develop our compensation programs.

Our goal is to create and maintain plans that are efficient, effective and in full compliance with these requirements.

When determining our compensation policies and practices, our board considered various matters relative to the development of a reasonable and prudent compensation program, including whether the policies and practices were reasonably likely to have a material adverse effect on us. We believe that the mix and design of our executive compensation plans and policies do not encourage management to assume excessive risks and are not reasonably likely to have a material adverse effect on us for the following reasons: we offer an appropriate balance of short and long-term incentives and fixed and variable amounts; our variable compensation is based on a balanced mix of criteria; and our Compensation Committee has the authority to adjust variable compensation as appropriate.

Compensation Tables

Unless otherwise specified, the following tables provide information regarding the compensation earned during our most recently completed fiscal year by our NEOs.

Summary compensation table

The following table shows the compensation earned by our NEOs during the fiscal years ended December 31, 2011 and December 31, 2010.

Name and Principal Position	Year	Salary ($)	Option Awards ($)(1)	Non-Equity Incentive Plan Compensation ($)(2)	All Other Compensation ($)(3)	Total ($)
Jack A. Khattar	2011	$ 420,180	$ —	$ 168,072	$ 11,439	$ 599,691
Chief Executive Officer, President	2010	407,942	—	159,913	12,185	580,040
Gregory S. Patrick(4)	2011	29,767	386,736	7,442	599	424,544
Vice President, Chief Financial Officer	2010	—	—	—	—	—
Peter L. Buzy(5)	2011	31,644	—		—	31,644
Former Vice President, Chief Financial Officer	2010	—	—	—	—	—
Russell P. Wilson(6)	2011	219,250	—	—	11,037	230,287
Former Vice President, Chief Financial Officer	2010	265,172	88,235	64,172	12,821	430,400
Paolo Baroldi, M.D., Ph.D.	2011	302,091	—	73,559	14,342	389,992
Senior Vice President, Chief Medical Officer	2010	293,292	98,014	68,044	18,303	477,653
Padmanabh Bhatt, Ph.D.	2011	274,186	—	67,176	12,654	354,016
Senior Vice President, Intellectual Property, Chief Scientific Officer	2010	266,200	66,450	64,154	14,036	410,841
Jones W. Bryan, Ph.D.	2011	216,858	—	53,130	8,262	278,250
Vice President, Business Development	2010	210,542	66,450	47,793	10,499	335,284

(1) In accordance with ASC Topic 718, or ASC 718, formerly Statement of Financial Accounting Standards No. 123R, our NEOs will only realize compensation to the extent the market price of our common stock is greater than the exercise price of such stock options. For information regarding assumptions underlying the valuation of equity awards, see Note 10 to our consolidated financial statements appearing at the end of this prospectus.

(2) Amounts represent annual performance bonus compensation earned for the years ended December 31, 2010 and 2011 based on pre-established performance objectives. Annual performance bonus compensation for 2010 and 2011 was paid in early 2011 and early 2012, respectively. Our annual performance bonus program is described in more detail under "—Compensation Discussion and Analysis—Performance-Based Cash Incentives."

(3) Amounts include the premium amounts paid by us for life insurance and long-term disability insurance coverage for each NEO, plus the employer matching contributions made on behalf of each NEO to our 401(k) plan.

(4) Mr. Patrick became our Vice President, Chief Financial Officer in November 2011. 2011 base salary amount represents salary paid to Mr. Patrick in 2011.

(5) Mr. Buzy served as our Vice President, Chief Financial Officer from October 2011 through November 2011. 2011 base salary amount represents salary paid to Mr. Buzy in 2011.

(6) Mr. Wilson resigned as our Vice President, Chief Financial Officer in October 2011. 2011 base salary amount represents salary paid to Mr. Wilson in 2011.

Grants of Plan-Based Awards

During fiscal year ended December 31, 2011, each of our NEOs participated in our performance-based cash incentive plan in which each officer was eligible for the awards set forth in the following table. For a detailed discussion of our performance-based cash incentive plan, refer to "—Compensation Discussion and Analysis—Performance-Based Cash Incentives." The following table also sets forth information regarding equity awards granted to our NEOs during the year ended December 31, 2011. Equity awards made to our NEOs are described in more detail under "—Compensation Discussion and Analysis—Equity Incentives."

		Estimated Future Payouts Under Non-Equity Incentive Plan Awards		All Other Options Awards:		
Name	Grant Date	Target ($)	Maximum ($)	Number of Securities Underlying Options(#)	Exercise or Base Price of Option Awards(1) ($/sh)	Grant Date Fair Value of Stock and Options Awards(2) ($)
Jack A. Khattar	—	$ 168,072	$ 168,072	—	—	—
Gregory S. Patrick(3)	12/30/2011	7,442	7,442	420,000	$ 1.47	386,736
Peter L. Buzy	—	—	—	—	—	—
Russell P. Wilson	—	—	—	—	—	—
Paolo Baroldi, M.D., Ph.D.	—	75,523	75,523	—	—	—
Padmanabh Bhatt, Ph.D.	—	68,547	68,547	—	—	—
Jones W. Bryan, Ph.D.	—	54,215	54,215	—	—	—

(1) Amounts represent the fair value of our common stock as determined in good faith by our board on the date of the grant.

(2) Amounts reflect the aggregate grant date fair value of the awards calculated in accordance with ASC 718.

(3) Mr. Patrick joined as the Chief Financial Officer in November 2011, so his target annual performance bonus amount for 2011 was prorated.

Outstanding Equity Awards at Fiscal Year-End

The table below sets forth certain information regarding the outstanding equity awards held by our NEOs as of December 31, 2011.

		Option Awards			
Name		Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)(5)	Option Expiration Date
Jack A. Khattar		—	—	—	—
Gregory S. Patrick	(1)	—	420,000	$ 1.47	12/30/2021
Peter L. Buzy		—	—	—	—
Russell P. Wilson	(2)	57,500		$ 0.64	12/15/2019
Paolo Baroldi, M.D., Ph.D.	(1)	100,000	100,000	$ 0.40	1/19/2019
	(1)	5,000	15,000	$ 0.84	02/10/2020
	(1)	53,750	161,250	$ 0.64	11/02/2020
Padmanabh Bhatt, Ph.D.	(1)	200,000		$ 0.10	1/17/2016
	(3)	25,000		$ 0.10	1/17/2016
	(4)	25,000		$ 0.10	1/17/2016
	(1)	12,000		$ 0.10	2/13/2017
	(1)	2,500	7,500	$ 0.84	02/10/2020
	(1)	37,500	112,500	$ 0.64	11/02/2020
Jones W. Bryan, Ph.D.	(1)	2,500	7,500	$ 0.84	02/10/2020
	(1)	37,500	112,500	$ 0.64	11/02/2020

(1) These stock options vest over four years in four equal installments of 25% each on the first four anniversaries from the date of grant.

(2) On November 2, 2010, this option was repriced from $1.76 to $0.64 per share.

(3) These stock options vested upon the completion of our first clinical trial in humans and was satisfied in 2006.

(4) These stock options vested upon the launch of a partnered product which was satisfied in 2006.

(5) The market value of each equity award is based on the fair market value of per share of our common stock as of the date of grant, as determined in good faith by our board.

Option Exercises and Stock Vested

The table below sets forth certain information regarding options to purchase our common stock that were exercised by our NEOs during 2011.

	Option Awards	
Name	Number of Shares Acquired On Exercise (#)	Value Realized On Exercise ($)(1)
Jack A. Khattar	—	—
Gregory S. Patrick	—	—
Peter L. Buzy	—	—
Russell P. Wilson	—	—
Paolo Baroldi, M.D., Ph.D.	—	—
Padmanabh Bhatt, Ph.D.	—	—
Jones W. Bryan, Ph.D.	262,000	$ 251,520

(1) Amount based on the difference between the exercise price of the options and the most recent fair market value of our common stock as determined in good faith by our board at the time of exercise.

Pension Benefits

Our NEOs did not participate in or have account balances in any qualified or nonqualified defined benefit plans sponsored by us. Our board of directors or Compensation Committee may elect to adopt qualified or nonqualified benefit plans in the future if it determines that doing so is in our best interest.

Deferred Compensation

We do not currently provide any deferred compensation program or benefits but may elect to do so in the future.

Employment Agreement and Severance Benefits

Jack A. Khattar

On December 22, 2005, we entered into an Employment Agreement with Mr. Khattar, our President and Chief Executive Officer, providing for his continued employment, effective as of the signing date. This employment agreement provides that Mr. Khattar's employment is at-will and may be terminated by either us or him at any time for any or no reason. Mr. Khattar's base salary was originally set at $359,000 per year, subject to review and increases from time to time by our board based on Mr. Khattar's and the company's performance. Mr. Khattar is also eligible to receive an annual bonus payment of up to 40% of his annual base salary, based on achievement of certain performance milestones identified by our board in consultation with Mr. Khattar. Furthermore, he is eligible to participate in our group benefits programs, including but not limited to, medical insurance, vacation and retirement plans, and will be provided with life insurance and the ability to participate in a 401(k) plan.

In the event Mr. Khattar is terminated by us without cause, as defined in the employment agreement, or he resigns with good reason, as defined in the employment agreement to include, among other things, any material reduction in base compensation or material diminution in title, duties or responsibilities as President and Chief Executive Officer, Mr. Khattar will be entitled to receive (i) continued payment of his base salary for 18 months, (ii) an amount equal to the most recent annual bonus paid to him which shall be payable over 18 months, and (iii) continuation of his taxable and non-taxable benefits for 18 months, subject to the limits under applicable law. In the event that

Mr. Khattar is terminated for cause or he terminates his employment without good reason, Mr. Khattar will not be entitled to the payments and benefits described above, unless mutually agreed upon in writing. Mr. Khattar's employment agreement also includes a non-solicitation covenant and a non-compete covenant for at least one year following the termination of Mr. Khattar's employment.

On February 29, 2012, we entered into an amended and restated employment agreement with Mr. Khattar effective January 1, 2012. Mr. Khattar's salary for fiscal year 2012 is $432,786, which will remain subject to review and increases from time to time by our board of directors based on Mr. Khattar's and the Company's performance. Mr. Khattar's amended and restated employment agreement contains other terms that are identical in all material respects to the terms of Mr. Khattar's previous employment agreement.

Other NEOs

Pursuant to the terms of the offer letters with Dr. Bryan and Dr. Bhatt, they are each entitled to receive six months of severance pay in connection with a restructuring of Supernus that results in the elimination of their respective positions.

Potential Payments Upon Termination and Change in Control

Assuming Mr. Khattar's employment is terminated without cause or he resigns for good reason, or he resigns for good reason after a change of control, each such term as defined in Mr. Khattar's employment agreement, on December 31, 2011, the estimated values of payments and benefits to Mr. Khattar are set forth in the following table. See "—Employment Agreement and Severance Benefits." In addition, the following table also sets forth the amounts payable upon a restructuring of Supernus that results in the elimination of Dr. Bryan's or Dr. Bhatt's respective positions assuming the restructuring occurred on December 31, 2011. No other NEOs are contractually entitled to payments upon termination or a change of control.

	Benefit	Termination Upon a Restructuring	Termination Without Cause or Resignation for Good Reason	Resignation for Good Reason After a Change of Control
Jack A. Khattar	Base salary continuation		$ 630,270	$ 630,270
	Bonus(1)		159,913	159,913
	Continuation of benefits(2)		20,058	20,058
	Total		$ 810,241	$ 810,241
Padmanabh Bhatt, Ph.D.	Severance	$ 137,093		
Jones W. Bryan, Ph.D.	Severance	$ 108,429		

(1) Amount shown for bonus in connection with a change in control represents the bonus payment Mr. Khattar would have earned based on the assumption that his employment terminated as of the last day of fiscal 2011, in accordance with his employment agreement. The amount set forth in the table reflects the most recent bonus paid to Mr. Khattar under our annual cash incentive plan as of December 31, 2011.

(2) Amounts shown for continuation of benefits represent estimates for the continuation of health, medical, life and group life insurance benefits afforded to Mr. Khattar and eligible family members in accordance with his employment agreement.

Director Compensation

Upon election to our board, each of our non-employee directors who are not affiliated with any 5% or greater stockholder was granted options to purchase shares of our common stock, subject to an annual vesting over a four-year period from the date of grant. The exercise price of the options was greater than or equal to the fair market value of a share of our common stock at the time of grant. In addition, our non-employee directors who are not affiliated with any 5% or greater stockholder receive

$20,000 annually. All directors have received and will continue to receive reimbursement for reasonable out-of-pocket expenses incurred in connection with attendance at meetings of the board.

The following table sets forth a summary of the compensation we paid to directors in 2011.

Name	Fees Earned or Paid in Cash ($)	Total ($)
William A. Nuerge	20,000	20,000
Frederick M. Hudson	20,000	20,000
John M. Siebert	20,000	20,000

None of the other members of our board received any compensation from us for their service on our board, other than reimbursement for reasonable out-of-pocket expenses as described above.

Equity-Based Plans

We maintain or propose to establish various benefit plans, as described below, for our officers, employees, non-employee directors and other key persons (including consultants and prospective employees). Our outstanding equity awards, which primarily consist of stock options, have been granted under our 2005 Stock Plan. Prior to the completion of this offering, the board of directors of the Company intends to adopt the Supernus Pharmaceuticals, Inc. 2012 Equity Incentive Plan (the "2012 Plan"), under which equity awards will be granted, and the Supernus Pharmaceuticals, Inc. 2012 Employee Stock Purchase Plan (the "ESPP"), under which employees may purchase discounted shares of our common stock. Following this offering, we will no longer make awards under the 2005 Stock Plan and will instead make awards under the 2012 Plan. The summaries below describe what we anticipate to be the material terms of the 2012 Plan and the ESPP.

2005 Stock Plan

Introduction. Our 2005 Stock Plan was adopted by our board and approved by our stockholders on December 21, 2005.

Share Reserve. 8,000,000 shares of common stock are reserved for the issuance of awards under our 2005 Stock Plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Generally, shares that expire or terminate for any reason without having been exercised in full shall be available for subsequent grants under our 2005 Stock Plan.

Administration. Our 2005 Stock Plan is administered by either our board or a committee of our board.

Eligibility. All officers, employees, directors and other key persons (including consultants and advisors) are eligible to participate in the 2005 Stock Plan, but only such eligible persons as are selected by the administrator will become participants.

Types of Awards. The types of awards that are available for grant under the 2005 Stock Plan are:

- incentive stock options;
- non-qualified stock options;
- purchase rights; and
- common stock awards.

The exercise price of stock options awarded under the 2005 Stock Plan may not be less than 100% of the fair market value of our common stock on the date of the option grant and the term of awards

may not exceed ten years. The administrator determines at what time or times each option may be exercised and, subject to the provisions of the 2005 Stock Plan, the period of time, if any, after retirement, death, disability or other termination of employment during which options may be exercised.

Transferability. Our 2005 Stock Plan does not allow for the transfer of incentive stock options, or of options (whether incentive stock options or non-qualified stock options) granted to persons required to file reports under Section 16(a) of the Exchange Act, and may be exercisable only by the grant holder during his or her lifetime, except that non-qualified options may be transferred pursuant to a qualified domestic relations order (as defined in the Code).

Change in Control. Except as otherwise provided by the administrator and evidenced in a particular award, in the event of a consolidation or merger or sale of all or substantially all of the assets of the company in which outstanding shares of common stock are exchanged for securities, cash or other property of any other corporation or business entity, or in the event of a liquidation of the company, the administrator may, in its discretion, terminate all stock options granted under the 2005 Stock Plan unless the successor entity agrees to assume the awards. In the event the awards are to be terminated, the administrator may provide for payment in exchange for the termination of the awards. Furthermore, at any time the administrator may provide for the acceleration of exercisability and/or vesting of an award.

Amendment or Termination. Our board of directors may amend, suspend, or terminate the 2005 Stock Plan in any respect at any time, subject to stockholder approval where such approval is required by applicable law or stock exchange rules. No amendment to the 2005 Stock Plan may materially impair any of the rights of a participant under any awards previously granted without his or her consent.

2012 Plan

Introduction. Prior to the completion of this offering, our board of directors intends to adopt the 2012 Plan, subject to approval by our shareholders. The 2012 Plan will authorize grants of stock options (both incentive stock options and non-qualified stock options) and certain other awards.

Share Reserve. shares of common stock will be reserved for delivery under awards granted pursuant to our 2012 Plan. This number will be subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Under the 2012 Plan, the number of shares available for grant will be determined net of shares of common stock withheld by the company in payment of the exercise price of the award or in satisfaction of tax withholding requirements with respect to the award, and without reduction for any shares of common stock underlying awards that are settled in cash, that expire or become unexercisable without having been exercised, or that are forfeited to or repurchased by the company for cash.

Administration. The 2012 Plan will be administered by either our board of directors or a committee of our board of directors.

Eligibility. Key employees and directors of, and consultants and advisors to, the company and its affiliates will be eligible to participate in the 2012 Plan, but only such persons as selected by the administrator will become participants.

Types of Awards. The types of awards that will be available for grant under the 2012 Plan are:

- stock options (incentive stock options and non-qualified stock options);
- stock appreciation rights;
- restricted stock;

- unrestricted stock;
- stock units, including restricted stock units;
- performance awards;
- cash awards; and
- other awards that are convertible into or otherwise based on stock.

Transferability. Under the 2012 Plan, neither incentive stock options nor, except as the administrator otherwise expressly provides, other awards will be permitted to be transferred other than by will or by the laws of descent and distribution. The administrator may permit awards other than incentive stock options to be transferred by gift, subject to such limitations as the administrator may impose.

Performance Criteria. The 2012 Plan provides that grants of performance awards will be made subject to the achievement of "performance criteria" over a performance period, which may be one or more periods as established by the administrator. For purposes of awards that are intended to qualify for the performance-based compensation exception under Section 162(m) of the Code, a performance criterion means an objectively determinable measure of performance relating to any or any combination of the following (measured either absolutely or by reference to an index or indices and determined either on a consolidated basis or, as the context permits, on a divisional, subsidiary, line of business, project or geographical basis or in combinations thereof): sales; revenues; assets; expenses; earnings before or after deduction for all or any portion of interest, taxes, depreciation, or amortization, whether or not on a continuing operations or an aggregate or per share basis; return on equity, investment, capital or assets; one or more operating ratios; borrowing levels, leverage ratios or credit rating; market share; capital expenditures; cash flow; stock price; stockholder return; sales of particular products or services; customer acquisition or retention; acquisitions and divestitures (in whole or in part); joint ventures and strategic alliances; spin-offs, split-ups and the like; reorganizations; or recapitalizations, restructurings, financings (issuance of debt or equity) or refinancings. A performance criterion and any targets with respect thereto determined by the administrator need not be based upon an increase, a positive or improved result or avoidance of loss. To the extent consistent with the requirements for satisfying the performance-based compensation exception under Section 162(m) of the Code, the administrator may provide in the case of any award intended to qualify for such exception that one or more of the performance criteria applicable to such award will be adjusted in an objectively determinable manner to reflect events (for example, but without limitation, acquisitions or dispositions) occurring during the performance period that affect the applicable performance criterion or criteria.

Corporate Transactions. In the event of a consolidation, merger or similar transaction, a sale or transfer of all or substantially all of the company's assets or a dissolution or liquidation of the company, the administrator may, among other things, provide for continuation or assumption of outstanding awards, for new grants in substitution of outstanding awards, for the cash-out of awards for an amount equal to the difference between their fair market value and their exercise price (if any) or for the accelerated vesting or delivery of shares under awards, in each case on such terms and with such restrictions as it deems appropriate. Except as otherwise provided in an award agreement, awards not assumed will terminate upon the consummation of such corporate transaction.

Adjustment. In the event of a stock dividend, stock split or combination of shares (including a reverse stock split), recapitalization or other change in the company's capital structure, the administrator will make appropriate adjustments to the maximum number of shares that may be delivered under the 2012 Plan and the individual limits included in the 2012 Plan, and will also make appropriate adjustments to the number and kind of shares of stock or securities subject to awards, the exercise prices of such awards or any other terms of awards affected by such change. The administrator may also make the types of adjustments described above to take into account events other than those

listed above if it determines that such adjustments are appropriate to avoid distortion in the operation of the 2012 Plan and to preserve the value of awards.

Term. No awards will be made after the 10th anniversary of the 2012 Plan's adoption, but previously granted awards will be permitted to continue beyond that date in accordance with their terms. The term of each award may not exceed 10 years.

Amendment or Termination. The administrator may at any time or times amend the 2012 Plan or any outstanding award for any purpose, subject to stockholder approval where such approval is required by applicable law, and may at any time terminate the 2012 Plan as to any future grants of awards, except that, unless otherwise expressly provided in the 2012 Plan, the administrator may not, without the participant's consent, alter the terms of an award so as to affect materially and adversely the participant's rights under the award, unless the administrator expressly reserved the right to do so at the time the award was granted.

ESPP

Introduction. Prior to the completion of this offering, our board of directors intends to adopt the ESPP, subject to approval by our shareholders. The ESPP, which will take effect as described below, will permit our eligible employees to purchase discounted shares of our common stock, subject to certain conditions.

Share Reserve. Up to shares of common stock will be reserved for sale under the ESPP. This number will be subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization.

Administration. The ESPP will be administered by the board of directors or a committee of our board of directors.

Eligibility. Each employee of the company and its designated subsidiaries that is employed on an applicable enrollment deadline will be entitled to participate, other than an employee that owns or is deemed to own 5% or more of the total combined voting power or value of all classes of stock of the company or its subsidiaries. In addition, no employee will be granted an option under the ESPP that would permit his or her rights to purchase shares of stock under all employee stock purchase plans of the company and its subsidiaries to accrue at a rate that exceeds $25,000 (or such other maximum as may be prescribed from time to time by the Code) in fair market value of such stock (determined at the time the option is granted) for any calendar year during which any such option granted to such employee is outstanding at any time.

Method of Participation. The periods of January 1 to June 30 and July 1 to December 31 of each year will generally be the "option periods" under the ESPP. However, the first option period will commence on such date, on or after an effective Form S-8 registration statement has been filed for the ESPP, as the board of directors may specify, and will end on the first June 30 or December 31 to follow such commencement by not less than six months. Generally, each eligible employee that has elected to participate in the ESPP not later than the enrollment deadline (as prescribed by the board of directors) prior to the beginning of an applicable option period will become a participant in the ESPP. Each participating employee will authorize the company to make after-tax payroll deductions equal to a whole percentage between 2% and 20% of his or her compensation, and such deduction rate will not be permitted to be changed during an option period unless the participant cancels his or her option entirely. The aggregate amount of a participant's payroll deductions during the option period will be credited to a non-interest bearing bookkeeping account.

Grant and Exercise of Options. Only options to purchase common stock of the company will be issuable under the ESPP. On the first day of each option period, each participant will be granted an

option to purchase the whole number (disregarding any fractional share amount) of shares of common stock equal to (i) the balance credited to the participant's withholding account (but generally subject to a limit of $12,500 or such other amount as the board of directors imposes) on the last day of the option period divided by (ii) 85% of the lesser of the fair market value of a share stock on (a) the first day of the option period or (b) the last day of the option period. If an employee is a participant in the ESPP on the last day of an option period, he or she will be deemed to have exercised the option granted to him or her for that option period, and the number of shares of common stock described in the preceding sentence will generally be delivered to him or her as soon as practicable thereafter.

Termination of Employment. Upon the termination of a participant's employment with the company for any reason, he or she will cease to be a participant, any option held by him or her under the ESPP will be deemed canceled, the balance of his or her withholding account will be returned to the participant (or his or her estate or designated beneficiary in the event of the participant's death), and he or she will have no further rights under the ESPP.

Transfer. Each participant's rights and privileges under any option granted under the ESPP will be exercisable during the participant's lifetime only by him or her and may not be sold, pledged, assigned, or transferred in any manner.

Corporate Transactions. In the event of a sale of all or substantially all of the company's common stock or a sale of all or substantially all of the assets of the company, or a merger or similar transaction in which the company is not the surviving corporation or which results in the acquisition of company by another person, the board of directors in its sole discretion may (but need not) provide that each outstanding option will be assumed or a substitute option granted by the acquiror or successor corporation or a parent or subsidiary of the acquiror or successor corporation; cancel each option and return the balances in participants' withholding accounts to the participants; or end the option period on or before the date of the proposed sale or merger.

Adjustment. In the event of any change in the outstanding common stock of the company by reason of a stock dividend, split-up, recapitalization, merger, consolidation, reorganization, or other capital change, the aggregate number and type of shares available under the ESPP, the number and type of shares under options granted but not exercised, the maximum number and type of shares purchasable under an option, and the option price will generally be appropriately adjusted.

Amendment or Termination. The company will generally be permitted to suspend or terminate the ESPP at any time, or at any time or times to amend the ESPP to any extent and in any manner it may deem advisable, in each case by vote of the board of directors. In connection therewith, the board of directors may either cancel outstanding options or continue them and provide that they will be exercisable either at the end of the applicable option period or on such earlier date as the board of directors may specify.

Limitation of Liability and Indemnification Arrangements

As permitted by the Delaware General Corporation Law, we intend to adopt provisions in our amended and restated certificate of incorporation and amended and restated bylaws, which will be effective upon the completion of this offering, that limit or eliminate the personal liability of our directors. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;

- any unlawful payments related to dividends or unlawful stock repurchases, redemptions or other distributions; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, our amended and restated bylaws, which will be effective upon the completion of this offering, provide that:

- we will indemnify our directors, officers and, at the discretion of our board, certain employees to the fullest extent permitted by the Delaware General Corporation Law; and
- advance expenses, including attorneys' fees, to our directors and, at the discretion of our board, to our officers and certain employees, in connection with legal proceedings, subject to limited exceptions.

We also intend to enter into indemnification agreements with each of our executive officers and directors. These agreements will provide that we will indemnify each of our directors to the fullest extent permitted by the Delaware General Corporation Law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

We also maintain management liability insurance to provide insurance coverage to our directors and officers for losses arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act of 1933, as amended, or the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, we have been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

These provisions may discourage stockholders from bringing a lawsuit against our directors in the future for any breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors, officers and certain employees pursuant to these indemnification provisions. We believe that these provisions, the indemnification agreements and the insurance are necessary to attract and retain talented and experienced directors and officers.

At present, there is no pending litigation or proceeding involving any of our directors, officers or employees in which indemnification will be required or permitted. We are not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

Rule 10b5-1 Sales Plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend or terminate the plan in some circumstances. Our directors and executive officers may also buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material, nonpublic information. However, pursuant to the terms of the lock-up agreements described under "Underwriting," no Rule 10b5-1 plan may provide for the transfer of common stock during the restricted period ending 180 days after the date of this prospectus (as such period may be extended under certain circumstances).

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than the compensation agreements and other arrangements described under "Compensation Discussion and Analysis" in this prospectus and the transaction set forth below, since January 1, 2009, there has not been any transaction or series of transactions to which we were or are a party in which the amount involved exceeded or exceeds $120,000 and in which any director, executive officer, holder of more than 5% of any class of our voting securities or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest. We believe the transaction set forth below was executed on terms no less favorable to us than we could have obtained from unaffiliated third parties.

Transactions with Our Executive Officers, Directors and 5% Stockholders

In May 2009, we entered into an amendment to a license agreement with Shire LLC, a holder of Series A convertible preferred stock, whereby Shire LLC and its affiliates paid us a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes our proprietary technologies. All four criteria necessary to recognize revenue in accordance with ASC 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction. Accordingly, the entire amount was recorded as royalty revenue in the consolidated statement of operations.

In December 2011, we entered into a Unit Purchase Agreement with Royalty Opportunities S.àr.l ("ROS"), which transaction is hereafter referred to as the "Purchase Transaction". Pursuant to the Unit Purchase Agreement, we sold 100% of our equity ownership interests in Royalty Sub to ROS for a payment of $27.0 million on the closing date of the Purchase Transaction and a potential milestone payment of $3.0 million payable upon occurrence of certain conditions. OrbiMed Advisors LLC ("OrbiMed"), which acts as investment manager for ROS, is the managing member of OrbiMed Capital GP II LLC, which is the general partner of OrbiMed Private Investments II, LP and OrbiMed Private Investments II (QP) LP, both of which are holders of Series A convertible preferred stock. Investment professionals employed by OrbiMed manage the investment portfolio of UBS Juniper Crossover Fund, L.L.C., a holder of Series A convertible preferred stock, on behalf of UBS Juniper Management, L.L.C. under the oversight of UBS Alternative and Quantitative Investments LLC. Michael Sheffery, one of our directors, is a member of OrbiMed.

Indemnification Agreements

We intend to enter into indemnification agreements with each of our directors and certain of our executive officers. These agreements will require us to indemnify these individuals and, in certain cases, affiliates of such individuals, to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain of our directors and 5% stockholders are party to an investor rights agreement providing for rights to register under the Securities Act certain shares of our capital stock. For more information regarding the registration rights granted pursuant to this agreement, see the section entitled "Description of Capital Stock—Registration Rights."

Employment Agreement and Offer Letters

We have entered into an employment agreement with our chief executive officer and offer letters with certain of our named executive officers, or NEOs, each of which provides for certain severance

benefits, among other things. For more information regarding this agreement and the offer letters with certain of our NEOs, see the section entitled "Executive Compensation—Employment Agreement and Severance Benefits."

Stock Option Awards

For more information regarding stock option awards and restricted stock granted to our named executive officers and directors, see the sections entitled "Executive Compensation—Outstanding Equity Awards at Fiscal Year End" and "Director Compensation."

Procedures for Related Party Transactions

Upon the closing of this offering, our audit committee will be responsible for reviewing and approving all material transactions with any related party on a continuing basis. Related parties can include any of our directors or officers, holders of 5% or more of our voting securities and their immediate family members. This obligation is set forth in writing in our Audit Committee Charter. We may not enter into a related person transaction unless our audit committee has reviewed and approved such transaction. Currently, such transactions are reviewed by management on a case-by-case basis.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of February 29, 2012, before and after the completion of this offering, and gives effect to the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering, by: (i) our named executive officers and our directors individually, (ii) all of our executive officers and directors, as a group, and (iii) any person who, to our knowledge, owns 5% or more of the common stock on an as-converted basis. Unless otherwise indicated, the address for each of the stockholders listed in the table below is c/o Supernus Pharmaceuticals, Inc., 1550 East Gude Drive, Rockville, Maryland 20850.

Beneficial ownership is determined in accordance with the rules and regulations of the United States Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within sixty (60) days of February 29, 2012 are deemed outstanding. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Except as indicated in the footnotes to this table and pursuant to applicable community property laws, we believe each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite that stockholders' name.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders:			
New Enterprise Associates 11, Limited Partnership and its affiliates(1) c/o New Enterprise Associates 1954 Greenspring Drive Suite 600 Timonium, MD 21093	25,000,000	44.9%	
OrbiMed Private Investments II, LP and its affiliates(2) c/o OrbiMed Advisors LLC 767 Third Avenue, 30th Floor New York, NY 10017	10,000,000	18.0%	
Abingworth Bioventures IV LP and its affiliates(3) c/o Abingworth Management Inc 890 Winter Street, Suite 150 Waltham, MA 02451	10,000,000	18.0%	
Shire LLC(4) 9200 Brookfield Court Suites 105 & 108 Florence, KY 41042	4,000,000	7.2%	

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
Executive Officers and Directors:			
Jack A. Khattar(5)	6,088,235	10.9%	
Gregory S. Patrick	—	*	
Paolo Baroldi, M.D., Ph.D(6)	213,750	*	
Padmanabh P. Bhatt, Ph.D.(7)	304,500	*	
Jones W. Bryan, Ph.D.(8)	304,500	*	
M. James Barrett, Ph.D.(9)	25,000,000	44.9%	
Michael Bigham(10)	10,000,000	18.0%	
Frederick M. Hudson(11)	8,750	*	
Charles W. Newhall, III(12)	25,000,000	44.9%	
William A. Nuerge	35,000	*	
Michael B. Sheffrey, Ph.D.(13)	10,000,000	18.0%	
John M. Siebert	—	*	
All executive officers and directors as a group (13 persons)(14)	52,109,735	93.6%	

* Less than one percent.

(1) Consists of (a) 24,965,000 shares of common stock issuable upon the automatic conversion of 24,965,000 shares of Series A convertible preferred stock held by New Enterprise Associates 11, Limited Partnership, or NEA 11; and (b) 35,000 shares of common stock issuable upon the automatic conversion of 35,000 shares of Series A convertible preferred stock held by NEA Ventures 2005, L.P., or Ven 2005. The shares directly held by NEA 11 are indirectly held by NEA Partners 11, Limited Partnership, or NEA Partners 11, the sole general partner of NEA 11, NEA 11 GP, LLC, or NEA 11 LLC, the sole general partner of NEA Partners 11, and each of the individual Managers of NEA 11 LLC. The individual Managers (collectively, the "Managers") of NEA 11 LLC are M. James Barrett, Peter J. Barris, Forest Baskett, Ryan D. Drant, Krishna "Kittu" Kolluri, C. Richard Kramlich, Charles W. Newhall III, Mark W. Perry and Scott D. Sandell. NEA Partners 11, NEA 11 LLC and the Managers share voting and dispositive power over the shares directly held by NEA 11. The shares directly held by Ven 2005 are indirectly held by J. Daniel Moore, the general partner of Ven 2005, who holds voting and dispositive power over the shares directly held by Ven 2005. All indirect holders of the above referenced shares disclaim beneficial ownership of all applicable shares except to the extent of their actual pecuniary interest therein, if any.

(2) Consists of 6,673,891 shares of common stock issuable upon the automatic conversion of 6,673,891 shares of Series A convertible preferred stock held by OrbiMed Private Investments II, LP; 2,498,842 shares of common stock issuable upon the automatic conversion of 2,498,842 shares of Series A convertible preferred stock held by OrbiMed Private Investments II (QP), LP; and 827,267 shares of common stock issuable upon the automatic conversion of 827,267 shares of Series A convertible preferred stock held by UBS Juniper Crossover Fund, L.L.C. OrbiMed Advisors LLC, or OrbiMed, a registered investment adviser under the Investment Advisers Act of 1940, as amended, is the managing member of OrbiMed Capital GP II LLC, which is the general partner of OrbiMed Private Investments II, LP and OrbiMed Private Investments II (QP), LP. Investment professionals employed by OrbiMed manage UBS Juniper Crossover Fund, L.L.C.'s investment portfolio on behalf of UBS Juniper Management, L.L.C. under the oversight of UBS Fund Advisor, L.L.C. Mr. Samuel D. Isaly is the managing member of and owner of a controlling interest in OrbiMed. Accordingly, OrbiMed and Mr. Isaly may be deemed to have voting and investment power over the shares held by OrbiMed Private Investments II, LP, OrbiMed Private

Investments II (QP), LP, and UBS Juniper Crossover Fund, L.L.C. noted above. OrbiMed and Mr. Isaly disclaim beneficial ownership with respect to such shares, except to the extent of their pecuniary interest therein, if any.

(3) Consists of 9,915,000 shares of common stock issuable upon the automatic conversion of 9,915,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV LP, or ABV IV; and 85,000 shares of common stock issuable upon the automatic conversion of 85,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV Executives LP, or ABV IV Executives. Abingworth Management Limited, or AML, serves as investment manager of each of ABV IV and ABV IV Executives and may be deemed to share voting and dispositive power with respect to the securities owned by ABV IV and ABV IV Executives.

(4) Consists of 4,000,000 shares of common stock issuable upon the automatic conversion of 4,000,000 shares of Series A convertible preferred stock held by Shire LLC. Shire LLC is an indirect, wholly-owned subsidiary of Shire plc. The directors of Shire plc are Mr. Matthew Emmens, Mr. Angus Russell, Mr. Graham Hetherington, Mr. David Kappler, Dr. Jeffrey Leiden, Mr. Bill Burns, Dr. David Ginsburg, Ms. Anne Minto, Ms. Susan Kilsby and Mr. David Stout. The board of directors of Shire plc may be deemed to have voting and investment control over the shares held by Shire LLC. The individuals noted above disclaim beneficial ownership of such shares.

(5) Consists of 4,500,000 shares of common stock held by KBT Trust and 1,588,235 common shares held by Mr. Khattar.

(6) Consists of 213,750 shares of common stock issuable to Dr. Baroldi upon the exercise of options within 60 days of February 29, 2012. Dr. Baroldi served as our Senior Vice President, Chief Medical Officer until March 2012.

(7) Consists of 304,500 shares of common stock issuable to Dr. Bhatt upon the exercise of options within 60 days of February 29, 2012.

(8) Consists of 42,500 shares of common stock issuable to Dr. Bryan upon the exercise of options within 60 days of February 29, 2012 and 262,000 shares held by Dr. Bryan.

(9) Consists of 25,000,000 shares of common stock issuable as described in note (1) above. Dr. Barrett, a member of our board, is a Manager of NEA 11 LLC, and disclaims beneficial ownership of the shares of capital stock held by NEA 11, except to the extent of his pecuniary interest therein, if any.

(10) Consists of 10,000,000 shares of common stock issuable as described in note (3) above. Michael Bigham is a director of AML, and in such capacity may be deemed to beneficially own the securities owned of record by ABV IV and ABV IV Executives, but disclaims beneficial ownership of such securities, except to the extent of his pecuniary interest therein, if any.

(11) Consists of 8,750 shares of common stock issuable to Mr. Hudson upon the exercise of options within 60 days of February 29, 2012.

(12) Consists of 25,000,000 shares of common stock issuable as described in note (1) above. Mr. Newhall, a member of our board, is a Manager of NEA 11 LLC and disclaims beneficial ownership of the shares of capital stock held by NEA 11, except to the extent of his pecuniary interest therein, if any.

(13) Consists of 10,000,000 shares of common stock issuable as described in note (2) above. Dr. Sheffery, a member of our board, is a member of OrbiMed, and disclaims beneficial ownership of such securities, except to the extent of his pecuniary interest therein, if any.

(14) Consists of 45,000,000 shares of common stock issuable upon the automatic conversion of 45,000,000 shares of Series A convertible preferred stock, 6,385,235 shares of common stock held by directors and executive officers, and 724,500 shares of common stock issuable to our of directors and executive officers upon the exercise of options within 60 days of February 29, 2012.

DESCRIPTION OF CAPITAL STOCK

General

Our Amended and Restated Certificate of Incorporation, which will become effective upon the closing of this offering, authorizes the issuance of up to shares of common stock, par value $0.001 per share, and shares of preferred stock, par value $0.001 per share. As of December 31, 2011, there were shares of common stock outstanding (after giving effect to the automatic conversion of all outstanding shares of preferred stock into shares of common stock and the for reverse stock split). As of December 31, 2011, we had approximately record holders of our capital stock. All of our outstanding shares of preferred stock will automatically convert into shares of common stock upon the closing of this offering. After the closing of this offering and after giving effect to the conversion of our preferred stock and the for reverse stock split, we will have shares of common stock and no shares of preferred stock outstanding.

The description below gives effect to the adoption of our Amended and Restated Bylaws and is qualified in its entirety by reference to these documents, copies of which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Upon the completion of this offering, we will be authorized to issue one class of common stock. Holders of our common stock are entitled to one vote for each share of common stock held of record for the election of directors and on all matters submitted to a vote of stockholders. Holders of our common stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any preferred stock then outstanding. Upon our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in our net assets legally available after the payment of all our debts and other liabilities, subject to the preferential rights of any preferred stock then outstanding. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future. Except as described under "—Antitakeover Effects of Delaware Law and Provisions of Our Certificate of Incorporation and Bylaws" below, a majority vote of the holders of common stock is generally required to take action under our amended and restated certificate of incorporation and amended and restated bylaws.

Preferred Stock

Upon the completion of this offering, our board of directors will be authorized, without action by the stockholders, to designate and issue up to an aggregate of shares of preferred stock in one or more series. Our board of directors can designate the rights, preferences and privileges of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible future financings and acquisitions and other corporate purposes, could, under certain circumstances, have the effect of restricting dividends on our common stock, diluting the voting power of our common stock, impairing the liquidation rights of our common stock, or delaying, deferring or preventing a change in control of our company, which might harm the market price of our common stock.

Our board of directors will make any determination to issue such shares based on its judgment as to our company's best interests and the best interests of our stockholders. Any shares of our Series A convertible preferred stock outstanding immediately prior to this offering will automatically convert into shares of our common stock on a one-for-one basis in connection with this offering. Upon the

completion of this offering, we will have no shares of preferred stock outstanding and we have no current plans to issue any shares of preferred stock.

Warrants

In connection with our secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. The warrants are immediately exercisable and expire on January 26, 2021. In December 2011, in connection with the amendment of the secured credit facility, we issued to the lenders warrants to purchase an aggregate of 200,000 shares of our Series A convertible preferred stock at $1.50 per share. The warrants are immediately exercisable and expire on December 30, 2021. Upon completion of this offering, the respective lender warrants will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable. All of our warrant holders are subject to lock-up agreements with the underwriters that restrict the sale of our securities for 180 days. See "Underwriting" for a description of these lock-up agreements.

Registration Rights

Demand Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares of our common stock will be entitled to certain demand registration rights. If holders of registrable securities then outstanding request a registration having a reasonably anticipated aggregate offering price to the public of at least $, we may be required to register their shares. After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain holders have the right to make two requests that we register all or a portion of their shares of our common stock.

Piggyback Registration Rights

After expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), in the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other stockholders, the holders of approximately shares of our common stock will be entitled to certain "piggyback" registration rights allowing the holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a registration related to the shares issuable upon conversion of debt securities or employee benefit plans, the holders of these shares of our common stock are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their shares in the registration.

Form S-3 Registration Rights

After the expiration of a 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares will be entitled to certain Form S-3 registration rights if we are eligible to file a registration statement on Form S-3. As a result, these holders will have the right to demand that we file a registration statement on Form S-3 so long as the aggregate value of the securities to be sold under the registration statement on Form S-3 is at least $500,000, subject to specified exceptions.

Antitakeover Effects Of Delaware Law And Provisions Of Our Certificate Of Incorporation And Bylaws

Delaware Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law. This statute regulating corporate takeovers prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for three years following the date that the stockholder became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66^2/3\%$ of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is any person who, together with such person's affiliates and associates (i) owns 15% or more of a corporation's voting securities or (ii) is an affiliate or associate of a corporation and was the owner of 15% or more of the corporation's voting securities at any time within the three year period immediately preceding a business combination of the corporation governed by Section 203. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board does not approve in advance. We also anticipate that Section 203 may discourage takeover attempts that might result in a premium over the market price for the shares of common stock held by our stockholders.

Certificate Of Incorporation And Bylaw Provisions

Provisions of our certificate of incorporation and bylaws, which will be effective upon the closing of this offering, may have the effect of making it more difficult for a third party to acquire, or discourage a third party from attempting to acquire, control of our company by means of a tender offer, a proxy contest or otherwise. These provisions may also make the removal of incumbent officers and directors more difficult. These provisions are intended to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of our company to first negotiate with us. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions may make it more difficult for stockholders to take specific corporate actions and could have the effect of delaying or preventing a change in control.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Listing

We have applied to list our shares of common stock for quotation on The NASDAQ Global Market under the symbol "SUPN."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and there can be no assurance that a significant public market for our common stock will develop or be sustained after this offering. Future sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options or warrants, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon completion of this offering, we will have shares of common stock outstanding, assuming (1) the conversion of all outstanding shares of preferred stock, (2) no exercise of any options outstanding as of December 31, 2011, (3) no exercise of any warrants to purchase shares outstanding as of the date of this prospectus and (4) no exercise of the underwriters' option to purchase additional shares from us. All shares sold in this offering, plus any shares issued upon exercise of the underwriters' option to purchase additional shares from us, will be freely tradable without restriction under the Securities Act, unless purchased by our "affiliates" as that term is defined in Rule 144 under the Securities Act. The remaining shares of common stock outstanding are "restricted securities" within the meaning of Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 701 or meet the safe harbor qualifications under Rule 144 under the Securities Act as summarized below.

The holders of shares of outstanding common stock as of the closing of this offering and the holders of shares of common stock underlying options or warrants as of the closing of this offering, including all of our officers and directors, have entered into lock-up agreements with the underwriters pursuant to which they have generally agreed, subject to certain exceptions, not to offer or sell any shares of common stock or securities convertible into or exchangeable or exercisable for shares of common stock for a period of 180 days from the date of this prospectus without the prior written consent of Citigroup Global Markets Inc. and Piper Jaffray & Co. At any time and without public notice, Citigroup Global Markets Inc. and Piper Jaffray may, in their sole discretion, release some or all of the securities from these lock-up agreements. In general, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. See "Underwriting."

Rule 144

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, a person who is one of our affiliates and has beneficially owned shares of our common stock for at least six months would be entitled to sell within any three month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal approximately shares immediately after the completion of this offering; or
- the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than an affiliate, is entitled to sell the shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, and will be subject only to the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

Shares of our common stock will qualify for resale under Rule 144 within 180 days of the date of this prospectus, subject to the lock-up agreements as described herein and under "Underwriting" in this prospectus, and to the extent such shares have been released from any repurchase option that we may hold.

Rule 701

Any of our employees, officers, directors or consultants who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice provisions of Rule 144.

Neither Rule 144 nor Rule 701 supersedes the contractual obligations of our security holders set forth in the lock-up agreements described above.

Lock-up Agreements

We, our officers and directors, our other stockholders, our warrant holders and option holders have agreed, subject to certain exceptions, that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Piper Jaffray dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Piper Jaffray in their sole discretion, together may release any of the securities subject to these lock-up agreements at any time, which, in the case of officers and directors, shall be with notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), holders of our preferred stock convertible into 49,000,000 shares of our common stock have demand and piggyback registration rights with respect to the shares of common stock to be issued upon conversion of their preferred stock. By exercising their registration rights and causing a large number of shares to be registered and sold in the public market, these holders could cause the price of our common stock to fall. In addition, any demand to include such shares in our registration statements could have a material adverse effect on our ability to raise needed capital. For more information about these registration rights, see "Description of Capital Stock—Registration Rights."

Stock Options

As of December 31, 2011, we had outstanding options to purchase 2,392,470 shares of common stock, of which 1,050,284 shares were vested. As soon as practicable after completion of this offering, we intend to register the shares of our common stock subject to the options outstanding or reserved for issuance under our stock plans on one or more registration statements on Form S-8 under the Securities Act. See "Management—Equity-Based Plans" for additional information about these plans. Subject to the lock-up agreements and the restrictions imposed under our stock plans, shares of common stock issued pursuant to our stock plans after the effective date of the registration statements on Form S-8 will be available for sale in the public market without restriction to the extent that they are held by persons who are not our affiliates.

Warrants

We have outstanding warrants to purchase (i) 375,000 shares of Series A convertible preferred stock at an exercise price of $1.00 per share and (ii) 200,000 shares of Series A convertible preferred stock at an exercise price of $1.50 per share. Upon completion of this offering, the respective lender warrants will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable. All of our warrant holders are subject to lock-up agreements with the underwriters that restrict the sale of our securities for 180 days. See "Underwriting" for a description of these lock-up agreements.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of our common stock by Non-U.S. Holders (as defined below), but does not purport to be a complete analysis of all the potential tax considerations that may be relevant to such holders. For purposes of this summary, a "Non-U.S. Holder" means a beneficial owner of common stock that for U.S. federal income tax purposes is:

- a non-resident alien individual;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized under the laws of a jurisdiction other than the U.S., any state thereof, or the District of Columbia;
- an estate, other than an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust, other than a trust (a) the administration of which is subject to the primary supervision of a court within the United States and which has one or more U.S. persons have the authority to control all substantial decisions of the trust, or (b) that has a valid election to be treated as a U.S. person for U.S. federal income tax purposes.

If a partnership (or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of its partners will generally depend upon the status of the partners and the activities of the partnership. Accordingly, we urge partnerships (and other entities or arrangements treated as partnerships for U.S. federal income tax purposes) that hold our common stock and partners in such partnerships to consult their tax advisors.

This summary deals only with shares of our common stock that are purchased in this offering and held as "capital assets" within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the "Code"). This summary is general in nature and thus does not purport to deal with all aspects of U.S. federal income taxation that might be relevant to a particular Non-U.S. Holder in light of its particular circumstances or status, nor does it address specific tax considerations that may be relevant to particular persons (including, for example, financial institutions, broker-dealers, insurance companies, partnerships or other pass-through entities, regulated investment companies, real estate investment trusts, grantor trusts, certain U.S. expatriates, pension plans, tax-exempt organizations, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, persons that receive shares of our common stock in connection with services provided, or persons in special situations, such as those who have elected to mark securities to market or those who hold common stock as part of a straddle, hedge, conversion transaction or other integrated investment). In addition, this summary does not address U.S. federal alternative minimum, estate and gift tax considerations (except to the extent discussed below) or considerations under the unearned income Medicare contribution tax, or considerations under the tax laws of any state, local or non-U.S. jurisdiction.

This summary is based on the Code, the Treasury regulations promulgated or proposed thereunder, and administrative and judicial interpretations thereof, all as of the date hereof and all of which are subject to change or differing interpretations at any time, possibly with retroactive effect. Any change could alter the tax consequences to Non-U.S. Holders described in this prospectus. In addition, the Internal Revenue Service, or the IRS, could challenge one or more of the tax consequences described in this prospectus.

This summary is for general information only. Non-U.S. Holders are urged to consult their tax advisors concerning the U.S. federal, state, local and non-U.S. taxation and other tax consequences to

them of the purchase, ownership and disposition of our common stock, as well as the application of U.S. federal, state, local and non-U.S. income and other tax laws.

Distributions

In the event that we make a distribution of cash or property with respect to our common stock, such distribution will be treated as a dividend for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Any distribution not treated as a dividend will be treated first as a tax-free return of capital to the extent of the Non-U.S. Holder's tax basis in our common stock and thereafter as capital gain from the sale or exchange of such stock as described in the next section. Dividends paid to a Non-U.S. Holder generally will be subject to a 30% U.S. federal withholding tax unless such Non-U.S. Holder provides us, or the relevant agent, as the case may be, with a properly executed IRS Form W-8, such as:

1. IRS Form W-8BEN (or successor form) claiming, under penalties of perjury, a reduction in withholding under an applicable income tax treaty, or

2. IRS Form W-8ECI (or successor form) stating that a dividend paid on common stock is not subject to withholding tax because it is effectively connected with a U.S. trade or business of the Non-U.S. Holder (in which case such dividend generally will be subject to regular graduated U.S. federal income tax rates as described below).

The certification requirement described above also may require a Non-U.S. Holder to obtain a U.S. taxpayer identification number. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the Non-U.S. Holder's behalf, the Non-U.S. Holder will be required to provide appropriate documentation to such agent. The agent will then be required to provide certification to us, or our paying agent, as the case may be, either directly or through other intermediaries.

Each Non-U.S. Holder is urged to consult its own tax advisor about the specific methods for satisfying these requirements. A claim for exemption will not be valid if the person receiving the applicable form has actual knowledge or reason to know that the statements on the form are false.

If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty, such holder may obtain a refund or credit of any excess amount withheld by timely filing an appropriate claim for refund with the IRS.

If dividends are effectively connected with a U.S. trade or business of the Non-U.S. Holder (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), the Non-U.S. Holder, although exempt from the withholding tax described above (provided that the certifications described above are satisfied), will be subject to U.S. federal income tax on such dividends on a net income basis in the same manner as if it were a resident of the United States. In addition, if such Non-U.S. Holder is a non-U.S. corporation and dividends are effectively connected with its U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), such Non-U.S. Holder may be subject to an additional "branch profits tax" equal to 30% (unless reduced by an applicable income treaty) in respect of such effectively-connected income.

Taxable Disposition of Our Common Stock

Subject to the discussion below under the sections entitled "Recently Enacted Legislation Affecting Taxation of Our Common Stock Held by or Through Foreign Entities" and "Information Reporting and Backup Withholding," a Non-U.S. Holder generally will not be subject to U.S. federal income tax on

gain recognized on a sale, exchange or other taxable disposition of a share of our common stock, unless:

- the gain is effectively connected with a trade or business of the Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment);
- the Non-U.S. Holder is a nonresident alien who is present in the United States for 183 days or more in the taxable year of the disposition and meets certain other conditions; or
- we are or have been a "United States real property holding corporation," as defined in the Code (a "USRPHC"), at any time within the shorter of the five-year period preceding the disposition and the Non-U.S. Holder's holding period the share our common stock.

If a Non-U.S. Holder is engaged in a trade or business in the U.S. and gain recognized by the Non-U.S. Holder on a sale or other disposition of our common stock is effectively connected with the conduct of such trade or business, the Non-U.S. Holder will generally be subject to regular U.S. income tax as if the Non-U.S. Holder were a U.S. person, subject to an applicable income tax treaty providing otherwise. Additionally, a non-U.S. corporation may also, under certain circumstances, be subject to an additional "branch profits tax" imposed at a rate of 30% (or, if applicable, a lower income tax treaty rate). Non-U.S. Holders whose gain from dispositions of our common stock may be effectively connected with the conduct of a trade or business in the United States are urged to consult their own tax advisors with respect to the U.S. tax consequences of the purchase, ownership and disposition of our common stock.

A nonresident alien who is subject to U.S. federal income tax because such individual was present in the United States for 183 days or more in the taxable year of the taxable disposition of our common stock will be subject to a flat 30% tax on the gain derived from such disposition, which may be offset by certain U.S. source capital losses.

We believe that we are not, and do not anticipate becoming, a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of other business and real property assets, there can be no assurance that we will not become a USRPHC in the future. Even if we become a USRPHC, a Non-U.S. Holder would not be subject to U.S. federal income tax on a sale, exchange or other taxable disposition of our common stock so long as our common stock continues to be regularly traded on an established securities market and such Non-U.S. Holder does not own and is not deemed to own (directly, indirectly or constructively) more than 5% of our common stock at any time during the shorter of the five year period ending on the date of disposition and the holder's holding period. There can be no assurance that our common stock will qualify as regularly traded on an established market.

Information Reporting and Backup Withholding

Generally, we must report annually to the IRS and to each Non-U.S. Holder certain information, including the Non-U.S. Holder's name, address and taxpayer identification number, the aggregate amount of distributions on our common stock paid to that Non-U.S. Holder during the calendar year and the amount of tax withheld, if any. Pursuant to tax treaties and certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Backup withholding is imposed at an applicable rate (currently 28% and scheduled to increase to 31% in 2013) on dividends and certain other types of payments to certain U.S. persons. Backup withholding will not apply to payments of dividends on common stock or proceeds from the sale of common stock payable to a Non-U.S. Holder if the certification described above in "Distributions" is duly provided by such Non-U.S. Holder or the Non-U.S. Holder otherwise establishes an exemption, provided that the payor does not have actual knowledge or reason to know that the holder is a U.S.

person or that the conditions of any claimed exemption are not satisfied. Certain information reporting may still apply to distributions even if an exemption from backup withholding is established.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a Non-U.S. Holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a Non-U.S. Holder and satisfies certain other requirements, or otherwise establishes an exemption. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Non-U.S. Holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding tax rules from a payment to a Non-U.S. Holder will be allowed as a refund or a credit against such Non-U.S. Holder's U.S. federal income tax liability by timely filing an appropriate claim for refund with the IRS.

Non-U.S. Holders are urged to consult their own tax advisors regarding their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding.

Recently Enacted Legislation Affecting Taxation of Our Common Stock Held by or Through Foreign Entities

Recently enacted legislation (commonly referred to as "FATCA") generally will impose a U.S. federal withholding tax of 30% on payments to certain non-U.S. entities (including certain intermediaries), including dividends on, and the gross proceeds from dispositions of, our common stock, unless such persons comply with a complicated U.S. information reporting, disclosure, and certification regime. This new regime requires, among other things, a broad class of persons to enter into agreements with the IRS to obtain, disclose, and report information about their investors and account holders. This new regime and its requirements are different from, and in addition to, the certification requirements described elsewhere in this discussion. As currently proposed, the FATCA withholding rules would apply to payments of dividends on our common stock beginning January 1, 2014, and to gross proceeds from dispositions of our common stock beginning January 1, 2015. Under certain circumstances, a Non-U.S. Holder may be eligible for refunds of, or credits for, such taxes.

Although administrative guidance and proposed regulations have been issued, regulations implementing the new FATCA regime have not yet been finalized and the exact scope of this new regime remains unclear and potentially subject to material changes. Prospective investors should consult with their own tax advisors regarding the possible impact of the FATCA rules on their investment in our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of this 30% withholding tax under FATCA.

U.S. Federal Estate Tax

Common stock owned or treated as owned by an individual who is a Non-U.S. Holder at the time of death generally will be included in the individual's gross estate for U.S. federal estate tax purposes and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX AND ESTATE CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW.

UNDERWRITING

Citigroup Global Markets Inc. and Piper Jaffray & Co. are acting as joint book-running managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus, each underwriter named below has severally agreed to purchase, and we have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter's name.

Underwriter	Number of Shares
Citigroup Global Markets Inc.	
Piper Jaffray & Co.	
Cowen and Company, LLC	
Stifel, Nicolaus & Company, Incorporated	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the over-allotment option described below) if they purchase any of the shares.

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price not to exceed $ per share. If all the shares are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms. The representatives have advised us that the underwriters do not intend to make sales to discretionary accounts.

If the underwriters sell more shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares at the public offering price less the underwriting discount. The underwriters may exercise the option solely for the purpose of covering over-allotments, if any, in connection with this offering. To the extent the option is exercised, each underwriter must purchase a number of additional shares approximately proportionate to that underwriter's initial purchase commitment. Any shares issued or sold under the option will be issued and sold on the same terms and conditions as the other shares that are the subject of this offering.

We, our officers and directors, our other stockholders, our warrant holders and option holders have agreed, subject to certain exceptions, that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Piper Jaffray, dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Piper Jaffray in their sole discretion, together may release any of the securities subject to these lock-up agreements at any time, which, in the case of officers and directors, shall be with notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Prior to this offering, there has been no public market for our shares. Consequently, the initial public offering price for the shares will be determined by negotiations between us and the

representatives. Among the factors considered in determining the initial public offering price will be our results of operations, our current financial condition, our future prospects, our markets, the economic conditions in and future prospects for the industry in which we compete, our management, and currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company. We cannot assure you, however, that the price at which the shares will sell in the public market after this offering will not be lower than the initial public offering price or that an active trading market in our shares will develop and continue after this offering.

We have applied to have our shares listed on the Nasdaq Global Market under the symbol "SUPN."

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option.

	Paid by Supernus Pharmaceuticals, Inc.	
	No Exercise	Full Exercise
Per share	$	$
Total	$	$

In connection with the offering, the underwriters may purchase and sell shares in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions, which may include purchases pursuant to the over-allotment option, and stabilizing purchases.

- Short sales involve secondary market sales by the underwriters of a greater number of shares than they are required to purchase in the offering.
    - "Covered" short sales are sales of shares in an amount up to the number of shares represented by the underwriters' over-allotment option.
    - "Naked" short sales are sales of shares in an amount in excess of the number of shares represented by the underwriters' over-allotment option.
- Covering transactions involve purchases of shares either pursuant to the over-allotment option or in the open market after the distribution has been completed in order to cover short positions.
    - To close a naked short position, the underwriters must purchase shares in the open market after the distribution has been completed. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
    - To close a covered short position, the underwriters must purchase shares in the open market after the distribution has been completed or must exercise the over-allotment option. In determining the source of shares to close the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.
- Stabilizing transactions involve bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the shares. They may also cause the price of the shares to be higher than the price that

would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on the Nasdaq Global Market, in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

The underwriters are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the underwriters have performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses. The underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. Cowen Healthcare Royalty Partners (CHRP), an affiliate of Cowen and Company, LLC, holds certain of the Non-recourse Notes issued by our former subsidiary, Royalty Sub.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Notice to Prospective Investors in the European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus may not be made to the public in that relevant member state other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the relevant member state has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by us for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For purposes of this provision, the expression an "offer of securities to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe for the shares, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the relevant member state) and includes any relevant implementing measure in the relevant member state. The expression 2010 PD Amending Directive means Directive 2010/73/EU.

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares as contemplated in this prospectus. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of the sellers or the underwriters.

Notice to Prospective Investors in the United Kingdom

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus nor any other offering material relating to the shares described in this prospectus has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers.* The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to the shares has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or
- in a transaction that, in accordance with article L.411-2-II-1°-or-2°-or 3° of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

Notice to Prospective Investors in Hong Kong

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the

meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Japan

The shares offered in this prospectus have not been registered under the Securities and Exchange Law of Japan. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

- where no consideration is or will be given for the transfer; or

- where the transfer is by operation of law.

Notice to Prospective Investors in Australia

No prospectus or other disclosure document (as defined in the Corporations Act 2001 (Cth) of Australia ("Corporations Act") in relation to the common stock has been or will be lodged with the Australian Securities & Investments Commission ("ASIC"). This document has not been lodged with ASIC and is only directed to certain categories of exempt persons. Accordingly, if you receive this document in Australia:

(a) you confirm and warrant that you are either:

(i) a "sophisticated investor" under section 708(8)(a) or (b) of the Corporations Act;

(ii) a "sophisticated investor" under section 708(8)(c) or (d) of the Corporations Act and that you have provided an accountant's certificate to us which complies with the requirements of section 708(8)(c)(i) or (ii) of the Corporations Act and related regulations before the offer has been made;

(iii) a person associated with the company under section 708(12) of the Corporations Act; or

(iv) a "professional investor" within the meaning of section 708(11)(a) and (b) of the Corporations Act, and to the extent that you are unable to confirm or warrant that you are an exempt sophisticated investor, associated person or professional investor under the Corporations Act any offer made to you under this document is void and incapable of acceptance; and

(b) you warrant and agree that you will not offer any of the common stock for resale in Australia within 12 months of that common stock being issued unless any resale offer is exempt from the requirement to issue a disclosure document under section 708 of the Corporations Act.

LEGAL MATTERS

Our counsel, Ropes & Gray LLP, Boston, Massachusetts, will pass on the validity of the shares of common stock offered by this prospectus. Goodwin Procter LLP, Boston, Massachusetts, has acted as counsel for the underwriters in connection with certain legal matters related to this offering.

EXPERTS

The consolidated financial statements of Supernus Pharmaceuticals, Inc. at December 31, 2011 and 2010, and for each of the three years in the period ended December 31, 2011, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 2 to the consolidated financial statements) appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

MARKET AND INDUSTRY DATA

Market data and certain industry data and forecasts included in this prospectus were obtained from internal company surveys, market research, consultant surveys, publicly available information and industry publications and surveys. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third-party sources. While we believe our internal company research is reliable and the market definitions we use are appropriate, neither such research nor these definitions have been verified by any independent source. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors."

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission, or SEC, a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and the exhibits filed as part of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The reports and other information we file with the SEC can be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington D.C. 20549. Copies of these materials can be obtained at prescribed rates from the SEC's Public Reference Room at such address. You may obtain information regarding the operation of the public reference room by calling 1-800-SEC-0330. The SEC also maintains a web site (http://www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

Upon completion of this offering, we will become subject to the reporting and information requirements of the Exchange Act and, as a result, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the web site of the SEC referred to above.

Supernus Pharmaceuticals, Inc.

Consolidated Financial Statements

Years ended December 31, 2009, 2010 and 2011

Report of Independent Registered Public Accounting Firm

The Board of Directors
Supernus Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Supernus Pharmaceuticals, Inc. as of December 31, 2010 and 2011, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Supernus Pharmaceuticals, Inc. at December 31, 2010 and 2011, and the consolidated results of its operations and its cash flows for the three years in the period ended December 31, 2011, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that Supernus Pharmaceuticals, Inc. will continue as a going concern. As more fully described in Note 2, the Company has incurred recurring operating losses and negative cash flows from operations and will require additional capital to fund operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The 2011 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

McLean, Virginia
March 15, 2012

Supernus Pharmaceuticals, Inc.

Consolidated Balance Sheets

	December 31,		Pro Forma Stockholders' Deficit at December 31, 2011(1)
	2010	2011	(unaudited)
	(in thousands except share and per share amounts)		
Assets			
Current assets:			
Cash and cash equivalents	$ 23,740	$ 48,544	
Marketable securities	8,964	—	
Marketable securities—restricted	261	245	
Accounts receivable	44	128	
Interest receivable	114	—	
Prepaid expenses	197	338	
Deferred financing costs, current	53	144	
Assets of discontinued operations (including restricted cash)	6,441	—	
Total current assets	39,814	49,399	
Property and equipment, net	1,249	1,310	
Purchased patents, net	1,142	912	
Other assets	78	55	
Deferred financing costs, long-term	1,291	2,054	
Assets of discontinued operations	3,435	—	
Total assets	$ 47,009	$ 53,730	
Liabilities and stockholders' equity (deficit)			
Current liabilities:			
Accounts payable and accrued expenses	$ 11,263	$ 10,078	
Accrued compensation	1,444	1,547	
Deferred revenue	—	232	
Interest payable	—	138	
Secured notes payable, current	—	6,775	
Current liabilities of discontinued operations	2,500	—	
Total current liabilities	15,207	18,770	
Deferred revenue, net of current portion	—	465	
Other non-current liabilities	861	1,399	
Supplemental executive retirement plan	261	245	
Secured notes payable, net of current portion	—	22,711	
Warrant liability	—	697	
Non-current liabilities of discontinued operations	75,000	—	
Total liabilities	91,329	44,287	
Stockholders' equity (deficit):			
Series A convertible preferred stock, $0.001 par value—49,000,000 and 49,625,000 shares authorized at December 31, 2010 and 2011, respectively; 49,000,000 shares issued and outstanding at December 31, 2010 and 2011; aggregate liquidation preference of $66,090 and $69,520 at December 31, 2010 and 2011 respectively	49	49	$ —
Common stock, $0.001 par value—62,000,000 and 62,625,000 shares authorized at December 31, 2010 and 2011; 6,371,061, and 6,649,302 shares issued and outstanding at December 31, 2010 and 2011, respectively; 55,649,302 shares issued and outstanding at December 31, 2011 on a pro forma basis	6	7	56
Additional paid-in capital	49,411	49,357	49,357
Accumulated other comprehensive income (loss)	—	1	1
Accumulated deficit	(93,786)	(39,971)	(39,971)
Total stockholders' equity (deficit)	(44,320)	9,443	$ 9,443
Total liabilities and stockholders'equity (deficit)	$ 47,009	$ 53,730	

(1) The pro forma stockholders' equity at December 31, 2011 reflects the expected automatic conversion of the 49,000,000 shares of Series A convertible preferred stock into 49,000,000 shares of common stock upon completion of an initial public offering.

See accompanying notes

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Operations

	Year Ended December 31,		
	2009	2010	2011
	(in thousands of dollars, except share and per share data)		
Revenues			
Development and milestone revenues	$ 1,050	$ 106	$ 803
Royalty revenues	36,875	—	—
Total revenues	37,925	106	803
Costs and expenses			
Research and development	29,260	35,149	30,627
General and administrative	4,649	5,080	7,928
Total costs and expenses	33,909	40,229	38,555
Operating income (loss) from continuing operations	4,016	(40,123)	(37,752)
Other income (expense):			
Interest income	122	107	31
Interest expense	—	—	(1,866)
Other	—	542	117
Total other income (expense)	122	649	(1,718)
Income (loss) from continuing operations before income tax benefit	4,138	(39,474)	(39,470)
Income tax benefit	—	399	16,245
Income (loss) from continuing operations	$ 4,138	$ (39,075)	$ (23,225)
Discontinued Operations:			
Income (loss) from discontinued operations, net of tax	(3,678)	612	2,188
Gain on disposal of discontinued operations, net of tax	—	—	74,852
Income (loss) from discontinued operations	(3,678)	612	77,040
Net income (loss)	$ 460	$ (38,463)	$ 53,815
Cumulative dividends on Series A convertible preferred stock	$ (3,430)	$ (3,430)	$ (3,430)
Net income (loss) attributable to common stockholders	$ (2,970)	$ (41,893)	$ 50,385
Income (loss) per common share:			
Basic			
Continuing operations	$ 0.12	$ (6.70)	$ (4.15)
Discontinued operations	(0.65)	0.10	12.00
Net income (loss)	$ (0.53)	$ (6.60)	$ 7.85
Diluted			
Continuing operations	$ 0.08	$ (6.70)	$ (4.15)
Discontinued operations	(0.07)	0.10	12.00
Net income (loss)	$ 0.01	$ (6.60)	$ 7.85
Weighted-average number of common shares:			
Basic	5,653,506	6,351,883	6,421,312
Diluted	56,324,761	6,351,883	6,421,312

See accompanying notes

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Changes in Stockholders' Equity (Deficit)

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
	(in thousands of dollars except per share and per share data)							
Balance, December 31, 2008	49,000,000	49	5,520,591	6	48,980	—	(55,783)	(6,748)
Vesting of unvested stock issued to officer	—	—	617,644	—	61	—	—	62
Exercise of stock options	—	—	197,826	—	20	—	—	20
Stock-based compensation	—	—	—	—	49	—	—	49
Comprehensive income (loss):								
Net income	—	—	—	—	—	—	460	460
Other comprehensive income (loss)	—	—	—	—	—	2	—	2
Total comprehensive income (loss)								462
Balance, December 31, 2009	49,000,000	49	6,336,061	6	49,110	2	(55,323)	(6,156)
Exercise of stock options	—	—	35,000	—	4	—	—	4
Stock-based compensation	—	—	—	—	297	—	—	297
Comprehensive income (loss):								
Net loss	—	—	—	—	—	—	(38,463)	(38,463)
Other comprehensive income (loss)	—	—	—	—	—	(2)	—	(2)
Total comprehensive income (loss)								(38,465)
Balance, December 31, 2010	49,000,000	49	6,371,061	6	49,411	—	(93,786)	(44,320)
Exercise of stock options	—	—	278,241	1	28	—	—	29
Stock-based compensation	—	—	—	—	(82)	—	—	(82)
Comprehensive income (loss) :								
Net income	—	—	—	—	—	—	53,815	53,815
Other comprehensive income (loss)						1		1
Total comprehensive income (loss)								53,816
Balance, December 31, 2011	49,000,000	$ 49	6,649,302	$ 7	$ 49,357	$ 1	$ (39,971)	$ 9,443

See accompanying notes

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Cash Flows

	Year Ended December 31,		
	2009	2010	2011
		(in thousands)	
Operating activities			
Income (loss) from continuing operations	$ 4,138	$ (39,075)	$ (23,225)
Adjustments to reconcile income (loss) from continuing operations to net cash provided by (used in) operating activities:			
Gain on sale of property and equipment	—	(54)	(25)
Change in fair value of warrant liability	—	—	85
Unrealized gain (loss) on marketable securities	2	(2)	1
Depreciation and amortization	1,072	1,188	879
Income tax benefit	—	(399)	(16,245)
Amortization of deferred financing costs	—	—	218
Stock-based compensation expense	111	297	(82)
Changes in operating assets and liabilities:			
Accounts receivable	(329)	284	(85)
Interest receivable	(334)	220	114
Prepaid expenses and other assets	12	74	(118)
Accounts payable, accrued expenses, and supplemental executive retirement plan	1,813	5,211	(1,097)
Interest payable	—	—	138
Deferred revenue	—	—	697
Other non-current liabilities	360	64	539
Net cash provided by (used in) operating activities from continuing operations	6,845	(32,192)	(38,206)
Net cash provided by (used in) operating activities from discontinued operations	(4,211)	(352)	2,021
Net cash provided by (used in) operating activities	2,634	(32,544)	(36,185)
Cash flows from investing activities			
Purchases of marketable securities	(56,289)	(32,781)	(17,890)
Sales and maturities of marketable securities	28,618	58,898	26,870
Purchases of property and equipment, net	(714)	(294)	(685)
Net cash (used in) provided by investing activities from continuing operations	(28,385)	25,823	8,295
Net cash provided by disposal of discontinued operations	—	—	25,607
Net cash (used in) provided by investing activities	(28,385)	25,823	33,902
Cash flows from financing activities			
Proceeds from issuance of common stock	20	4	29
Proceeds from issuance of secured notes payable	—	—	30,000
Deferred financing costs	—	(1,345)	(975)
Net cash provided by (used in) financing activities from continuing operations	20	(1,341)	29,054
Net cash provided by (used in) financing activities from discontinued operations	4,260	397	(1,967)
Net cash provided by (used in) financing activities	4,280	(944)	27,087
Net change in cash and cash equivalents	(21,471)	(7,665)	24,804
Cash and cash equivalents at beginning of period	52,876	31,405	23,740
Cash and cash equivalents at end of period	$ 31,405	$ 23,740	$ 48,544
Supplemental cash flow information:			
Cash paid for interest—Continuing operations	$ —	$ —	$ 1,412
Cash paid for interest—Discontinued operations	$ 12,000	$ 12,122	$ 12,036

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements

Years ended December 31, 2009, 2010 and 2011

1. Organization and Nature of Operations

Supernus Pharmaceuticals, Inc. (the Company) was incorporated in Delaware on March 30, 2005, and commenced operations on December 22, 2005. The Company is a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system diseases, including neurological and psychiatric disorders. The Company has several proprietary product candidates in clinical development that address large market opportunities in epilepsy and attention deficit hyperactivity disorder.

The Company is currently focused on attaining regulatory approval and bringing its two late-stage epilepsy product candidates, SPN-538 and SPN-804, to market. Except for profits earned in 2009 and 2011 due to one-time items, the Company has incurred net losses from operations since its inception. The Company had net income (loss) of approximately $0.5 million, $(38.5) million and $53.8 million during the years ended December 31, 2009, 2010, and 2011, respectively. The net income in 2011 was primarily due to a gain on the sale of TCD Royalty Sub LLC (TCD) of approximately $74.9 million, net of taxes, being reported as discontinued operations (see Note 8). The Company has financed its operations primarily through the sale of equity securities, non-recourse debt arrangements, issuing debt instruments, and payments received under its royalty and development agreements. To date, none of the Company's product candidates have been approved for sale, and therefore, the Company has not generated any revenues from product sales. Management expects operating losses to continue for the foreseeable future and until one or more of its products are established in the marketplace. The Company may need to obtain additional capital through equity offerings, debt financings and/or payments under new or existing licensing and research and development collaboration agreements (see Note 2).

The Company's operations are subject to certain risks and uncertainties. The risks include negative outcome of clinical trials, inability or delay in completing clinical trials or obtaining regulatory approvals, changing market conditions for products being developed by the Company, more stringent regulatory environment, the need to retain key personnel and protect intellectual property, product liability, and the availability of additional capital financing on terms acceptable to the Company.

2. Management's Plans as to Continuing as a Going Concern

The accompanying financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Since inception, the Company has incurred, and continues to incur, significant losses from operations. The Company needs to raise additional capital to continue its business operations as currently conducted and fund deficits in operating cash flows.

As described more fully in Note 7, the Company drew down $30.0 million under a secured credit facility (the Facility). There is no remaining borrowing capacity under the Facility. As described in Note 8, the Company sold all of its equity interest in its wholly-owned subsidiary, TCD, for consideration consisting of a cash payment of $27.0 million and contingent consideration of $3.0 million to be paid in the future if certain criteria are met. The Company funded operations during 2011 principally through draws under the Facility, cash received from the sale of TCD, and existing cash and short-term instruments. The Company's current operating assumptions, which reflect management's best estimate of future revenue and operating expenses, indicate that current cash on hand will not be sufficient to fund operations as currently conducted through the end of 2012. The Company is seeking

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

2. Management's Plans as to Continuing as a Going Concern (Continued)

to raise additional capital through either an initial public offering of its common stock or a sale of additional private equity securities to finance the development of its business operations, although there can be no assurance that such financing will be available to the Company at any given time or available on favorable terms. The type, timing, and terms of financing selected by the Company will be dependent upon the Company's cash needs, the availability of financing sources, and the prevailing conditions in the financial markets.

In the event the Company does not access funding to continue operations for the next 12 months, the Company will likely revise its commercial plans for its two late-stage epilepsy product candidates, its planned clinical trials, other development activities, capital expenditure plans, and the scale of its operations, until it is able to obtain sufficient financing to do so, or pursue other alternatives. If the Company is required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of its development programs, these events could have a material adverse effect on the Company's business, results of operations and financial condition.

These factors could significantly limit the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Company be unable to continue in existence.

3. Summary of Significant Accounting Policies

Basis of Presentation

The Company's consolidated financial statements include the accounts of Supernus Pharmaceuticals, Inc. and included the accounts of its wholly-owned subsidiaries, TCD through December 14, 2011, the date that the Company sold 100% of its equity interests in TCD, and Supernus Europe Ltd. These are collectively referred to herein as "Supernus" or "the Company." All significant intercompany transactions and balances have been eliminated in consolidation. The Company's consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (U.S. GAAP). The Company currently operates in one business segment.

In December 2011, the Company sold its equity interest in TCD. The assets and liabilities related to this business have identifiable cash flows that are largely independent of the cash flows of other groups of assets and liabilities, and the Company does not have significant continuing involvement with the related products. Accordingly, the remaining assets and liabilities, and the results of operations, related to TCD are presented as discontinued operations for all periods in the accompanying consolidated financial statements.

Use of Estimates

The preparation of the financial statements in accordance with U.S. GAAP requires the Company to make estimates and judgments in certain circumstances that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. In preparing these consolidated financial statements, management has made its best estimates and judgments of certain amounts included in the financial statements, giving due consideration to

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

materiality. On an ongoing basis, the Company evaluates its estimates, including those related to revenue recognition, fair values of assets, convertible preferred stock and common stock, income taxes, preclinical study and clinical trial accruals and other contingencies. Management bases its estimates on historical experience or on various other assumptions that it believes to be reasonable under the circumstances. Actual results could differ from these estimates.

Pro Forma Balance Sheet Presentation

The unaudited pro forma consolidated balance sheet as of December 31, 2011 reflects the expected automatic conversion of the outstanding 49,000,000 shares of Series A convertible preferred stock (Series A Preferred Stock) into 49,000,000 shares of common stock as though the completion of the Company's initial public offering (IPO) had occurred on December 31, 2011. The shares of common stock issued in the IPO and any related estimated net proceeds are excluded from such pro forma information.

Cash and Cash Equivalents and Restricted Cash

The Company considers all investments in highly liquid financial instruments with an original maturity of three months or less to be cash equivalents. Under the terms of a non-recourse note agreement, TCD had been required to maintain a cash account to cover interest payments. As of December 31, 2010, the TCD cash account was restricted as to its withdrawal or use and, therefore, was segregated and presented as assets of discontinued operations (including restricted cash). As of December 31, 2011, subsequent to the sale of TCD (see Note 8), the Company is no longer required to maintain this restricted cash balance.

Marketable Securities

Marketable securities consist of investments in U.S. Treasuries and various U.S. government agency debt securities. Management classifies the Company's short-term investments as available-for-sale. Such securities are carried at estimated fair value, with any material unrealized holding gains or losses reported, net of any tax effects, as accumulated other comprehensive income (loss), which is a separate component of stockholders' equity (deficit). Realized gains and losses, and declines in value judged to be other-than-temporary, if any, are included in consolidated results of operations. A decline in the market value of any available-for-sale security below cost that is deemed to be other-than-temporary results in a reduction in fair value, which is charged to earnings in that period, and a new cost basis for the security is established. Dividend and interest income is recognized as interest income when earned. The cost of securities sold is calculated using the specific identification method. The Company places all investments with highly rated financial institutions.

Marketable Securities—Restricted

On January 21, 2006, the Company established the Supernus Supplemental Executive Retirement Plan (SERP) for the sole purpose of receiving funds for two executives from the Shire Laboratories, Inc. SERP and providing a continuing deferral program under the Supernus SERP. As of December 31, 2010 and 2011, the estimated fair value of the mutual fund investment securities within the SERP has been recorded as restricted marketable securities. A corresponding noncurrent liability is

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

also included in the consolidated balance sheets to reflect the Company's obligation for the SERP. The Company has not made, and has no plans to make, contributions to the SERP. The securities can only be used for purposes of paying benefits under the SERP.

Accounts Receivable

Accounts receivable are reported in the consolidated balance sheets at outstanding amounts, less an allowance for doubtful accounts. The Company extends credit without requiring collateral. The Company writes off uncollectible receivables when the likelihood of collection is remote. The Company evaluates the collectability of accounts receivable on a regular basis. An allowance, when needed, is based upon various factors including the financial condition and payment history of customers, an overall review of collections experience on other accounts, and economic factors or events expected to affect future collections experience. No allowance was recorded as of December 31, 2010 or December 31, 2011.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash, cash equivalents, accounts receivable and marketable securities. The counterparties are various corporations and financial institutions of high credit standing.

Substantially all of the Company's cash and cash equivalents are maintained with major financial institutions. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and, therefore, management believes they bear minimal risk. The Company has not experienced any losses on its deposits of cash, cash equivalents, short-term investments and restricted investments, and management believes that its guidelines for investment of its excess cash maintain safety and liquidity through diversification and investment maturity.

Fair Value of Financial Instruments

The carrying amounts of financial instruments, including cash and cash equivalents, accounts receivable, and accounts payable and accrued expenses, approximate fair value due to their short-term maturities. The carrying value and the estimated fair value of the non-recourse notes payable, held in TCD, was approximately $66.0 million at December 31, 2010. The fair value was estimated based on actual trade information as well as quoted prices provided by bond traders.

The fair value of an asset or liability should represent the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Such transactions to sell an asset or transfer a liability are assumed to occur in the principal or most advantageous market for the asset or liability. Accordingly, fair value is determined based on a hypothetical transaction at the measurement date, considered from the perspective of a market participant rather than from a reporting entity's perspective.

The Company defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. The Company

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

reports assets and liabilities that are measured at fair value using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- Level 1—Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2—Inputs are quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.) and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).
- Level 3—Unobservable inputs that reflect the Company's own assumptions, based on the best information available, including the Company's own data.

In accordance with the fair value hierarchy described above, the following tables show the fair value of the Company's financial assets and liabilities that are required to be measured at fair value:

		Fair Value Measurements at December 31, 2010		
	Total Carrying Value at December 31, 2010	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
	(in thousands)			
Cash and cash equivalents	$ 23,740	$ 23,740	$ —	$ —
Marketable securities	8,964	1,024	7,940	—
Marketable securities—restricted	261	—	261	—
Cash and cash equivalents—restricted(1)	1,453	1,453	—	—
Total assets at fair value	$ 34,418	$ 26,217	$ 8,201	$ —

(1) Included in assets of discontinued operations at December 31, 2010.

		Fair Value Measurements at December 31, 2011		
	Total Carrying Value at December 31, 2011	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
	(in thousands)			
Assets:				
Cash and cash equivalents	$ 48,544	$ 48,544	$ —	$ —
Marketable securities—restricted	245	—	245	—
Total assets at fair value	$ 48,789	$ 48,544	$ 245	$ —
Liabilities:				
Warrant liability	$ 697	$ —	$ —	$ 697

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

The Company's Level 1 assets include money market funds and U.S. Treasuries and government agency debt securities with quoted prices in active markets. At December 31, 2011, Level 2 assets include mutual funds in which the SERP assets are invested. Mutual funds are valued using third-party pricing sources that apply applicable inputs and other relevant data into their models to estimate fair value. At December 31, 2010 and 2011 Level 2 assets include mutual funds in which the SERP assets are invested and municipal bonds whose values are based upon quoted prices in inactive markets.

Level 3 liabilities include the fair market value of outstanding warrants to purchase Series A Preferred Stock recorded as a derivative liability. The fair value of the preferred stock warrant liability has been calculated using the probability-weighted expected return method (PWERM**).** The following table presents information about the Company's preferred stock warrant liability:

	Year Ended December 31, 2011 (in thousands)
Balance at December 31, 2010	$ —
Issuance of Series A Preferred Stock warrants	612
Changes in fair value of warrants included in earnings	85
Balance at December 31, 2011	$ 697

Property and Equipment

Property and equipment are stated at cost. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is credited or charged to operations. Repairs and maintenance costs are expensed as incurred. Depreciation and amortization are computed using the straight-line method over the following average useful lives:

Computer equipment	3 years
Software	3 years
Furniture	7 years
Lab and office equipment	5 years
Leasehold Improvements	Shorter of lease term or useful life

Intangible Assets

Intangible assets consist primarily of purchased patents. Patents are carried at cost less accumulated amortization, which is calculated on a straight-line basis over the estimated useful lives of the patents, estimated to be ten years. The carrying value of the patents is assessed for impairment annually during the fourth quarter of each year, or more frequently if impairment indicators exist.

Deferred Financing Costs

Deferred financing costs consists of syndication costs of approximately $4.4 million incurred by the Company in connection with the sale of non-recourse notes issued by TCD (see Note 7), which was eliminated from the Company's consolidated balance sheets in connection with the sale of TCD on

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

December 14, 2011 (see Note 8), financing costs of approximately $0.5 million incurred by the Company in connection with the closing of the Company's term loans (see Note 7) and legal, accounting and other costs of approximately $1.8 million incurred in connection with preparing for Company's IPO. The Company amortized the deferred financing costs associated with the non-recourse notes until December 14, 2011, at which time the non-recourse notes were assumed by the Purchaser of TCD (see Note 8). The Company amortizes the deferred financing costs associated with the outstanding term loans over the term of the related debt using the effective interest method. Upon closing of a successful IPO, the Company will record its legal, accounting and other costs as a charge against the proceeds received. Until the completion of its IPO, the Company evaluates the realizability of the related deferred costs at the end of each reporting period.

Impairment of Long-Lived Assets

Long-lived assets consist primarily of purchased patents and property and equipment. The Company assesses the recoverability of its long-lived assets whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If indications of impairment exist, projected future undiscounted cash flows associated with the asset are compared to the carrying amount to determine whether the asset's value is recoverable. Evaluating for impairment requires judgment, including the estimation of future cash flows, future growth rates and profitability and the expected life over which cash flows will occur. Changes in the Company's business strategy or adverse changes in market conditions could impact impairment analyses and require the recognition of an impairment charge equal to the excess of the carrying value of the long-lived assets over its estimated fair value. For the years ended December 31, 2010 and 2011, the Company determined that there was no impairment of the Company's long-lived assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value, less costs to sell.

Preclinical Study and Clinical Trial Accruals and Deferred Advance Payments

The Company estimates preclinical study and clinical trial expenses based on the services performed pursuant to contracts with research institutions and clinical research organizations that conduct these activities on its behalf. In recording service fees, the Company estimates the time period over which the related services will be performed and compares the level of effort expended through the end of each period to the cumulative expenses recorded and payments made for such services and, as appropriate, accrues additional service fees or defers any non-refundable advance payments until the related services are performed. If the actual timing of the performance of services or the level of effort varies from the estimate, the Company will adjust its accrual or deferred advance payment accordingly. If the Company later determines that it no longer expects the services associated with a nonrefundable advance payment to be rendered, the advance payment will be charged to expense in the period that such determination is made.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

expected to be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company accounts for uncertain tax positions in its consolidated financial statements when it is more-likely-than-not that the position will be sustained upon examination by the tax authorities. Such tax positions must initially and subsequently be measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. The Company's policy is to recognize any interest and penalties related to income taxes in income tax expense.

Revenue Recognition

The Company's revenues have been generated through collaboration and research and development agreements. These agreements include fees for development services provided to customers, payments for achievement of specified development, regulatory and sales milestones, and to a lesser extent, upfront license payments, which comprise the Company's development and milestone revenue, as well as royalties on product sales of licensed products, Oracea®, Sanctura XR®, and Intuniv®, which comprise the Company's royalty revenue. The Company records any amounts received in advance of services performed as deferred revenue and recognizes the amount as revenue when earned.

Multiple Element Arrangements

For arrangements entered into with multiple elements, the Company evaluates whether the components of each arrangement are separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the fee is fixed and determinable, and collection is reasonably assured.

The Company's development revenues have been earned under contracts that were less than one year in duration. Development contracts generally take the form of fee-for-service arrangements based on an annual contractual full-time equivalent billing rate. In cases where performance spanned multiple accounting periods, the Company has recognized revenue as services were performed, measured on a proportional-performance basis. Output measures, specifically labor hours, were used to measure performance as they reflect the Company's pattern of performance over the contractual term.

Non-refundable license fees are recognized as revenue when the Company has a contractual right to receive such payment, the contract price is fixed or determinable, the collection of the resulting receivable is reasonably assured, and the Company has no further significant performance obligations in exchange for the license payment.

On January 1, 2011, the Company adopted Accounting Standard Update (ASU) No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force* (ASU No. 2009-13). ASU No. 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available; third-party evidence, if VSOE is unavailable; and estimated selling prices

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

if neither VSOE or third-party evidence is available. In addition, ASU No. 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. The adoption of ASU No. 2009-13 did not impact the Company's consolidated financial statements, as the Company did not enter into or modify any multiple element arrangements during 2011. The Company will evaluate new or materially modified multiple element arrangements pursuant to the guidance in ASU No. 2009-13.

Milestone Payments

Milestone payments have been recognized as revenue when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone. On January 1, 2011, the Company adopted ASU No. 2010-17, *Revenue Recognition—Milestone Method,* (ASU No. 2010-17). Under this guidance, management may recognize revenue contingent upon the achievement of a milestone in its entirety in the period in which the milestone is achieved only if the milestone meets all the criteria within the guidance to be considered substantive. Substantive milestone payments are recognized upon achievement of the milestone only if all of the following conditions are met:

- the milestone payments are non-refundable;
- achievement of the milestone involves a degree of risk and was not reasonably assured at the inception of the arrangement;
- substantive effort on the Company's part is involved in achieving the milestone;
- the amount of the milestone payment is reasonable in relation to the effort expended or the risk associated with achievement of the milestone; and,
- a reasonable amount of time passes between the up-front license payment and the first milestone payment as well as between each subsequent milestone payment.

Determination as to whether a payment meets the aforementioned conditions involves management's judgment. If any of these conditions are not met, the resulting payment would not be considered a substantive milestone, and therefore the resulting payment would be considered part of the consideration for the single unit of accounting. The adoption of ASU No. 2010-17 did not have a material impact on the Company's consolidated results of operations, financial position, or liquidity.

The Company's recorded milestone revenues were approximately $0.8 million, $0.0, and $0.8 million during the years ended December 31, 2009, 2010 and 2011, respectively. During 2011, after the adoption of ASU No. 2010-17, the Company recorded revenues upon achievement of the milestone, as the Company concluded that the milestone was substantive in accordance with its accounting policy.

Royalty Revenues

Except as noted below, the Company records royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). The Company maintains regular communication with licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period which they are collected,

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent the Company does not have sufficient ability to accurately estimate revenue, it records revenue when received.

In 2009, the Company recognized approximately $36.9 million in royalty revenues related to an amendment to a license agreement with Shire plc for Intuniv, which is a novel ADHD product marketed by Shire plc, utilizing one of the Company's proprietary technologies. Under the terms of the license amendment, the parties agreed to delete all provisions regarding milestone and royalty payments and replaced those provisions with, among other things, (1) a commitment by Shire plc to make a one-time payment of $36.9 million within 15 days of signing the amendment, (2) an acknowledgement by the Company that no other sums would be payable to the Company, then or in the future, under the amended license; and (3) a statement that the amended license was permanent, irrevocable and fully paid. The Company concluded that immediate revenue recognition was appropriate because (1) the executed contract constituted persuasive evidence of an arrangement, (2) the delivery of the license amendment had occurred and Shire plc had assumed all risks and rewards regarding Intuniv, and the Company had no current or future performance obligations, (3) the total consideration for the license amendment was fixed and known at the time of its execution and there were not any extended payment terms or rights of return, and (4) collection was reasonably assured as the Company determined that Shire plc was creditworthy and had the financial ability to make the payment in accordance with the terms of the license amendment.

Research and Development Costs

Research and development expenditures are expensed as incurred. Research and development costs primarily consist of employee-related expenses, including salaries and benefits; expenses incurred under agreements with contract research organizations, investigative sites, and consultants that conduct the Company's clinical trials; the cost of acquiring and manufacturing clinical trial materials; the cost of manufacturing materials used in process validation, to the extent that those materials are manufactured prior to receiving regulatory approval for those products; facilities costs that do not have an alternative future use; related depreciation and other allocated expenses; license fees for and milestone payments related to in-licensed products and technologies; stock-based compensation expense; and costs associated with non-clinical activities and regulatory approvals.

Stock-Based Compensation

Employee stock-based compensation is measured based on the estimated fair value on the grant date. The grant date fair value of options granted is calculated using the Black-Scholes option-pricing model, which requires the use of subjective assumptions including volatility, expected term, risk-free rate, and the fair value of the underlying common stock. For awards that vest based on service conditions, the Company recognizes expense using the straight-line method less estimated forfeitures. The Company has awarded non-vested stock. The estimated fair value of these awards is determined at the date of grant based upon the estimated fair value of the Company's common stock. The Company recognizes the estimated fair value on a straight-line basis over the requisite service period as the awards vest.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

The Company records the expense for stock option grants and non-vested stock subject to performance-based milestone vesting over the remaining service period when management determines that achievement of the milestone is probable. Management evaluates when the achievement of a performance-based milestone is probable based on the relative satisfaction of the performance conditions as of the applicable reporting date.

The Company records the expense for stock option grants to non-employees based on the estimated fair value of the stock option using the Black-Scholes option-pricing model. The fair value of non-employee awards is re-measured at each reporting period. As a result, stock compensation expense for non-employee awards with vesting is affected by changes in the fair value of the Company's common stock.

Warrant Liability

In January 2011, the Company entered into a secured credit facility pursuant to a loan and security agreement with certain lenders, which was subsequently amended in December 2011, providing for term loans of up to an aggregate of $30.0 million. In connection with the drawdown of $15.0 million under the secured credit facility on January 26, 2011, the Company issued to its lenders warrants to purchase an aggregate of 375,000 shares of the Company's Series A Preferred Stock at an exercise price of $1.00 per share. The warrants became exercisable immediately and expire on January 26, 2021. Upon completion of an initial public offering, each warrant will become exercisable into one share of the Company's common stock for each share of its Series A Preferred Stock with an exercise price equal to the lesser of the IPO price or $1.00. These warrants are recorded as a derivative liability and, as such, the Company reflects the warrant liability at fair value in the consolidated balance sheets. The fair value of this derivative liability is re-measured at the end of every reporting period and the change in fair value is reported in the consolidated statements of operations as other income (expense). As of January 26, 2011 and December 31, 2011, the fair value was estimated to be approximately $375,000 and $460,000, respectively. The change in fair value of approximately $85,000 has been recorded in other income (expense) in the Company's consolidated statements of operations.

In connection with the drawdown of the second $15.0 million under the secured credit facility on December 30, 2011, the Company issued to its lenders warrants to purchase an aggregate of 200,000 shares of the Company's Series A Preferred Stock at an exercise price of $1.50 per share. The warrants became exercisable immediately and expire on December 30, 2021. Upon completion of an initial public offering, each warrant will be exercisable into one share of the Company's common stock for each share of its Series A Preferred Stock into which it was convertible prior to the IPO at a price per share equal to the lesser of the IPO price or $1.50. These warrants are recorded as a derivative liability and, as such, the Company reflects the warrant liability at fair value in the consolidated balance sheets. The fair value of this derivative liability is re-measured at the end of every reporting period and the change in fair value is reported in the consolidated statements of operations as other income (expense). As of December 31, 2011, the fair value was estimated to be approximately $237,000.

The terms of the warrant agreements provide for "down-round" anti-dilution adjustment for the warrants in certain situations whereby the Company sells or issues (a) shares at a price per share less than the exercise price of the warrants, or (b) equity-linked financial instruments with strike prices less than the exercise price of the warrants. As a result of this "down round" provision, the warrants will

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

continue to be classified as derivative liabilities upon completion of an IPO (at which point the shares underlying the warrants are converted from Series A Preferred Stock to common stock).

The fair value of the preferred stock warrants is estimated in accordance with the guidance outlined in the American Institute of Certified Public Accountants' Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation* (the Technical Practice Aid). Several objective and subjective factors are considered when valuing each equity security and related warrant at a valuation date. The Company utilized the PWERM to estimate the fair value of the preferred stock warrants. Under the PWERM, the value of each equity security and warrant is estimated based upon an analysis of future values for the entire equity instrument assuming various future outcomes. Share value is based upon the probability-weighted present value of the expected outcomes, as well as the rights of each class of preferred and common stock. A probability is estimated for each possible event based on the facts and circumstances as of the valuation date. The Company will continue to adjust the warrant liability for changes in fair value until the earlier of the exercise or expiration of the warrants. Subsequent to the completion of an IPO, the fair value of the warrants will be determined using either a risk-neutral lattice methodology within a Monte-Carlo analysis or a Black-Scholes model within a Monte-Carlo framework. The Monte-Carlo simulation is a generally accepted statistical method used to estimate fair value based on the application of subjective assumptions, consistently applied for each period, including the probability, timing and magnitude of our issuance of additional common stock in future financings. This valuation is computed at the end of each fiscal quarter until the warrants are exercised or they expire to reflect conditions at each such valuation date. Under either methodology, in addition to assumptions regarding future equity financings, consideration is also given to the current stock price, anticipated stock volatility going forward, and the anti-dilution provisions embedded in the warrant agreements.

Earnings (Loss) Per Share

Basic earnings (loss) per common share is determined by dividing earnings (loss) attributable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock equivalents. Diluted earnings (loss) per share is computed by dividing the earnings (loss) attributable to common stockholders by the weighted-average number of common share equivalents outstanding for the period. The treasury stock method is used to determine the dilutive effect of the Company's stock option grants and warrants and the if-converted method is used to determine the dilutive effect of the Company's Series A Preferred Stock. With the exception of the year ended December 31, 2009, the weighted-average shares used to calculate both basic and diluted loss per share are the same. The following common stock equivalents were excluded in the calculation of diluted earnings (loss) per share because their effect would be anti-dilutive:

	Year Ended December 31,		
	2009	2010	2011
Series A Preferred Stock	—	49,000,000	49,000,000
Warrants to purchase Series A Preferred Stock	—	—	575,000
Stock options and non-vested stock	—	3,069,723	2,392,470

Because income from continuing operations net of preferred stock dividends is the control number for earnings per share purposes, the Company included the 50,671,255 potential common shares in the

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

denominator for the per share amounts related to discontinued operations and net income for the year ended December 31, 2009 even though resulting per share amounts (($0.07) per share for the loss from discontinued operations and $0.01 per share for the net income) are anti-dilutive with respect to their comparable basic per-share amounts.

The unaudited pro forma earnings (loss) per share is computed using the weighted-average number of common shares outstanding and assumes the conversion of all outstanding shares of the Company's Series A Preferred Stock into an aggregate of 49,000,000 shares of common stock upon completion of the Company's planned IPO, as if they had converted at the beginning of the period. The Company believes the unaudited pro forma earnings (loss) per share provides material information to investors, as the conversion of the Company's Series A Preferred Stock to common stock is expected to occur upon the closing of its IPO, and the disclosure of pro forma earnings (loss) per share thus provides an indication of earnings (loss) per share that is comparable to what will be reported by the Company as a public company.

	Year Ended December 31, 2011
Pro forma earnings (loss) per common share	
Numerator:	
(Loss) from continuing operations used to compute pro forma (loss) from continuing operations per common share—basic and diluted	$ (23,225)
Income from discontinued operations used to compute pro forma income per common share—basic and diluted	$ 77,040
Net income used to compute pro forma income per common share—basic and diluted	$ 53,815
Denominator:	
Weighted-average number of common shares used to calculate (loss) from continuing operations, income from discontinued operations and net income per common share:	
Basic	6,421,312
Diluted	6,421,312
Add: Pro forma adjustments to reflect assumed weighted-average effect of conversion of convertible preferred stock	49,000,000
Weighted-average number of common shares used in calculating pro forma (loss) from continuing operations, income from discontinued operations and net income per common share:	
Basic	55,421,312
Diluted	55,421,312
Basic and diluted Pro forma net income (loss) per common share:	
Continuing operations	$ (0.42)
Discontinued operations	$ 1.39
Net income	$ 0.97

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

3. Summary of Significant Accounting Policies (Continued)

Recently Issued Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (FASB) issued ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income* (ASU No. 2011-05), which requires entities to present reclassification adjustments included in other comprehensive income on the face of the financial statements and allows entities to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate consecutive statements. It also eliminates the option for entities to present components of other comprehensive income as part of the statement of changes in stockholders' equity. The updated guidance is effective for fiscal and interim periods beginning after December 15, 2011, with early adoption permitted. The adoption of ASU No. 2011-05 is not expected to have a material effect on the Company's consolidated results of operations.

In May 2011, the FASB issued ASU No. 2011-04, *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs* (ASU No. 2011-04). ASU No. 2011-04 created a uniform framework for applying fair value measurement principles and clarified existing guidance in GAAP. ASU No. 2011-04 will be effective for the first annual reporting period beginning after December 15, 2011 and must be applied prospectively. The Company will adopt ASU No. 2011-04 in the first quarter of fiscal year 2012. The Company does not believe that the adoption of ASU No. 2011-04 will have a material impact on its consolidated financial statements.

4. Marketable Securities

Marketable securities held by the Company were as follows:

At December 31, 2010:

Available for Sale	Amortized Cost	Unrealized Gains (Losses)	Fair Value
		(in thousands)	
U.S. Treasuries and agencies	$ 1,026	$ (2)	$ 1,024
Municipal bonds	7,940	—	7,940
Mutual funds for SERP	261	—	261
	$ 9,227	$ (2)	$ 9,225

At December 31, 2011:

Available for Sale	Amortized Cost	Unrealized Gains (Losses)	Fair Value
		(in thousands)	
Mutual funds for SERP	$ 245	$ —	$ 245
	$ 245	$ —	$ 245

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

5. Property and Equipment

Property and equipment consists of the following:

	December 31,	
	2010	2011
	(in thousands)	
Computer equipment	$ 554	$ 586
Software	174	209
Lab equipment and furniture	3,480	3,465
Leasehold improvements	979	1,486
	5,187	5,746
Less accumulated depreciation and amortization	(3,938)	(4,436)
	$ 1,249	$ 1,310

Depreciation expense on property and equipment for the years ended December 31, 2010 and 2011 was approximately $959,000 and $650,000, respectively.

6. Purchased Patents

In connection with a purchase agreement with Shire Laboratories, Inc., the Company acquired certain patents in 2005. The following sets forth the gross carrying amount and related accumulated amortization of the patents (in thousands):

		December 31, 2010		December 31, 2011	
	Weighted-Average Life	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
		(in thousands)			
Purchased patents	10.0	$ 2,292	$ 1,150	$ 2,292	$ 1,380

Amortization expense for the years ended December 31, 2010 and 2011 was approximately $229,000 each year, as is the estimated annual aggregate amortization expense through December 31, 2015. The net book value of intangible assets as of December 31, 2010 and 2011 was approximately $1.1 million and $0.9 million, respectively.

7. Notes Payable

Secured Notes Payable

In January 2011, the Company entered into a secured credit facility pursuant to a loan and security agreement with certain lenders, which was subsequently amended in December 2011, providing for term loans of up to an aggregate of $30.0 million. On January 26, 2011 and December 30, 2011, the Company drew down $15.0 million and $15.0 million, respectively, of term loans under this secured credit facility. The term loans bear interest at a fixed rate per annum of 11.0% and will mature on August 1, 2014 and January 1, 2015, respectively. The Company is required to make twelve months of interest only payments, beginning in March 2011, and six months of interest only payments, beginning in February 2012, respectively, and thereafter, principal and interest payments will be made over the

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

7. Notes Payable (Continued)

remaining term of the loans. As of December 31, 2011, the Company is required to make the following principal payments:

	As of December 31, 2011 (in thousands)
Year ending December 31:	
2012	6,775
2013	11,809
2014	10,847
2015	569
	$ 30,000

The Company may voluntarily prepay all, but not less than all, outstanding term loans under its secured credit facility at any time, subject to the payment of a premium. With respect to any prepayment, the premium is 5.0%, if such prepayment is made before the amortization date, 2.0%, if such prepayment is made during the 15-month period after the amortization date, and 1.0%, if such prepayment is made thereafter. Upon the maturity of any outstanding term loans or the acceleration or prepayment thereof, the Company will also be required to make a final payment equal to 2.5% of the aggregate principal amount, or $750,000, of the term loans borrowed under the secured credit facility. This payment is being as recorded as additional interest expense over the term of the loans.

The Company capitalized deferred financing costs of approximately $498,000 in issuing the secured notes payable, which are being amortized to interest expense over the term of the debt. The balance of deferred financing costs was approximately $378,000 at December 31, 2011. The carrying value of the secured notes payable at December 31, 2011 includes a debt discount of $514,000 related to the estimated fair value of the warrants issued in connection with the issuance of the notes. The Company recorded interest expense related to the secured notes payable of approximately $1.5 million for the year ended December 31, 2011.

All obligations under the secured credit facility are secured by substantially all of the Company's existing property and assets (excluding its intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, the Company's U.K. subsidiary and any future subsidiary.

Non-recourse Notes Payable of Discontinued Operations

In April 2008, pursuant to a Purchase and Sale Agreement and Residual License Agreements executed by the Company and TCD, certain royalty payment rights and other license rights of the Company that it had under license agreements with two unrelated companies were transferred to TCD, a 100%-owned subsidiary of the Company, in exchange for approximately $63.3 million. TCD raised funds for the transaction from a completed private placement of $75.0 million in secured 16% notes, due April 15, 2024 (the Notes). Net proceeds amounted to $63.3 million, net of financing costs and required interest reserve. The Notes are non-recourse to the Company and are secured by TCD's assets including the royalty payment rights and other related rights of the transferred license agreements. While the Notes are outstanding, all royalty payments under these license agreements go to the payment of interest. Royalties earned in excess of the stated interest rate will be applied to the

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

7. Notes Payable (Continued)

principal on such Notes. Interest expense related to the Notes for the years ended December 31, 2009, 2010, and 2011 was $12.0 million, $12.1 million, and $11.5 million, respectively. As of December 31, 2010, TCD had interest payable of $2.5 million. On December 14, 2011, the Company executed an agreement to sell 100% of its equity interests in TCD, which included the purchaser assuming all rights and obligations under the Notes (See Note 8).

In conjunction with the issuance of the Notes, TCD had initially placed $8.0 million into a restricted cash interest reserve account to cover payments required when the initial royalties were not sufficient to meet the interest payments due. In the first quarter of 2010, the $8.0 million interest reserve was exhausted, and, as such, all subsequent interest payments were made solely from royalty payments received. Royalties were also deposited into a restricted cash account to meet interest and principal payments. At December 31, 2010, the balance of restricted cash available to pay interest was approximately $1.5 million. Any excess restricted cash was used to make principal payments. In April 2011 and October 2011, TCD paid approximately $182,000 and $364,000, respectively, in principal on the Notes. As of December 14, 2011, the date of the sale of TCD, the principal balance amounted to $74.5 million (See Note 8).

The syndication costs to complete the transaction were approximately $4.4 million for investment banking, legal, consulting, accounting, and printing fees. These costs were capitalized as deferred financing costs and were being amortized over the term of the related debt using the effective interest method. Amortization of deferred financing costs for the years ended December 31, 2009, 2010 and 2011 approximated $270,000, $271,000, and $260,000, respectively. In connection with the transaction on December 14, 2011 to sell TCD, the remaining balance of $3.4 million in deferred financing costs was eliminated from the Company's consolidated balance sheets (See Note 8).

Through December 14, 2011, the date of the sale of TCD, TCD had been able to make up all interest shortfalls in full before the next succeeding payment date. In the event of a default for failure to pay interest on a timely basis, the holders of the Notes did not have recourse to the Company as the Notes were non-recourse beyond TCD, were not convertible into any other securities of the Company, and had not been guaranteed by the Company. The Company had pledged all equity interests of TCD to the holders of the Notes so, upon an event of default, the holders of the Notes could elect to exercise their rights to acquire those equity interests in TCD.

In connection with the Notes, the Company executed a Servicing Agreement with TCD. The Servicing Agreement provided for a servicing fee of $10,000 per quarter to be paid to the Company for performance of services related to the collection of amounts due in connection with the license agreements. The Company is also to be reimbursed for any out-of-pocket expenses. These services consist of taking commercially reasonable steps to collect the royalty amount due and enforcing the related provisions under the license agreements. In particular, we are required to monitor receipt of the royalty payments due under the licensing agreements and to confirm that the payments are received on a timely basis, calculated properly and made available to the trustee.

In addition, pursuant to the Purchase and Sale Agreement, the Company is responsible for preserving, maintaining and maximizing the commercial value of the licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep the patents in force. The Company considers the amounts spent with respect to these activities to be

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

7. Notes Payable (Continued)

de minimis. Under the license agreements, the Company has the right, but not the obligation, to defend challenges to the patents.

8. Sale of TCD Royalty Sub Reported as Discontinued Operations

Pursuant to a Unit Purchase Agreement executed on December 14, 2011, the Company sold 100% of its equity ownership interests in TCD to an entity affiliated with Orbimed Advisors LLC, one of its stockholders, hereafter referred to as the "Purchase Transaction." The purchase price consisted of $27.0 million cash payment, assumption of all assets and liabilities and a milestone payment of $3.0 million payable within 10 days of the occurrence of the earlier of the following conditions:

- The purchaser receives royalty payments equal to at least $35.1 million, the purchaser has not entered into a transaction to sell, refinance or monetize its equity interests in TCD, and no generic formulations of the products underlying the royalty payments and related license agreements have entered the market, or

- The purchaser receives proceeds in excess of the aggregate of (a) $27.0 million, plus (b) the purchase price paid by the purchaser, if any, to acquire a beneficial interest in one or more of the Notes, plus (c) the aggregate redemption price paid by the purchaser, if any, to redeem any of the Notes, from any transaction that refinances or liquidates the equity interests in TCD or the Notes.

The purchase price was determined through a competitive bidding process, involving more than one bidder and multiple rounds of negotiations between each potential buyer and the Company. The Company entered into the purchase transaction with an entity affiliated with OrbiMed Advisors LLC, which offered the highest purchase price.

Pursuant to the Purchase Transaction, the Company retained duties and obligations under the Notes and related agreements, including the Purchase and Sale Agreement, the Residual License Agreements and the Servicing Agreement, for so long as the Notes remain outstanding. For example, pursuant to the Purchase Transaction, the Company has an obligation to use commercially reasonable efforts to preserve, maintain, and maximize the commercial value of the licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep these patents in force.

The Company also retained certain duties and obligations under the ongoing Servicing Agreement. The Company will continue to perform these services in exchange for a quarterly fee of $10,000, or $40,000 annually. These retained duties consist of taking commercially reasonable steps to collect the royalty amounts due and enforcing the related provisions under the license agreements. In particular, the Company is required to monitor receipt of the royalty payments due under the license agreements and to confirm that the payments are received on a timely basis, calculated properly and made available to the trustee.

At the time the aforementioned Notes cease to be outstanding, the purchaser must make an election to either (1) terminate the Servicing Agreement and execute the New Servicing Agreement, which was contemplated and drafted at the time of the Purchase Transaction, or (2) obtain from the Company the assignment and transfer of all the licensed intellectual property and all of the Company's

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

8. Sale of TCD Royalty Sub Reported as Discontinued Operations (Continued)

rights and obligations under the license agreements subject to certain conditions described in the Unit Purchase Agreement.

The Company determined it had not retained any interest nor any of the risks and rewards of TCD ownership nor had it guaranteed any payment of principal and interest on the Notes. The Company is serving as an agent for the debt holders in discharging its retained duties. Therefore, pursuant to ASC 810-10, "Consolidation", the Company is accounting for the Purchase Transaction as a sale of a subsidiary and is calculating the resulting gain as the aggregate of the fair value of consideration and the carrying value of TCD's assets and liabilities, less its fees and expenses. Since the assets and liabilities of TCD had identifiable operations and cash flows that are independent from the Company and the Company does not have a significant continuing involvement with TCD operations, the sale of TCD will be reported as discontinued operations in our consolidated statements of operations. Accordingly, the gain on the sale of the subsidiary, as well as any results of operations related to TCD, are presented as discontinued operations in all periods presented in the accompanying financial statements. Should the Company receive the milestone payment or additional consideration, the fair value of amounts received, less any related fees and expenses, will be recorded as "gain on the sale of the subsidiary", a component of discontinued operations.

9. Stockholders' Equity (Deficit)

In 2005 and 2006, the Company issued an aggregate of 49,000,000 shares of its Series A Preferred Stock, which includes 4,000,000 shares issued in connection with the purchase of certain assets from Shire Laboratories, Inc. The offering price per share was $1.00, resulting in aggregate gross cash proceeds of $45.0 million. The Company incurred approximately $286,000 in expenses directly related to these offerings, and these expenses were charged to additional paid-in capital.

Dividends on the Series A Preferred Stock are cumulative and accrue at a rate per annum of $0.07 per share, subject to adjustment for certain dilutive events. The Company is not obligated to pay the dividends unless it declares or pays dividends on any other shares of capital stock or in the event of a liquidation, dissolution or winding up of the Company. As of December 31, 2010 and 2011, dividends of approximately $17.1 million and $20.5 million, respectively, have been accumulated. In liquidation, the holders of Series A Preferred Stock are entitled to receive $1.00 per share plus an amount equal to all accrued unpaid dividends and any dividends declared but unpaid before any distribution to the holders of any shares of common stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock. A merger or consolidation in which the Company is a constituent party is deemed to be a liquidation.

The holders of the Series A Preferred Stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of Series A Preferred Stock held are convertible as of the specified record date. The holders of the Series A Preferred Stock are entitled to elect four directors of the Company. Without the affirmative vote of two-thirds of the then outstanding shares of Series A Preferred Stock, the Company shall not, among other things, change the number of directors from nine; create any additional shares of preferred stock; liquidate or dissolve the business affairs of the Company; create or issue any security or obligation that is convertible or exchangeable into securities of the Company; pay dividends or distributions on any shares of stock; or incur any liability for indebtedness that exceeds $500,000.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

9. Stockholders' Equity (Deficit) (Continued)

At any time, the holders of Series A Preferred Stock may convert their Series A Preferred Stock shares into shares of common stock. The initial conversion is one-for-one. The conversion ratio is subject to adjustment should specified dilutive events occur. The Company has reserved 49,000,000 shares of common stock for the potential conversion of its Series A Preferred Stock. Each share of Series A Preferred Stock automatically converts into shares of the Company's common stock upon closing of a firm commitment underwritten public offering of common stock registered under the Securities Act of 1933 at a price of at least $3.00 per share (adjusted to reflect stock splits, stock dividends, stock combinations, recapitalizations, and like occurrences), and which generates gross proceeds to the Company of at least $35.0 million. The holders of the Series A Preferred Stock have the right to elect to convert all outstanding shares of their stock into shares of common stock upon a two-thirds vote. The Series A Preferred Stock is not redeemable or contingently redeemable.

Common Stock

The holders of the common stock are entitled to one vote for each share of common stock held. Except for certain matters specified in the Company's amended and restated certificate of incorporation, the holders of common stock shall vote together as a single class on all matters with the holders of the Series A Preferred Stock.

10. Share-Based Payments

As of December 31, 2011, the Company had one share-based compensation plan. The Supernus Pharmaceuticals, Inc. 2005 Stock Plan (the Plan), which is stockholder-approved, permits the grant of options, purchase rights, and awards to its employees, officers, directors, consultants, or advisors for up to 8,000,000 shares of common stock. The Company believes that such awards better align the interest of its employees with those of its stockholders. Option awards are granted with an exercise price equal to the estimated fair value of the Company's common stock at the grant date; those option awards generally vest in four annual installments, starting on the first anniversary of the date of grant and have ten-year contractual terms. The Plan provides for the issuance of common stock of the Company upon the exercise of stock options. A portion of the grants to certain employees vests upon the achievement of specified Company milestones.

If an optionee is terminated for cause, the Company has the right and option to purchase, for a period of 180 days from the termination date, the shares of common stock the optionee obtained through the exercise of a stock option. The purchase price will equal the estimated fair market value of the common stock determined by mutual agreement between the Company and the optionee. There were no shares subject to repurchase at December 31, 2010 and 2011.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

10. Share-Based Payments (Continued)

Stock-based compensation recognized related to the grant of employee and non-employee stock options, and non-vested stock was as follows:

	Year Ended December 31,		
	2009	2010	2011
	(in thousands)		
Research and development	$ 28	$ 53	$ 63
General and administrative	83	244	(145)
Total	$ 111	$ 297	$ (82)

In November 2010, the Company's Board of Directors (the "Board") repriced 255,000 of the options granted on December 15, 2009, from a per-share exercise price of $1.76 to $0.64. In addition, the Board approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of non-vested stock awarded to the Company's chief executive officer. The vesting of these share-based awards was contingent upon the submission and the FDA's acceptance of the Company's first new drug application (NDA) on or before December 22, 2010, and the Board extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of the Board actions, there was no immediate charge related to the repriced and modified options. The Company recognized approximately $190,000 of stock-based compensation related to the modified performance vesting options during the period January 1, 2010 through February 28, 2011. As of March 31, 2011, the performance condition was not met and all performance vesting options expired. As a result, all previously recorded compensation expense related to the performance vesting options was reversed.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model using the assumptions in the following table:

	Year Ended December 31,		
	2009	2010	2011
Fair value of common stock	$0.40 – $1.76	$0.64 – $0.84	$1.06 – $1.47
Expected volatility	60.3% – 61.5%	59.1% – 74.7%	69.1% – 69.5%
Expected dividends	0%	0%	0%
Expected term	6.25 years	0.41 – 6.25 years	6.25 years
Risk-free rate	1.65% – 2.72%	0.15% – 2.93%	1.16% – 1.49%
Expected forfeiture rate	5%	0% – 5%	0%

Fair Value of Common Stock—For all option grants, the fair value of the common stock underlying the option grants was determined by the Board, with the assistance of management, which intended all options granted to be exercisable at a price per share not less than the per share fair value of the Company's common stock underlying those options on the date of grant. The Company utilized methodologies, approaches and assumptions as set forth in the Technical Practice Aid, when estimating the fair value of common stock at each grant date.

Given the lack of an active public market for the common stock, the Board employed a third-party valuation firm to assist in the determination of fair value by completing contemporaneous valuations. In

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

10. Share-Based Payments (Continued)

the absence of a public market, and as a clinical stage company with no significant revenues from product sales, the Company considered a range of factors to determine the fair market value of the common stock at each grant date. The factors include: (1) the achievement of clinical and operational milestones by the Company, (2) the status of strategic relationships with collaborators, (3) the significant risks associated with the Company's stage of development, (4) capital market conditions for life science companies, particularly similarly situated privately held, early-stage life science companies, (5) the Company's available cash, financial condition, and results of operations, (6) the most recent sales of the Company's preferred stock, and (7) the preferential rights of the outstanding preferred stock.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

10. Share-Based Payments (Continued)

Expected Volatility—Volatility is a measure of the amount by which a financial variable such as a share price has fluctuated (historical volatility) or is expected to fluctuate (expected volatility) during a period. The Company does not maintain an internal market for its shares and its shares are not traded privately. The Company has identified several public entities of similar size, complexity, and stage of development and, accordingly, historical volatility has been calculated using the volatility of these companies.

Dividend Yield—The Company has never declared or paid dividends and has no plans to do so in the foreseeable future.

Expected Term—This is the period of time that the options granted are expected to remain unexercised. Options granted have a maximum term of ten years. The Company determines the average expected life of stock options according the "simplified method" as described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the end of the contractual term. Over time, management will track estimates of the expected life of the option term so that estimates will approximate actual behavior for similar options.

Risk-Free Interest Rate—This is the U.S. Treasury rate for the week of each option grant during the year, having a term that most closely resembles the expected term of the option.

Expected Forfeiture Rate—The forfeiture rate is the estimated percentage of options granted that are expected to be forfeited or canceled on an annual basis before becoming fully vested. The Company estimates the forfeiture rate based on turnover data with further consideration given to the class of employees to whom the options were granted.

Information with respect to stock options granted to employees and non-employees from January 1, 2009 through December 31, 2011 was as follows:

Grant Date	Number of Options Granted	Exercise Price	Estimated Fair Value	Intrinsic Value
01/19/2009	225,000	$ 0.40	$ 0.23	$ —
12/15/2009	257,200	$ 1.76	$ 1.03	$ —
02/10/2010	52,500	$ 0.84	$ 0.49	$ —
04/16/2010	32,750	$ 0.84	$ 0.49	$ —
07/20/2010	38,500	$ 0.84	$ 0.48	$ —
10/15/2010	15,000	$ 0.64	$ 0.37	$ —
11/02/2010	880,000	$ 0.64	$ 0.41	$ —
11/16/2010	35,000	$ 0.64	$ 0.41	$ —
10/14/2011	35,000	$ 1.06	$ 0.67	$ —
12/30/2011	544,000	$ 1.47	$ 0.92	$ —

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

10. Share-Based Payments (Continued)

The following table summarizes stock option activity under the Plan:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Outstanding, December 31, 2010	2,657,958	$ 0.43	7.83
Granted	579,000	$ 1.45	
Exercised	(278,241)	$ 0.10	
Forfeited or expired	(566,247)	$ 0.54	
Outstanding, December 31, 2011	2,392,470	$ 0.69	7.71
As of December 31, 2011:			
Vested and expected to vest	2,354,347	$ 0.69	7.70
Exercisable	1,050,284	$ 0.32	5.96

The aggregate intrinsic value of options outstanding, vested and expected to vest, and exercisable as of December 31, 2010 is approximately $589,000, $585,000 and $463,000, respectively. The aggregate intrinsic value of options outstanding, vested and expected to vest, and exercisable as of December 31, 2011 is approximately $1.9 million, $1.8 million and $1.2 million, respectively.

The weighted-average, grant-date fair value of options granted for the years ended December 31, 2009, 2010 and 2011, was $0.66, $0.42, and $0.91 per share, respectively. The total fair value of the underlying common stock related to shares that vested during the years ended December 31, 2009, 2010 and 2011, was approximately $49,000, $104,000, and $113,000, respectively. The total intrinsic value of options exercised amounted to approximately $65,000, $26,000, and $262,000, respectively, during the years ended December 31, 2009, 2010 and 2011. As of December 31, 2011, the total unrecognized compensation expense, net of related forfeiture estimates, was approximately $768,000, which the Company expects to recognize over a weighted-average period of 3.09 years.

On December 22, 2005, the Company granted an officer a restricted award for 3,500,000 shares of common stock. Approximately 2,500,000 shares of the award vested on a quarterly basis over a four-year period through 2009. The remaining 1,000,000 shares of the award vest upon the achievement of specified clinical and regulatory milestones. Of the 1,000,000 restricted awards subject to performance based vesting, there were 411,765 unvested shares as of December 31, 2010, which would vest upon the pending successful completion of one last milestone, which is the filing and the FDA's acceptance of the Company's first NDA filing on or before March 31, 2011. As the Company believed that achievement of this milestone was probable, the Company began recording stock compensation expense related to the fair value of this performance based restricted award in its consolidated statements of operations during the period ended December 31, 2010. The performance condition was not met, so the unvested portion of the restricted stock award expired on March 31, 2011 and the related expense was reversed on that date.

On the grant date, the Company estimated the fair value of restricted common stock to be $0.10 per share. The total estimated fair value of $350,000 was recognized a) ratably over the four year requisite service period and b) the portion subject to the achievement of the specified performance conditions is being recognized when achievement of those conditions was considered probable. For the years ended December 31, 2009, 2010 and 2011, the Company recognized approximately $62,000,

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

10. Share-Based Payments (Continued)

$141,000, and $(141,000), respectively, in stock compensation related to this arrangement. The following table summarizes activity related to these non-vested shares:

	Number of Shares	Weighted-Average Fair Value
Non-vested shares, December 31, 2010	411,765	$ 0.10
Granted	—	
Vested	—	
Forfeited or expired	(411,765)	$ 0.10
Non-vested shares, December 31, 2011	—	

11. Income Taxes

The components of the benefit from income tax were as follows:

	Year Ended December 31,		
	2009	2010	2011
	(in thousands)		
Current			
Federal	$ —	$ —	$ (14,090)
State	—	—	(2,155)
Deferred			
Federal	—	(399)	—
State	—	—	—
Total	$ —	$ (399)	$ (16,245)

For the years ended December 31, 2009, 2010 and 2011, there was a $0, $0.4 million and $16.2 million, benefit for federal or state income taxes based on continuing operation, respectively. A reconciliation of the expected income tax benefit computed using the federal statutory income tax rate to the Company's effective income tax rate is as follows:

	Year Ended December 31,		
	2009	2010	2011
	(in thousands)		
Income tax (benefit) computed at federal statutory tax rate	157	$ (13,421)	$ (13,419)
Permanent items	38	61	57
State taxes	33	(2,142)	(2,155)
Change in valuation allowance	(667)	16,144	—
Uncertain tax position	—	190	129
Research and development credits	(986)	(1,267)	(857)
Other	1,425	36	—
Total	$ —	$ (399)	$ (16,245)

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

11. Income Taxes (Continued)

In 2011, the Company recorded pre-tax income from discontinued operations of approximately $93.3 million, which resulted in income tax expense from discontinued operations of approximately $36.8 million. This income tax expense from discontinued operations was completely offset by a $16.2 million income tax benefit generated from the 2011 loss from continuing operations and the utilization of net operating loss carryforwards.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some or all of the deferred tax assets will not be realized. The ultimate realization of the deferred tax assets is dependent upon the generation of future taxable income during the periods in which the net operating loss (NOL) carryforwards are available. Management considers projected future taxable income, the scheduled reversal of deferred tax liabilities, and available tax planning strategies that can be implemented by the Company in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the NOL carryforwards are available to reduce income taxes payable, management has established a full valuation allowance.

As of December 31, 2011, the NOL carryforwards amounted to approximately $37.5 million and will begin to expire in various years beginning in 2025. As of December 31, 2011, the Company has available research and development credit carryforwards of approximately $5.0 million, which expire, if unused, starting 2025. The use of the Company's NOL carryforwards and research and development credits may be restricted due to changes in Company ownership. Additionally, despite the NOL carryforwards, the Company may have a future tax liability due to an alternative minimum tax or state tax requirements. The Company paid no income taxes in the years ended December 31, 2009, 2010 or 2011.

The deferred tax benefit has been entirely offset by valuation allowances. The significant components of the Company's deferred tax assets (liabilities) were as follows:

	As of December 31,	
	2010	2011
Deferred tax assets:		
Net operating loss carryforward	$ 36,418	$ 14,809
Deferred rent credit	339	514
Accrued compensation and non-qualified stock options	57	48
Deferred financing costs	(8)	35
Depreciation and amortization	(15)	98
Research and development credits	4,282	5,018
Other	8	9
Net deferred tax asset before valuation allowance	41,081	20,531
Valuation allowance	(41,081)	(20,531)
Net deferred tax asset	$ —	$ —

The Company accounts for uncertain tax positions pursuant to the guidance in FASB ASC Topic 740, *Income Taxes*. The Company recognizes interest and penalties related to uncertain tax positions, if any, in income tax expense. As of December 31, 2010 and 2011, the Company did not accrue any interest related to uncertain tax positions. The Company's income taxes have not been subject to

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

11. Income Taxes (Continued)

examination by any tax jurisdictions since its inception. Due to NOL and research and development credit carryforwards, all income tax returns filed by the Company are subject to examination by the taxing jurisdictions. The net change during the year ended December 31, 2011 in total valuation allowance of approximately $20.6 million is due to the tax attributes utilized by discontinued operations.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows:

	Year Ended December 31,		
	2009	2010	2011
	(in thousands)		
Balance as of January 1	$ —	$ —	$ 642
Gross increases related to prior-year tax positions	—	452	—
Gross increases related to current-year tax positions	—	190	110
Balance as of December 31	$ —	$ 642	$ 752

The Company believes that any of its uncertain tax positions would not result in adjustments to its effective income tax rate because likely corresponding adjustments to deferred tax assets would be offset by adjustments to recorded valuation allowances.

12. Commitments and Contingencies

The Company's original lease for office and lab space extended through April 2013. The lease contained tenant and capital improvement allowances in the aggregate of $1.1 million. In December 2010, the Company amended its lease arrangement for its office and lab space in order to extend the expiration of the term from April 2013 to April 2018. Commencing in November 2013, the base annual rent will be increased 2% per annum for the remaining term. The Company may elect to extend the term of the lease for an additional five-year period on the same terms and conditions. In addition to the original tenant improvement allowance of $1.1 million, the lease amendment provides for additional tenant improvement allowance of approximately $1.3 million. Through December 31, 2010 and 2011, approximately $949,000 and $1.4 million, respectively, of the allowance has been utilized and included in fixed assets and deferred rent.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

12. Commitments and Contingencies (Continued)

Rent expense for the years ended December 31, 2009, 2010, and 2011 was approximately $921,000, $918,000, and $906,000, respectively. Future minimum lease payments under non-cancelable operating leases as of December 31, 2011 are as follows:

	As of December 31, 2011 (in thousands)
Year ending December 31:	
2012	962
2013	965
2014	985
2015	1,004
Thereafter	2,424
	$ 6,340

The Company has obtained exclusive licenses from third parties for proprietary rights to support the product candidates in the Company's psychiatry portfolio. Under license agreements with Afecta Pharmaceuticals, Inc. (Afecta), the Company has an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. The Company does not owe any future milestone payments for SPN-810. The Company will also be obligated to pay royalties to Afecta based on worldwide net sales of each of these products in the low-single digits. The Company has also entered into a purchase and sale agreement with Rune Healthcare Limited (Rune), where the Company obtained the exclusive worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If the Company receives approval to market and sell any products based on the Rune product concept for SPN-809, the Company will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

13. Employee Benefit Plan

On January 2, 2006, the Company established the Supernus Pharmaceuticals, Inc. 401(k) Profit Sharing Plan (the 401(k) Plan) for its employees under Section 401(k) of the Internal Revenue Code (Code). Under the 401(k) Plan, all full-time employees who are at least 21 years old are eligible to participate in the 401(k) Plan. Employees may participate starting on the first day of the month following employment. Employees may contribute up to the lesser of 90% of eligible compensation or the applicable limit established by the Code.

Employees are 100% vested in their contributions to the 401(k) Plan. The Company matches 100% of a participant's contribution for the first 3% of their salary deferral and matches 50% of the next 2% of their salary deferral. As determined by the Board, the Company may elect to make a discretionary contribution not exceeding 60% of the annual compensation paid to all participating employees. The Company's contributions to the 401(k) Plan approximated $255,000, $254,000 and $267,000 for the years ended December 31, 2009, 2010 and 2011, respectively.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

14. Related-Party Transactions

In May 2009, the Company entered into an amendment to a license agreement with Shire LLC, a holder of Series A Preferred Stock, whereby Shire LLC and its affiliates paid the Company a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes the Company's proprietary technologies. All four criteria necessary to recognize revenue in accordance with Accounting Standards Codification 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction (see Note 3). Accordingly, the entire amount was recorded as royalty revenue in the consolidated statements of operations.

In December 2011, the Company entered into a Unit Purchase Agreement with Royalty Opportunities S.àr.l ("ROS") (see Note 8). Pursuant to the Unit Purchase Agreement, the Company sold 100% of its equity interests in TCD to ROS for a cash payment of $27.0 million upon closing and a potential milestone payment of $3.0 million payable upon the occurrence of certain conditions. ROS is an affiliate of one of the Company's Series A Preferred Stock stockholders.

15. Collaboration Agreements

United Therapeutics

The Company has a license agreement with United Therapeutics to use one of its proprietary technologies for an oral formulation of Remodulin for the treatment of PAH and potentially for additional indications. Through December 31, 2011, the Company has received $1.5 million in pre-commercial milestone payments under the agreement. Remaining milestone payments to the Company could total $2.0 million, based on satisfaction of development milestones of oral treprostinil in PAH and up to approximately $4.0 million for the development of additional treprostinil products for a second indication. If United Therapeutics receives approval to market and sell oral treprostinil for additional indications and/or any additional combination products that utilizes the Company's technologies, the Company will receive royalties in the single digits based on net sales worldwide. The Company's license agreement with United Therapeutics will expire, on a country-by-country and product-by-product basis, 12.5 years from the first commercial sale of each product in such country. United Therapeutics may terminate, at its option, the agreement for a technical, strategic or market-related cause after giving the Company a reasonable opportunity to cure. The Company may terminate the agreement if, after having launched a product in a country, United Therapeutics or its sub-licensee discontinues the sale of such product for a prolonged period of time for reasons unrelated to force majeure, regulatory or safety issues. In addition, either party may terminate the agreement for the material, uncured breach by the other party and in certain events of bankruptcy or insolvency of the other party.

Stendhal

In August 2011, the Company executed a Development and Licensing Agreement (Stendhal License Agreement) with Especificos Stendhal, S.A., DE C.V. (Stendhal) that provided Stendhal an exclusive license to the Company's licensed intellectual property underlying the SPN-804 product in the defined territory. The license included the right to the Company's patents, proprietary information, and know-how of the Company's drug-delivery technology and pharmaceutical product underlying its SPN-804 product. Stendhal is responsible for all costs associated with clinical development, approval, commercialization and distribution of the product in the defined territory, which may be expanded

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

Years ended December 31, 2009, 2010 and 2011

15. Collaboration Agreements (Continued)

upon certain events. As of December 31, 2011, the Company had recorded approximately $697,000 as deferred revenue that is being recognized as revenue on a straight-line basis over its substantive obligation period until approval, which is estimated to be December 2014. The Company monitors this estimate on a quarterly basis to determine if facts and circumstances may have changed that would require a prospective adjustment of the recognition period. As of December 31, 2011, the Company may receive up to $3.0 million in additional milestone payments, based on certain milestones defined in the Stendhal License Agreement.

Shares

SUPERNUS PHARMACEUTICALS, INC.

Common Stock

PRELIMINARY PROSPECTUS

, 2012

Joint Book-Running Managers

Citigroup
Piper Jaffray

Co-Managers

Cowen and Company

Stifel Nicolaus Weisel

Until , 2012 (25 days after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. ***Other Expenses of Issuance and Distribution.***

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered hereby. All amounts are estimates except the SEC Registration Fee, the FINRA filing fee and NASDAQ Global Market listing fee.

	Amount to be Paid
SEC registration fee	$ 7,130
FINRA filing fee	$ 10,500
NASDAQ Global Market initial listing fee	$ 25,000
Blue Sky fees and expenses	$ *
Printing and engraving expenses	$ *
Legal fees and expenses	$ *
Accounting fees and expenses	$ *
Transfer agent and registrar fees	$ *
Miscellaneous	$ *
Total	$ *

* To be completed by amendment.

ITEM 14. ***Indemnification of Directors and Officers.***

On completion of this offering, our amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of directors and executive officers for monetary damages for breach of their fiduciary duties as a director or officer. Our amended and restated certificate of incorporation and bylaws will provide that we shall indemnify our directors and executive officers and may indemnify our employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

We are entering into indemnification agreements with each of our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation and bylaws, and intend to enter into indemnification agreements with any new directors and executive officers in the future.

We intend to purchase and maintain insurance on behalf of any person who is or was a director or officer of our company against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement (to be filed as Exhibit 1.1 hereto) provides for indemnification by the underwriters of us and our executive officers and directors, and by us of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 17 herein.

ITEM 15. ***Recent Sales of Unregistered Securities.***

The following sets forth information regarding all unregistered securities sold during the last three years:

(a) Within the last three years, we have issued and sold the following securities:

(1) From February 5, 2009 to February 29, 2012, we issued 577,567 shares of common stock upon the exercise of options to purchase shares of our common stock under the 2005 Stock Plan at prices ranging from $0.10 to $0.64 per share.

The sales and issuances of restricted securities in the transactions described in the paragraph above were deemed to be exempt from registration under the Securities Act in reliance upon the following exemptions: Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(2) From January 19, 2009 to January 17, 2012, we granted to our employees and consultants options to purchase an aggregate of 2,137,700 shares of our common stock under the 2005 Stock Plan at prices ranging from $0.40 to $1.76 per share.

The sales and issuances of securities in the transactions described in the above paragraph (2) were deemed to be exempt from registration under the Securities Act in reliance upon Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(3) On April 15, 2008, our former subsidiary, TCD Royalty Sub LLC, issued and sold $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 in a private placement to certain institutional investors for an aggregate purchase price of $75.0 million. TCD Royalty Sub LLC paid Morgan Stanley & Co. Incorporated, as placement agent, a cash placement fee of approximately $3.0 million.

(4) On January 26, 2011, in connection with our secured credit facility, we issued promissory notes and ten-year warrants to purchase shares of our Series A convertible preferred stock at an exercise price of $1.00 per share to each of our lenders under our secured credit facility. On December 30, 2011, the secured credit facility was amended and we issued additional promissory notes and ten-year warrants to purchase shares of our Series A convertible preferred stock at an exercise price of $1.50 per share to the lenders. The promissory notes and warrants were issued in the following amounts:

- to Oxford Finance LLC, an aggregate of $20,000,000 in promissory notes and 300,000 warrants at an exercise price of $1.00 per share and 106,667 warrants at an exercise price of $1.50 per share; and

- to Compass Horizon Funding Company LLC, an aggregate of $10,000,000 in promissory notes and 75,000 warrants at an exercise price of $1.00 per share and 93,333 warrants at an exercise price of $1.50 per share.

Upon completion of this offering, the respective lender warrants will be exercisable for one share of our common stock for each share of Series A convertible preferred stock into which it was convertible at a price per share equal to the lesser of the initial public offering price, or $1.00 or $1.50, as applicable.

The issuance of the securities in the transactions described in the above paragraphs (3) and (4) were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. The securities were issued directly by the registrant and did not involve a public offering or general solicitation. All recipients of the securities were "accredited investors" as that term is defined in Rule 501 of Regulation D.

(b) There were no underwritten offerings employed in connection with any of the transactions set forth in Item 15.

ITEM 16. ***Exhibits and Financial Statement Schedules.***

(a) Exhibits—The exhibits to the registration statement are listed in the Exhibit Index to this Registration Statement beginning on page E-1 and are incorporated herein by reference.

(b) Financial Statements Schedules—All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

ITEM 17. ***Undertakings.***

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 14 or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act of 1933, shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and this offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 4 to the Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rockville, State of Maryland, on the 15th day of March, 2012.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ JACK A. KHATTAR

Name: Jack A. Khattar
Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 4 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated below:

Signature	Title	Date
/s/ JACK A. KHATTAR Jack A. Khattar	President and Chief Executive Officer and Director (Principal Executive Officer)	March 15, 2012
/s/ GREGORY S. PATRICK Gregory S. Patrick	Vice President, Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 15, 2012
* M. James Barrett, Ph.D.	Director and Chairman of the Board	March 15, 2012
* Michael F. Bigham	Director	March 15, 2012
* Frederick M. Hudson	Director	March 15, 2012
* Charles W. Newhall, III	Director	March 15, 2012
* William A. Nuerge	Director	March 15, 2012
* Michael B. Sheffery, Ph.D.	Director	March 15, 2012
* John M. Siebert, Ph.D.	Director	March 15, 2012

*By: /s/ JACK A. KHATTAR

Jack A. Khattar
Attorney-in-Fact

EXHIBIT INDEX

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1**	Amended and Restated Certificate of Incorporation of the Registrant, as amended (as currently in effect)
3.2*	Form of Second Amended and Restated Certificate of Incorporation (to be effective upon the closing of this offering)
3.3**	By-laws of the Registrant (as currently in effect)
3.4*	Form of Amended and Restated By-laws of the Registrant (to be effective upon the closing of this offering)
4.1	Specimen Stock Certificate evidencing the shares of common stock
4.2**	Secured Promissory Note, dated as of January 26, 2011, between the Registrant and Oxford Finance Corporation
4.3**	Secured Promissory Note, dated as of January 26, 2011, between the Registrant and Compass Horizon Funding Company LLC
4.4**	Form of Amended and Restated Warrant to Purchase Stock, issued in connection with the Loan and Security Agreement, dated as of December 30, 2011, by and among the Registrant, Oxford Finance LLC (successor in interest to Oxford Finance Corporation), as collateral agent and lender and Horizon Credit II LLC (successor in interest to Compass Horizon Funding Company LLC), as lender
4.5**	Secured Promissory Note—1 (Term B Loan), dated as of December 30, 2011, between the Registrant and Oxford Finance LLC (successor in interest to Oxford Finance Corporation)
4.6**	Secured Promissory Note—2 (Term B Loan), dated as of December 30, 2011, between the Registrant and Oxford Finance LLC (successor in interest to Oxford Finance Corporation)
4.7**	Secured Promissory Note (Term B Loan), dated as of December 30, 2011, between the Registrant and Compass Horizon Funding Company LLC
4.8**	Form of Warrant to Purchase Stock, issued in connection with the First Amendment to the Loan and Security Agreement, dated as of December 30, 2011, by and among the Registrant, Oxford Finance LLC (successor in interest to Oxford Finance Corporation) and Compass Horizon Funding Company LLC
5.1*	Opinion of Ropes & Gray LLP
10.1**	2005 Stock Plan and form agreements thereunder
10.2**	Supplemental Executive Retirement Plan
10.3**	Employment Agreement, dated as of December 22, 2005, by and between the Registrant and Jack Khattar
10.4**	Stock Restriction Agreement, dated December 22, 2005, by and between the Registrant and Jack Khattar
10.5**	Lease, dated as of April 19, 1999, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.
10.6**	First Amendment to Lease, dated as of November 1, 2002, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.

Exhibit Number	Description
10.7**	Second Amendment to Lease, dated as of December 22, 2005, by and among ARE-East Gude Lease, LLC, Shire Laboratories Inc. and Supernus Pharmaceuticals, Inc.
10.8**	Third Amendment to Lease, dated as of November 24, 2010, by and between ARE-East Gude Lease, LLC and the Registrant (successor-in-interest to Shire Laboratories Inc.)
10.9**	Investor Rights Agreement, dated as of December 22, 2005, by and among the Registrant and the holders of shares of Series A convertible preferred stock identified therein, as amended
10.10†	Asset Purchase and Contribution Agreement, dated as of December 22, 2005, by and among the Registrant, Shire Laboratories Inc. and Shire plc
10.11†	Guanfacine License Agreement, dated as of December 22, 2005, by and among the Registrant, Shire LLC and Shire plc, as amended
10.12†	Exclusive License Agreement, dated as of June 6, 2006, by and between the Registrant and United Therapeutics Corporation
10.13†	Exclusive Option and License Agreement, dated as of April 27, 2006, by and between the Registrant and Afecta Pharmaceuticals, Inc.
10.14†	Purchase and Sale Agreement, dated as of June 9, 2006, by and between the Registrant and Rune Healthcare Limited
10.15†	Exclusive License Agreement, dated as of November 2, 2007, by and between the Registrant and Afecta Pharmaceuticals, Inc.
10.16**	Indenture, dated as of April 15, 2008, by and between TCD Royalty Sub LLC, as issuer of the non-recourse notes, and U.S. Bank National Association, as initial trustee of the non-recourse notes
10.17**	Loan and Security Agreement, dated as of January 26, 2011, by and among the Registrant, Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender
10.18**	First Amendment to Loan and Security Agreement, dated as of December 30, 2011, by and among the Registrant, Oxford Finance LLC (successor in interest to Oxford Finance Corporation), as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender
10.19**	Unit Purchase Agreement, dated December 14, 2011, by and between the Registrant and Royalty Opportunities S.àr.l
10.20**	Form of Indemnification Agreement
10.21	Offer Letter, dated June 7, 2005, to Dr. Jones W. Bryan from the Registrant
10.22	Offer Letter, dated June 10, 2005, to Dr. Padmanabh P. Bhatt from the Registrant
10.23	Amended and Restated Employment Agreement, dated February 29, 2012, by and between the Registrant and Jack Khattar
10.24	Consulting Agreement, dated March 13, 2012, by and between Paolo Baroldi and the Registrant
10.25*	Supernus Pharmaceuticals, Inc. 2012 Equity Incentive Plan
10.26*	Form of Time-Based Incentive Stock Option Agreement under the Supernus Pharmaceuticals, Inc. 2012 Equity Incentive Plan

Exhibit Number	Description
10.27*	Form of Non-Statutory Time-Based Stock Option Agreement under the Supernus Pharmaceuticals, Inc. 2012 Equity Incentive Plan
10.28*	Supernus Pharmaceuticals, Inc. 2012 Employee Stock Purchase Plan
21.1**	Subsidiaries of the Registrant
23.1	Consent of Ernst & Young LLP
23.2*	Consent of Ropes & Gray LLP (included in 5.1)
24.1**	Power of Attorney (included on signature pages to original Filing)
24.2**	Power of Attorney of John M. Siebert, Ph.D.

* To be filed by amendment.

** Previously filed.

† Confidential treatment requested under 17 C.F.R. §§200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to the Confidential Treatment Request.

Exhibit 4.1


COMMON STOCK
COMMON STOCK
Supernus®
Pharmaceuticals
Supernus Pharmaceuticals, Inc.
CUSIP 868459 10 8
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
THIS CERTIFIES THAT
is the record holder of
FULLY PAID AND NONASSESSABLE SHARES OF COMMON STOCK, $0.001 PAR VALUE PER SHARE, OF
Supernus Pharmaceuticals, Inc.
transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed.
WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.
DATED:
VICE PRESIDENT & TREASURER
SUPERNUS PHARMACEUTICALS, INC.
SEAL
2005
DELAWARE
PRESIDENT & CEO

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT– _____ Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors
Act _____
(State)

UNIF TRF MIN ACT– _____ Custodian (until age _____)
(Cust)
_____ under Uniform Transfers
(Minor)
to Minors Act _____
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares

of the Common Stock represented by the within Certificate, and do(es) hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

X _____

X _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED:

By _____

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

Exhibit 10.10

EXECUTION COPY

ASSET PURCHASE AND CONTRIBUTION AGREEMENT

dated as of

December 22, 2005

among

SUPERNUS PHARMACEUTICALS, INC.,

SHIRE LABORATORIES INC.

and

SHIRE PLC

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

TABLE OF CONTENTS

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 8
TAX MATTERS

ARTICLE 9
EMPLOYEE BENEFITS

ARTICLE 10
SURVIVAL; INDEMNIFICATION

ARTICLE 11
MISCELLANEOUS

ASSET PURCHASE AND CONTRIBUTION AGREEMENT

AGREEMENT dated as of December 22, 2005 among Supernus Pharmaceuticals, Inc., a Delaware corporation (**"Supernus"**), Shire Laboratories Inc., a Delaware corporation (**"SLI"**) and Shire plc, a company incorporated under the laws of England and Wales (**"Guarantor"**).

W I T N E S S E T H :

WHEREAS, SLI conducts a business which develops pharmaceutical products using its oral drug delivery technologies for or in partnership with pharmaceutical companies and which consists of (i) predictive discovery lead selection and oral bioavailability screening, (ii) oral bioavailability enhancement, including solubility enhancement, permeation enhancement and efflux and protease protection, (iii) the development of oral controlled release formulations and (iv) the development of reduced abuse potential formulations (collectively, the **"Business"**); *provided* that the term "Business" shall not include the Retained Business (as defined herein);

WHEREAS, the parties desire to effect the contribution, sale and licensing of assets attributable to the Business currently conducted by SLI to Supernus, with a view towards Supernus carrying on the Business as a going concern in succession to SLI, in consideration for securities issued by Supernus and cash, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, concurrently herewith, Supernus, Shire LLC, an Affiliate (as defined herein) of SLI, and Guarantor have entered into (i) a License Agreement dated as of the date hereof relating to the license of Guanfacine (as defined herein) and (ii) a License Agreement dated as of the date hereof relating to the Compounds (as defined herein) being licensed to Shire LLC and its Affiliates (the licenses in clauses (i) and (ii), collectively, the "**Licenses**");

WHEREAS, concurrently herewith, Supernus, SLI and certain other parties have entered into a Series A Convertible Preferred Stock Purchase Agreement (the **"Stock Purchase Agreement"**);

WHEREAS, concurrently herewith Supernus, Shire LLC and Guarantor have entered into an Ongoing Projects Agreement (as defined herein); and

WHEREAS, Guarantor has agreed to guarantee the obligations of SLI hereunder.

The parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.*

(a) The following terms, as used herein, have the following meanings:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

"Amphetamine" means (i) (±)-alpha-Methylbenzeneethanamine; (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"Anagrelide" means 6,7-Dichloro-1,5-dihydroimidazo-[2,1-b]quinazolin-2(3H)-one.

"Business Day" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Business Intellectual Property Rights" means (i) the SLI Patents, (ii) the SLI Trademarks and Tradenames and (iii) the SLI Other Know-How.

"Carbamazepine" means (i) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii); *provided* that the definition of Carbamazepine shall not include Oxcarbazepine.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended.

"Compound Fields" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import and export of any pharmaceutical product containing any of the Compounds as an active ingredient.

"Compounds" means Amphetamine, Carbamazepine, Guanfacine, Lanthanum, and Mesalamine (each a **"Compound"** and collectively, the **"Compounds"**).

"Contract" means any contract, agreement (including any confidential disclosure agreement), license, lease, sales or purchase order or other legally binding undertaking or commitment, whether written or oral.

"Damages" means any and all damage, loss and expense (including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding whether involving a third party claim or solely between the parties hereto).

"Effective Time" means 12:01 a.m. (EST) on the Closing Date.

"Environmental Laws" means any statute, law (including common law), regulation, rule, judgment, order, injunction, permit or governmental restriction or requirement, in each case relating to the environment, or pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials.

"Environmental Liabilities" means any and all liabilities, obligations or commitments arising in connection with or in any way relating to the Business (as currently or previously conducted), the Contributed Assets or any activities or operations occurring or conducted at the Real Property (including offsite disposal), whether accrued, contingent, absolute, determined, determinable or otherwise, which arise under or relate to any Environmental Law (and including any matter disclosed or required to be disclosed in Schedule 3.13).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

"ERISA Affiliate" of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

"GAAP" means generally accepted accounting principles in the United States.

"Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"IND" means an Investigational New Drug Application.

"Inventions" means all writings, inventions, discoveries, improvements, Know-How, and other technology (including without limitation any proprietary biological or other materials, compounds or reagents and computer software), whether or not patentable or copyrightable, and any patent applications, patents or copyrights based thereon relating, in whole or in part, to the Compounds.

"Intellectual Property Rights" means patents, trademarks, service marks, trade names, internet domain names, rights in designs, copyright (including rights in computer software databases) and moral rights, utility models and other intellectual property rights, and all rights in and to Know-How, in each case whether registered or unregistered and including any applications for the grant of any such rights and all rights and forms of protection having an equivalent or similar effect anywhere in the world.

"Know-How" means any non-public information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation databases; ideas; discoveries; inventions; trade secrets; practices; methods; tests; assays; techniques; specifications; processes; formulations; formulae; knowledge; skill; experience; materials including pharmaceutical, chemical and biological materials; products; compositions; scientific, technical, or test data including without limitation pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, and stability data; studies; procedures; drawings; plans; designs; diagrams; sketches; technology; documentation; and patent-related and other legal information or descriptions.

"Knowledge of SLI," "SLI's knowledge" or any other similar knowledge qualification in this Agreement means to the actual knowledge of the individuals listed in Schedule 1.01(a).

"Knowledge of Supernus," "Supernus' knowledge" or any similar knowledge qualification in this Agreement means to the actual knowledge of the individuals listed in Schedule 1.01(b).

"Lanthanum" means (i) lanthanum; (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"Lien" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"Material Adverse Effect" means a material adverse effect on the business, assets or results of operations of the Business, except any such effect

resulting from or arising in connection with (i) this Agreement or the transactions contemplated hereby, (ii) changes or conditions affecting the pharmaceutical industry generally or (iii) changes in economic, regulatory or political conditions generally.

"Mesalamine" means (i) mesalamine (5-Amino-2-hydroxybenzoic acid); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"NDA" means a New Drug Application.

"Oxcarbazepine" means 10,11-Dihydro-10-oxo-5H-dibenz[b,f]azepine-5-carboxamide.

"Ongoing Projects Agreement" means the Ongoing Projects and Royalty Agreement between Supernus, Shire Development Inc. and Guarantor dated the date hereof.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Pre-Closing Receivables" means an amount in respect of any accounts, notes or other receivables arising from the conduct of the Business or the Retained Business that SLI or any of its Affiliates had invoiced to a third party prior to the Effective Time and which remain outstanding as of such time.

"QA Agreement" means the Quality Assurance Agreement among Supernus, Shire Development Inc. and Shire Pharmaceuticals Development Limited dated the date hereof.

"Retained Business" means the business of SLI and its Affiliates related to the research, development and commercialization of the Compounds or products based on the Compounds, including all Intellectual Property Rights of SLI and its Affiliates related to the Compounds (other than, for the avoidance of doubt, the SLI Other Know-How and other than the patent families identified as: (i) [**], including US patent number [**]; and (ii) [**] and form part of the Business Intellectual Property Rights).

"SLI Compound Know-How" means Know-How relating, in whole or in part, to any of the Compounds, including their formulation development, stability, bioanalytics, testing, pharmacodynamics, pharmacokinetics, preclinical and clinical performance, manufacture, use, sale or design, and in which SLI or any of its Affiliates has any right or title as of the Effective Time.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

"SLI Other Know-How" means Know-How, other than the SLI Compound Know-How, relating to the Business and in which SLI has any right or title as of the Effective Time.

"SLI Patents" means the patents and patent applications set forth on Schedule 3.10(a) together with all foreign equivalents thereof held in SLI's name.

"SLI Trademarks and Tradenames" means the trademarks, service marks, trade names, internet domain names, rights in designs and copyright (including rights in computer software databases) held in SLI's name and set forth on Schedule 3.10(a), together with the goodwill associated therewith.

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Supernus Consideration Shares" means 4,000,000 shares of Supernus Preferred Stock.

"Supernus Common Stock" means the common stock, par value $.001 per share, of Supernus.

"Supernus Preferred Stock" means the Series A Convertible Preferred Stock, par value $.001 per share, of Supernus.

"Transaction Documents" means, collectively, (i) the Stock Purchase Agreement, (ii) the Ongoing Projects Agreement, (iii) the QA Agreement and (iv) the Licenses.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Accounting Referee	7.06
Apportioned Obligations	8.03
Assumed Liabilities	2.03
Business	Recitals
Closing	2.07
Code	8.01
Contributed Assets	2.01
Customer	6.04
Customer Contract	6.04

Term	Section
Damages	10.02
Employment Terms	9.01
Guarantor	Recitals
Indemnified Party	10.03
Indemnifying Party	10.03
Independent Compound Activities	6.04
Licenses	Recitals
Material Contracts	3.06
Permitted Liens	3.09
Post-Closing Tax Period	8.03
Potential Contributor	10.05
Pre-Closing Accrued Income	7.05
Pre-Closing COBRA Participant	9.03
Pre-Closing Tax Period	8.01
Prepaid Expenses	2.02
Prior Plan	9.06
Real Property	3.09
Resigning Employees	9.01
Restricted Affiliate	6.04
Retained Assets	2.02
Retained Intellectual Property Rights	2.02
Retained Liabilities	2.04
Required Consents	3.05
SBE Affiliate	6.04
Scheduled Employees	9.01
SERP Transferee	9.09
Shire-Related Customer Provisions	6.04
Shire SERP	9.09
SLI	Recitals
SLI Confidential Information	6.03
SLI Plans	3.12
Special Resignation Benefits	9.01
Specified Covenants	10.06
Specified Persons	6.04
Stock Purchase Agreement	Recitals
Subsequent Transaction	6.04
Successor Business Entity	6.04
Successor Plan	9.06
Supernus	Recitals
Supernus Confidential Information	5.03
Supernus Consideration	2.06
Supernus Consideration Amount	2.06
Supernus 401(k) Plan	9.04
Supernus Securities	4.05
Supernus SERP	9.09

Term	Section
Tax	8.01
Taxing Authority	8.01
Third Party Claim	10.03
Transfer Date	9.01
Transfer Taxes	8.03
Transferred Employee	9.01
Transferred Plans	9.03
Transferred SERP Liability	9.09

Section 1.02. *Other Definitional and Interpretative Provisions.* Unless specified otherwise, in this Agreement the obligations of any party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2
TRANSACTIONS AT CLOSING

Section 2.01. *Contribution of Assets.* Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, SLI agrees to contribute, sell, convey, transfer, assign and deliver, or cause to be contributed, sold, conveyed, transferred, assigned and delivered, to Supernus at the Closing, free and clear of all Liens, other than Permitted Liens, all of SLI's right, title and interest in, to and under the following assets and properties, as the same shall exist at the Effective Time (the **"Contributed Assets"**):

(a) the Business Intellectual Property Rights; and

(b) the other assets and properties of the Business owned, used or held for use by SLI that are not Intellectual Property Rights, including all right, title and interest of SLI in, to and under the following assets to the extent owned, used or held for use exclusively in the conduct of the Business:

(i) all personal property (including office and laboratory equipment) and interests therein;

(ii) all raw materials, supplies and other inventories;

(iii) all rights under all Contracts to which SLI is a party other than those relating to the Retained Assets, including those set forth on Schedule 3.06;

(iv) all accounts, notes and other receivables arising after the Effective Time;

(v) all transferable licenses, permits or other governmental authorizations;

(vi) all books, records, files and papers, whether in hard copy or computer format; *provided* that SLI shall be entitled to make and maintain copies of such books, records, files and papers; and

(vii) all goodwill associated with the Contributed Assets, together with the right to represent to third parties that Supernus is the successor to the Business;

provided that in no event shall the Contributed Assets include any Retained Asset.

Section 2.02. *Retained Assets.* Supernus expressly understands and agrees that the following assets and properties of SLI (the **"Retained Assets"**) shall be retained by SLI and its Affiliates and not included in the Contributed Assets:

(a) all cash and cash equivalents, including any marketable securities, on hand and in banks and any security deposits in respect of any Retained Asset or Contributed Asset;

(b) insurance policies relating to the Business or the Contributed Assets and all claims, credits, causes of action or rights thereunder;

(c) all Intellectual Property Rights other than the Business Intellectual Property Rights (the **"Retained Intellectual Property Rights"**), including for the avoidance of doubt but without limiting the

foregoing the patents and patent applications, together with all foreign equivalents thereof, and other items set forth on Schedule 2.02 and the SLI Compound Know-How;

(d) the other property and assets of the Retained Business set forth on Schedule 2.02;

(e) all books, records, files and papers, whether in hard copy or computer format (i) used or held for use in the Retained Business or relating to any of the other Retained Assets, including all data, regulatory filings, quality assurance records, processes and manufacturing materials relating to the Compounds, (ii) related to the matters set forth on Schedules 3.07 or 6.01, including all documents and attorney work papers related thereto or (iii) prepared in connection with this Agreement or the transactions contemplated hereby;

(f) all minute books and corporate records of SLI and its Affiliates;

(g) the Pre-Closing Accrued Income and the Pre-Closing Receivables;

(h) all Tax refunds or credits of the Business relating to the Pre-Closing Tax Period, whether received prior to or after the Effective Time; *provided* that SLI or its Affiliates paid the Tax in respect of such refund or credit;

(i) all rights of SLI arising under this Agreement or any other Transaction Document to which it is a party or the transactions contemplated hereby or thereby;

(j) the Lease Agreement dated November 1, 2002 between ARE Acquisitions, LLC and SLI for the premises located at 1330 Piccard Drive, Rockville, Maryland; and

(k) all prepaid expenses, including *ad valorem* taxes, leases and rentals (collectively, **"Prepaid Expenses"**).

Section 2.03. *Assumed Liabilities.* Upon the terms and subject to the conditions of this Agreement, Supernus agrees, effective at the time of the Closing, to assume all liabilities and obligations of any kind, character or description (whether known or unknown, absolute, contingent or otherwise) relating to or arising out of the Contributed Assets or the conduct of the Business and, in each case, arising after the Effective Time, except for the Retained Liabilities (the **"Assumed Liabilities"**).

Section 2.04. *Retained Liabilities.* Notwithstanding any provision in this Agreement or any other writing to the contrary, Supernus is assuming only the

Assumed Liabilities and is not assuming any other liability or obligation of SLI or its Affiliates of whatever nature, whether in existence prior to the Effective Time or arising thereafter, including any liability or obligation set forth on Schedule 2.04, relating to the Retained Business or the Retained Assets or relating to the Contributed Assets or the Business and arising prior to the Effective Time. All such other liabilities and obligations shall be retained by and remain obligations and liabilities of SLI (all such liabilities and obligations not being assumed being herein referred to as the **"Retained Liabilities"**).

Section 2.05. *Assignment of Contracts and Rights.* (a) Subject to the terms and conditions of this Agreement, promptly after the Closing, Supernus will use its reasonable best efforts to obtain the consent of any third party required to assign the Contributed Assets to Supernus and, if Supernus so requests, SLI shall use its reasonable best efforts to assist Supernus in obtaining such third party consents; *provided* that SLI shall not be required to make any payment or incur any liability in connection therewith other than in respect of a Retained Liability.

(b) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contributed Asset or any right thereunder if an attempted assignment, without the consent of a third party, would constitute a breach or in any way adversely affect the rights of Supernus or SLI thereunder. If such consent is not obtained, SLI and Supernus will, if possible, (i) cooperate in a mutually agreeable arrangement under which Supernus would obtain the benefits and assume the obligations thereunder in accordance with this Agreement or (ii) take such other action or enter into such other arrangement in respect of such Contributed Asset as they may mutually agree.

Section 2.06. *Consideration; Allocation of Consideration.* (a) The consideration for the contribution of the Contributed Assets is (i) the Supernus Consideration Shares and (ii) $1,500,000 in cash (the **"Supernus Consideration Amount"** and, together with the Supernus Consideration Shares, the **"Supernus Consideration"**). The Supernus Consideration shall be delivered to SLI as provided in Section 2.07.

(b) Supernus and SLI agree that the Supernus Consideration (plus Assumed Liabilities, to the extent properly taken into account under Section 1060 of the Code) shall be allocated in accordance with Schedule 2.06 (b). SLI and Supernus agree to (i) be bound by the allocation set forth on Schedule 2,06 (b) and (ii) act in accordance with such allocation in the preparation, filing and audit of any Tax return (including filing Form 8594 with its federal income Tax return for the taxable year that includes the date of the Closing). Not later than 30 days prior to the filing of their respective Forms 8594 relating to this transaction, each party required to file such form shall deliver to the other parties hereto a copy of such form.

Section 2.07. *Closing*. The closing of the contribution of the Contributed Assets, the assumption of the Assumed Liabilities, the issuance of the Supernus Consideration Shares and the payment of the Supernus Consideration Amount hereunder (the **"Closing"**) shall take place at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York, on the date hereof. At the Closing:

(a) Supernus shall issue to SLI certificates for the Supernus Consideration Shares pursuant to the Stock Purchase Agreement and shall register such shares in its corporate books.

(b) Supernus shall deliver to SLI the Supernus Consideration Amount in immediately available funds by wire transfer to an account of SLI with a bank previously designated by SLI in writing to Supernus; *provided* that, at the request of SLI, the amount of such payment shall be less the amount payable by SLI to Supernus pursuant to a certain letter agreement dated the date hereof relating to the leased property at 1550 East Gude Drive, Rockville, Maryland.

(c) SLI and Supernus shall enter into (i) an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A, (ii) an Assignment of SLI Patents substantially in the form attached hereto as Exhibit B and (iii) subject to the provisions hereof, SLI shall deliver to Supernus such bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary to vest in Supernus all right, title and interest of SLI in, to and under the Contributed Assets, free and clear of any Liens, other than Permitted Liens.

(d) Each of SLI and Supernus shall execute and deliver each Transaction Document to which it is a party to each other party to such Transaction Document.

(e) SLI shall deliver a certification signed under penalties of perjury that it is not a "foreign person" as defined in Section 1445 of the Code.

(f) (i) Supernus shall have received all documents it may reasonably request relating to the existence of SLI and the authority of SLI to enter into this Agreement and consummate the transactions contemplated hereby, all in form and substance reasonably satisfactory to Supernus and (ii) SLI shall have received all documents it may reasonably request relating to the existence of Supernus and the authority of Supernus to enter into this Agreement and consummate the transactions contemplated hereby, all in form and substance reasonably satisfactory to SLI.

Section 2.08. *License to the SLI Compound Know-How.* SLI hereby grants to Supernus and its Affiliates, a paid-up, worldwide, irrevocable, exclusive (except as to SLI and its Affiliates) license under the SLI Compound Know-How relating to the Business for any use outside the Compound Fields to conduct any business with respect to any compounds other than the Compounds. The grant of the license in this Section 2.08 includes the right to grant sublicenses to third parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Supernus or its Affiliates. Such grant to Supernus and its Affiliates, and the right to grant sublicenses, is subject to the restrictions and obligations set forth in Section 6.04. As used in this Section 2.08, an "exclusive (except as to SLI and its Affiliates) license" means that SLI shall not grant any other entity any license under such SLI Compound Know-How other than in respect of the Compounds, but that SLI and its Affiliates retain all of their rights, including but not limited to any rights to practice the rights and ownership of such SLI Compound Know-How, in all fields. It is understood and agreed that this Section 2.08 does not grant Supernus or its Affiliates any right other than as specified in this Section 2.08 in any intellectual property of SLI or its Affiliates, nor the right to sue.

Section 2.09. *Access for Possession of Retained Assets.* As soon as practicable after the Closing, Supernus will afford to SLI, its Affiliates and their respective authorized representatives such access to Supernus' offices, properties, books, records, employees and auditors as may be reasonably necessary or appropriate to permit SLI and its Affiliates to obtain possession of all Retained Assets, including those referred to in Section 2.02 (e).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SLI

Except as set forth in the Disclosure Schedules to this Agreement, SLI represents and warrants to Supernus as of the date hereof that:

Section 3.01. *Corporate Existence and Power.* SLI is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation.

Section 3.02. *Corporate Authorization.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby are within SLI's corporate powers and have been duly authorized by all necessary corporate action on the part of SLI. This Agreement and each Transaction Document to which it is a party constitutes a valid and binding agreement of SLI.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which

it is a party and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any governmental body, agency or official other than (i) in relation to NDAs and INDs in SLI's name, notifications to be made to the U. S. Food and Drug Administration (and competent regulatory authorities in other counties) of the transaction and consequent change of principal office address of SLI, (ii) any such actions or filings as to which the failure to make or obtain would not have, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) any filings or notices not required to be made or given until after the Closing Date.

Section 3.04. *Noncontravention.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of SLI, (ii) assuming compliance with the matters referred to in Section 3.03, violate any applicable law, (iii) assuming the obtaining of all Required Consents, to SLI's knowledge, constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit relating to the Business to which SLI is entitled under any provision of any agreement or other instrument binding upon SLI or (iv) result in the creation or imposition of any Lien on any Contributed Asset, except in the case of clause (ii), (iii) or (iv) for such matters as would not have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. *Required Consents.* Schedule 3.05 sets forth each Contract binding upon SLI requiring a consent or other action by any Person as a result of the execution, delivery and performance of this Agreement, except such consents or actions that would not have, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect if not received or taken by the Closing Date (the **"Required Consents"**).

Section 3.06. *Material Contracts.* (a) Except for the Contracts disclosed in Schedule 3.06 (collectively, the **"Material Contracts"**), with respect to the Business, SLI is not a party to or bound by:

(i) any lease (whether of real or personal property) providing for annual rentals of S 50,000 or more that cannot be terminated on not more than 60 days' notice without payment by SLI of any material penalty;

(ii) any agreement for the purchase of materials, supplies, goods, services, equipment or other assets providing for either (A) annual payments by SLI of $50,000 or more or (B) aggregate payments by SLI of $50,000 or more, in each case that cannot be terminated on not more than 60 days' notice without payment by SLI of any material penalty;

(iii) any sales, distribution or other similar agreement providing for the sale by SLI of materials, supplies, goods, services, equipment or other assets that provides for annual payments to SLI of $100,000 or more;

(iv) any material partnership, joint venture or other similar agreement;

(v) any agreement relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);

(vi) any agreement relating to indebtedness for borrowed SLI money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement with an aggregate outstanding principal amount not exceeding $50,000;

(vii) any agreement, other than this Agreement and the Transaction Documents, that limits in any material respect the freedom of SLI or the Business to compete in any line of business or with any Person or in any area; or

(viii) any material agreement with or for the benefit of any Affiliate of SLI.

(b) Each Material Contract required to be disclosed pursuant to this Section is a valid and binding agreement of SLI and is in full force and effect, and none of SLI or, to the Knowledge of SLI, any other party thereto is in default or breach in any respect under the terms of any such Material Contract, except for any such defaults or breaches which would not have, or would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.07. *Litigation.* Except for the matters disclosed in Schedule 3.07, there is no action, suit, investigation or proceeding pending against, or to the Knowledge of SLI, threatened against or affecting, SLI or the Business before any court or arbitrator or any governmental body, agency or official which is reasonably likely to have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 3.08. *Compliance with Laws and Court Orders.* SLI is not in violation of any law, rule, regulation, judgment, injunction, order or decree applicable to the Contributed Assets or the conduct of the Business, except for violations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.09. *Properties.* (a) Schedule 3.09(a) correctly describes all real property used or held for use exclusively in the Business which SLI owns, leases, operates or subleases (the **"Real Property"**).

(b) SLI has good title to, or in the case of any leased Real Property or personal property has valid leasehold interests in, all Contributed Assets, except for properties and assets where the failure to have such good title or valid leasehold interests is not material to such properties or assets or to the Business. No Contributed Asset is subject to any Lien, except:

(i) Liens disclosed on Schedule 3.09(b);

(ii) Liens for taxes, assessments and similar charges that arc not yet due or are being contested in good faith;

(iii) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable or arc being contested in good faith; or

(iv) Liens incurred in the ordinary course of business (clauses (i) through (iv) of this Section 3.09(b) are, collectively, the "**Permitted Liens**").

Section 3.10. *Intellectual Property.* (a) Schedule 3.10(a) contains a list of the SLI Patents and the SLI Trademarks and Tradenames included in the Business Intellectual Property Rights.

(b) Schedule 3.10(b) sets forth a list of all agreements (excluding customer agreements entered into in the ordinary course of business) as to which SLI is a party and pursuant to which any Person is authorized to use any material Business Intellectual Property Right.

(c) To the Knowledge of SLI, except for the Retained Intellectual Property Rights, the Business Intellectual Property Rights and the license to the SLI Compound Know-How granted pursuant to Section 2.08 together constitute all the Intellectual Property Rights necessary for the conduct of the Business as currently conducted, other than rights in respect of third party commercial computer software.

(d) SLI has not received any written notice of infringement of or conflict with the rights of others with respect to the use of any of the Business Intellectual Property Rights.

(e) No Business Intellectual Property Right is subject to any outstanding judgment, injunction, order or decree restricting the use thereof by SLI with respect to the Business.

Section 3.11. *Insurance Coverage.* SLI has made available to Supernus a list of, and true and complete copies of, all insurance policies and fidelity bonds relating to the Contributed Assets, the Business and its officers and employees.

Section 3.12. *Employee Benefit Plans.* (a) SLI has made available to Supernus a list and copies of each material "employee benefit plan", as defined in Section 3(3) of ERISA, each employment, severance or similar contract, plan arrangement or policy and each other plan or arrangement providing for compensation, bonuses, profit-sharing, stock option or other stock related rights or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangements), health or medical benefits, employee assistance program, disability or sick leave benefits, workers' compensation, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered or contributed to by SLI or any of its ERISA Affiliates and covers any individual employed by SLI. Such plans are referred to collectively herein as the **"SLI Plans"**.

(b) Except as otherwise provided in this Agreement, no facts or circumstances exist which would reasonably be expected to impose upon Supernus any liability or obligation with respect to any current or former employee benefit plan sponsored, maintained or contributed to SLI or any ERISA Affiliate of SLI or any predecessor thereof.

Section 3.13. *Environmental Compliance.* Except as disclosed on Schedule 3.13 and as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) (i) no written notice, order, request for information, complaint or penalty has been received by SLI, and (ii) there are no judicial, administrative or other actions, suits or proceedings pending or threatened, in the case of each of (i) and (ii), which allege a violation of any Environmental Law and relate to the Contributed Assets or Real Property;

(b) SLI has obtained or caused to be obtained all environmental permits necessary for the operation of the Contributed Assets and the Real Property to comply with all applicable Environmental Laws (as in effect on the date hereof) and SLI is in compliance with the terms of such permits and, with respect to the operation of the Contributed Assets and the Real Property, with all other applicable Environmental Laws (as in effect on the date hereof); and

(c) there has been no written environmental audit conducted within the past five years by SLI of any Contributed Asset or any of the Real Property which has not been made available to Supernus prior to the date hereof.

Section 3.14. *Title to the Contributed Assets.* Upon consummation of the transactions contemplated hereby, Supernus will have acquired good title in and to, or a valid leasehold interest in, each of the Contributed Assets, free and clear of all Liens, except for Permitted Liens, and the right to use the Contributed Assets, subject to the terms and conditions of this Agreement, the Transaction Documents and Contracts with third parties that are in respect of or relate to the Contributed Assets.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SUPERNUS

In addition to the representations and warranties being made by Supernus to the Purchasers (as defined in the Stock Purchase Agreement) in the Stock Purchase Agreement, Supernus represents and warrants to SLI as of the date hereof that:

Section 4.01. *Corporate Existence and Power.* Supernus is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted.

Section 4.02. *Corporate Authorization.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Supernus and have been duly authorized by all necessary corporate action on the part of Supernus. This Agreement and each Transaction Document to which it is a party constitutes a valid and binding agreement of Supernus.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any governmental body, agency or official.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a patty and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of Supernus or (ii) assuming compliance with the matters referred to in Section 4.03, violate any applicable law, rule, regulation, judgment, injunction, order or decree.

Section 4.05. *Capitalization; Issuance of Supernus Consideration Shares.* (a) The authorized capital stock of Supernus consists of 52,000,000 shares of

Supernus Common Stock and 39,000,000 shares of Supernus Preferred Stock. Immediately prior to the consummation of the transactions contemplated hereby and by the Stock Purchase Agreement, there are outstanding 6,500,000 shares of Supernus Common Stock and no shares of Supernus Preferred Stock.

(b) All outstanding shares of capital stock of Supernus have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth in this Section 4.05, there are no outstanding (i) shares of capital stock or voting securities of Supernus, (ii) securities of Supernus convertible into or exchangeable for shares of capital stock or voting securities of Supernus or (iii) options or other rights to acquire from Supernus, or other obligation of Supernus to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of Supernus (the items in Sections 4.05(b)(i), 4.05(b)(ii) and 4.05(b)(iii) being referred to collectively as the **"Supernus Securities"**). There are no outstanding obligations of Supernus to repurchase, redeem or otherwise acquire any Supernus Securities.

(c) Schedule 4.05(c) lists, for each holder of any Supernus Securities (i) the identity of such holder, (ii) the type and amount of Supernus Securities held by such holder and (iii) the percentage of such holder's fully diluted equity interest in Supernus, in each case, immediately after the consummation of the transactions contemplated hereby and by the Stock Purchase Agreement.

(d) Upon issuance of the Supernus Consideration Shares, the Supernus Consideration Shares shall be duly authorized and validly issued and will be fully paid and non-assessable.

Section 4.06. *Litigation.* There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Supernus threatened against or affecting, Supernus before any court or arbitrator or any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or any Transaction Document to which it is a party.

Section 4.07. *No Prior Activities.* Supernus has not engaged in any activities or incurred any liabilities other than in connection with its incorporation, this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby.

Section 4.08. *Representations of SLI.* Neither Supernus nor any of its Affiliates has any knowledge, or any reason to believe, that any representation or warranty made by SLI pursuant to this Agreement is not true and correct.

Section 4.09. *Inspections; No Other Representations.* Supernus, together with its expert advisors, is an informed and sophisticated purchaser, experienced in the evaluation and purchase of property and assets such as the Contributed Assets as contemplated hereunder. Supernus, together with its expert advisors,

has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Supernus acknowledges that SLI has given Supernus complete and open access to the key employees, documents and facilities of the Business. Supernus agrees to accept the Contributed Assets and the Business in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to SLI, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Supernus acknowledges that no representation or warranty is made by either SLI or any of its Affiliates with respect to (i) any projections, estimates or budgets delivered to or made available to Supernus of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future business and operations of the Business or (ii) any other information or documents made available to Supernus or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement.

ARTICLE 5
COVENANTS OF SLI

Section 5.01. *Access to Information.* On and after the Closing Date, SLI will afford to Supernus and its agents reasonable access to its books of account, financial and other records (including accountant's work papers), information, employees and auditors to the extent necessary for Supernus in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Business or the Contributed Assets; *provided* that any such access by Supernus shall not unreasonably interfere with the conduct of the business of SLI or its Affiliates.

Section 5.02. *SLI Trademarks and Tradenames.* After the Closing, SLI shall cooperate with Supernus to effect the transfer of the SLI Trademarks and Tradenames to Supernus.

Section 5.03. *Confidentiality.* (a) After the Closing, SLI and its Affiliates will hold, will cause their respective officers, directors and employees to hold, and will use their best efforts to cause their respective accountants, counsel, consultants, advisors and agents to hold, in confidence, all confidential documents and information as of the Effective Time concerning the Business or relating to any of the Contributed Assets (including all data, regulatory filings, quality assurance records, processes, and manufacturing materials relating to the Contributed Assets or the Business), whether furnished to SLI or its Affiliates in connection with the transactions contemplated by this Agreement or any Transaction Document or in the possession of, or known by, any current

employee of any Affiliate of SLI who had previously worked at SLI prior to the Closing Date, except to the extent that such information (i) can be shown to have been in the public domain through no fault of SLI or any of its Affiliates, (ii) can be shown to have been later lawfully acquired by SLI or any of its Affiliates from sources other than Supernus, (iii) relates to the Retained Business or the Retained Assets or any continuing business of SLI and its Affiliates; *provided* that, if any such information is the subject of a separate written confidentiality obligation between Supernus and any Affiliate of SLI, any obligations of SLI and its Affiliates regarding such information shall be governed by the terms of such other confidentiality obligation, (iv) relates to any Retained Liability and may reasonably be necessary in the satisfaction of or resolution of any dispute involving such Retained Liability and (v) relates to any past, present or future products of SLI or any of its Affiliates and may reasonably be necessary or may be required in connection with the development, manufacturing, offer for sale, sale, distribution, importation or exportation of such products or may reasonably be requested or may be required by any governmental agency or authority (collectively, **"Supernus Confidential Information"**). SLI shall be responsible for any failure to treat any Supernus Confidential Information confidentially by such Persons.

(b) Notwithstanding the restriction set forth in Section 5.03(a) to the contrary, SLI may disclose Supernus Confidential Information (i) to its Affiliates, potential and actual sublicensees, consultants, outside contractors, clinical investigators, and other third parties, on a need-to-know basis; *provided* that such Persons shall only use the Supernus Confidential Information for purposes specifically authorized by this Agreement, (ii) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality (it being understood that any sublicensee referred to in clause (i) above may disclose the relevant Supernus Confidential Information to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality), (iii) to government or other regulatory authorities to the extent that such disclosure is reasonably necessary to obtain intellectual property protection or authorizations to conduct clinical trials of, and to commercially market, products; *provided* that SLI or its Affiliates requests confidential treatment, if it is available, with respect to such Supernus Confidential Information, and (iv) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that SLI shall, where legally permissible, notify Supernus promptly upon receipt thereof, giving Supernus, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such Supernus Confidential Information; and *provided, further,* that SLI shall furnish only that portion of such Supernus Confidential Information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained by Supernus.

Section 5.04. *Non-Solicit.* SLI agrees that for a period of four years after the Closing Date, neither it nor any of its Affiliates shall solicit for employment any employee of Supernus or any of its Subsidiaries or induce any such employee to terminate his or her employment with Supernus or any of its Subsidiaries; *provided* that general advertisement for employment in newspapers, magazines, trade publications or other public media (including the Internet) shall not be considered solicitation for employment.

ARTICLE 6
COVENANTS OF SUPERNUS

Section 6.01. *Access; Cooperation.* On and after the Closing Date, Supernus will afford to SLI, its Affiliates and their respective counsel, auditors and other authorized representatives reasonable access to its offices, properties, books, records, employees and auditors to the extent relating to the Retained Assets or the Retained Liabilities or necessary to permit SLI to determine any matter relating to its rights and obligations for the period ending on or prior to the Closing Date; *provided* that any such access by SLI shall not unreasonably interfere with the conduct of the business of Supernus. Without limiting the foregoing, Supernus will, and will cause its employees, officers and advisers to, cooperate with and provide assistance to SLI and its Affiliates in connection with (i) determining any amounts owed to SLI pursuant to Section 7.05 and (ii) the litigation matters set forth on Schedule 6.01, including preserving and retaining records, and furnishing records, information and testimony, and attending conferences, discovery proceedings, hearings, trials or appeals; *provided* that, with respect to clause (ii) above, Supernus shall be reimbursed by SLI or one of its Affiliates for the time reasonably spent by any of its employees cooperating with or providing assistance to SLI and its Affiliates in connection with such litigation, at the FTE Rate (as defined in the Ongoing Projects Agreement) for such time, and for any out-of-pocket expenses reasonably incurred by Supernus or its employees in connection therewith.

Section 6.02. *Trademarks; Tradenames.* (a) Except as set forth in Section 6.02(b), after the Closing, Supernus and its Affiliates shall not use any of the trademarks, service marks or tradenames that are part of the Retained Intellectual Property Rights.

(b) Supernus shall have the right to use existing packaging, labeling, containers, supplies, logos and advertising materials bearing the name "Shire Laboratories" or "SLI" for a period not to exceed six months following the Closing Date. All goodwill from such use by Supernus shall accrue to the benefit of SLI and its Affiliates, and all such use shall conform to any trademark usage guidelines provided by SLI. Supernus shall comply with all applicable laws in any use of packaging or labeling containing the name "Shire Laboratories" or "SLI".

(c) If Supernus violates any provision of this Section 6.02 or if, in the reasonable view of SLI or its Affiliates, Supernus deviates from the permissible scope of use in connection with or the manner and nature of the permitted use of the names "Shire Laboratories" or "SLI", SLI or its Affiliates shall provide Supernus written notice of the violation and/or deviation from the permissible standard and allow Supernus ten Business Days from receipt of the written notice to cure such violation and/or deviation. If, after ten Business Days from receipt of the written notice of the violation and/or deviation, Supernus has not cured such violation and/or deviation to the reasonable satisfaction of SLI or its Affiliate that provided the notice, SLI or its Affiliates may immediately terminate Supernus's right to use such names and Supernus shall permanently and immediately discontinue all use of such names. The parties acknowledge and agree that a violation of any provision of this Section 6.02 will cause SLI and its Affiliates irreparable injury and that if Supernus does not cure the violation within the specified time period, SLI and its Affiliates shall be entitled to seek emergency relief from a federal or state court to enforce the terms of this Agreement.

Section 6.03. *Confidentiality.* (a) After the Closing, Supernus and its Affiliates will hold, will cause their respective officers, directors and employees to hold, and will use their best efforts to cause their respective accountants, counsel, consultants, advisors and agents to hold, in confidence, all confidential documents and information concerning the Retained Business or relating to any of the Retained Assets (including all data, regulatory filings, quality assurance records, processes, dissolution methodologies and manufacturing materials relating to the Compounds), whether furnished to Supernus or its Affiliates in connection with the transactions contemplated by this Agreement or any Transaction Document or in the possession of, or known by, any Transferred Employee on or prior to the Closing Date, except to the extent that such information can be shown to have been (i) in the public domain through no fault of Supernus, its Affiliates or any Transferred Employee, (ii) later lawfully acquired by Supernus from sources other than SLI, any Transferred Employee or any other current or former employee of SLI or its Affiliates or (iii) relates solely to the Business or the Contributed Assets and not in any respect to the Retained Business or the Retained Assets; *provided* that, if any such information is the subject of a separate written confidentiality obligation between Supernus and any Affiliate of SLI, any obligations of Supernus and its Affiliates regarding such information shall be governed by the terms of such other confidentiality obligation (collectively, **"SLI Confidential Information"**). Supernus shall be responsible for any failure to treat SLI Confidential Information confidentially by such Persons.

(b) Notwithstanding the restriction set forth in Section 6.03(a) to the contrary, Supernus may disclose SLI Confidential Information related to the SLI Compound Know-How (i) to its Affiliates, potential and actual sublicensees, consultants, outside contractors, clinical investigators, and other third parties, on a need-to-know basis; *provided* that such Persons shall only use any such SLI Confidential Information for purposes specifically authorized by this Agreement,

(ii) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality (it being understood that any sublicensee referred to in clause (i) above may disclose such SLI Confidential Information to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality), (iii) to government or other regulatory authorities to the extent that such disclosure is reasonably necessary to obtain authorizations to conduct clinical trials of, and to commercially market, products; *provided* that Supernus requests confidential treatment, if it is available, with respect to such SLI Confidential Information, (iv) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that Supernus shall, where legally permissible, notify SLI promptly upon receipt thereof, giving SLI, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such SLI Confidential Information; and *provided, further,* that Supernus shall furnish only that portion of such SLI Confidential Information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained by SLI and (v) related to improvements to the Business for the purpose of filing patent applications; *provided* that such disclosure does not disclose confidential information concerning the Retained Business or relating to any of the Retained Assets (including all data, regulatory filings, quality assurance records, processes, dissolution methodologies and manufacturing materials relating to the Compounds).

Section 6.04. *Restriction on Use.* (a) Supernus agrees that, except for activities conducted pursuant to contracts or agreements with SLI or any of its Affiliates, from time to time, neither Supernus nor any of its Restricted Affiliates shall engage in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, analytical testing, technology assessment or oral bioavailability screening, enhancement or other activities that relate, in whole or in part, to any of the Compounds in any field of use, either directly or indirectly, including as a principal or for its own account or solely or jointly with others, or as a stockholder in any corporation or joint stock association, as a partner, member, joint venturer, joint researcher, joint sponsor, joint promoter, joint marketer, joint developer, collaborator or other equity interest holder in a partnership, a limited liability company or other Person, or as a licensor of Intellectual Property Rights (or otherwise aid or assist any Person in connection with any of the foregoing); *provided, however,* subject to Section 6.04(g), Supernus may provide services to, license Intellectual Property Rights in the ordinary course of business to, or otherwise work with, providing such services, license or work is unrelated to any of the Compounds, any Person who has, without any prior contact with or assistance from Supernus, any of its Affiliates or any Transferred Employee, independently engaged in (or who has the present intention to engage in) any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design,

analytical testing, technology assessment or oral bioavailability screening, enhancement or other activities that relate, in whole or in part, to any of the Compounds in any field of use, either directly or indirectly **("Independent Compound Activities")**, so long as (i) Supernus, its Affiliates and the Transferred Employees are and remain in compliance with Section 6.03 and this Section 6.04, and the provision of such services or such other work does not contravene Section 6.03 or this Section 6.04, (ii) Supernus and its Affiliates comply with Section 6.04(b) and (iii) also, in the case of a license, the scope and terms of the license between Supernus and such Person are sufficient to ensure that the licensee cannot use the Business Intellectual Property Rights in a manner inconsistent with Section 6.03 or this Section 6.04. For purposes of this Section 6.04(a) and Section 6.05, **"Restricted Affiliates"** means Affiliates of Supernus other than investors who are investing in Supernus pursuant to the Stock Purchase Agreement and future financial investors in equity or debt of Supernus, in either case, who are not or who do not become a Successor Business Entity.

(b) Supernus hereby agrees that, from and after the Closing, it shall not provide any services to, license any Business Intellectual Property Rights to, or otherwise perform any work for, any Person (each such Person, a **"Customer"**) unless the contract or agreement relating to such services, license or work (each such contract or agreement, a **"Customer Contract"**) between Supernus and the Customer contains the provisions set forth in Exhibit D (the **"Shire-Related Customer Provisions"**). Supernus further agrees that, from and after the Closing, (i) it shall not amend or waive, in whole or in part, any of the Shire-Related Customer Provisions in any Customer Contract, without the prior written consent of Shire, (ii) it shall from time to time and upon the request of SLI (or such other entity as may be designated by Guarantor) provide SLI and its Affiliates, for monitoring purposes, with a list of all Customers, (iii) if SLI or any of its Affiliates in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the Shire-Related Customer Provisions under any Customer Contract, at the written request of SLI (or such other entity as may be designated by Guarantor), Supernus shall provide SLI and its Affiliates with an executed copy of the relevant Customer Contract and (iv) it shall indemnify and hold harmless SLI and its Affiliates against any and all Damages suffered by SLI and its Affiliates as a result of a breach of the Shire-Related Customer Provisions by any Customer, if and to the extent that any of Shire-Related Customer Provisions in the Customer Contract that SLI or any of its Affiliates is seeking to enforce shall for any reason be held invalid, illegal or unenforceable in any respect. SLI and its Affiliates agree to keep the information in any Customer Contract confidential in accordance with the provisions of Section 5.03, except to the extent reasonably necessary or appropriate for SLI or any of its Affiliates to enforce its rights and/or pursue its remedies under or with respect to such Customer Contract.

(c) Supernus may sell, assign, or otherwise transfer any Business Intellectual Property Rights to any of its Subsidiaries so long as such Subsidiary expressly agrees in writing with SLI or such other entity as designated by

Guarantor as a prior condition to such sale, assignment or other transfer to be bound by the terms of Section 6.03 and this Section 6.04.

(d) Supernus or any of its Affiliates may, subject to Section 6.04(g), enter into and consummate any transaction involving a direct or indirect sale, assignment, transfer or other disposition of all or any part of the Business or the Business Intellectual Property Rights (a **"Subsequent Transaction"**), *provided* that, as a condition to entering into any such Subsequent Transaction, any acquiror, successor, assignee or direct or indirect transferee of all or such part of the Business or the Business Intellectual Property Rights (each such acquiror, successor, assignee or direct or indirect transferee, a **"Successor Business Entity"**) shall have expressly agreed in writing with SLI or such other entity as designated by Guarantor that such Successor Business Entity shall comply with, and, as applicable, shall cause Supernus (or its successor), the Subsidiaries of Supernus, if any, in existence immediately prior to such Subsequent Transaction, and the Affiliates of the Successor Business Entity to comply with, the terms of Section 6.03 and this Section 6.04. The provisions of this Section 6.04 shall apply mutatis mutandis to each Subsequent Transaction and any and all Successor Business Entities as if it were Supernus hereunder.

(e) Supernus shall, and as a further condition to entering into any Subsequent Transaction each Successor Business Entity shall have expressly agreed in writing with SLI (or such other entity as may be designated by Guarantor) that such Successor Business Entity shall, provide to SLI (or such other entity as may be designated by Guarantor) on an annual basis within 30 days of the end of the calendar year a certificate signed by its chief executive officer, chief financial officer or general counsel certifying the compliance of Supernus and its Affiliates or such Successor Business Entity and its Affiliates, as the case may be, with all of their obligations under Section 6.03 and this Section 6.04.

(f) For the avoidance of doubt, to the extent that any Successor Business Entity or any Affiliate of a Successor Business Entity (an "**SBE Affiliate**") is, prior to closing of any Subsequent Transaction, without any prior assistance from Supernus, any of its Affiliates or any Transferred Employee, independently engaged in (or who has the present intention to engage in) any Independent Compound Activities, the Independent Compound Activities of such Successor Business Entity or SBE Affiliate shall not constitute a breach of Section 6.03 or this Section 6.04 so long as (i) the Business and the Business Intellectual Property Rights are held separate by the Successor Business Entity or SBE Affiliate from, and are not used in connection with, any Independent Compound Activities, (ii) all non-public information concerning the Business Intellectual Property Rights relating to the Compounds is kept confidential from any Successor Business Entity or SBE Affiliate engaged in any Independent Compound Activities and is not used in any manner by any Successor Business Entity or SBE Affiliate in connection with any Independent Compound Activities and (iii) SLI (or such other entity as may be designated by Guarantor) has received in a timely manner the certification required by Section 6.04(e). The

parties hereto agree that the obligation to "hold separate" shall not require a separate physical location provided that the Successor Business Entity or SBE Affiliate has otherwise taken all steps necessary and appropriate to ensure compliance with Section 6.03 and this Section 6.04.

(g) Notwithstanding any other provisions of this Section 6.04, for a period of seven years from the Closing Date, Supernus agrees that neither Supernus nor any of its Subsidiaries shall, directly or indirectly (i) provide any services to or on behalf of, license any Intellectual Property Rights to, or otherwise work with or for, any of the Persons set forth on Schedule 6.04(g) (the **"Specified Persons"**), their successors or any of their Affiliates or (ii) enter into any business combination or merge or consolidate with, be acquired by, or enter into any joint venture, joint research, joint sponsorship, joint promotion, joint development, collaboration or Subsequent Transaction with any of the Specified Persons, their successors or any of their Affiliates.

Section 6.05. *Waiver.* Except as otherwise specifically set forth in this Agreement (including Supernus' right of indemnification pursuant to Section 10.02(a)), Supernus agrees not to, and agrees to cause its Restricted Affiliates not to, either alone or in cooperation with any third party, sue or to bring any cause of action in any court, patent office or other forum (including those for any type of infringement invalidity, or unenforceability of any Intellectual Property Rights), against SLI or any of its Affiliates or any of their respective officers, directors, employees, agents, representatives, distributors, salespersons, customers, licensees, and/or end-users to prevent, inhibit, financially affect or encumber in any manner any of the activities of SLI or any of its Affiliates related, in whole or in part, to the research, development, manufacture, use, offer to sell, sale, distribution, import, and export of any compound(s), composition(s), article(s), material(s), method(s), use(s), or product(s) relating, in whole or in part, to the Compounds. For the avoidance of doubt, the provisions of this Section 6.05 shall not affect the rights and obligations of Supernus or any of its Affiliates under the Ongoing Projects Agreement or the Licenses in the event of an alleged breach of any of these agreements by SLI or any of its Affiliates.

Section 6.06. *First Right Regarding [**].* (a) Supernus hereby grants to SLI or its designated Affiliate the first right to enter into a license under all Intellectual Property Rights of Supernus and its Affiliates relating to any oral formulation for [**] which Supernus or any of its Affiliates proposes to commercialize or to grant rights in to any third party. If Supernus or any of its Affiliates proposes to commercialize or grant any rights to any third party relating to any oral formulation of [**], Supernus shall notify SLI in writing of such proposal. The notice shall (i) provide details about such oral formulation and the proposed commercialization or granting of rights, and any material commercial terms associated therewith and (ii) offer to provide or make available such other information as may be reasonably requested by SLI or its designated Affiliate to the extent it is available to Supernus and is not a trade or business secret of a third party. During the 90-day period following receipt of such written

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

notice, SLI or its designated Affiliate shall have the right to enter into negotiations with Supernus regarding such oral formulation and, if SLI or its designated Affiliate shall so elect, Supernus shall negotiate, exclusively and in good faith, during such 90-day period, with SLI or such designated Affiliate commercially reasonable terms for the commercialization or granting of rights with respect to such oral formulation to SLI or such designated Affiliate.

(b) If SLI or its designated Affiliate does not elect to enter into negotiations with Supernus during such 90-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.06 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.06 to SLI or any of its Affiliates.

(c) If SLI or its designated Affiliate has entered into negotiations with Supernus and, by the end of such 90-day period, SLI or such designated Affiliate and Supernus have not been able to reach agreement on the terms for the commercialization or granting of rights to SLI or such designated Affiliate with respect to such oral formulation, Supernus shall be free to negotiate with a third party so long as the terms and conditions of such third party agreement or arrangement are at least as favorable to Supernus as those proposed by SLI or such designated Affiliate. If the terms and conditions of such proposed third party agreement or arrangement are the same as or less favorable to Supernus than those previously proposed by SLI or its designated Affiliate, before the execution of any agreement(s) with such third party, Supernus shall provide SLI or such designated Affiliate with a copy of the relevant agreement(s) and, for a period of 30 days from the receipt of copies of the relevant agreement(s), SLI or such designated Affiliate shall have the right to enter into an agreement (or agreements) with Supernus on the same terms and conditions. Should SLI or such designated Affiliate not enter into any such agreement(s) with Supernus during such 30-day period, at the end of such 30-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.06 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.06 to SLI or any of its Affiliates.

Section 6.07. *First Right Regarding [**].* (a) Supernus hereby grants to SLI or its designated Affiliate the first right to enter into a license under all Intellectual Property Rights of Supernus and its Affiliates relating to any oral formulation for [**] which Supernus or any of its Affiliates proposes to commercialize or to grant rights in to any third party. If Supernus or any of its

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Affiliates proposes to commercialize or grant any rights to any third party relating to any oral formulation of [**], Supernus shall notify SLI in writing of such proposal. The notice shall (i) provide details about such oral formulation and the proposed commercialization or granting of rights, and any material commercial terms associated therewith and (ii) offer to provide or make available such other information as may be reasonably requested by SLI or its designated Affiliate to the extent it is available to Supernus and is not a trade or business secret of a third party. During the 90-day period following receipt of such written notice, SLI or its designated Affiliate shall have the right to enter into negotiations with Supernus regarding such oral formulation and, if SLI or its designated Affiliate shall so elect, Supernus shall negotiate, exclusively and in good faith, during such 90-day period, with SLI or such designated Affiliate commercially reasonable terms for the commercialization or granting of rights with respect to such oral formulation to SLI or such designated Affiliate.

(b) If SLI or its designated Affiliate does not elect to enter into negotiations with Supernus during such 90-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.07 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.07 to SLI or any of its Affiliates.

(c) If SLI or its designated Affiliate has entered into negotiations with Supernus and, by the end of such 90-day period, SLI or such designated Affiliate and Supernus have not been able to reach agreement on the terms for the commercialization or granting of rights to SLI or such designated Affiliate with respect to such oral formulation, Supernus shall be free to negotiate with a third party so long as the terms and conditions of such third party agreement or arrangement are at least as favorable to Supernus as those proposed by SLI or such designated Affiliate. If the terms and conditions of such proposed third party agreement or arrangement are the same as or less favorable to Supernus than those previously proposed by SLI or its designated Affiliate, before the execution of any agreement(s) with such third party, Supernus shall provide SLI or such designated Affiliate with a copy of the relevant agreement(s) and, for a period of 30 days from the receipt of copies of the relevant agreement(s), SLI or such designated Affiliate shall have the right to enter into an agreement (or agreements) with Supernus on the same terms and conditions. Should SLI or such designated Affiliate not enter into any such agreement(s) with Supernus during such 30-day period, at the end of such 30-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.07 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

without any further obligations under this Section 6.07 to SLI or any of its Affiliates.

Section 6.08. *Business.* Supernus confirms that it is its intention as of the date of this Agreement to continue the conduct of its business as a going concern for the foreseeable future.

ARTICLE 7
COVENANTS OF SUPERNUS AND SLI

Section 7.01. *Reasonable Best Efforts; Further Assurance.* Subject to the terms and conditions of this Agreement, Supernus and SLI will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement. Subject to Section 2.05, SLI and Supernus agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to (i) consummate or implement expeditiously the transactions contemplated by this Agreement, (ii) vest in Supernus good title to the Contributed Assets and (iii) ensure title and rights with respect to the Retained Assets remain with SLI or its Affiliates, as applicable, and are not affected by this Agreement or the transactions contemplated hereby.

Section 7.02. *Certain Filings.* SLI and Supernus shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority is required in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking to obtain any such actions, consents, approvals or waivers in a timely manner.

Section 7.03. *Public Announcements.* The parties agree to work together to prepare a mutually acceptable press release regarding the transaction contemplated by this Agreement. The parties agree to consult with each other before issuing any other press release or making any other public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by applicable law or any listing agreement with any national securities exchange, will not issue any such press release or make any such public statement prior to such consultation. The parties acknowledge and agree that nothing in this Section 7.03 shall preclude any of the parties from disclosing this Agreement and the transactions contemplated hereby to customers, potential customers, suppliers, potential sources of financing and any third party whose consent may be required to effect the transactions contemplated hereby.

Section 7.04. *Quality Assurance Services.* For a period of three months following the Closing Date, SLI or one or more of its Affiliates shall provide Supernus with quality assurance services and, as reasonably required by Supernus, shall assist Supernus in establishing its own internal quality assurance capability.

Section 7.05. *Receivables, Retained Liabilities and Prepaid Expenses; Set-off.* (a) Promptly after the Closing, Supernus shall mail invoices in respect of any accounts, notes or other receivables, other than the Pre-Closing Receivables, arising from the conduct of the Business or the Retained Business (including any work in progress) that had accrued to SLI or any of its Affiliates prior to the Effective Time (such amounts, the **"Pre-Closing Accrued Income"**) to each third party that owes any such amount, with appropriate instructions for such amounts to be paid directly to SLI. After the Closing, Supernus shall promptly pay, subject to Section 7.05(d), to a bank account designated by SLI or any of its Affiliates, any Pre-Closing Receivables or Pre-Closing Accrued Income it receives from any third party. Supernus shall use its reasonable best efforts to assist SLI and its Affiliates to collect any Pre-Closing Receivables or Pre-Closing Accrued Income from third parties. After the Closing, SLI shall promptly pay, subject to Section 7.05(d), to a bank account designated by Supernus, any amounts it receives from third parties in respect of accounts, notes or other receivables arising from the conduct of the Business after the Effective Time.

(b) Promptly after the Closing, subject to Section 7.05(d), Supernus shall pay to a bank account designated by SLI or any of its Affiliates an amount equal to all Prepaid Expenses that SLI or any Affiliate of SLI has paid, or is owed, with respect to the Business, any Contributed Asset or any Assumed Liability. If at any time after the Closing, SLI notifies Supernus regarding any other Prepaid Expense to which it is entitled under this Agreement, or if Supernus discovers any other Prepaid Expenses to which SLI is entitled pursuant to this Agreement, Supernus shall, subject to Section 7.05(d), promptly pay such amount to a bank account designated by SLI or any of its Affiliates. Any amounts payable pursuant to this 7.05(b) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to 4.75% for the first 75 days from the Closing Date and 5% above the U.S. Federal Funds rate thereafter.

(c) After the Closing, Supernus agrees to pay all amounts owed to any third party in respect of any Contributed Asset; *provided* that if any such amount includes any Retained Liability, Supernus shall notify SLI of the Retained Liability, which notice shall include documentation substantiating such liability together with proof of payment by Supernus and, subject to Section 7.05(d), SLI shall promptly pay such amount to a bank account designated by Supernus.

(d) After the Closing, each of SLI and Supernus shall have the right to deduct any amount the other owes to it pursuant to this Section 7.05 from any payment such party is obligated to make to the other party pursuant to this Section

7.05; *provided* that, in each case, the party claiming any right to deduct any amount hereunder receives the prior written consent of the party that owes such amount.

(e) The parties hereto agree that any payment made pursuant to this Section 7.05 shall be treated for all Tax purposes as an adjustment to the Supernus Consideration.

(f) Any amounts properly invoiced by either Supernus or SLI for payment by the other party pursuant to Section 7.05(c) or Article 9 shall be paid by the other party within 15 days from the date of the receipt of the invoice. Interest shall be chargeable on any amounts overdue, from the due date for payment of the unpaid sum (i.e., the 15th day from the date of the receipt of the relevant invoice) to the date of actual payment of the full amount, at a rate equal to 5% above the U.S. Federal Funds rate from time to time, such interest to accrue daily and to be compounded on the last day of each calendar month.

Section 7.06. *Closing Financial Statements.* (a) As promptly as practicable, but in no event later than 75 days after the Closing Date, Supernus agrees to prepare and deliver to SLI (i) financial statements for SLI (including a balance sheet as of the Closing Date and a statement of income and cash flows for the period from January 1, 2005 through the Closing Date, but, in each case, before giving effect to the transactions contemplated by this Agreement) and (ii) a certificate based on such financial statements setting forth Supernus's calculation of each of the amounts arising under Section 7.05, which certificate shall fairly present the accounts receivables, accrued liabilities and Prepaid Expenses arising under the Business as at the Effective Time, in each case, consistent with the methodologies used by SLI and its Affiliates to prepare financial statements and record such amounts prior to the Closing Date.

(b) If after SLI's review of the documents referred to in Section 7.06(a) SLI disagrees with Supernus's calculation of the financial statements or amounts set forth in the certificate delivered pursuant to Section 7.06(a), SLI may, within 30 days after delivery of such documents, deliver a notice to Supernus disagreeing with such calculation and setting forth SLI' s calculation of such financial statements or amount, as applicable.

(c) If a notice of disagreement shall be duly delivered pursuant to Section 7.06(b), SLI and Supernus shall, during the 30 days following such delivery, use their best efforts to reach agreement on the disputed items or amounts. If during such period, SLI and Supernus are unable to reach such agreement, either SLI or Supernus by notice to the other party may initiate the process whereby they shall promptly jointly retain a nationally recognized accounting firm (the **"Accounting Referee"**) and cause it to promptly review this Agreement and the disputed items or amounts and to resolve the disputed items or amounts. The Accounting Referee shall deliver to SLI and Supernus, as promptly as practicable, a report setting forth its calculation of the disputed items or

amounts. Such report shall be final and binding upon SLI and Supernus and any amount set forth therein that is payable to a party hereto pursuant to Section 7.05, shall promptly be paid to such party by the party hereto obligated to make such payment pursuant to Section 7.05. The cost of such review and report shall be borne (i) by Supernus if the amount it owes SLI pursuant to such report is greater than the amount reflected on the certificate delivered pursuant to Section 7.06(a), (ii) by SLI if the amount Supernus owes SLI pursuant to such report is less than the amount reflected on the certificate delivered pursuant to Section 7.06(a) and (iii) otherwise equally by SLI and Supernus.

(d) SLI and Supernus agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the preparation of the financial statements and the certificate delivered pursuant to Section 7.06(a) and in the conduct of the reviews referred to in this Section 7.06, including the making available to the extent necessary of books, records, work papers and personnel.

Section 7.07. *Notices From Third Parties.* After the Closing, (a) Supernus shall promptly send to SLI any notices or claims it receives in respect of the Retained Assets, Retained Liabilities, Retained Business or any other notice from any third party relating to (i) any asset to which SLI or any of its Affiliates have a right or (ii) any liability to which SLI or any of its Affiliates is subject (including any notices under any provisions of the Hatch Waxman Act or requests under Section 287, Title 35 U.S.C., product liability claims and notices from the U.S. Food and Drug Administration) and (b) SLI shall promptly send to Supernus any notices or claims it receives in respect of the Business, the Contributed Assets or the Assumed Liabilities.

Section 7.08. *Reports.* For so long as SLI or any of its Affiliates owns any Supernus Preferred Stock or Supernus Common Stock, Supernus agrees to furnish to SLI (or such other Affiliate of SLI as may be designated by either SLI or Guarantor) the reports and other information to be provided to holders of Supernus Preferred Stock or Supernus Common Stock pursuant to the Investor Rights Agreement dated as of the date hereof entered into by Supernus and the holders of Supernus Preferred Stock.

Section 7.09. *Warranty Disclaimer; Exclusion of Damages.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SLI NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR EXTEND ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY CONTRIBUTED ASSETS OR ASSUMED LIABILITIES TRANSFERRED HEREUNDER, OR ANY MATERIAL OR INFORMATION PROVIDED TO SUPERNUS UNDER THIS AGREEMENT, OR WITH RESPECT TO ANY PRODUCTS OR SERVICES OF SUPERNUS OR ITS AFFILIATES. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL

BE CONSTRUED AS A WARRANTY THAT ANY PATENT OR OTHER PROPRIETARY RIGHTS INCLUDED IN THE BUSINESS OR THE CONTRIBUTED ASSETS ARE VALID OR ENFORCEABLE OR THAT USE BY SUPERNUS OR ITS AFFILIATES OF SUCH CONTRIBUTED ASSETS, OR ANY MATERIALS OR INFORMATION PROVIDED TO SUPERNUS UNDER THIS AGREEMENT, DOES NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER ARTICLE 10 REGARDING INDEMNIFICATION, NO PARTY HERETO SHALL BE LIABLE TO ANY OTHER PARTY HERETO FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OR LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

ARTICLE 8
TAX MATTERS

Section 8.01. *Tax Definitions.* The following terms, as used herein, have the following meanings:

"Pre-Closing Tax Period" means (i) any Tax Period ending on or before the Closing Date and (ii) with respect to a Tax Period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

"Tax" means (i) any tax or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any governmental authority (a **"Taxing Authority"**) responsible for the imposition of any such tax (domestic or foreign), or (ii) liability for the payment of any amounts of the type described in (i) as a result of being party to any agreement or any express or implied obligation to indemnify any other Person.

Section 8.02. *Tax Matters.* SLI hereby represents and warrants to Supernus that:

(a) SLI has paid all material Taxes which will have been required to be paid prior to the Effective Time, the non-payment of which would result in a Lien on any Contributed Asset.

(b) SLI has established, in accordance with GAAP applied on a basis consistent with that of preceding periods, adequate reserves for the payment of, and will pay, all material Taxes which arise from or with respect to the Contributed Assets or the operation of the Business and are incurred in or attributable to the Pre-Closing Tax Period, the non-payment of which would result in a Lien on any Contributed Asset.

Section 8.03. *Tax Cooperation; Allocation of Taxes.* (a) Supernus and SLI agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Contributed Assets (including access to books and records) as is reasonably necessary for the filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Supernus and SLI shall retain all books and records with respect to Taxes pertaining to the Assets for a period of at least six years following the Closing Date. On or after the end of such period, each party shall provide the other with at least 30 days prior written notice before destroying any such books and records, during which period the party receiving such notice can elect to take possession, at its own expense, of such books and records. SLI and Supernus shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Contributed Assets or the Business, at the cost and expense of the party being audited.

(b) All real property taxes, personal property taxes and similar *ad valorem* obligations levied with respect to the Contributed Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the **"Apportioned Obligations"**) shall be apportioned between SLI and Supernus based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days of such taxable period after the Closing Date (any such portion of such taxable period, the **"Post-Closing Tax Period"**). SLI shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and Supernus shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period.

(c) All excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and similar Taxes, levies, charges and fees (collectively, **"Transfer Taxes"**) incurred in connection with the transactions contemplated by this Agreement shall be borne by SLI. Supernus and SLI shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(d) Apportioned Obligations and Taxes described in Section 8.03(b) or 8.03(c) shall be paid in a timely manner, and all applicable filings, reports and returns shall be filed, as provided by applicable law. The paying party shall be entitled to reimbursement from the non-paying party in accordance with Section 8.03(b) or 8.03(c), as the case may be. Upon payment of any such Apportioned

Obligation or Tax, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 8.03(b) or 8.03(c), as the case may be together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than 10 days after the presentation of such statement. Any payment not made within such time shall bear interest at a rate per annum equal to the Prime rate as published in the *Wall Street Journal,* Eastern Edition, in effect from time to time, for each day until paid.

ARTICLE 9
EMPLOYEE BENEFITS

Section 9.01. *Employment Offers and Terms.* (a) Supernus shall offer employment to each employee listed on Schedule 9.01(a) (the **"Scheduled Employees"**) effective as of the Closing in a position which provides a status, base salary and health and welfare benefits no less favorable to the employee than those provided to the employee by SLI and its Affiliates as of the Closing (the **"Employment Terms"**). Each offer of employment by Supernus to a Scheduled Employee shall be conditioned upon such Scheduled Employee's execution of a confidentiality and proprietary rights agreement in the form set forth in Exhibit C hereto. Each Scheduled Employee who accepts Supernus's offer of employment shall hereinafter be referred to as a **"Transferred Employee"** and the **"Transfer Date"** with respect to such Transferred Employee shall be the Closing Date. Notwithstanding the foregoing, any Scheduled Employee who is not actively at work as of the Closing Date shall not be deemed a Transferred Employee unless he or she reports to work for Supernus after the Closing Date and the Transfer Date for such Scheduled Employee shall be the date on which such Scheduled Employee reports to work for Supernus after the Closing Date. Supernus may retract its offer of employment to any Scheduled Employee who is not actively at work as of the Closing Date and does not report to work for Supernus within 9 months following the Closing Date.

(b) During the six-month period following the Closing, Supernus shall not terminate or constructively terminate the employment of any Transferred Employee without just cause. Nothing in this Agreement shall restrict the ability of Supernus to modify the Employment Terms with respect to any Transferred Employee any time following such Transferred Employee's Transfer Date. The Parties agree that modifications of the Employment Terms with respect to any Transferred Employee following such Transferred Employee's Transfer Date are not intended to give such Transferred Employee any rights or recourse under any benefit plans of SLI or its Affiliates or any rights or recourse against SLI or its Affiliates. If, however, any such Transferred Employee successfully asserts any right or recourse under any benefit plan of SLI or its Affiliates or against SLI or its Affiliates as a result of a modification of the Employment Terms with respect to such Transferred Employee following such Transferred Employee's Transfer

Date, Supernus shall reimburse SLI and its Affiliates for all Damages incurred by SLI and its Affiliates arising from the assertion of such rights or recourse by such Transferred Employee.

(c) The Scheduled Employees set forth on Schedule 9.01(c) have declined the Supernus employment offer (collectively, the **"Resigning Employees"**) and have entered into termination agreements with SLI pursuant to which such Resigning Employees shall receive the special resignation benefits described in Schedule 9.01(c) (the **"Special Resignation Benefits"**). SLI shall bear full responsibility for the cost of the Special Resignation Benefits payable to the Resigning Employees under such termination agreements.

Section 9.02. *Employee Liabilities.* (a) Schedule 9.02(a) sets forth the names of employees of SLI (the **"Redundant Employees"**) whose employment terminated prior to the Closing and who have been determined by SLI to be entitled to severance benefits (the **"Severance Benefits"**) under the Shire severance policy covering the SLI employees. Supernus agrees that effective as of Closing it shall assume responsibility for the payment of the Severance Benefits to the Redundant Employees as directed by SLI in writing and shall pay such Severance Benefits through the Supernus payroll, making all necessary deductions, withholding and payroll tax payments relating to such Severance Benefits. Supernus shall furnish to SLI itemized written monthly statements of the amounts of such Severance Benefits paid by Supernus and within thirty (30) days after receiving each such written statements SLI shall reimburse to Supernus in readily available funds the aggregate amount of such Severance Benefit payments. Notwithstanding the foregoing, if Supernus or any Affiliate of Supernus retains any Redundant Employee as an employee or consultant during the period that such Terminated Employee is entitled to receive Severance Benefits: (i) Supernus shall promptly notify SLI in writing, setting forth the name of such Redundant Employee and the date such Redundant Employee was retained by Supernus or its Affiliate, (ii) Supernus shall cease all payments of Severance Benefits to such Redundant Employee in respect of the period following the date such Redundant Employee was retained by Supernus or its Affiliate and (iii) SLI shall not be required to reimburse Supernus for any severance benefits or other amounts (including any Severance Benefits) in respect of the period following the date such Redundant Employee was retained by Supernus or its Affiliate.

(b) Except as otherwise provided in this Article 9 and any corresponding schedules hereto, SLI shall retain, and shall indemnify and hold harmless Supernus and its Affiliates with respect to, all liabilities relating to the SLI Plans, including, without limitation, all liabilities arising under any such SLI Plans for health, medical and dental benefits and disability and workers compensation benefits and accrued and unpaid bonus and incentive compensation for any year (or portion thereof) with respect to any employee of SLI including any Transferred Employee prior to the Transferred Employee's Transfer Date. Except as expressly provided in this Article 9, SLI shall retain, and shall

indemnify and hold harmless Supernus from, all employment-related liabilities (i) with respect to each employee and former employee of the Business who does not become a Transferred Employee and (ii) with respect to each Transferred Employee to the extent that such liabilities arise, accrue or are incurred before the Transfer Date of such Transferred Employee.

(c) Except as otherwise provided in this Article 9 and any corresponding schedules hereto, Supernus shall assume, and shall indemnify and hold harmless SLI and its Affiliates with respect to, all employment-related liabilities with respect to each Transferred Employee to the extent that such liabilities arise, accrue or are incurred on or after the Transfer Date of such Transferred Employee.

Section 9.03. *Sponsorship of Welfare Benefit Plans.* Effective as of the Closing, Supernus shall convert sponsorship of the SLI Plans listed on Schedule 9.03 to Supernus plans (the **"Transferred Plans"**). SLI and Supernus shall, and shall cause their respective Affiliates to, take all actions necessary to effect the transfer to and assumption by Supernus of the Transferred Plans on the terms set forth in Schedule 9.03. From and after the Closing, Supernus shall assume all responsibility for the benefits payable from and after the Effective Time under the Transferred Plans to all participants, beneficiaries and dependants covered by the Transferred Plans. To the extent that any former employee of the SLI business who is not an employee of the SLI business as of the Closing Date or any partner or dependent of any such employee has elected or elects COBRA continuation coverage under any Transferred Plan (each a **"Pre-Closing COBRA Participant"**): (i) Supernus shall cause such COBRA continuation coverage to be provided to such Pre-Closing COBRA Participant under such Transferred Plan for the full elected duration applicable under COBRA and (ii) to the extent that SLI has provided pursuant to any agreement or arrangement that any such Pre-Closing COBRA Participant shall be entitled to a continuation of a company-paid contribution toward the premium for coverage under any such Transferred Plan during the COBRA continuation period, Supernus shall continue to fund such company-paid contribution after the Closing; *provided* that Supernus shall furnish to SLI itemized written monthly statements of the amounts of such company-paid contributions funded by Supernus and within thirty (30) days after receiving each such written statement SLI shall reimburse to Supernus in readily available cash funds the aggregate amount of such company-paid contributions. The reimbursement provisions above in this section shall not apply with respect to any Resigning Employee or any partner or dependent of any Resigning Employee and instead any company-paid contributions toward the COBRA benefits of any such individual shall be paid and reimbursed by the Parties pursuant to Section 9.01(c).

Section 9.04. *Spin-off of 401(k) Plan.* (a) SLI shall cause each Transferred Employee who is or has at any time been a participant in the SLI 401(k) Plan to be 100% vested in their account balance thereunder, if any, as of the Closing Date.

(b) Effective as of the Closing Date, Supernus has adopted a prototype, non-standardized, defined contribution plan intended to qualify under Section 401(a) and Section 401(k) of the Code (the **"Supernus 401(k) Plan"**) in which Transferred Employees shall be eligible to participate on and after the Closing Date and that is substantially comparable to the SLI 401(k) Plan, provided that such Supernus 401(k) Plan shall not permit future investments in or hold securities of SLI or its Affiliates except as provided below in this Section 9.04. The prototype plan on which the Supernus 401(k) Plan is based has received a favorable qualification opinion letter.

(c) As soon as practicable after the Closing Date, SLI shall cause to be transferred to the Supernus 401(k) Plan, cash or, to the extent provided below, other assets as the parties may agree, having a fair market value equal to the aggregate value of the account balances in the SLI 401(k) Plan as of the date of the plan asset transfer for Transferred Employees. Such plan asset transfer shall include any notes evidencing loans to Transferred Employees from their account balances, marketable securities acceptable to Supernus, shares of common stock of SLI or any of its Affiliates, if any, held in any Transferred Employee's account and the balance in cash, and shall also include all qualified domestic relations orders, within the meaning of Section 414(p) of the Code, applicable to Transferred Employees. Supernus shall assume exclusive responsibility for the administration of the transferred assets from and after the transfer of those assets, including, without limitation, responsibility for: (i) all duties and obligations associated with those assets and the investment alternatives made available for those assets while those assets are held under the Supernus 401(k) Plan or any successor plan, (ii) the proper distribution of benefits relating to the transferred assets and (iii) any future transfer of the assets out of any trust or account maintained under the Supernus 401(k) Plan.

Section 9.05. *Credit for Prior Service.* Each Transferred Employee will receive service credit for all periods of employment with SLI or any Affiliate of SLI or any predecessor thereof prior to the Closing Date to the same extent and for all purposes under any employee benefit plan of Supernus or any Affiliate of Supernus in which such employee participates after the Closing (including the Transferred Plans), to the extent that such service was recognized under any analogous plan of SLI or any Affiliate of SLI in effect immediately prior to the Closing (including the Transferred Plans). For the avoidance of doubt, Supernus may establish any service requirements for any employee benefit plans implemented after Closing which are additional and not analogous to any plan of SLI or any Affiliate of SLI in effect immediately prior to the Closing, including any additional equity-based or non-qualified deferred compensation plans. In addition, Supernus reserves the right to change all employee benefit plan rules, except as prohibited by law and as limited under Section 9.01.

Section 9.06. *Health Plan Exclusions, Deductibles and Co-Pays. If* on or after the Closing Date, any Transferred Employee becomes covered under any benefit plan of Supernus or any Affiliate of Supernus providing medical, dental,

health, pharmaceutical or vision benefits (a **"Successor Plan"**) to replace benefits of a similar type provided under a plan of SLI or an Affiliate of SLI immediately prior to Closing Date (a **"Prior Plan"**), such Successor Plan shall not include any restrictions or limitations with respect to any pre-existing condition exclusions and actively-at-work requirements (except to the extent such exclusions or requirements were applicable under the corresponding Prior Plan), and any eligible expenses incurred by such Transferred Employee and his or her covered dependents during the calendar year in which the Transferred Employee becomes covered under any Successor Plan shall be taken into account under any such Successor Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and/or his or her covered dependents for that year, to the extent that such expenses were incurred during a period in which the Transferred Employee or covered dependent was covered under a corresponding Prior Plan.

Section 9.07. *Vacation*. Effective as of the-Closing Date, SLI shall pay to each Transferred Employee, within 30 days after the Closing Date, all accrued but unused vacation days under the SLI vacation policy.

Section 9.08. *Annual Bonus.* SLI shall pay to each Transferred Employee, within 30 days after the Closing Date, such Scheduled Employee's 2005 annual bonus entitlement under the SLI annual bonus plan for the full calendar year 2005, based on 100% of each such Employee's target bonus.

Section 9.09. *Other.* Each Transferred Employee shall cease his or her participation, if any, in the Shire Employee Stock Purchase Plan, and Shire Deferred Bonus Plan effective as of the Closing and shall be paid his or her accrued balance or benefit under such plans in accordance with the terms of such plans and SLI and its Affiliates shall have no further obligation in respect of such amounts or benefits or any tax liabilities or attributes associated with such amounts or benefits. Under the Shire Supplemental Executive Retirement Plan (the **"Shire SERP"**), the transactions contemplated under this Agreement shall not be treated as a termination of the employment of any Transferred Employee participating in the Shire SERP for as long as SLI continues to hold a material voting interest in Supernus (or any successor). As of the Closing Date, Supernus shall establish a mirror plan to the Shire SERP (the **"Supernus SERP"**) and, under the Supernus SERP, Supernus shall assume sole responsibility and liability for the benefits accrued by each Transferred Employee under the Shire SERP as of the Closing Date (each, a **"SERP Transferee"**) and all matters and liabilities relating to such benefits (including, without limitation, the administration of such benefits before, on and after the Closing Date, the transfer of such benefits as provided above, the payment of such benefits and any taxes and withholding related thereto and the administration and updating of the Supernus SERP (collectively, the **"Transferred SERP Liability"**)). As soon as practicable following the Closing Date (but within 30 days following the Closing Date), SLI shall transfer to Supernus in readily available cash funds, an amount equal to the aggregate benefit liability under the Shire SERP as of the Closing Date in respect

of the benefits accrued under the Shire SERP by the SERP Transferees as of the Closing Date. Subject to such transfer, neither SLI nor any Affiliate of SLI (other than Supernus and its successors) shall have any further liability or obligation with respect to the Transferred SERF Liability. As of the Closing Date, Supernus shall deliver to SLI an indemnity agreement {in a form reasonably acceptable to SLI) executed by each SERP Transferee, indemnifying SLI and its Affiliates (other than Supernus and its successors) against the Transferred SERP Liability associated with such SERP Transferee's benefit under the Shire SERP and the Supernus SERP.

ARTICLE 10
SURVIVAL; INDEMNIFICATION

Section 10.01. *Survival.* The representations and warranties of the parties hereto contained in this Agreement shall expire on the Closing Date; *provided* that the representations and warranties contained in Sections 3.01, 3.02, 3.03, 3.14, 4.01, 4.02, 4.03 and 4.05 shall survive until the latest date permitted by applicable law. The covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by applicable law. Notwithstanding the preceding sentence, any breach of covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

Section 10.02. *Indemnification.* (a) Effective at and after the Closing, SLI hereby indemnifies Supernus and its Affiliates against and agrees to hold each of them harmless from any and all Damages actually suffered by Supernus or any of its Affiliates arising out of:

(i) any misrepresentation or breach of Section 3.01, 3.02, 3.03 or 3.14;

(ii) any breach of covenant or agreement made or to be performed by SLI pursuant to this Agreement; or

(iii) any Retained Liability;

provided that with respect to indemnification by SLI pursuant to Section 10.02(a)(i), SLI's maximum aggregate liability for all such misrepresentations or breaches shall not exceed $1,500,000.

(b) Effective at and after the. Closing, Supernus hereby indemnifies SLI and its Affiliates against and agrees to hold each of them harmless from any and all Damages actually suffered by SLI or any of its Affiliates arising out of:

(i) any misrepresentation or breach of Section 4.01, 4.02, 4.03 or 4.05;

(ii) any breach of covenant or agreement made or to be performed by Supernus pursuant to this Agreement; or

(iii) any Assumed Liability;

provided that with respect to indemnification by Supernus pursuant to Section 10.02(b)(i), Supernus's maximum aggregate liability for all such misrepresentations or breaches shall not exceed $1,500,000.

Section 10.03. *Procedures.* (a) The party seeking indemnification under Section 10.02 (the **"Indemnified Party"**) agrees to give prompt notice to the party against whom indemnity is sought (the **"Indemnifying Party"**) of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought under such Section and will provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The Indemnified Party's failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have adversely prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any third party (**"Third Party Claim"**) and, subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel for such defense, in each case at its own expense.

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 10.03, (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party, and (ii) the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall be paid by the Indemnified Party.

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and

attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

Section 10.04. *Calculation of Damages.* (a) The amount of any Damages payable under Section 10.02 by the Indemnifying Party shall be net of any (i) amounts recovered or recoverable by the Indemnified Party under applicable insurance policies, or from any other Person alleged to be responsible therefor and (ii) Tax benefit realized by the Indemnified Party arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax benefit, the Indemnified Party shall be deemed to fully utilize, at the highest applicable marginal tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages. If the Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party, net of any expenses incurred by such Indemnified Party in collecting such amount.

(b) The Indemnifying Party shall not be liable under Section 10.02 for any (i) consequential or punitive Damages or (ii) Damages for lost profits.

Section 10.05. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 10.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a **"Potential Contributor"**) based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment; *provided* that the Indemnified Party shall not be required to assign any right to proceed against a Potential Contributor if the Indemnified Party determines in its reasonable discretion that such assignment would be materially detrimental to its reputation or future business prospects.

Section 10.06, *Exclusivity.* After the Closing, Section 10.02 will provide the exclusive remedy for any misrepresentation, breach of warranty, covenant or other agreement or other claim (other than those arising out of a breach of Sections 5.01, 5.02, 5.03, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06 and 6.07 (collectively, the **"Specified Covenants"**)) arising out of this Agreement or the transactions contemplated hereby, other than in the case of fraud.

ARTICLE 11
MISCELLANEOUS

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Supernus, to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar
Telephone No.: (301) 838-2500
Facsimile No.: (301) 424-1364

with a copy to:

Schmeltzer, Aptaker & Shepard, P.C.
2600 Virginia Avenue, N.W. Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.
Telephone No.: (202) 342-3444
Facsimile No.: (202) 342-3434

if to SLI, to:

Shire Laboratories Inc.
11200 Gundry Lane
Owings Mills, Maryland 21117
Attention: Richard Couch
Telephone No.: (410) 413-2002
Facsimile No.: (443) 471-2470

with a copy to:

Davis Polk & Wardwell
99 Gresham Street
London EC2V 7NG
England
Attention: John K. Knight
Facsimile No.: +44 207 710 4839

and, in the case of Sections 7.05, 7.06, 7.08 and 8.03, with a copy to:

Shire plc
Hampshire International Business Park
Chineham
Basingstoke
Hampshire RG24 8EP
England
Attention: Simon Gibbins
Facsimile No.: 44 1256 894713

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 11.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 11.03. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. SLI agrees to reimburse Supernus for an amount of its reasonable legal fees and expenses up to, but not to exceed, $100,000.

Section 11.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that, except as otherwise expressly provided in this Agreement, no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. For the avoidance of doubt, (i) the limitations on assignment, delegation or other transfer under this Section 11.04 relate to the parties' rights and obligations under this Agreement and are not otherwise intended to limit or restrict the ability of Supernus to sell or dispose of its assets so long as it complies

with its obligations under Article 6 and (ii) any such sale or disposition shall not affect the rights of Supernus under Article 10.

Section 11.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 11.06. *Jurisdiction.* (a) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appellate court from any thereof; in any suit, action, or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Delaware State court, or, to the extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.01 shall be deemed effective service of process on such party.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.06(a).

(c) Each of the parties hereto hereby irrevocably waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action, or proceeding in any such court, and agrees not to plead the same, and agrees that nothing herein will limit the right to sue in any other jurisdiction if a Delaware State or Federal court of competent jurisdiction sitting in New Castle County, Delaware rules or orders that it will not exercise jurisdiction over any such action or proceeding.

(d) To the extent that a party hereto has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or execution, on the ground of sovereignty or otherwise) with respect to itself or its property, it hereby irrevocably waives, to the fullest extent it may legally and effectively do so, such immunity in respect of its obligations under this Agreement.

(e) Each of the parties hereto hereby acknowledges that a breach of a Specified Covenant may cause irreparable harm to the non-breaching party and that the remedy or remedies at law for any such breach may be inadequate. Each

of the parties hereto hereby agrees that, in the event of any such breach, in addition to all other available remedies hereunder, the non-breaching party shall have the right to obtain equitable relief to enforce the provisions of this Agreement.

Section 11.07. *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,

Section 11.08, *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 11.09. *Entire Agreement.* This Agreement and the Transaction Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. For the avoidance of doubt, this Agreement and each of the Transaction Documents shall be treated as a stand-alone agreement unless otherwise expressly provided for herein or therein.

Section 11.10. *Bulk Sales Laws.* Supernus and SLI each hereby waive compliance by SLI with the provisions of the "bulk sales," "bulk transfer" or similar laws of any state.

Section 11.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.12. *Guarantor.* Guarantor hereby guarantees to Supernus the prompt and full discharge by SLI of all of SLI's covenants, agreements, indemnities, obligations and liabilities under this Agreement including the due and punctual payment of all amounts which are or may become due and payable by SLI hereunder, when and as the same shall become due and payable, in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SHIRE LABORATORIES INC.

By: /s/ Scott Applebaum
Name: Scott Applebaum
Title: Secretary

SUPERNUS PHARMACEUTICALS, INC.

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

SHIRE PLC

By: /s/ Matthew Emmens
Name: Matthew Emmens
Title: Director

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 22, 2005, between Shire Laboratories Inc., a Delaware corporation (**"SLI"**) and Supernus Pharmaceuticals, Inc., a Delaware corporation (**"Supernus"**).

W I T N E S S E T H :

WHEREAS, Supernus and SLI have concurrently herewith consummated the purchase by Supernus of the Contributed Assets pursuant to the terms and conditions of the Asset Purchase and Contribution Agreement dated as of December 22, 2005 among Supernus, SLI and Shire plc (the "**Asset Purchase Agreement**"; capitalized terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, pursuant to the Asset Purchase Agreement, Supernus has agreed to assume certain liabilities and obligations of SLI with respect to the Contributed Assets and the Business.

NOW, THEREFORE, in consideration of the sale of the Contributed Assets and in accordance with the terms of the Asset Purchase Agreement, Supernus and SLI agree as follows:

1. (a) SLI does hereby sell, transfer, assign and deliver to Supernus all of the right, title and interest of SLI in, to and under the Contributed Assets; *provided* that no sale, transfer, assignment or delivery shall be made of any or any material portion of any Contributed Asset if an attempted sale, assignment, transfer or delivery, without the consent of a third party, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Supernus or SLI thereunder.

(b) Supernus does hereby accept all the right, title and interest of SLI in, to and under all of the Contributed Assets (except as aforesaid) and Supernus assumes and agrees to pay, perform and discharge promptly and fully when due all of the Assumed Liabilities and to perform all of the obligations of SLI to be performed under the Contracts that comprise the Contributed Assets except to the extent liabilities thereunder constitute Retained Liabilities.

2. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SHIRE LABORATORIES INC.

By: _____
Name:
Title:

SUPERNUS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EXHIBIT B

ASSIGNMENT OF PATENTS

WHEREAS SHIRE LABORATORIES INC., a corporation incorporated under the laws of Delaware whose principal office is situated at 1550 East Gude Drive, Rockville, Maryland (**"Shire"**) (hereinafter **"ASSIGNOR"**) in consideration of the sum of Ten Dollars ($10.00), or the equivalent thereof, and other good and valuable consideration, the sufficiency of which and receipt of which are hereby acknowledged, paid to it by Supernus Pharmaceuticals, Inc, a corporation incorporated under the laws of Delaware whose principal office is at 1550 East Gude Drive, Rockville, Maryland (**"Supernus"**); (hereinafter **"ASSIGNEE"**), does hereby sell and assign to the said ASSIGNEE, its successors and assigns, the below indicated right, title, and interest throughout the world, in and to the patents and patent applications listed on Schedule A attached hereto, which patents and patent applications are owned by it, and all patents, divisions, reissues, continuations and any extensions thereof and rights of priority therein, said interest being its entire ownership interest in the same, to be held and enjoyed by said ASSIGNEE, its successors, assigns, or other legal representatives, to the full end of the term thereof, except as expressly provided herein, as fully and entirely as the same would have been held and enjoyed by ASSIGNOR if this assignment and sale had not been made;

WHEREAS, in connection with the sale and assignment by ASSIGNOR to said ASSIGNEE of the patents and patent applications listed on Schedule A attached hereto, said ASSIGNEE and ASSIGNOR have entered into two License Agreements dated as of December 22, 2005 pursuant to which said ASSIGNEE has granted to ASSIGNOR and its affiliates an irrevocable, exclusive license, including the right to sue and grant sublicenses, under such patents and patent applications to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world.

And for the consideration aforesaid, ASSIGNOR hereby covenants and agrees to and with said ASSIGNEE, its successors and assigns, that whenever ASSIGNEE, its counsel or representative, or the counsel or representative of its successors or assigns, shall advise that an amendment to, or a division of, or any other proceeding or action in connection with any patent applications listed on Schedule A attached hereto, including interference proceedings, is lawful and desirable, or that a reissue or continuation or extension of such application or patent issuing therefrom is lawful and desirable, ASSIGNOR will, through an authorized representative, have all papers and drawings signed, have all rightful oaths and affidavits taken, and have all acts done that are necessary or required to be done for the procurement of all lawful rights associated with the patents and patent applications listed on Schedule A attached hereto, or for the reissue or continuation or extension of the same, will, through an authorized representative,

have done all acts necessary or required to secure in said ASSIGNEE, its successors and assigns, the title to and full benefit of all rights hereby assigned, without charge to said ASSIGNEE or its successors or assigns, but at its or their expense and ASSIGNOR hereby appoints every present or future officer of said ASSIGNEE as its agent to sign all such papers and to do all such necessary acts on its behalf, to the fullest extent permitted by law;

And ASSIGNOR hereby authorizes and requests the Commissioner of Patents and Trademarks and any other granting authority to issue any Letters Patent resulting from said patent applications listed on Schedule A attached hereto concerning same to said ASSIGNEE;

And ASSIGNEE hereby covenants and agrees to and with said ASSIGNOR, its successors and assigns, such covenant to run with and attach to each patent and patent application assigned to ASSIGNEE by ASSIGNOR in this assignment, that the owner of any patents or patent applications listed on Schedule A attached hereto shall not use, directly or indirectly, solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, any of the intellectual property rights covered by such patents and/or patent applications in any research, development, formulation, testing, design, manufacture, use, offer for sale, sale, distribution, importation or exportation, that relates, in whole or in part, to any of the Compounds in any field of use, other than for or on behalf of ASSIGNOR and its affiliates. For purposes hereof, **"Compounds"** means any and all of (a)(i) (+)-alpha-Methylbenzeneethanamine; (ii) carbamazepine (5H-Dibenz{b,f} azepine-5-carboxyamide), (iii) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (iv) lanthanum and (v) mesalamine (5-Amino-2-hydroxybenzoic acid), (b) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of any of clause (a); and (c) any compound involving forming or breaking a bond or bonds with any of clause (a) or (b) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (a) or (b), other than, in the case of clauses (a), (b) and (c), 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide.

This assignment shall have an effective date of December 22, 2005.

I declare under penalty of perjury under the laws of the United States of America, and under penalty of the laws of any other jurisdiction before which this document may be presented, that I am an officer of the above identified ASSIGNOR, that I have signed this document on behalf of ASSIGNOR with the full authority of its board of directors, and that all of the foregoing is true and correct.

Dated: December 22, 2005

By: _____
Name: _____
Title: _____

ACCEPTANCE BY ASSIGNEE

I hereby accept this assignment on behalf of said ASSIGNEE. I declare under penalty of perjury under the laws of the United States of America, and under penalty of the laws of any other jurisdiction before which this document may be presented, that I am an officer of the above-identified ASSIGNEE, that I have signed this document on behalf of ASSIGNEE with the full authority of its board of directors, and that all of the foregoing is true and correct.

Dated: December 22, 2005

By: _____
Name: _____
Title: _____

EXHIBIT C

SHIRE LABORATORIES INC.

Confidentiality and Proprietary Rights Agreement

In consideration of my employment by Shire Laboratories Inc. **("Shire"** or **"SLI")** (which together with Shire plc and any affiliated companies and any predecessors thereof shall hereinafter be referred to as the **"Company")** and in consideration of my transfer of employment to Supernus Pharmaceuticals, Inc. **("Supernus")** and the compensation and benefits made available to me by the Company and Supernus, I understand, acknowledge and agree that:

1. The Company intends to sell the Business to Supernus pursuant to the terms and conditions of an Asset Purchase and Contribution Agreement dated as of December 22, 2005 among Supernus, the Company and Shire plc (the **"Purchase Agreement"**) and in so doing will assign to Supernus certain patents, trademarks and tradenames of SLI and certain know how not pertaining to the Compounds (collectively, the **"Business Intellectual Property Rights"**). However, the Company has not agreed to assign or transfer to Supernus any intellectual property rights other than the Business Intellectual Property Rights. The intellectual property, proprietary property, assets and information retained by the Company include the following types of property and information: (i) client lists, financial information, proprietary scientific methods and protocols, scientific results, market research and product ideas which do not pertain to the Business; (ii) all other knowledge or information of a proprietary, private, confidential or secret nature which in any way relates to the business of the Company or the design, construction, manufacture or sale of the Company's products or services which do not pertain to the Business, and (iii) any confidential business plans, budgets, financial information, legal information, records or similar information of the Company, other than such information that has been assigned or transferred by the Company to Supernus and made available to you for use in the context of your employment with Supernus. This is not an exhaustive list, but rather it is intended to illustrate those types of information or materials that the Company deems protected by this Agreement. The intellectual property, proprietary property, assets and information retained by the Company shall hereinafter be referred to as the **"Retained Intellectual Property".**

2. I shall not, publish, disclose, or make use of, or authorize anyone else to publish, disclose or otherwise make use of any of the Retained Intellectual Property, except as may be expressly permitted by the Purchase Agreement. I shall not disclose or cause others to disclose any of the Retained Intellectual Property to Supernus or any other party, or induce Supernus or any other party to use any information or material which is the property of the Company or its affiliates or other individuals or companies (other than Supernus) and which is of a proprietary or confidential nature. If I have any doubt as to whether any information or material includes any of the Retained Intellectual Property I will

consult with senior management of Supernus who, in turn, will consult with officials of Shire plc to resolve such doubt.

3. All documents, written information and other items including, but not limited to, notes, sketches, manuals, blueprints, notebooks, products, tools, fixtures, records and information made or obtained by me while employed by the Company which constitute part of the Retained Intellectual Property or which include any of the Retained Intellectual Property shall be the exclusive property of the Company and, upon the request of the Company, I shall promptly deliver such material to the Company without retaining any copies thereof, whether in written, electronic, oral, visual or other form.

4. My interest in (a) any and all inventions, improvements, and ideas (whether or not patentable) which I have made or conceived, either solely or jointly with others, at any time during the period of my employment with the Company, and (b) any suggestions, proposals, writings and the like, of any sort whatsoever, including any interest in any copyright, which I have developed and with which my work for the Company was concerned during my employment with the Company, or which relate or are applicable directly or indirectly to any phase of the Company's business shall be the exclusive property of the Company or the Company's rightful successor, assignee, or nominee with respect thereto, except to the extent it is part of the Business Intellectual Property in which case it shall be the exclusive property of Supernus. The items defined in (a) and (b) above will hereinafter be referred to collectively as **"Proprietary Subject Matter"**. I have made full and prompt disclosure in writing to an official of the Company of all Proprietary Subject Matter made or conceived during the term of my employment with the Company. At the request and expense of the Company, but without further compensation to me, I shall do such acts, and execute, acknowledge and deliver all such papers, including without limitation patent applications, as may be necessary or desirable in the sole discretion of the Company to obtain, maintain, protect or vest in applications, patents, copyrights or other proprietary rights of any kind relating thereto, in all countries of the world; including rendering such assistance as the Company may request in any contemplated or pending litigation, patent office proceeding, or other proceeding.

5. Excepted from this Agreement are only such inventions, improvements, ideas, suggestions, proposals, writings and the like relating to any phase of the Company's business made or conceived by me prior to my employment with the Company which are (a) embodied in a United States Letters Patent, Copyright Registration or an application for United States Letters Patent or Copyright Registration filed prior to the commencement of my employment; (b) in the physical possession of a former employer who owns them; or (c) disclosed in detail in an attachment hereto signed by the Company.

6. The terms **"Business", "Business Intellectual Property Rights", "Compounds"** and **"Retained Intellectual Property Rights"**, as used in this Agreement, are intended to have the same meanings given to those terms in the

Purchase Agreement. In the event of any inconsistency or conflict between the meaning of any such term in this Agreement and in the Purchase Agreement, the meaning given to such term in the Purchase Agreement shall control. A copy of the relevant provisions of the Purchase Agreement will be made available during normal business hours at the offices of the Company or Supernus in the event of any questions concerning the meanings of any of these terms or the scope of the confidentiality provisions contained therein.

7. This Agreement is to be made under and shall be construed in accordance with the laws of the State of Maryland.

Signature of Employee	Print Name of Employee

IN WITNESS WHEREOF, I have hereunto set my hand this day of in the year 200

Signature of Witness	Print Name of Witness

EXHIBIT D

CUSTOMER CONTRACT/LICENSE AGREEMENT PROVISIONS

Section . *Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights.* (a) Customer acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc (**"Shire"**) pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A)(I) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Customer hereby agrees that it shall not use any of the services or Confidential Information(1) provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose(2) and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement

(1) To be separately defined based on information to be provided or shared as part of the customer arrangements.

(2) To be separately defined based on scope of the customer arrangements.

and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers' names from time to time for monitoring purposes and Customer hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section . Customer acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section , at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Customer hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Customer breaches or threatens to breach the provisions of this Section , should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Compounds then, in addition to any rights that Supernus may have against Customer, Customer acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Customer for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Customer's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section , and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section , and such action is unsuccessful, Customer shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Customer may be entitled. Customer further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Customer agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Customer agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Customer against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Customer further agrees to waive against Shire and its subsidiaries any such claims or

counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) [This Agreement] [the provisions of this Section] shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to [this Agreement] [the provisions of this Section] and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint [name to be inserted], as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO [THIS AGREEMENT] [THE PROVISIONS OF THIS SECTION].

Exhibit 10.11

GUANFACINE LICENSE AGREEMENT

THIS GUANFACINE LICENSE AGREEMENT ("Agreement"), effective on the 22nd day of December, 2005, ("Effective Date") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business in Florence, Kentucky; and Shire plc, a company incorporated in England and Wales ("Guarantor").

RECITALS

WHEREAS Supernus has acquired certain patents and Know-How (as defined below) from an Affiliate (as defined below) of Shire;

WHEREAS concurrently herewith, Supernus, an Affiliate of Shire certain other parties have entered into a Series A Convertible Preferred Stock Purchase Agreement ("the Stock Purchase Agreement");

WHEREAS concurrently herewith, Supernus, Guarantor, and an Affiliate of Shire have entered into an Asset Purchase Agreement (as defined below);

WHEREAS concurrently herewith, Supernus, Guarantor, and an Affiliate of Shire have entered into an Ongoing Projects Agreement (as defined below);

WHEREAS concurrently herewith, Supernus, Guarantor, and Shire have entered into a General License Agreement ("the General License");

WHEREAS Supernus owns all right, title, and interest in the Guanfacine Patents (as defined below) and Guanfacine Know-How (as defined below);

WHEREAS Shire is desirous of obtaining and Supernus is desirous of granting a license under the Guanfacine Patents and Guanfacine Know-How to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products (as defined below) in the Guanfacine Field (as defined below) in the Territory (as defined below) under the terms and conditions set forth herein; and

WHEREAS, Guarantor has agreed to guarantee the obligations of SLI hereunder.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 1 - DEFINITIONS

The terms in this Agreement with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

1.2 "Asset Purchase Agreement" means the Asset Purchase and Contribution Agreement between, *inter alia,* Supernus and Shire Laboratories Inc. dated the date hereof.

1.3 "Business Day" means any day other than (1) Saturday or Sunday or (2) any other day on which banks in New York, New York, United States or London, England are permitted or required to be closed.

1.4 "Calendar Quarter" means for each Calendar Year, each of the three month periods ending March 31, June 30, September 30 and December 31; *provided, however,* that the first Calendar Quarter for the first Calendar Year shall extend from the Effective Date to the end of the first complete Calendar Quarter thereafter.

1.5 "Calendar Year" means, for the first Calendar Year, the period commencing on the Effective Date and ending on December 31 of the Calendar Year during which the Effective Date occurs, and each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.6 "Combination Product" means any product that contains one or more pharmaceutically-, therapeutically-, prophylactically- or diagnostically-active ingredients in addition to Guanfacine.

1.7 "Commercial Sale" means the transfer of title to a Licensed Product by Shire, its Affiliates, or its sublicensees to a Third Party for consideration in any arm's length transaction in any country following governmental approval for commercial sale in such country. If governmental approval is not necessary in order to sell a Licensed Product in a particular country, then Commercial Sale shall mean the transfer of title to a Licensed Product by Shire, its Affiliates, or its sublicensees to a Third Party for consideration in any arm's length transaction in such country.

1.8 "Control" means, with respect to any intellectual property right or other intangible property, that a Party or one of its Affiliates owns any right, title, or interest or has a license or sublicense to such item or right, and has the ability to grant access, license, or sublicense, in whole or in part, in or to such right without violating the terms of any agreement or other arrangement with any Third Party.

1.9 "Effective Date" means the date first written above.

1.10 "First Commercial Sale" means the first Commercial Sale.

1.11 "Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii)..

1.12 "Guanfacine Field" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of any pharmaceutical product containing Guanfacine as an active ingredient.

1.13 "Guanfacine Know-How" means any Know-how in which Supernus has acquired or acquires any right, title, interest or Control under the Asset Purchase Agreement.

1.14 "Guanfacine Patents" means the following patent application and patents:

U.S. Patent Nos. 6,287,599 and 6,811,794 [**] and the patent application identified as [**], filed in the U.S. Patent and Trademark Office on [**], entitled [**]; continuation and divisional applications of any of the foregoing; any patents granted on any of the foregoing; re-examinations, reissues, renewals, extensions, supplementary protection certificates and term restorations, any confirmation patent or registration patent or patent of addition based on any such patent; and all foreign counterparts of any of the foregoing.

1.15 "Intellectual Property Rights" means patents, trade marks, service marks, trade names, internet domain names, rights in designs, copyright (including rights in computer software databases) and moral rights, utility models and other intellectual property rights, and all rights in and to Know-How, in each case whether registered or unregistered and including any applications for the grant of any such rights and all rights and forms of protection having an equivalent or similar effect anywhere in the world.

1.16 "Know-How" means any non-public information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases; ideas; discoveries; inventions; trade secrets; practices; methods; tests; assays; techniques; specifications; processes; formulations; formulae; knowledge; skill; experience; materials including pharmaceutical, chemical and biological materials; products; compositions; scientific, technical, or test data including without limitation pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, and stability data; studies; procedures; drawings; plans; designs; diagrams; sketches; technology; documentation; and patent-related and other legal information or descriptions.

1.17 "Licensed Product" means any pharmaceutical product containing Guanfacine as an active ingredient.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.18 "Net Sales" means, with respect to a Licensed Product, the amount received by Shire, its Affiliates, or its sublicensees for Commercial Sales of such Licensed Product to a Third Party less:

(A) transportation charges, freight and insurance;

(B) taxes (other than taxes based on income), tariffs, customs duty, excise or other duty and any other governmental charges, all to the extent imposed upon the sale, transportation or delivery of such Licensed Product and paid by the seller;

(C) trade, quantity discounts, cash discounts, rebates or chargebacks actually granted, allowed or incurred in the ordinary course of business in connection with the sale of such Licensed Product, including any credits, volume rebates, charge-back and prime vendor rebates, fees, reimbursements or similar payments granted or given to wholesalers and other distributors, buying groups, health care insurance carriers, pharmacy benefit management companies, health maintenance organizations or other institutions or health care organizations;

(D) adjustments, allowances or credits to customers, including on account of price adjustments, governmental requirements, billing errors, rejection, damage, recalls or return of such Licensed Product, in each case, in the ordinary course of business; and

(E) payments or rebates paid in connection with sales of Licensed Products to any government or governmental authority in respect of any state or federal Medicare, Medicaid or similar programs.

For the purposes of determining Net Sales in the event a Licensed Product is a Combination Product, the Net Sales of any such Combination Product shall be determined by multiplying the Net Sales of the Combination Product by the fraction A/(A+B), where A is the weighted (by sales volume) average sale price of the Licensed Product when sold separately in finished form and B is the weighted (by sales volume) average sale price of the other product(s) sold separately in finished form. In the event that such average sale price cannot be determined for both the Licensed Product and the other product(s) in combination, Net Sales for purposes of determining royalties shall be mutually agreed by the Parties based on the relative value contributed by each component.

Notwithstanding the foregoing, the disposition of, or the use of, a Licensed Product in clinical studies, compassionate use, named patient use, test marketing, or any non-registrational studies where the Licensed Product is supplied without charge or at cost shall not result in any Net Sales. Additionally, amounts received by Shire or its Affiliates or sublicensees for the sale of Licensed Products among Shire and its Affiliates and sublicensees for resale shall not be included in the computation of Net Sales hereunder.

For the avoidance of doubt, Net Sales shall not include any upfront fees or milestones.

1.19 "Ongoing Projects Agreement" means the Ongoing Projects and Royalty Agreement among Supernus, Guarantor, and Shire Development Inc. dated the date hereof

1.20 "Parties" means Supernus, Guarantor, and Shire.

1.21 "Party" means Supernus, Guarantor, or Shire.

1.22 "Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

1.23 "Representatives" means Affiliates of the Parties and the respective officers, directors, employees, agents, advisors, representatives, distributors, salespersons, customers, licensees, subcontractors and end-users of each Party and its Affiliates.

1.24 "Term" means, on a country-by-country basis, the later of (i) [**] or (ii) [**], absent this Agreement, would be infringed by the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of a Licensed Product.

1.25 "Territory" means the world.

1.26 "Third Party" means any entity including for-profit and non-profit institutions other than Supernus and Shire and Shire's Affiliates.

1.27 "Transaction Documents" means, collectively, (i) the Asset Purchase Agreement, (ii) the Stock Purchase Agreement, (iii) the Ongoing Projects Agreement, (iv) the Quality Assurance Agreement among Supernus, Shire Pharmaceuticals Development Ltd. and Shire Development Inc. dated the date hereof, (v) this Agreement, and (vi) the General License.

1.28 "Valid Claim" means a claim of an issued and unexpired patent which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental authority of competent jurisdiction, unappealable or unappealed within the time allowed for appeal.

1.29 Other Terms. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Actions	5.5
Agreed Rate	4.8
Agreement	Preamble
Effective Date	Preamble
General License	Recitals
Guarantor	Preamble
Liabilities	5.4

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Term	Section
Royalty Term	4.4
Shire	Preamble
Stock Purchase Agreement	Preamble
Supernus	Preamble

1.30 Other Definitional and Interpretative Provisions. Unless specified otherwise, in this Agreement the obligations of any party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2 - GRANT OF RIGHTS

2.1 Grant of License to Shire. Subject to the terms and conditions of this Agreement, Supernus hereby grants to Shire and its Affiliates, in the Guanfacine Field, an irrevocable, exclusive license under the Guanfacine Patents and the Guanfacine Know-How to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products in the Territory.

2.2 Sublicenses. The grant of the license in this Article 2 includes the right to grant sublicenses to Third Parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Shire and its Affiliates pursuant to Section 2.1. All sublicense agreements entered into by Shire or its Affiliates shall be consistent with the terms and conditions of this Agreement.

2.3 No Other Technology Rights. It is understood and agreed that this Guanfacine License Agreement does not grant either Party any license or other right in the Intellectual Property Rights of the other Party other than as specified in this Article 2.

2.4 Covenant Not to Sue. Supernus and its Affiliate(s) individually and jointly hereby covenant and agree not, either alone or in cooperation with any Third Party, to sue or to bring any cause of action including those for any type of infringement of any Intellectual Property Rights, against Shire or any of its Representatives to prevent, inhibit, financially affect or encumber in any

manner any of the activities of any of Shire or any of its Affiliates related, in whole or in part, to the research, development, testing, design, formulation, manufacture, use, offer to sell, sale, distribution, import, and export of any compound(s), composition(s), article(s), material(s), method(s), use(s), or product(s) relating, in whole or in part, to Guanfacine or Licensed Products. This covenant shall not prevent Supernus from enforcing its rights under any of the Transaction Documents, including, in the case of this Agreement, indemnification under Section 5.4.

2.5 Covenant for Intellectual Property. Supernus hereby covenants and agrees, at its own expense, to file, prosecute, and maintain, on a Guanfacine Patent-by-Guanfacine Patent and country-by-country basis, the Guanfacine Patents, *provided however,* that Supernus may decide, in its sole discretion, not to file, prosecute, maintain any of the Guanfacine Patents in any country. In the event that Supernus decided not to file, prosecute, or maintain any of the Guanfacine Patents in any country, Supernus shall provide to Shire sufficient notice of such decision to permit Shire to decide whether Shire desires to file, prosecute, or maintain such Guanfacine Patent(s) in such country and if Shire so desires, Supernus shall assign to Shire, at no cost to Shire, all right, title, and interest in such Guanfacine Patent(s) in such country with sufficient time for Shire to file, prosecute, or maintain such Guanfacine Patent(s) in such country.

2.6 Mutual Covenant. Neither Party has entered into, and neither Party shall, during the term of this Agreement, enter into, any agreements, contracts, or other arrangements that will be inconsistent with its obligations under this Agreement.

2.7 Access to Documentation. During the Term of this Agreement, Supernus and its Affiliates will continuously provide Shire and its Affiliates access to, if such access is not a violation by Supernus or any of its Affiliates of any obligations of confidentiality of Supernus or its Affiliates to any Third Party, at Shire's sole cost and subject to any obligations of confidentiality of Supernus or its Affiliates that would not be such a violation, originals or copies of Supernus's research and development documentation relating, in whole or in part, to Guanfacine.

2.8 Availability of Supernus Personnel. Personnel of Supernus and its Affiliates, designated by Supernus and subject to Shire's approval will be made available to Shire and its Affiliates, during Supernus's regular business hours and upon reasonable advance notice to Supernus, at Shire's sole cost for the purpose of consulting with Shire on the scientific development of the Guanfacine Patents and the Guanfacine Know-How including assisting Shire and its Affiliates in understanding or interpreting the documentation provided to Shire and its Affiliates under Section 2.7.

2.9 Confirmatory Recording. On the Effective Date, Supernus shall execute a confirmatory license in the form attached hereto as Exhibit A solely for recordation as Shire may deem necessary or desirable. It shall not be a violation or breach of any agreement to which Supernus and Shire are parties, to record such confirmatory license. Such confirmatory license shall not amend, modify, cancel, or supersede the terms of this Agreement. In the event of any inconsistencies between this Agreement and such confirmatory license, this Agreement shall prevail.

ARTICLE 3 - ENFORCEMENT OF PATENT RIGHTS

3.1 Notification of Third Party Infringement. Each Party shall promptly notify the other Party in writing of any claim or evidence of possible Third Party infringement or misappropriation of any the Guanfacine Patents or Guanfacine Know-How insofar as such infringement or misappropriation relates to Guanfacine.

3.2 Right to Respond. Shire or its Affiliates shall have the first right, but not any obligation, to take any action against any infringement, misappropriation, or allegation of invalidity or unenforceability of any Guanfacine Patents insofar as such infringement, misappropriation, or allegation of invalidity or unenforceability relates to Guanfacine by a Third Party with counsel to be chosen by Shire or its Affiliates *provided* that, to the extent practicable and not materially detrimental to Shire, Shire notifies Supernus prior to its response and allows Supernus sufficient opportunity to contribute to such action if Supernus determines that Shire's action will have an effect on other Supernus' licensees. Shire shall also have the sole right, and at its sole discretion, to settle or compromise any such action in any manner. The expense and costs of counsel in such action by Shire shall be borne entirely by Shire. Supernus shall be permitted to retain its own counsel in an action by Shire at Supernus' own expense and costs, and Shire shall have no obligation to reimburse Supernus for such expense or costs. If Shire does not take any action against such infringement, misappropriation, or allegation of invalidity or unenforceability of the Guanfacine Patents and Supernus chooses to act at its own election, the expense and costs of such action shall be borne entirely by Supernus, but Shire shall be permitted to retain its own counsel in such action at Shire's own expense and costs and Supernus shall have no obligation to reimburse Shire for such expense or costs.

Supernus or its Affiliates shall have the sole right, but not any obligation, to take any action against any infringement, misappropriation, or allegation of invalidity or unenforceability of any Guanfacine Patents insofar as such infringement, misappropriation, or allegation of invalidity or unenforceability does not relate to Guanfacine by a Third Party with counsel to be chosen by Supernus or its Affiliates, *provided* that, to the extent practicable and not materially detrimental to Supernus, Supernus notifies Shire prior to its response and allows Shire sufficient opportunity to contribute to such action. Supernus shall also have the sole right, and at its sole discretion, to settle or compromise any such action in any manner. The expense and costs of counsel in such action by Supernus shall be borne entirely by Supernus. Shire shall be permitted to retain its own counsel in an action by Supernus at Shire's own expense and costs, and Supernus shall have no obligation to reimburse Shire for such expense or costs.

Supernus shall not take any direct or indirect actions and shall not assist any Third Party or any Affiliate of Supernus in any action asserting that any Guanfacine Patent is invalid, is not enforceable, or is not infringed.

3.3 Recovery. Any and all monetary damages recovered from a Third Party in connection with any action by Shire regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall be used to reimburse Shire for the expense and costs of Shire's counsel. Any excess over such reimbursement shall be treated as Net Sales under this Agreement. Any and all monetary damages recovered from a Third Party in connection with any action by Supernus regarding infringement, misappropriation, invalidity, or unenforceabilty of

any of the Guanfacine Patents shall be used to reimburse Supernus for the expense and costs of Supernus's counsel. Shire shall receive the equivalent of the then applicable royalty rate payable by Supernus under Section 4.2 of any excess over such reimbursement.

ARTICLE 4 — MILESTONE, ROYALTIES, AND REPORTING

4.1 Milestone and Milestone Payment. Shire shall, upon the First Commercial Sale in the United States of the first Licensed Product, pay to Supernus [**] dollars (US$[**]). This milestone payment shall accrue and be paid for the first Licensed Product only, and shall be made only once when this milestone is achieved for the first time under this Agreement regardless of how many times such milestone is achieved for the first Licensed Product. Shire shall pay any such milestone payment to Supernus within ten (10) Business Days of the date the payment becomes due. No payment shall be owed unless the milestone is achieved.

4.2 Royalty Rate on Licensed Products. During the Royalty Term (as defined in section 4.4, below) Shire shall pay to Supernus a running royalty of [**] ([**]%) of Net Sales of each Licensed Product that, absent this Agreement, would infringe a Valid Claim of a Guanfacine Patent in the country in which such Licensed Product is sold and that is not researched, developed, formulated, or manufactured for Shire or its Affiliates by or on behalf of Supernus. If the term of such Guanfacine Patent that would be infringed absent this Agreement expires during the Royalty Term for such Licensed Product, Shire shall pay to Supernus a running royalty of [**] ([**]%) of Net Sales of such Licensed Product for the remainder of the Royalty Term for such Licensed Product. The foregoing notwithstanding, no running royalties shall be due to Supernus under any Guanfacine Patents or Guanfacine Know-How assigned to Shire pursuant to Section 2.5.

4.3 One Royalty. Only one royalty shall be due for the Net Sales of any Licensed Product, no matter what Intellectual Property Rights are incorporated into such product. Furthermore, Shire's obligation to pay royalties shall only be imposed once with respect to the same unit of a Licensed Product, no matter how many times that unit may be sold.

4.4 Royalty Term. Royalties due under this Article 4 will be due on a country-by-country until the later of (i) [**] or (ii) [**], absent this Agreement, would be infringed by the sale of such Licensed Product in such country ("the Royalty Term"). After expiration of the Royalty Term for any Licensed Product, the licenses granted in this Agreement shall become permanent, irrevocable, and fully paid-up with respect to such Licensed Product.

4.5 Payments. Shire shall within thirty (30) days following the conclusion of each Calendar Quarter after the First Commercial Sale of a Licensed Product for which a royalty is due, deliver to Supernus a written report showing the information and basis on which the payment under Section 4.2 due for such Calendar Quarter is calculated. Supernus shall within ten (10) days following the receipt of such information issue to Shire an invoice for the payment of such amount due under Section 4.2. Shire shall pay any amounts properly invoiced by Supernus within fifteen (15) days from the date of receipt of the invoice. Any such amounts shall be payable in United States dollars and shall be paid by bank wire transfer in immediately available

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

funds to such bank account as designated in writing by Supernus.

4.6 Payment Currency. If Net Sales are in a currency other than U.S. dollars, then, for the purpose of determining the amount of royalties payable hereunder, such amount shall be converted into U.S. dollars at the exchange rate used by Shire consistent with its standard operating procedures as they relate to its income statement, for the purposes of consolidating its own net revenues. Such policies will be made available to Supernus upon request and are consistent with customary industry practices.

4.7 Withholding Taxes. All amounts payable by Shire pursuant to this Agreement shall be paid free and clear of, and without deduction for and on account of, tax unless Shire is required by law to make those payments subject to deduction or withholding of tax, in which case Shire will deduct or withhold such taxes in accordance with the applicable tax treaty, law or regulation and will pay such taxes to the appropriate taxing authorities. Shire shall make certificates of such tax payments available to Supernus to review and copy.

4.8 Interest. Subject to Section 4.7, interest shall be chargeable on any amounts overdue to Supernus at the Agreed Rate, from the due date for payment of the unpaid sum to the date of actual payment of the full amount. The Agreed Rate for these purposes is the rate of [**] ([**]%) above the U.S. Federal Funds Rate from time to time, such interest to accrue daily and to be compounded on the last day of each calendar month.

4.9 Records and Audits. Shire, its Affiliates and its sublicensees shall keep and maintain complete and accurate records of their revenues received from sales of Licensed Product(s) for a period of three (3) years. Shire shall permit, and cause its Affiliates and sublicensees to permit, independent certified public accountants retained by Supernus and approved by Shire, such permission not to be unreasonably withheld or delayed, to have access to their records and books for the sole purpose of verifying Net Sales and any payment under Section 4.2 due thereon. Such independent certified public accountant must be under an obligation of confidentiality (a) not to use the information contained in the audited Party's records and books or the auditing results for any other purpose and (b) not to disclose the information contained in the audited Party's records and books or the auditing results except that the independent certified public accountant may disclose the auditing results to Supernus solely to confirm the accuracy of the information being audited and to identify any errors therein. The independent certified public accountant shall promptly forward the results of such audit to both Supernus and Shire upon completion of such audit. Such examination shall be conducted during regular business hours and upon reasonable notice and no more than once in each Calendar Year during the Term of this Agreement, and once during the Calendar Year following the termination of this Agreement and only for the two (2) Calendar Years preceding the date of such request for such audit. Any adjustment in the amount of payment under Section 4.2 due to Supernus on account of overpayment or underpayment of amounts due hereunder shall be made at the next date when payments are to be made under this Agreement. Supernus shall pay the fees and expenses of the accountant engaged to perform the audit unless such audit reveals an underpayment of [**] ([**]%) or more for the period examined, in which case the audited Party shall pay all reasonable fees and expenses of the accountant.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

4.9 Legal Restrictions. If at any time legal restrictions prevent the remittance by Shire of all or any part of royalties on Net Sales in any country, Shire will have the right and option to make such payment by depositing the amount thereof in local currency to an account in the name of Supernus in a bank or other depository in such country. Shire will consult with Supernus regarding, and promptly notify Supernus of, any and all such arrangements.

4.10 Current Products. If there have been Net Sales of any product prior to or on the Effective Date, there shall be no royalties due to Supernus for any Net Sales of such product made after the Effective Date. For the avoidance of doubt, this Section 4.10 refers to all units of such product no matter when produced or sold.

4.11 Future Products. Shire has no obligation to Supernus or its Affiliates to make, use, offer to sell, sell, import, or commercialize any compounds or products under this Agreement, and therefore, there is no obligation or commitment to Supernus that any payments of any kind will ever accrue to Supernus under this Agreement. This Section 4.11 is not a grant of any license for Shire to make, use, offer to sell, sell, import, or commercialize any compounds or products under this Agreement.

ARTICLE 5 - REPRESENTATIONS, WARRANTIES, DISCLAIMERS, LIABILITY

5.1 Supernus's Representations and Warranties. Supernus represents and warrants that:

(A) Supernus is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;

(B) Supernus has the legal right, authority, and power to enter into this Agreement;

(C) Supernus has taken all necessary action to authorize the execution, delivery, and performance of this Agreement;

(D) upon the execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of Supernus, enforceable in accordance with its terms; and

(E) the performance of Supernus's obligations under this Agreement will not conflict with its certificate of incorporation, as amended, or by-laws, or result in a breach of any agreements, contracts, or other arrangements to which it is a party.

5.2 Shire's Representations, and Warranties. Shire represents and warrants that:

(A) Shire is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Kentucky;

(B) Shire has the legal right, authority, and power to enter into this Agreement;

(C) Shire has taken all necessary action to authorize the execution, delivery, and performance of this Agreement;

(D) upon the execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of Shire, enforceable against Shire in accordance with its terms; and

(E) the performance of Shire's obligations under this Agreement will not conflict with its organizational documents or result in a breach of any agreements, contracts, or other arrangements to which it is a party.

5.3 WARRANTY DISCLAIMER; EXCLUSION OF DAMAGES; LIMITATIONS OF LIABILITY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GUANFACINE PATENTS, THE GUANFACINE KNOW-HOW, OR ANY LICENSE GRANTED BY EITHER PARTY HEREUNDER, OR ANY MATERIALS OR INFORMATION PROVIDED TO EITHER PARTY UNDER THIS AGREEMENT, OR WITH RESPECT TO ANY PRODUCTS OR SERVICES OF EITHER COMPANY OR THEIR RESPECTIVE AFFILIATES. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY THAT ANY PATENT OR OTHER PROPRIETARY RIGHTS INCLUDED IN THE GUANFACINE PATENTS OR THE GUANFACINE KNOW- HOW ARE VALID OR ENFORCEABLE OR THAT USE BY EITHER PARTY OR THEIR RESPECTIVE AFFILIATES OF THE GUANFACINE PATENTS, THE GUANFACINE KNOW-HOW, OR ANY OTHER RIGHTS LICENSED HEREIN, OR ANY MATERIALS OR INFORMATION PROVIDED TO EITHER PARTY UNDER THIS AGREEMENT, DO NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER ARTICLE 5 REGARDING INDEMNIFICATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OR LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER. ALL CONDITIONS, WARRANTIES OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCONSISTENT WITH THE PROVISIONS OF THIS SECTION ARE EXPRESSLY EXCLUDED.

The foregoing exclusion of damages (i) applies even if a Party had or should have had knowledge, actual or constructive, of the possibility of such damages, (ii) is a fundamental element of the basis of the bargain between the Parties and this Agreement would not be entered into without such limitations and exclusions, and (iii) shall apply whether a claim is based on breach of contract, breach of warranty, tort (including negligence), product liability, strict liability or otherwise, and notwithstanding any failure of essential purpose of any limited remedy herein. The foregoing exclusion of damages is intended to apply even if there is a total and fundamental breach of this Agreement. The essential purpose of the exclusion of damages clause is to limit the Parties' respective liabilities to each other hereunder.

5.4 Indemnification. Shire hereby agrees to defend, indemnify and hold harmless Supernus and each of its Representatives from and against any liabilities, claims, costs, expenses (including reasonable legal fees), loss or damage ("Liabilities") to the extent arising from Shire's or its Representatives' willful misconduct, gross negligence or material breach of its representations and warranties or its obligations under this Agreement, and except, in each case, to the extent that such Liability arises, in whole or in part, as a result of Supernus' or its Representatives' gross negligence, willful misconduct, or breach of this Agreement. For the avoidance of doubt and notwithstanding the immediately preceding sentence, this indemnity shall not include protection for any loss, claim, damage, or liability resulting, in whole or in part, directly or indirectly, from actions or omissions covered by the warranty disclaimers in Section 5.3 herein.

Supernus hereby agrees to defend, indemnify and hold harmless Shire and each of its Representatives from and against any Liabilities to the extent arising from Supernus' or its Representatives' wilful misconduct, gross negligence or material breach of its representations and warranties or its obligations under this Agreement, except, in each case, to the extent that such Liability arises, in whole or in part, as a result of Shire's or its Representatives' wilful misconduct, gross negligence, or breach of this Agreement. For the avoidance of doubt and notwithstanding the immediately preceding sentence, this indemnity shall not include protection for any loss, claim, damage, or liability resulting, in whole or in part, directly or indirectly, from actions or omissions covered by the warranty disclaimers in Section 5.3 herein.

5.5 Indemnification Procedure. The indemnified Party shall promptly notify the indemnifying Party, in writing, if it learns of any litigation, claim, administrative or criminal proceedings (collectively "Actions") asserted or threatened against the indemnified Party for which the indemnified Party is entitled to indemnification hereunder. With respect to any such Action, the indemnified Party shall cooperate with and provide such assistance to the indemnifying Party as such Party may reasonably request. Such assistance may include providing copies of all relevant correspondence and other materials that the indemnifying Party may reasonably request; *provided however,* that any information so provided which is confidential shall be treated in accordance with the confidentiality provisions of the Ongoing Projects Agreement.

In the event of any claim or notice of the commencement of any proceedings to which the indemnities in this Article 5 may apply, the indemnified Party shall permit the indemnifying Party to take control of the relevant proceedings and shall not make any admission or offer or make any settlement without the prior consent of the indemnifying Party. If the indemnifying Party shall assume the control of the relevant proceedings in accordance with the previous sentence, (a) the indemnifying Party shall obtain the prior written consent of the indemnified Party before entering into any settlement with respect to such proceedings if the settlement would not release the indemnified Party from all liabilities and obligations with respect to such proceedings or the settlement would impose injunctive or other equitable relief against the indemnified Party and (b) the indemnified Party shall be entitled to participate in such proceedings and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall, absent a conflict between the indemnifying Party and the indemnified Party, be paid by the indemnified Party. The failure or delay to deliver notice to the indemnifying Party within a reasonable time after the commencement of any such action, if irreparably prejudicial to the indemnifying Party's ability to defend such action, shall relieve the

indemnifying Party of any liability to the indemnified Party under this Article 5 to the extent that is directly attributable in its entirety to such failure or delay, but the omission to deliver notice to the indemnifying Party will not relieve the indemnifying Party of any liability that the indemnifying Party may have to any indemnified Party otherwise. The indemnified Party shall cooperate fully with the indemnifying Party and its legal representatives in the investigation of any loss, action, claim, damage, or liability covered by this indemnification.

5.6 Compliance with Law. Each Party shall comply, and shall require its Affiliates and sublicensees to comply, with all applicable laws and regulations relative to its obligations hereunder.

ARTICLE 6 - TERMINATION

6.1 Term of the Licenses. The licenses granted to Shire by this Agreement shall become permanent, irrevocable, and paid-up, on a country-by-country basis and a Licensed Product-by-Licensed Product basis, upon the expiration of the Term in such country.

6.2 Term of Supernus's Covenant Not to Sue. Supernus's covenant not to sue set forth in Article 2 shall run for [**] from the Effective Date.

6.3 No Termination by Supernus. The Agreement cannot be terminated by Supernus for any reason.

6.4 Termination by Shire - Financial. Shire shall have the right to terminate immediately (a) this entire Agreement, other than those provisions which shall survive pursuant to Section 6.6 or (b) any provisions of this Agreement other than those that shall survive this Agreement pursuant to Section 6.6, at Shire's sole discretion, if Supernus (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian on behalf of itself or for all or a substantial part of its property, (ii) becomes unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its creditors, (iv) is dissolved or liquidated in full or in part other than in a solvent reorganization merger, or other similar activity, (v) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consents to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it under any bankruptcy, insolvency or other similar law, (vi) takes any action for the purpose of effecting any of the foregoing, (vii) becomes the subject of an involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect that is not dismissed within ninety (90) calendar days of commencement, or (viii) ceases to carry on its business as a going concern during the six (6) month period following the Effective Date. Supernus shall not have any right to cure termination under this Section 6.4.

6.5 Termination by Shire without Cause. Shire may terminate this Agreement, in whole or in part, without cause at any time.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

6.6 Survival. Termination or expiration of this Agreement for any reason shall not affect the accrued rights of Shire or Supernus arising in any way out of this Agreement and shall not release either Shire or Supernus from any liability which, at the time of such termination or expiration, has already accrued to Shire or Supernus, as applicable, or which is attributable to a period prior to such termination or expiration, nor preclude Shire or Supernus, as applicable, from pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any event occurring prior to such termination or expiration. Additionally, Articles 5, 6, 7, and 8 and Sections 2.3, 2.4, 2.5, 2.6, and 3.3 of this Agreement shall survive the termination or expiration of this Agreement.

ARTICLE 7 — DISPUTE RESOLUTION

7.1 Negotiation. Without prejudice to any rights under Section 7.7, the Parties hereby agree that they will attempt in good faith to resolve promptly by negotiations, any controversy or claim between the Parties arising out of or relating to this Agreement. If a controversy or claim should arise hereunder, the matter shall be referred to a senior executive of Supernus and a senior executive of Shire (the "Mediators"). If the matter has not been resolved within fifteen (15) days of the referral to the Mediators, subject to rights to injunctive relief and specific performance, and unless otherwise specifically provided for herein, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be brought in a court of competent jurisdiction as specified in Section 7.3.

7.2 Governing Law. The validity, construction, and interpretation of this Agreement and any determination of the performance which this Agreement requires will be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware.

7.3 Jurisdiction. Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appellate court from any thereof; in any suit, action, or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the Parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Delaware State court, or, to the extent permitted by law, in such Federal court. Each of the Parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.4 Venue. Each of the Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 7.3.

7.5 Inconvenient Forum. Each of the Parties hereby irrevocably waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action, or proceeding in any such court, and agrees not to plead the same, and agrees that nothing herein will limit the right to sue in any other jurisdiction if a Delaware State or

Federal court of competent jurisdiction sitting in New Castle County, Delaware rules or orders that it will not exercise jurisdiction over any such action or proceeding.

7.6 Immunity Waiver. To the extent that a Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or execution, on the ground of sovereignty or otherwise) with respect to itself or its property, it hereby irrevocably waives, to the fullest extent it may legally and effectively do so, such immunity in respect of its obligations under this Agreement.

7.7 Equitable Relief. Each of the Parties hereby acknowledges that a breach of their respective obligations under this Agreement may cause irreparable harm and that the remedy or remedies at law for any such breach may be inadequate. Each of the Parties hereby agrees that, in the event of any such breach, in addition to all other available remedies hereunder, the non-breaching Party shall have the right to seek equitable relief to enforce the provisions of this Agreement.

ARTICLE 8 — OTHER PROVISIONS

8.1 Headings. Headings and captions of the Articles and Sections hereof are for convenience only and are not to be used in the interpretation of this Agreement.

8.2 Assignment. Shire shall not be entitled to assign, transfer or charge all or any of its rights or obligations under this Agreement without the prior written consent of Supernus, such consent not to be unreasonably withheld or delayed; provided that Shire may transfer or assign, in whole or from time to time in part, all or any of its rights or obligations under this Agreement, without the prior written consent of Supernus (i) to an Affiliate or (ii) to any Third Party in connection with any sale or other disposition involving any assets or equity of Shire, by way of merger, business combination, asset sale, stock sale or otherwise.

Supernus shall have the right to assign, transfer, or charge its rights and obligations in their entirety under this Agreement without the consent of Shire only as part of a sale of the entire assets of Supernus to a single Third Party, and only if such assignment, transfer, or charge is to such single Third Party, such assets including all of those acquired by Supernus under the Transaction Documents. Supernus shall not have the right to assign, transfer, or charge any of its rights and obligations under this Agreement without the prior written consent of Shire under any circumstances other than such sale of its entire such assets, and Shire's consent may be withheld at Shire's sole discretion, *provided however,* that Supernus may assign, transfer, or charge its right to running royalties under Article 4 to any Third Party without the consent of Shire.

8.3 Notices. Any notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by facsimile, with confirmation of transmission, on such date, with paper copy being sent by certified first class mail, postage prepaid, or by next day express delivery service, addressed to it at its address below (or such address as it shall designate by written notice given to the other party).

if to Supernus, to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar
Telephone No.: (301) 838-2500
Facsimile No.: (301) 424-1364

with a copy to:

Schmeltzer, Aptaker & Shepard, P.C.
2600 Virginia Avenue, N.W. Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.
Telephone No.: (202) 342-3444
Facsimile No.: (202) 342-3434

if to Shire or Guarantor, to:

Shire LLC
c/o 725 Chesterbrook Boulevard
Wayne, Pennsylvania 19087-5637
Attention: Scott Applebaum
Telephone No.: (484) 595-8800
Facsimile No.: (484) 595-8900

with a copy to:

Davis Polk & Wardwell
99 Gresham Street
London EC2V 7NG
England
Attention: John K. Knight
Facsimile No.: +44 207 418 1400

and with a copy to:

Shire plc
Hampshire International Business Park
Chineham
Basingstoke
Hampshire RG24 8EP
Attention: Simon Gibbins
Facsimile No.: 44 1256 894713

8.4 Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including without limitation, fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other Party; *provided, however,* that the Party so affected shall use commercially reasonable and diligent efforts to avoid or remove such causes of non-performance, and shall continue performance hereunder with reasonable dispatch wherever such causes are removed. Each Party shall provide the other Parties with prompt written notice of any delay or failure to perform that occurs by reason of *force majeure.* The Parties shall mutually seek a resolution of the delay or the failure to perform in good faith.

8.5 Waivers and Modifications. The failure of any Party to insist on the performance of any obligation hereunder shall not be deemed to be a waiver of such obligation. Waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other breach of such provision or any other provision. No waiver, modification, release or amendment of any obligation under or provision of this Agreement shall be valid or effective unless in writing and signed by both Parties hereto.

8.6 Relationship of the Parties. It is expressly agreed that the relationship between Supernus and Shire shall not constitute a partnership, joint venture or agency. Supernus and Shire are independent contractors. Neither Supernus nor Shire shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior consent of the other Party to do so.

8.7 Counterparts. This Agreement may be executed in counterparts with the same effect as if both Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

8.8 Severability. In performing this Agreement, the Parties shall comply with all applicable laws. Wherever there is any conflict between any provision of this Agreement and any law, the law shall prevail, but in such event the affected provision of this Agreement shall be limited or eliminated only to the extent necessary, and the remainder of this Agreement shall remain in full force and effect. In the event the terms of this Agreement are materially altered as a result of the foregoing, the parties shall renegotiate in good faith the terms of this Agreement to resolve any inequities.

8.9 Entire Agreement. This Agreement and the other agreements referenced herein constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede any and all oral and/or written communications or understandings relating to the subject matter hereof. For the avoidance of doubt, the Agreement and each of the Transaction documents shall be treated as a stand alone agreement unless expressly provided for herein or therein.

8.10 Guarantor. Guarantor hereby guarantees to Supernus the prompt and full discharge by Shire of all of Shire's covenants, agreements, indemnities, obligations and liabilities under this Agreement including the due and punctual payment of all amounts which are or may become due and payable by Shire hereunder, when and as the same shall become due and payable, in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar

Name: Jack Khattar
Title: President & CEO

SHIRE LLC

By: /s/ Mike Chapman

Name: Mike Chapman
Title: President

SHIRE LLC

By: /s/ Matthew Emmens

Name: Matthew Emmens
Title: Director

Exhibit A

CONFIRMATORY LICENSE AGREEMENT

THIS CONFIRMATORY LICENSE AGREEMENT ("Agreement"), effective on the 22nd day of December, 2005, ("Effective Date") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business in Florence, Kentucky; and Shire plc, a company incorporated in England and Wales ("Shire plc").

RECITALS

WHEREAS Supernus has acquired and owns all right, title, and interest in the Guanfacine Patents (as defined below); and

WHEREAS Shire is desirous of obtaining and Supernus is desirous of granting a license under the Guanfacine Patents to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products (as defined below) in all fields in the Territory (as defined below).

WHEREAS Supernus, Shire, and Shire plc have entered into a Guanfacine License that they wish to confirm herein, the terms stated below confirming, but not amending or restating, the terms of the Guanfacine License.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

ARTICLE 1 - DEFINITIONS

The Guanfacine License incorporates, *inter alia,* the following terms with initial letters capitalized, whether used in the singular or the plural, and have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

1.2 "Effective Date" means the date first written above.

1.3 "Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (ii) any isomers, salts, solvates, hydrates, polymorphs, esters,

prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii)..

1.4 "Guanfacine Field" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of any pharmaceutical product containing Guanfacine as an active ingredient.

1.5 "Guanfacine Know-How" means any Know-how in which Supernus has acquired or acquires any right, title, interest or Control under the Asset Purchase Agreement.

1.6 "Guanfacine Patents" means the following patent application and patents:

U.S. Patent Nos. 6,287,599 and 6,811,794 [**] and the patent application identified as [**], filed in the U.S. Patent and Trademark Office on [**], entitled [**]; continuation and divisional applications of any of the foregoing; any patents granted on any of the foregoing; re-examinations, reissues, renewals, extensions, supplementary protection certificates and term restorations, any confirmation patent or registration patent or patent of addition based on any such patent; and all foreign counterparts of any of the foregoing.

1.7 "Licensed Product" means any pharmaceutical product containing Guanfacine as an active ingredient.

1.8 "Parties" means Supernus, Shire, and Shire plc.

1.9 "Party" means Supernus, Shire, or Shire plc.

1.10 "Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

1.12 "Territory" means the world.

1.13 Other Terms. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Shire	Preamble
Shire plc	Preamble
Supernus	Preamble

1.15 Other Definitional and Interpretative Provisions. Unless specified otherwise, in this Agreement the obligations of any Party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2 - GRANT OF RIGHTS

2.1 Grant of License to Shire. The grant of the Guanfacine License provides that subject to the terms and conditions of that agreement, Supernus grants to Shire and its Affiliates, in the Guanfacine Field, an irrevocable, exclusive license under the Guanfacine Patents to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export Licensed Products in the Territory.

2.2 Sublicenses. The grant of the Guanfacine License includes the right to grant sublicenses to Third Parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Shire and its Affiliates pursuant to Section 2.1.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: _____

Name:
Title:

SHIRE LLC

By: _____

Name:
Title:

SHIRE PLC

By: _____

Name:
Title:

AMENDMENT No. 1 TO THE
GUANFACINE LICENSE AGREEMENT
having an Effective Date of December 22nd, 2005
by and among Supernus Pharmaceuticals, Inc., Shire LLC and Shire plc

THIS AMENDMENT NO. 1 TO THE GUANFACINE LICENSE AGREEMENT effective on the 1st day of May, 2009, ("Guanfacine License Amendment") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business at 9200 Brookfield Court, Florence, Kentucky; and Shire plc, a company organized and existing under the laws of England and Wales, now known as Shire Biopharmaceuticals Holdings ("Guarantor").

RECITALS

WHEREAS Supernus, Shire and Guarantor entered into a Guanfacine License Agreement having an Effective Date of December 22nd, 2005 (the "Guanfacine License Agreement") as part of a transaction on that same date which included a Stock Purchase Agreement, an Asset Purchase Agreement, an Ongoing Projects Agreement, and a General License Agreement;

WHEREAS the Guanfacine License Agreement provides for a royalty-bearing license under the Guanfacine Patents and Guanfacine Know-How;

WHEREAS Supernus, Shire and Guarantor are desirous of amending the Guanfacine License Agreement so that it is a paid-up, royalty-free license;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 1 - DEFINITIONS

The terms in this Guanfacine License Amendment with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth in the Guanfacine License Agreement, or the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

ARTICLE 2- SPECIFIC AMENDMENTS TO THE GUANFACINE LICENSE AGREEMENT

2.1 The Guanfacine License Agreement is hereby amended as follows:
Article 1.18 of the Guanfacine License Agreement is deleted in its entirety.

2.2 The Guanfacine License Agreement is hereby amended as follows:

Article 4 of the Guanfacine License Agreement (inclusive of each of Articles 4.1 through and including 4.11) is deleted in its entirety and replaced with the following:

4.1 Within fifteen (15) days of entering into this Guanfacine License Amendment, Shire shall pay Supernus a one-time lump sum payment of thirty six million eight hundred seventy five thousand dollars ($36,875,000.00) by wire transfer to the account designated below. No other sums are payable to Supernus, now or in the future, for the licenses granted herein.

Bank Name: [**]

Bank Address: [**]

Account Number: [**]

ABA Number: [**]

2.3 The Guanfacine License Agreement is hereby amended as follows:

Article 3.3 of the Guanfacine License Agreement is deleted in its entirety and replaced with the following:

3.3 Recovery. Any and all monetary damages recovered from a Third Party in connection with any action by Shire regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall belong to Shire. Any and all monetary damages recovered from a Third Party in connection with any action by Supernus regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall be used to reimburse

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Supernus for the expense and costs of Supernus' counsel. Shire shall receive any excess over such reimbursement to the extent such Supernus action is related to Guanfacine and not other Supernus products or licensed products. To the extent such Supernus action relates to other Supernus products or licensed products, Supernus shall receive any excess over such reimbursement.

2.4 The Guanfacine License Agreement is hereby amended as follows:

Article 6.1 of the Guanfacine License is deleted in its entirety and replaced with the following:

6.1 Term of the Licenses. The licenses granted to Shire by this Agreement are permanent, irrevocable, and paid-up during the Term of this Agreement and thereafter.

2.5 The Guanfacine License Agreement is hereby Amended as follows:

The last sentence of Article 8.2 of the Guanfacine License Agreement is deleted in its entirety and replaced with the following sentence:

Supernus shall not have the right to assign, transfer, or charge any of its rights and obligations under this Agreement without the prior written consent of Shire under any circumstances other than such sale of its entire assets, and Shire's consent may be withheld at Shire's sole discretion.

ARTICLE 3- CONFIDENTIALITY

This Guanfacine License Amendment, and the terms thereof, shall be treated by Supernus as confidential and will not be disclosed or shared with any third parties. Notwithstanding the previous sentence, Supernus may disclose this Guanfacine License Amendment and the terms thereof (i) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality, or (ii) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that Supernus shall, where legally permissible, notify Shire promptly upon receipt thereof, giving Shire, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information; and *provided, further,* that Supernus shall furnish only that portion of such information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained.

Except as expressly modified in this Guanfacine License Amendment, all terms of the Guanfacine License Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

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

SHIRE LLC

By: /s/ Mike Chapman
Name: Mike Chapman
Title: President

SHIRE BIOPHARMACEUTICALS HOLDINGS

By: /s/ Patrick Clements
Name: Patrick Clements
Title: SVP

Exhibit 10.12

June 6, 2006

EXCLUSIVE LICENSE AGREEMENT

Between

SUPERNUS PHARMACEUTICALS INC.

and

UNITED THERAPEUTICS CORPORATION

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

EFFECTIVE DATE: **June 6, 2006**

PARTIES:

(1) **SUPERNUS PHARMACEUTICALS INC.,** a Delaware corporation with its principal place of business at 1550 East Gude Drive, Rockville, Maryland 20850 (**"*Supernus*"**); and

(2) **UNITED THERAPEUTICS CORPORATION**, located at One Park Drive, Research Triangle Park, NC 27709 **("*United Therapeutics*").**

BACKGROUND

(A) Supernus is the owner of all right, title and interest in the Supernus Intellectual Property (as defined below) relating to its drug delivery and drug formulation technologies.

(B) United Therapeutics is the owner of all rights, title and interest in the United Therapeutics Intellectual Property (as defined below) relating to United Therapeutics' Compound.

(C) On July 1, 2004, Supernus and United Therapeutics entered into the first of a series of Feasibility Agreements (as defined below) to evaluate the application of the Supernus Technology (as defined below) to the Compound (as defined below).

(D) In accordance with the Feasibility Agreements, United Therapeutics has requested, and Supernus agrees to grant, an exclusive license under the Supernus Intellectual Property to make, have made, use, supply and sell Licensed Products and Licensed Combination Products (as defined below) in the Territory (as defined below) on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement:

"Act" means the Federal Food Drug and Cosmetic Act of 1934, and the rules and regulations promulgated thereunder, as in effect from time to time;

"Affiliates" means corporations, firms, partnerships or other entities which directly or indirectly control, are controlled by, or are under common control with a Party to this Agreement. For the purpose of this definition, "control" of corporations, firms, partnerships or other entities means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract or otherwise, and the terms "controlled" and "common control" will have correlative meanings;

"Business Day" means any day other than Saturday or Sunday on which the New York Stock Exchange is open for business;

"cGMP" means current good manufacturing practices as defined in 21 CFR Parts 210 and 211 promulgated by the FDA under the Act or corresponding applicable Laws in any jurisdiction;

"Clinical Development Data" means all data, charts, summaries, analyses, reports, know how and other information resulting or derived from any animal or human clinical trials or studies of the Compound or the Licensed Products or the Licensed Combination Products conducted under or in connection with any Development Plan relating to United Therapeutics Intellectual Property but excluding (i) any Non-Clinical Development Data, or (ii) any information, data and materials that refer to, relate to, incorporate or claim Supernus Intellectual Property;

"Commercial Sale" means any sale of a Licensed Product or a Licensed Combination Product to a Third Party in any country in the Territory in the Field; provided, however, that a transfer of Licensed Products or Licensed Combination Products (i) for research and development purposes, or (ii) prior to United Therapeutics' receipt of Product Approval for use of such Licensed Product or Licensed Combination Product in humans, shall not be considered a Commercial Sale;

"Compound" means treprostinil diethanolamine, known as UT-15C, for oral administration;

"Confidential Information" means any scientific, technical, formulation, process, analytical methods, manufacturing, clinical, non-clinical, regulatory and related documentation, marketing, financial or commercial information or data relating to the business, projects or products of either Party and provided by one Party to the other (by written, oral, electronic or other means) in connection with this Agreement;

"Development Costs" means the costs and expenses of a Development Plan due and payable to Supernus by United Therapeutics in accordance with such Development Plan;

"Development Patent" means any Patent that discloses or claims subject matter generated or derived from Non-Clinical Development Data generated under or in connection with any Development Plan, and which may include Clinical Development Data supplied by United Therapeutics to Supernus under this Agreement;

"Development Plan" means (i) any plan for the development of the Compound by Supernus as set out in clause 4 and (ii) the Feasibility Agreements as set out in Schedule 1;

"Development Team" means the team set up by the Parties in accordance with clause 4.7 and 4.8;

"EnSoTrol®" means Supernus' proprietary osmotic tablet technology including formulas, methods, techniques, Patents, and related information;

"FDA" means the United States Food and Drug Administration or any successor thereto;

"Feasibility Agreements" means those certain feasibility agreements between Supernus and United Therapeutics dated, as set out in Schedule 1, and any amendments expansions or extensions thereto;

"Field" means the treatment of any and all therapeutic indications and uses;

"First Commercial Sale" means the first sale of Licensed Product or Licensed Combination Product to any Third Party in any country in the Territory; provided, however, that a first transfer of Licensed Products or Licensed Combination Products (i) for research and development purposes, or (ii) prior to United Therapeutics' receipt of Product Approval for use of such Licensed Product or Licensed Combination Product in humans, shall not be considered a First Commercial Sale so long as United Therapeutics receives no financial consideration for same;

"GAAP" means generally accepted accounting principles in the United States;

"Improvement" means any and all improvements, enhancements or modifications, patentable or otherwise, relating to the Compound or Licensed Products or Licensed Combination Products including, without limitation, any change or modification in the manufacture, formulation, analytical methodology, ingredients, preparation, presentation or means of delivery, administration or dosage of the Compound or Licensed Products or Licensed Combination Products;

"IND" means an investigational new drug application and any amendments thereto relating to the development or use of Licensed Product or Licensed Combination Product in the United States or the equivalent application in any other jurisdiction in the Territory;

"Laws" means all federal, state, provincial and local laws, ordinances, rules and regulations in any jurisdiction applicable to this Agreement or the activities contemplated under this Agreement, whether such laws, ordinances, rules and regulations are now or hereafter in effect;

"Licensed Patents" means:

(a) all domestic and international Patents set out in Schedule 2 which are owned by or licensed to Supernus to the extent necessary to enable United Therapeutics to make, have made, use or sell Licensed Products or Licensed Combination Products, and which claim (i) a Licensed Product or Licensed Combination Product, (ii) the process of manufacture or use of a Licensed Product or Licensed Combination Product, or (iii) a congener, if any, described within the Patents set forth in Schedule 2 to this Agreement, together with any and all Patents that issue or in the future issue therefrom, including utility and design Patents and certificates of invention, or (iv) any Patent that claims an invention in the Supernus Intellectual Property;

(b) any and all reissues, extensions, substitutions, confirmations, registrations, revalidations, renewals, supplementary protection certificates, additions, continuations, continuations-in-part, divisions, or foreign equivalents to any such Patents to the extent that they claim the subject matter set forth in (a) i, ii, iii or iv above;

(c) the Development Patents, if any, to the extent they are necessary to enable UT to make, have made, use or sell Licensed Products and Licensed Combination Products; and

(d) such other Patents as the Parties may agree in writing from time to time;

To the extent that any existing Patent, Patent disclosure or Supernus Improvement owned or licensed by Supernus is necessary to practice any Licensed Patent, then such necessary Patents, Patent disclosures, and Supernus Improvements will be included as Patents, to the extent that Supernus is capable to do so;

"Licensed Products" means pharmaceutical compositions comprised of the Compound as the therapeutically active ingredient and which uses or is developed or manufactured using or in connection with the Supernus Intellectual Property;

"Licensed Combination Products" means pharmaceutical compositions comprised of the Compound as a therapeutically active ingredient in combination with other active ingredients and which uses or is developed or manufactured using or in connection with the Supernus Intellectual Property.

"Milestone Event" means each event identified in clause 7 which trigger a Milestone Payment;

"Milestone Payments" means the payments by United Therapeutics to Supernus of the sum identified in clause 7 on the occurrence of a Milestone Event;

"NDA" means a New Drug Application and all supplements filed with the FDA, including all documents, data and other information concerning Licensed Products and Licensed Combination Products which are necessary for, or included in, a Product Approval to market Licensed Products and Licensed Combination Products in the United States of America, as more fully defined in the Act;

"Net Sales" means the amount invoiced by United Therapeutics, its Affiliates or its Sub-Licensees to Third Parties for the Commercial Sale of Licensed Products and Licensed Combination Products in the Territory commencing upon the date of First Commercial Sale, after deducting in accordance with GAAP, the following:

(a) trade, quantity or ordinary discounts including without limitation prompt payment and volume discounts;

(b) credits, allowances for Licensed Product and Licensed Combination Product returns, discounts and rebates to, and chargebacks from, the account of Third Parties for spoiled, damaged, obsolete, outdated, rejected or returned Licensed Products or Licensed Combination Products;

(c) sales, use or excise taxes, VAT or other taxes; or governmental charges incurred in connection with the sale, exportation or importation, transportation, or delivery of Licensed Products or Licensed Combination Products in final form; and

(d) rebates or similar payments made in connection with sales of Licensed Products and Licensed Combination Products to any governmental or regulatory authority in respect of any State or Federal Medicare, Medicaid or similar programs in any country of the Territory.

If United Therapeutics, its Affiliates or Sub-Licensees supply the Licensed Products or Licensed Combination Products to any Customer as part of a package of products or services then the Net Sales value of the Licensed Products or Licensed Combination Product shall be whichever is higher of:

(a) the fair market value of such Licensed Product or Licensed Combination Product; or

(b) the actual price at which United Therapeutics, its Affiliates or Sub-Licensees sold the Licensed Product or Licensed Combination Product to such Customer.

For the purposes of this clause, fair market value shall mean the value of Licensed Products or Licensed Combination Products sold to similar Third Parties in the Territory with similar pricing and reimbursement structures and for similar quantities. Any dispute as to the determination of fair market value that cannot be resolved through discussion between the Parties shall be referred to an expert in the pharmaceutical industry, knowledgeable in customary terms for such transactions and jointly chosen by the Parties, for resolution. In the absence of fraud or bad faith, the industry expert's determination will be binding.

Sales or other transfers between United Therapeutics and its Affiliates and Sub-Licensees shall be excluded from the computation of Net Sales, but Net Sales shall include the subsequent sales by such Affiliates and Sub-Licensees to any Third Parties.

"Non-Clinical Development Data" means all information, data, formulations, inventions, methods of manufacture, analytical methodology, charts, studies, summaries, analyses, reports, know how and other information generated, discovered or arising under any Development Plan relating to Supernus Technology, but excluding (i) any Clinical Development Data, or (ii) any information, data and materials that refer to, relate to, incorporate or claim United Therapeutics Intellectual Property;

"Party and Parties" means respectively Supernus or United Therapeutics, or as the case may be, being both parties to this Agreement;

"Patent" means a patent or patent application, including any and all divisions, continuations, continuations in part, extensions, substitutions, renewals, registrations, revalidations, reissues or other additions relating thereto including supplementary certificates of protection of or to any patent or patent application;

"Product Approval" means the grant of all necessary regulatory and governmental approvals required to manufacture, use, store, import, export, transport and/or sell Licensed Products or Licensed Combination Products in any country of the Territory;

"Product Launch" shall mean the date selected by United Therapeutics on which United Therapeutics first makes a Licensed Product or Licensed Combination Product available for commercial sale in each country of the Territory, after the receipt of all applicable Product Approvals required to be obtained by United Therapeutics or its suppliers prior to commercial sale of Licensed Products or Licensed Combination Products;

"*Quarter*" means a three-month period ending on the last day of March, June, September or December in any calendar year;

"*Royalty Term*" means, with respect to each Licensed Product or Licensed Combination Product in each country of the Territory, the period of 12.5 years from the date of the First Commercial Sale of each Licensed Product or Licensed Combination Product in such country;

"*Supernus Improvements*" means any and all improvements, enhancements and modifications, patentable or otherwise, which improvements, enhancements and modifications, patentable or otherwise, do not refer to, relate to, incorporate or claim United Therapeutics Intellectual Property, relating to Supernus Intellectual Property and Supernus Technology that has been, is or will be (i) identified or discovered by Supernus, or United Therapeutics, and their subcontractors or sublicensees, under any Development Plan or otherwise in accordance with this Agreement and which relate to the use of United Therapeutics Intellectual Property or Supernus Intellectual Property, or (ii) identified or discovered by United Therapeutics, and its subcontractors or sublicensees, with the use of Supernus Intellectual Property and which relate to Supernus Intellectual Property and Supernus Technology, or (iii) specific to the development and/or commercialization of Licensed Products and Licensed Combination Products within the Field;

"*Supernus Intellectual Property*" means the Licensed Patents and the Supernus Know-How existing as of the Effective Date and improved during the term of this Agreement as may be qualified by clause 25.16;

"*Supernus Know-How*" means all information, data and materials, including but not limited to the Supernus Technology, processes, formulae, data, inventions, analytical methods, know-how, trade secrets, Non-Clinical Development Data and Supernus Improvements, which are proprietary to or owned or controlled by Supernus and which are required for the development, use, manufacture or sale of Licensed Products or Licensed Combination Products, as may be qualified by clause 25.16, but which know how, trade secrets, results,

inventions and any other intellectual property rights, whether patentable or otherwise, do not refer to, relate to, incorporate or claim United Therapeutics Intellectual Property;

"*Supernus Technology*" means Supernus' proprietary drug delivery technologies whether owned by Supernus, licensed to Supernus, or available to Supernus, existing as of the Effective Date including but not limited to ProPhile®, ProScreen®, OptiScreen®, Microtrol®, Solutrol®, EnSoTrol®, and any Supernus Improvements thereto that may be generated by Supernus during the term of this Agreement for use during the term of this Agreement as may be qualified by clause 25.16;

"*Specifications*" means the written methods, formulae, procedures, tests (and testing protocols) and standards and acceptance criteria relating to the testing and manufacture of Licensed Products and or Licensed Combination Products, as agreed upon in writing by the Parties;

"*Sub-Licensee*" means any Third Party sub-licensee of the rights granted to United Therapeutics to develop Licensed Products and Licensed Combination Products under this Agreement; provided, however, that entities purchasing Licensed Products and Licensed Combination Products from United Therapeutics, its Affiliates and Sub-Licensees in order to resell such Licensed Products and Licensed Combination Products to Third Parties shall not be deemed to be Sub-Licensees within the meaning of the foregoing sentence;

"*Sub-Licensee Agreement*" means any agreement entered into by United Therapeutics and a Sub-Licensee pursuant to which United Therapeutics sub-licenses any of the rights granted by Supernus under this Agreement provided such agreement contains the provisions set forth in clause 3;

"Territory" means the universe;

"Third Party" means any person or entity who or which are neither a Party nor an Affiliate of a Party;

"United Therapeutics Improvements" means any and all improvements, enhancements and modifications, patentable or otherwise, which improvements, enhancements and modifications, patentable or otherwise, do not refer to, relate to, incorporate or claim Supernus Intellectual Property relating to United Therapeutics Intellectual Property and United Therapeutics Technology that has been, is or will be (i) identified or discovered by United Therapeutics or Supernus, and their subcontractors or sublicensees, under a Development Plan or otherwise in accordance with this Agreement or with the use of United Therapeutics Intellectual Property or Supernus Intellectual Property, or (ii) identified or discovered by United Therapeutics or Supernus, and their subcontractors or sublicensees, with the use of United Therapeutics Intellectual Property or Supernus Intellectual Property and which relate solely to United Therapeutics Intellectual Property, or (iii) specific to the development and/or commercialization of Licensed Products and Licensed Combination Products within the Field;

"United Therapeutics Intellectual Property" means the Compound, United Therapeutics Patents, United Therapeutics Know How and United Therapeutics improvements;

"United Therapeutics Know How" means (i) all information, data and materials, including but not limited to reports, data, inventions, Clinical Development Data and all other data arising from the performance of *in silico* modeling of the Compound and all United Therapeutics Improvements, know how and trade secrets, patentable or otherwise, which are owned or controlled by United Therapeutics or its Affiliates and relate to the Compound or Licensed Products or Licensed Combination Products, and (ii) results, inventions and any other intellectual property rights, whether patentable or otherwise, created, developed, or arising from the performance of any Development Plan, but which know how, trade secrets, results, inventions and any other intellectual property rights, whether patentable or otherwise do not refer to, relate to, incorporate or claim Supernus Technology or Supernus Intellectual Property;

"United Therapeutics Patents" means all domestic and international Patents set out in Schedule 3; and

"Valid Patent Claim" means a claim of an issued Licensed Patent that has not (i) expired or been canceled, (ii) been declared invalid by an unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, and/or (iv) been abandoned.

1.2 In this Agreement, unless the context requires otherwise:

(a) the headings are included for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular clause;

(b) references to "persons" includes individuals, bodies corporate (wherever incorporated), unincorporated associations, limited liability companies, partnerships and other entities;

(c) words denoting the singular shall include the plural and vice versa;

(d) words denoting one gender shall include each gender and all genders; and

(e) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted.

1.3 The Schedules comprise part of and shall be construed in accordance with the terms of this Agreement. In the event of any inconsistency between the Schedules and the terms of this Agreement, the terms of this Agreement shall prevail.

2. GRANT OF LICENSE

2.1 Subject to the terms of this Agreement, Supernus hereby grants United Therapeutics an exclusive license in the Field under the Supernus Intellectual Property to develop, make, have made, use, offer for sale, sell, have sold and import Licensed Products and Licensed Combination Products in the Territory for the Royalty Term.

2.2 The term "exclusive" for the purposes of clause 2.1 means to the exclusion of all others, including Supernus and its Affiliates, except to the extent necessary to enable Supernus to perform its obligations under this Agreement.

2.3 During the term of this Agreement, neither United Therapeutics nor its Affiliates shall have the right to use the Supernus Intellectual Property otherwise than as expressly set out and agreed to by the Parties in this Agreement, and without prejudice to the generality of the foregoing, United Therapeutics and its Affiliates shall not:

(a) use or exploit the Supernus Intellectual Property for any purpose other than in respect of the use, development, manufacture, sale or supply of Licensed Products and Licensed Combination Products in the Field; or

(b) utilize any part of the Supernus Intellectual Property in the making of any Patent application, except as otherwise agreed in writing by the Parties pursuant to the terms of this Agreement and shall be bound by, enforce and monitor its obligation set for in clause 25.16. herein

2.4 During the term of this Agreement, Supernus agrees that it shall not assert nor cause to be asserted against United Therapeutics, its Affiliates or its Sub-Licensees any existing information, data, materials, invention, Patent know-how, improvements or other Supernus Technology of any kind or nature not included in the Supernus Intellectual Property that is or might be infringed by reason of United Therapeutics', its Affiliates' or its Sub-Licensees' exercise of rights granted to United Therapeutics under clause 2.1.

2.5 During the term of this Agreement, United Therapeutics or its Affiliates, agree that it shall not assert nor cause to be asserted against Supernus, its Affiliates or its Sub-Licensees any claims relating to existing information, data, materials, invention, Patent know-how, improvements or other technology of any kind or nature that results from any development activity with parties other than Supernus or its Affiliates or its Sub-Licensees initiated by United Therapeutics that is infringed by Supernus, its Affiliates or its Sub-Licensees in connection with the development work done by Supernus, its Affiliates' or its Sub-Licensees on behalf of United Therapeutics resulting in this License Agreement to United Therapeutics.

2.6 United Therapeutics, at its expense, may register the exclusive license granted under this Agreement in any country, or community or association of countries within the Territory, where the use, sale or manufacture of a Licensed Product or Licensed Combination Product in such country would be covered by a Valid Patent Claim. Upon request of United Therapeutics, Supernus agrees after reviewing for accuracy to promptly execute any "short

form" licenses in a form submitted to it by United Therapeutics from time to time in order to affect the foregoing registration in such country.

3. SUB-LICENSING

3.1 United Therapeutics shall have the right to grant sub-licenses of the rights granted to United Therapeutics by Supernus under clause 2.1 to its Affiliates or any Third Party provided that:

(a) United Therapeutics shall, prior to execution of any Sub-Licensee Agreement or any sub-license agreement with an Affiliate, (i) ensure that all sub-license agreements and the obligations, covenants and agreements of sublicensee or Affiliate sublicense contained therein are consistent with and not contrary to the obligations, covenants and agreements of Licensee to Licensor in this Agreement, and (ii) provide Supernus with a copy of the agreement and give due consideration to any further comments offered in a timely manner in writing by Supernus;

(b) any Sub-Licensee Agreement or any sub-license agreement with an Affiliate shall be in writing and shall give no greater rights to Sub-Licensee or Third Party than rights held by Licensor; and

(c) the Sub-Licensee or Affiliate sub-licensee or Third Party shall not have the right to sub-license or assign any rights and any Sub-License Agreement or any sub-license agreement with an Affiliate shall terminate automatically on termination or expiration of this Agreement, subject to reasonable sell-off periods. In the event United Therapeutics licenses, sublicenses, transfers or in any way acts inconsistently with this Section 3, Supernus shall be entitled to immediate injunctive relief and incidental and consequential damages in addition to any other remedies available to Supernus.

3.2 In the event and to the extent that any such Sub-Licensee directly pays Supernus the Milestone Payments and royalty obligations under clauses 7 and 8, then in such event United Therapeutics shall not make such payments to Supernus.

4. COMMERCIALIZATION AND NEW DEVELOPMENT PLANS

4.1 Supernus has provided services under the Feasibility Agreement that United Therapeutics believes are sufficient for United Therapeutics to commercialize a Licensed Product or Licensed Combination Product for a first indication.

(a) United Therapeutics may request in writing that Supernus perform additional services with respect to United Therapeutics' development of Licensed Products or Licensed Combination Products under this Agreement, including (i) additional work to be performed by Supernus with respect to a first indication, and (ii) work to be performed by Supernus with respect to indications beyond the first indication, together referred to as ***"Additional Services"***.

(b) Upon receipt of a written request from United Therapeutics for Supernus to provide Additional Services, the Parties shall negotiate in good faith and enter into a Development Plan Agreement and with respect to each such request for Additional Services execute a work order which is bound by said Development Plan Agreement (***"Work Order"***) that will set forth the Development Costs for each such Development Plan. The Development Costs shall be Supernus' actual costs calculated at $[**] plus [**]% on a mutually agreed invoicing schedule in connection with the activities carried out under each Development Plan and expansions thereof and billed accordingly. In addition, United Therapeutics shall reimburse Supernus for travel and other reasonable and customary out-of-pocket expenses incurred in the performance of a Development Plan as approved in advance in writing by United Therapeutics unless such expense satisfies previously agreed-upon written policies.

4.2 With respect to each such Development Plan Agreement or Work Order, Supernus shall:

(a) perform such Additional Services in connection with each such Development Plan, and ensure that such services are performed with reasonable care and skill; and

(b) ensure that personnel employed or engaged in the provision of services in connection with each such Development Plan are competent and have appropriate qualifications, training and experience.

4.3 United Therapeutics shall at its own cost provide Supernus with adequate supplies of the Compound in accordance with each such Development Plan. In the event that United Therapeutics fails to deliver or is late in delivering the Compound or any other active ingredient, the timetable for such Development Plan will be automatically extended accordingly.

4.4 If requested by United Therapeutics in writing, the Parties will negotiate the terms of a supply agreement with Supernus responsible for the manufacture and supply of Licensed Products or Licensed Combination Products to United Therapeutics for use in pre-clinical and clinical studies, in accordance with each such Development Plan. Under such a supply agreement, Supernus shall manufacture Licensed Products and Licensed Combination Products:

(a) in accordance with the Specifications; and

(b) in compliance with cGMP, where applicable.

4.5 In the event that United Therapeutics wishes to amend or request additional services under a Development Plan, the Parties shall discuss the scope of any change in services under such Development Plan and the additional costs (if any). If mutually acceptable, the Parties shall, by written agreement, amend such Development Plan to incorporate the amended or additional services.

4.6 On reasonable written notice and no more than twice annually, Supernus shall give United Therapeutics or its preapproved nominee access to its offices and laboratories during normal

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

business hours to review and discuss the progress of a Development Plan, approval of such nominee not to be unreasonably withheld or delayed. The Parties hereby acknowledge that since Supernus is in the partner-based drug delivery business, the Parties will be required to take certain reasonable precautions during facility visits, tours and audits to preserve the confidential nature of partner programs that may be in progress in the same facility at the appointed time.

4.7 The Parties shall establish a Development Team for each Development Plan consisting of not less than a representative from each Party who shall be the primary point of contact for all relevant aspects of the development and commercialization of Licensed Products and Licensed Combination Products.

4.8 The purpose of the Development Team is to provide a forum for the Parties to share information and knowledge in relation to the development, regulatory filing and commercialization of Licensed Products and Licensed Combination Products including, but not limited to, monitoring progress of each Development Plan, clinical studies, clinical trial programs and discussing relevant regulatory, technical, quality assurance or safety issues in relation to Licensed Products and Licensed Combination Products. The Development Team shall meet or hold telephone conferences as often as the Parties may reasonably determine.

4.9 The Development Plan Agreement shall set forth that Supernus shall:

(a) from time to time during the course of each Development Plan and at United Therapeutics' expense, provide United Therapeutics with written updates on a mutually acceptable schedule detailing the work being performed, and will provide such other information or data reasonably requested by United Therapeutics; and

(b) at the conclusion of each Development Plan, provide United Therapeutics with a written summary of the work performed in connection with each such Development Plan and the data generated.

4.10 After completion of any Development Plan and for as long as each such Licensed Product or Licensed Combination Product is manufactured or sold by United Therapeutics, its subcontractors, sublicensees, or assignees, United Therapeutics shall inform Supernus of any Improvements or proposed changes to such Licensed Product or Licensed Combination Product formulation, manufacturing process or United Therapeutics Know-How and shall consult with Supernus concerning the impact of any such Improvements or proposed changes.

4.11 United Therapeutics shall have complete control in its sole discretion over all aspects of the development and commercialization of Licensed Products or Licensed Combination Products under this Agreement, including without limitation to the development, use, manufacture and sale of Licensed Products or Licensed Combination Products in accordance with the Specifications. Pursuant to this clause, United Therapeutics will use commercially reasonable efforts to enforce confidentiality and limitations of use on its subcontractors, sublicensees and assignees as pertain to Supernus Intellectual Property and the Licensed Patents.

4.12 United Therapeutics shall, at its own cost, retain sole responsibility for the preparation, filing, prosecution and maintenance of all filings and applications for Product Approvals relating to Licensed Products or Licensed Combination Products, and United Therapeutics shall solely in its direction manage all applications, requests for authorization, submissions of information and data and for all interactions with the FDA or applicable governing health authority for the purpose of attempting to obtain registration of Licensed Products and Licensed Combination Products within the Territory. United Therapeutics shall solely and exclusively own all regulatory applications, approvals, Clinical Development Data and Licensed Product and Licensed Combination Products registrations obtained by United Therapeutics or its Affiliates with respect to Licensed Products and Licensed Combination Products, including retaining control and ownership of each Drug Master File related to Licensed Products and Licensed Combination Products.

4.13 Supernus shall, at the request and reasonable expense of United Therapeutics, provide United Therapeutics with reasonable assistance in any IND, NDA or other regulatory filings and meetings worldwide relating to Compound or Licensed Products or Licensed Combination Products. United Therapeutics shall have the right to reference Non-Clinical Development Data, Supernus Technology and Supernus Intellectual Property to the extent necessary to support its worldwide regulatory filings and compliance program as may be pre-approved by Supernus, such approval not to be unreasonably withheld or delayed.

5. NON-CLINICAL AND CLINICAL DEVELOPMENT DATA

5.1 As soon as practicable after the Effective Date, Supernus shall provide United Therapeutics in a timely manner with:

(a) copies of all Non-Clinical Development Data and information generated in connection with any Development Plans, including without limitation all related Supernus Intellectual Property, that is necessary for United Therapeutics to develop and commercialize Licensed Products and Licensed Combination Products under this Agreement, including without limitation the development, use, manufacture and sale of Licensed Products and Licensed Combination Products;

(b) any other information or data, that in Supernus' reasonable view is generally useful for United Therapeutics to develop and commercialize Licensed Products and Licensed Combination Products under this Agreement, including without limitation the development, use, manufacture and sale of Licensed Products and Licensed Combination Products; and

(c) provide United Therapeutics at its expense as shall be mutually pre-agreed upon in writing, at its request with reasonable assistance and consultation regarding the Supernus Technology and Supernus Intellectual Property, as they relate to Licensed Products and Licensed Combination Products.

5.2 After the Effective Date and from time to time during the term of this Agreement United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, supply any Clinical Development Data to Supernus, reasonably necessary for use in:

(a) fulfilling Supernus' obligations under this Agreement or any Development Plan; or

(b) preparing, filing, prosecuting or defending any Development Patents.

5.3 During the term of this Agreement, neither Supernus nor its Affiliates shall have the right to use the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products otherwise than as expressly set out in this Agreement, and without prejudice to the generality of the foregoing, Supernus and its Affiliates shall not:

(a) use, study, experiment with or otherwise exploit the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products; and

(b) utilize any part of the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products (but excluding Supernus' Intellectual Property) in the making of any Patent application, except as otherwise agreed in writing by the Parties pursuant to the terms of this Agreement.

6. PAYMENT TERMS

6.1 Payments of Development Costs under this Agreement shall be made by United Therapeutics to Supernus within 30 days after United Therapeutics' receipt of Supernus' invoice. In the event that United Therapeutics disputes any Development Cost, it shall pay the undisputed amount of Supernus' invoice as provided above, and shall, within 15 Business Days of receipt of Supernus' invoice, provide written notice to Supernus identifying the disputed charge and providing a detailed explanation of the nature of its position with respect to disputed amount. If a notice of disagreement shall be duly delivered, Supernus and United Therapeutics shall, during the 30 days following such delivery, use their best efforts to reach agreement on the disputed charges or amounts. If during such period, Supernus and United Therapeutics are unable to reach such agreement, either Supernus or United Therapeutics by notice to the other party may initiate the process whereby they shall promptly jointly retain a nationally recognized accounting firm (the **"Accounting Referee"**) and cause it to promptly review this Agreement and the disputed charges or amounts and to resolve the disputed charges or amounts. The Accounting Referee shall deliver to Supernus, as promptly as practicable but no later than 45 days, a report setting forth its calculation of the disputed charges or amounts. Such report shall be final and binding upon Supernus and United Therapeutics and any amount due to be paid or reimbursed, as the case may be, shall promptly be paid or reimbursed by the appropriate party. The cost of such review and report shall be borne by Supernus if the Accountant Referee finds in United Therapeutics favor and Supernus is required to reimburse United Therapeutics, or shall be born by United Therapeutics, if the Accountant Referee finds in Supernus' favor and United Therapeutics owes or has paid Supernus the disputed charges.

6.2 Unless otherwise agreed between the Parties, all sums due under this Agreement to Supernus shall be paid in United States dollars. Net Sales shall be determined in accordance with GAAP in the currency in which each Licensed Product or Licensed Combination Product was sold and shall be converted into United States dollars using the average buying rate as published in the Wall Street Journal for the [**] for which such payment is being determined.

6.3 Other than as otherwise provided herein, all sums due under this Agreement shall be paid without deduction, set-off or counterclaim and shall be made in full without deduction of income, value added or other taxes, charges or duties that may be imposed, except (i) insofar as United Therapeutics is required to withhold or deduct the same to comply with Laws, and (ii) to the extent that the determination of Net Sales incorporates such deductions. In the event that United Therapeutics is required to make any such deduction, it shall promptly provide Supernus with a certificate or other documentary evidence sufficient to enable Supernus to support a claim for a tax credit in respect of any amount so withheld.

6.4 If Laws require withholding of income taxes or other taxes imposed upon any payments by United Therapeutics to Supernus under this Agreement, Supernus shall provide United Therapeutics with applicable forms or documentation required by any applicable taxation Laws, treaties or agreements to such withholding or as necessary to claim a benefit due to Supernus thereunder (including, but not limited to Form W-8BEN or any successor forms) and United Therapeutics shall make such withholding payments as required and subtract such withholding payments from the payments due Supernus as set forth in this Agreement. United Therapeutics will use commercially reasonable efforts consistent with its usual business practices and cooperate with Supernus to ensure that any withholding taxes imposed are reduced as far as possible under the provisions of the current or any future applicable taxation treaties or agreements between foreign countries

6.5 Interest shall be payable by United Therapeutics on any amounts payable to Supernus under this Agreement which are not paid within 30 days of the due date for payment. All interest shall accrue and be calculated on a daily basis (both before and after any judgment) at the rate of [**] as published in the Wall Street Journal on that due date, for the period from the due date for payment until the date of actual payment.

6.6 Notwithstanding any other provision of this Agreement, if at any time legal restrictions prevent the prompt remittance of part or all of the payments required hereunder in any country, payment shall be made through such lawful means or methods as United Therapeutics may determine. When in any country the Laws prohibit both the transmittal and deposit of royalties on sales in such a country, royalty payments shall be suspended for as long as such prohibition is in effect, and shall be paid within thirty (30) days after such prohibition ceases to be in effect all royalties that United Therapeutics would have been obligated to transmit or deposit, but for the prohibition, shall be deposited or transmitted, as the case may be, to the extent allowable, less any transactional costs. United Therapeutics shall use reasonable commercial efforts to resolve with any country any prohibitions or suspensions of royalty payments. If the royalty rate specified in this Agreement should exceed the permissible rate established in any country, the royalty rate for sales in such

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

country shall be adjusted to the highest legally permissible or government approved rate.

7. MILESTONE PAYMENTS

7.1 Milestone Payments for the First Indication in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of Licensed Products for a first indication, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of results of the [**] human pilot pharmacokinetic study and United Therapeutics' decision to continue development;

(b) $[**] within 30 days of release of the [**] batch of pivotal GMP supplies;

(c) $[**] upon the earlier of (i) validation of technology transfer to commercial manufacturing site, or (ii) April 1, 2007. Validation of Technology transfer to Commercial Site shall mean the successful manufacture of the [**] of the [**] product strengths that are suitable for use in the clinic;

(d) $[**] within 30 days of completion of the [**] pivotal efficacy study and United Therapeutics' decision to pursue filing for Product Approval; and

(e) $[**] within 30 days of the [**] Product Launch for the first indication.

7.2 Milestone Payments for the Second Indication in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of Licensed Products or Licensed Combination Products for a second indication, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of release of the [**] batch of pivotal GMP supplies in accordance with, or as a result of, a Development Plan for the second indication, if any;

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(b) $[**] at the earlier of: (i) initiation of the [**] pivotal efficacy study for the second indication using any of the strengths developed for the first indication, or (ii) the successful manufacture of the [**] of the new product strength for the second indication that are suitable for use in the clinic;

(c) $[**] within 30 days of completion of the [**] pivotal efficacy study for the second indication and United Therapeutics' decision to pursue regulatory filing for Product Approval; and

(d) $[**] within 30 days of the [**] Product Launch for the second indication.

7.3 Milestone Payments for Each Combination Product in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of each Licensed Combination Product, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once for each Licensed Combination Product with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of results of the [**] human pilot pharmacokinetic study and a decision to continue development for each Licensed Combination Product;

(b) $[**] within 30 days of release of the [**] of pivotal GMP supplies for each Licensed Combination Product in accordance with, or as a result of, a Development Plan, if any;

(c) $[**] within 30 days of validation of technology transfer to commercial manufacturing site to include the successful manufacture of the [**] of the first product strength for each Licensed Combination Product that are suitable for use in the clinic;

(d) $[**] within 30 days of both completion of the primary registration study using product manufactured at the commercial site for each Licensed Combination Product and United Therapeutics' decision to pursue registration filing for Licensed Combination Product approval; and

(e) $[**] within 30 days of the Product Launch for each Licensed Combination Product, or

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(f) as an alternative to Milestone Payments outlined in Articles 7.3.a through 7.3.e, a one-time payment of $[**] within sixty(60) days of signing of this Agreement to expand the Field from a single Compound to all Licensed Combination Products.

7.4 If any of the Milestone Events outlined for the Licensed Products or Licensed Combination Products are not met or not pursued by United Therapeutics (***"Missed Event"***) resulting in a non-payment of the Milestone amount(s) to Supernus, but United Therapeutics chooses to proceed with the development of the Licensed Products or Licensed Combination Products notwithstanding, the Milestone Payments, not previously paid to Supernus shall be paid at the moment that the next Milestone Event is pursued by United Therapeutics.

7.5 United Therapeutics shall notify Supernus immediately upon achievement of each Milestone Event and the corresponding Milestone Payment will be paid within (30) Business Days of United Therapeutics' receipt of an invoice from Supernus.

8. ROYALTIES

8.1 Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall for the Royalty Term, pay each Quarter to Supernus, or an Affiliate of Supernus designated in writing, royalties based on Net Sales during the Royalty Term as set out in the following table:

Territory/Type of Product	Indication	Royalty rate as a percentage of Net Sales
Worldwide	First	[**]%
Worldwide	Second	[**]%
Worldwide	Third and beyond	[**]%
Each Licensed Combination Product, if existing Third Party royalty obligations	All	[**]%
Each Licensed Combination Product, if no existing Third Party royalty obligations	All	[**]%

8.2 Upon Product Approval of a Licensed Product for the second indication the royalty rate for the first indication will be reduced to [**]% and the royalty rate for the Second Indication will be [**]%. Upon Product Approval of a Licensed Product for the Third Indication, the royalty rate for the Second Indication will be reduced to [**]% and the royalty rate for the Third Indication will be [**]%.

8.3 In the event that [**] study for the second indication has not been initiated using Licensed Products or Licensed Combination Products at the time of first approval for a Licensed Product the royalty rate for the first indication will be increased to [**]%.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

8.4 No royalties shall be payable on Licensed Products or Licensed Combination Products distributed to Third Parties without the receipt of compensation solely as a sample for testing or evaluation purposes. Only one payment of royalties shall be due with respect to the same unit of a Licensed Product or Licensed Combination Product, and no multiple royalties shall be payable because any Licensed Product or Licensed Combination Product, or its manufacture, sale or use, is covered by more than one Valid Claim or is subject to both Supernus Know-How and a Valid Patent Claim. Following First Commercial Sale in any country, United Therapeutics shall have the right to distribute (without receipt of compensation and without payment of a royalty to Supernus) in any calendar year for compassionate purposes to indigent patients, an aggregate of up to [**] ([**]%) of the total number of Licensed Products or Licensed Combination Products sold in units (with the receipt of compensation) in such country in such calendar year by United Therapeutics, its Affiliates and Sub-Licensees.

8.5 If United Therapeutics, its Affiliates or its Sub-Licensees are required to pay royalties to any Third Party because the manufacture, use or sale of Licensed Products or Licensed Combination Products infringes any Patent or other intellectual property rights of such Third Party in any country in the Territory in accordance with clause 14 and where such infringement is not otherwise caused by United Therapeutics, its Affiliates, its Sub-Licensees, subcontractors, or its suppliers, and where such Patent or other intellectual property rights cover Supernus Intellectual Property used in such Licensed Products or Licensed Combination Products, then United Therapeutics, its Affiliates or its Sub-Licensees may deduct from royalties thereafter due to Supernus with respect to Net Sales of any Licensed Product up to the lower of: (i) [**] ([**]%) of the royalties or such other fees paid to acquire rights in such Patent or other intellectual property right, or (ii) [**] ([**]%) of the royalties due to Supernus with respect to Net Sales of any Licensed Product or Licensed Combination Products in a given quarter.

9. [DELIBERATELY OMITTED]

10. RECORDS AND REPORTS

10.1 During the term of this Agreement, and for a period of four years after its expiration or termination, United Therapeutics shall, and shall procure that its Affiliate and Sub-Licensees shall, keep at its normal place of business detailed, accurate and up to date records and books of account showing any regulatory filings made in relation to Licensed Products or Licensed Combination Products and price increases in each country in the Territory sufficient to ascertain the achievement, or progress towards achievement, of any Milestone Events.

10.2 Upon the written request of Supernus, and not more than once in each calendar year, United Therapeutics shall permit an independent certified public accounting firm of nationally recognized standing, selected by Supernus and reasonably acceptable to United Therapeutics, at Supernus' expense, to have access during normal business hours to such of the books of account and records of United Therapeutics as may be reasonably necessary to verify the accuracy of the royalty reports hereunder for any year ending not more than twenty-four (24)

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

months (unless fraud has been determined by such certified public accounting firm of nationally recognized standing in writing) prior to the date of such request. The accounting firm shall disclose to Supernus only whether the records are correct or not and the specific details concerning any discrepancies. No other information shall be shared. The accounting firm shall be entitled to take copies or extracts from the records and books of account during any such review or audit.

10.3 Supernus shall be solely responsible for its costs in making such review and audit unless such accounting firm identifies a discrepancy in the amounts paid in any calendar year from those payable under this Agreement for that calendar year of greater than [**]%, in which event United Therapeutics shall pay the reasonable and direct fees and expenses charged by such accounting firm, and make good the deficit in any payments that are due to Supernus (including interest on the deficit at [**] as published in the Wall Street Journal on the due date on and from the date that the relevant payments became due).

10.4 All information disclosed by United Therapeutics, its Affiliates and its Sub-Licensees pursuant to this clause 10 shall be deemed Confidential Information, and Supernus shall cause its accounting firm and consultants to retain all such financial information in confidence.

11. LAUNCH AND MARKETING EFFORTS

11.1 United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, use reasonable commercial efforts to develop and commercialize Licensed Products and Licensed Combination Products. For the purpose of this clause, reasonable commercial efforts means commercial efforts consistent with normal business practices and effort used by United Therapeutics in connection with other United Therapeutics products of similar market size or importance which United Therapeutics intends to launch or has launched and sold in the Territory or any part of it, or in the absence of any such similar products, then such effort as is consistent with good industry practice.

11.2 United Therapeutics shall use reasonable efforts to meet and comply with any timelines which are mutually agreed by the Parties in writing for the delivery of sufficient quantity of Compound, other related material, and information requested by Supernus as may be required for development, regulatory filing, launch and commercialization of Licensed Products and Licensed Combination Products.

12. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

12.1 Nothing in this Agreement shall affect the ownership of any Party's intellectual property rights existing at the date of this Agreement or generated outside of a Development Plan which one Party agrees to make available to the other in the course of a Development Plan.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

12.2 Subject to clauses 12.1., 12.3 and 12.4, United Therapeutics shall retain and is the sole and exclusive owner of all existing and future right, title and interest in and to all Clinical Development Data, United Therapeutics Intellectual Property whether or not created, developed, or arising from the performance of any Development Plan hereunder and to the extent all such United Therapeutics Intellectual Property has not previously been assigned to United Therapeutics, Supernus hereby completely and irrevocably assigns and transfers to United Therapeutics any and all right, title and interest that it may have in and to such United Therapeutics Intellectual Property. At the request and expense of United Therapeutics, Supernus shall promptly execute such documents and do such acts as may be reasonably necessary to completely and exclusively vest such rights in United Therapeutics. In the event that Supernus has any rights in and to the work which cannot be assigned, and which is not Non-Clinical Development Data, Supernus' Intellectual Property, Supernus' Improvements or subject to clause 25.16, Supernus agrees to waive enforcement worldwide of such rights against United Therapeutics, its successors, distributors, licensees and assigns and, if necessary, hereby grants a fully-paid up irrevocable worldwide exclusive license to United Therapeutics with the right to sublicense and assign. Subject to clause 5.3, and other than as may be required for the purposes of this Agreement, Supernus shall not use United Therapeutics Intellectual Property without the prior written consent of United Therapeutics. Notwithstanding the provisions of this clause 12.2, Supernus may use the Clinical Development Data only for purposes of preparing, prosecuting or maintaining Patents.

12.3 Subject to clauses 12.1., 12.2 and 12.4, Supernus shall retain and is the sole and exclusive owner of all existing and future right, title and interest in and to all Non-Clinical Development Data, Supernus Intellectual Property, Supernus Technology, and Supernus Improvements whether or not created, developed, or arising from the performance of any Development Plan hereunder, which intellectual property belonging to Supernus includes, but is not limited to, Supernus Technology, including ProPhile^{SM}, ProScreen®, OptiScreen®, Microtrol®, Solutrol^{TM}, or EnSoTrol® technology platforms, but explicitly excludes the United Therapeutics Intellectual Property, and United Therapeutics hereby completely and irrevocably assigns and transfers to Supernus any and all right, title and interest that it may have in and to such Supernus Technology, Supernus Intellectual Property, and Supernus Improvements. At the request and expense of Supernus, United Therapeutics shall promptly execute such documents and do such acts as may be reasonably necessary to completely and exclusively vest such rights in Supernus. Subject to clause 5.3, and other than as may be required for the purposes of this Agreement, United Therapeutics shall not use Supernus Intellectual Property without the prior written consent of Supernus. Notwithstanding the provisions of this clause 12.3, United Therapeutics may use the Non-Clinical Development Data only for purposes of preparing, prosecuting or maintaining Patents that are not in conflict with Supernus' rights and obligations under this Agreement.

12.4 Each Party agrees (i) to disclose promptly to the other any and all Patent applications prepared or filed by that Party which applications are made directly or indirectly as a result of the collaboration under this Agreement or further collaboration between the Parties on the subject matter of this Agreement, and (ii) promptly upon request by the other Party to sign such documents and do such things, or procure the signing of such documents or the doing of

such things, as is reasonably necessary to vest such relevant intellectual property rights in the other Party.

12.5 Subject to the terms of this Agreement, Supernus expressly acknowledges and agrees that it shall have no right, title or any other interest in the United Therapeutics Intellectual Property.

12.6 Subject to the terms of this Agreement, United Therapeutics expressly acknowledges and agrees that it shall have no right, title or any other interest in the Supernus Intellectual Property.

12.7 United Therapeutics shall only use the Supernus Intellectual Property and Non-Clinical Development data or any other Confidential Information provided by Supernus from the Agreement solely in connection with the development and commercialization of Licensed Products and Licensed Combination Products including, but not limited to, negotiating, implementing and operating Third Party development, use, manufacturing and other partnering agreements and relationships with respect to Licensed Products and Licensed Combination Products in accordance with the Specifications, provided that the relevant Third Party enters into a confidentiality agreement with United Therapeutics on terms no less onerous than those contained in clause 17 prior to such use and further agrees to be subject to the restrictions set forth herein in clause 25.16 herein.

12.8 United Therapeutics hereby grants Supernus a royalty-free, non-exclusive license to use United Therapeutics Intellectual Property only in relation to:

(a) the performance of any services in connection with any Development Plan or the further development of a Licensed Product or Licensed Combination Product under this Agreement; or

(b) the filing, prosecuting, maintaining or commercializing any Patent arising from and relating to the Supernus Intellectual Property and Development Patents.

12.9 The express provisions of this Agreement provide for all licenses granted by and to the Parties hereunder and no additional transfer, license or other grant of rights concerning a Party's intellectual property shall be implied from either such express provisions of this Agreement or from the performance under any Development Plan.

12.10 Each Party shall promptly disclose to the other Party, in such detail as is reasonably required, any Improvements developed in accordance with the terms of this Agreement.

12.11 Nothing in this Agreement gives either Party any right, title or interest in any trademarks owned or used by the other Party.

13. **PATENTS**

13.1 Subject to clause 13.3, Supernus shall at its sole option and expense prepare, file, prosecute and maintain the Licensed Patents that relate to the Licensed Products or Licensed Combination Products in the [**] and at the expense of United Therapeutics in any other countries requested in writing. At Supernus' option, all filings in additional countries will be prepared, filed, prosecuted and maintained by United Therapeutics on behalf of Supernus at United Therapeutics' sole cost and expense.

13.2 Supernus shall, at its sole option at its own cost, file, prosecute and maintain any Development Patents in the [**] and at United Therapeutics' expense any other countries requested by United Therapeutics in writing. At Supernus' option, all filings of Development Patent applications in additional countries will be prepared, filed, prosecuted and maintained by United Therapeutics on behalf of Supernus at United Therapeutics' sole cost and expense.

13.3 In the event that Supernus elects to abandon any pending application or granted Patent for both Licensed Patents and Development Patents, it shall provide adequate written notice to United Therapeutics and give United Therapeutics the opportunity to file or maintain such application or Patent on behalf of Supernus, the cost and expense of which shall be deducted from payments to be made by United Therapeutics to Supernus under this Agreement. Without limiting the generality of the foregoing, in no event shall Supernus provide United Therapeutics with written notice of abandonment of any Licensed Patent or Development Patent less than 60 days prior to its date of lapse.

13.4 Each Party shall keep the other Party reasonably informed of all material matters in connection with the filing, prosecution and maintenance of Patents with respect to both Licensed Patents and Development Patents, including providing United Therapeutics with copies of substantive communications submitted to or received from patent offices throughout the Territory.

13.5 Each Party for a reasonable period of time shall make available to the other Party or its authorized attorneys, agents, consultants or representatives, if available, such information necessary or appropriate but subject to any restraints of confidentiality or contract to enable the appropriate Party to prepare, file, prosecute and maintain Patents with respect to both Licensed Patents and Development Patents as set forth in this clause 13 Where appropriate, each Party shall sign or cause to have signed all documents relating to said Patents at no charge to the other.

14. INFRINGEMENT OF THIRD PARTY RIGHTS

14.1 If either Party becomes aware that the exercise of such Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

14.2 The Parties shall, after receipt of notice referred to in clause 14.1, discuss the infringement and, to the extent necessary, attempt to agree on a course of action. Such course of action may include:

(a) obtaining an appropriate license from the Third Party; or

(b) contesting any claim or proceedings brought by the Third Party.

14.3 If within 28 days of the date of the notice referred to in clause 14.1, the Parties have not agreed upon an appropriate course of action then:

(a) Supernus may decide, at its own cost and expense, upon the course of action with respect to any claim which relates exclusively or predominantly to any of the Supernus Technology (***"Supernus Action"***); and

(b) United Therapeutics may decide, at its own cost and expense, upon the course of action with respect to any claim which relates exclusively or predominantly to, such Licensed Product or Licensed Combination Product (so long as it does not fall within the definition of a Supernus Action), Clinical Development Data or other United Therapeutics Intellectual Property (***"United Therapeutics Action"***).

14.4 For the avoidance of doubt, United Therapeutics may negotiate a license for the use of Third Party intellectual property rights, in connection with any United Therapeutics Action, and Supernus may negotiate a license for the use of Third Party intellectual property rights, in connection with any Supernus Action. In such event, the Parties shall keep each other fully informed of any license negotiations.

14.5 If within 180 days from receiving notice from a Third Party relating to a Supernus Action, Supernus fails or refuses to respond to or defend any such claim or negotiate a license from such Third Party, United Therapeutics may defend such claim or (subject to the prior written consent of Supernus, not to be unreasonably withheld or delayed) negotiate a license with such Third Party. If within 180 days from receiving notice from a Third Party relating to a United Therapeutics Action, United Therapeutics fails or refuses to respond to or defend any such claim or negotiate a license from such Third Party, Supernus may defend such claim or (subject to the prior written consent of United Therapeutics, not to be unreasonably withheld or delayed) negotiate a license with such Third Party.

14.6 If at any time a Third Party files a lawsuit against United Therapeutics, its Affiliates, Sub-Licensees or distributors asserting that the alleged infringing process, method or composition is claimed under the Supernus Intellectual Property, Supernus shall have the right, in its sole discretion, to control the defense of such suit at its own expense, in which event United Therapeutics shall have the right to be represented by advisory counsel of its own selection, at its own expense, and shall cooperate fully in the defense of such suit and furnish to Supernus all evidence and assistance in its control. If Supernus does not elect within thirty (30) days after receiving written notice of such Third Party lawsuit to so control the defense

of such suit, United Therapeutics may undertake such control at its own expense, and Supernus shall then have the right to be represented by advisory counsel of its own selection, at its own expense, and Supernus shall cooperate fully in the defense of such suit and furnish to United Therapeutics all evidence and assistance in United Therapeutics' control. The Party controlling the suit may not settle the suit or otherwise consent to an adverse judgment in such suit that diminishes the rights or interests of the non-controlling Party without the express written consent of the non-controlling Party. Any judgments, settlements or damages payable with respect to legal proceedings covered by this clause 14.6 shall be paid by the Party which controls the litigation, subject to the other Party's indemnification obligations under clause 16, if any.

15. INFRINGEMENT OF LICENSED PATENTS BY THIRD PARTY

15.1 If either Party becomes aware of any Third Party infringement or suspected infringement of any Supernus Intellectual Property used in connection with a Licensed Product or Licensed Combination Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

15.2 The Parties shall, after receipt of notice referred to in clause 15.1, discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent or terminate such Third Party infringement, the proportions that any costs of proceedings or action shall be shared and the proportions that any damages or other sums awarded in their favor (or against them) shall be divided.

15.3 If within 90 days of the date of the notice referred to in clause 15.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

(a) if the Licensed Patent or Development Patent contains one or more claims specifically directed to Compound or a Licensed Product or a Licensed Combination Product (including but not limited to compositions containing the Compound), then United Therapeutics shall have the right, but not the obligation, to commence, at its sole expense, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. United Therapeutics shall provide Supernus with prior written notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that United Therapeutics has not commenced any action or proceedings to terminate or prevent such infringement within 120 days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

(b) if the Licensed Patent or Development Patent does not contain one or more claims specifically directed to formulations of Compound or a Licensed Product or a Licensed Combination Product (including but not limited to compositions containing the Compound), then Supernus shall have the right, but not the obligation, to commence, at Supernus' expense, any action or proceedings, negotiate a license or

take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide United Therapeutics with prior written notice of the initiation of any such action or proceedings and shall keep United Therapeutics informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement within 120 days after having become aware of such potential infringement, then United Therapeutics may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

15.4 The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

15.5 Each Party shall use reasonable efforts to cooperate with the other Party's requests and, to the extent possible, shall keep the other Party reasonably informed of all material matters in connection with the commencement and prosecution of any such action or proceeding.

15.6 Each Party shall make available to the other Party or its authorized attorneys, agents, consultants or representatives, if available, such information necessary or appropriate to enable the appropriate Party to commence and prosecute any such action or proceeding for a period of time reasonably sufficient for such Party to obtain the assistance it needs from such personnel.

15.7 Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under clauses 14 or 15 shall be divided between the Parties as follows:

(a) the Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs and expenses (including reasonable attorneys' and expert fees) incurred in connection with the action or proceedings;

(b) after deducting the costs and expenses identified in clause 15.7(a), the other Party shall, to the extent possible, recover its costs and expenses (including reasonable attorneys' and expert fees) incurred in connection with the action or proceedings;

(c) if Supernus initiated, prosecuted or maintained the defense of, the action or proceedings, any amount remaining after the deduction of both Parties' costs and expenses outlined in clauses 15.7 (a) and (b) shall be retained by Supernus; and

(d) if United Therapeutics initiated, prosecuted or maintained the defense of the action or proceedings, any amount remaining after the deduction of both Parties' the costs and expenses outlined in clauses 15.7 (a) and (b) shall be retained by United Therapeutics, except that Supernus shall receive a portion equivalent to the royalties it would have received under this Agreement if such remaining recovery amount were deemed to be Net Sales.

16. INDEMNIFICATION AND LIABILITY

16.1 Subject to Supernus' compliance with clause 16.3, United Therapeutics will indemnify and hold Supernus, and its Affiliates and its and their directors, officers, employees and agents (each an *"**Supernus Party**"*) harmless from and against any Third Party costs, claims, damages and expenses (including reasonable attorneys' fees, expenses to defend and amounts paid in settlement of any action paid in accordance with clause 16.3. herein) suffered or incurred by any Supernus Party, and arising out of any development activity initiated by United Therapeutics with Third Parties, or in connection with the clinical trials to be conducted by or on behalf of United Therapeutics under this Agreement or under any Development Plan, or in connection with any aspect of bringing Licensed Products or Licensed Combination Products to market including but not limited to any development, scale-up, transfer, manufacturing, marketing, sale and distribution of Licensed Products or Licensed Combination Products, except to the extent that such costs, claims, damages or expenses arise from the gross negligence, breach of the terms of this Agreement or willful misconduct by a Supernus Party.

16.2 Subject to United Therapeutics' compliance with clause 16.3, Supernus will indemnify and hold United Therapeutics, its Affiliates, Sub-Licensees and its and their directors, officers, employees and agents (each a *"**United Therapeutics Party**"*) harmless from and against any Third Party costs, claims, damages and expenses (including reasonable attorneys' fees, expenses to defend and amounts paid in settlement of any action paid in accordance with clause 16.3. herein) suffered or incurred by any United Therapeutics Party, and arising out of or in connection with the activities conducted by Supernus or by Third Parties under its control in its facility in connection with any Development Plan under this Agreement, except to the extent that such costs, claims, damages or expenses arise from the gross negligence, breach of the terms of this Agreement or willful misconduct by a United Therapeutics Party.

16.3 In all cases where a Party seeks indemnification by the other under this clause 16, the Party seeking indemnification shall promptly notify the indemnifying Party in writing, in the manner set forth in clause 23, of receipt of any claim or lawsuit covered by such indemnification obligation and shall cooperate fully with the indemnifying Party in connection with the investigation and defense of such claim or lawsuit. The indemnifying Party shall have the right to control the defense, with counsel of its choice, provided that the non-indemnifying Party shall have the right to be represented by advisory counsel at its own expense. The indemnifying Party shall not settle or dispose of the matter in any manner, which could negatively and materially affect the rights or liability of the non-indemnifying Party without the non-indemnifying Party's prior written consent, which shall not be unreasonably withheld or delayed.

16.4 EXCEPT AS MAY BE OTHERWISE SET FORTH HEREIN, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, COLLATERAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS OF THE OTHER PARTY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATIONS SET FORTH

HEREIN, EXCEPT FOR THOSE DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MALFEASANCE.

17. CONFIDENTIALITY AND PUBLICATIONS

17.1 The Parties, their Affiliates and their respective employees, directors, officers, consultants and contractors shall keep and maintain as confidential and shall not publish or otherwise disclose any Confidential Information supplied by the other Party during the term of this Agreement. The confidentiality and non-disclosure obligations contained in this Agreement shall not apply to the extent that a Party can demonstrate by competent written evidence that such Confidential Information is:

(a) information that at the time of disclosure by one Party to the other is in the public domain or otherwise generally available to the public;

(b) information which after disclosure by one Party to the other becomes part of the public domain or otherwise becomes generally available to the public, other than by breach of this Agreement by the receiving Party;

(c) information which the receiving Party can establish was already in its possession at the time of receipt or was independently developed by the receiving Party; or

(d) information received from a Third Party who was lawfully entitled to disclose such information and

the disclosure of which will not violate clause 25.16 herein.

17.2 Notwithstanding the limitations in this clause 17.1, but so long as it does not violate the provisions of clause 25.16, each Party may disclose Confidential Information to the extent such disclosure is reasonably necessary in the following instances, but solely for the limited purpose of such necessity:

(a) prosecuting or defending litigation;

(b) complying with applicable governmental Laws, including without limitation, NASDAQ and SEC disclosure requirements, or court orders;

(c) to file Patent applications or prosecute such applications to grant or to gain approval to conduct clinical trials in relation to Licensed Products or Licensed Combination Products;

(c) disclosure to employees, consultants or agents, solely in furtherance of this Agreement, provided that such individuals have agreed in writing to be bound by similar terms of confidentiality and non-use at least equivalent in scope to those set forth in clause 17.1; or

(d) general information of a non-material nature regarding the general status of the development and commercialization of Licensed Products or Licensed Combination Products.

Notwithstanding the foregoing, in the event that a Party is required to make a disclosure of the Confidential Information of the other Party pursuant to clauses 17.2(a) and (b), it will give prompt advance written notice to the other Party of such disclosure and shall use its best efforts to assist the other Party in securing confidential treatment of such information.

17.3 The Parties shall consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements relating to any Confidential Information or the transactions contemplated under this Agreement. The obligations contained in this clause 17 shall continue for the duration of the Agreement and for a period of [**] after the termination or expiration of this Agreement.

17.4 From time to time it may be to the mutual interest of the Parties to publish articles relating to data generated or analyzed as a part of this Agreement. Neither Party shall submit for written or oral publication or presentation any manuscript, abstract, writing, printed material or the like which includes data or any other information generated and provided solely by the other Party without first obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided however, that (i) valid commercial reasons may exist for withholding such consent, (ii) such prior consent shall not be required for publications and presentations that do not disclose details of the Supernus Technology (e.g., clinical articles), and (iii) if a party does not object within ten days of its receipt of a proposed publication or presentation from the other party, then it will be deemed to have consented to such publication or presentation. Nothing contained herein shall be construed as precluding either Party from its own intellectual property, making, in its discretion, any disclosures of information of any type which relate to the safety, efficacy, toxicology, or pharmacokinetic characteristics of the Licensed Products and Licensed Combination Products to the extent that either Party may be required by law to make disclosures of such information.

17.5 The terms of this Agreement are deemed to be Confidential Information, subject to clause 17.1; provided however, each Party shall be free to disclose the terms of the Agreement to potential investors, financial institutions, licensors, licensees and consultants provided such disclosures are subject to no less restrictive terms of confidentiality than as are set forth in this Agreement.

18. COVENANTS, REPRESENTATIONS AND WARRANTIES

18.1 Covenants by Both Parties throughout the Term of this Agreement:

(a) Each Party covenants that it will use its reasonable best efforts to obtain and maintain in full force and effect all necessary licenses, permits and other authorizations required by Law to carry out its duties and obligations under this Agreement. Each Party shall cooperate with the other to provide such letters,

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

documentation and other information on a timely basis as the other Party may reasonably require to fulfill its reporting and other obligations under Laws to applicable regulatory authorities. Except for such amounts as are expressly required to be paid by a Party to the other under this Agreement, each Party shall be solely responsible for any costs incurred by it to comply with its obligations under Laws. Each Party shall conduct its activities hereunder in an ethical and professional manner.

(b) Each Party hereby covenants that each of its employees and other Third Parties performing any work under the any Development Plan and otherwise in accordance with this Agreement shall have entered into a written invention assignment agreement requiring that each such Third Party assign to such Party all right, title and interest in and to any intellectual property conceived of and/or reduced to practice by such Third Party or its employees, consultants or agents in connection with any activities under any Development Plans and otherwise in accordance with this Agreement.

(c) Each Party hereby covenants that it has not and shall not knowingly misappropriate or otherwise misuse, nor shall it knowingly permit any of its employees, consultants or agents to misappropriate or otherwise misuse, any intellectual property of any Third Party in its conduct in accordance with any Development Plan and this Agreement.

(d) Each Party covenants that it shall cooperate with the other and provide such assistance and resources as the other Party may reasonably request in connection with performance of the obligations under this Agreement.

(e) Each Party covenants that it shall not, without the prior written consent of the other Party, acquire, directly or indirectly, any securities of the other Party or any right or options to acquire any such securities, or issue any public announcements naming the other Party without the prior written consent of such Party.

(f) Each Party covenants that it will immediately notify the other in writing if any debarment proceedings have commenced against a Party or any employees of consultants of a Party, or if an employee or consultant of a Party is debarred by the FDA.

18.2 By Supernus. Supernus represents and warrants to United Therapeutics as of the Effective Date that:

(a) It has the full right, power and authority to enter into this Agreement, perform this Agreement and to grant all of the rights, property and authorizations granted in this Agreement; that this Agreement has been duly executed and delivered by Supernus and is a legal, valid and binding obligation enforceable against Supernus in accordance with its terms; that, to the best of its knowledge, there are no agreements, commitments or obstacles, technical or legal, including intellectual

property rights of others, which could prevent it from carrying out all of its obligations hereunder; and that the execution, delivery and performance of this Agreement does not and will not violate any law, statute, local ordinance, state or federal regulation, court order, or administrative order ruling, its corporate charter or bylaws, nor any agreement by which it is bound

(b) It is the sole owner or exclusive licensee of the Supernus Intellectual Property in the Territory with the power and right to license or sublicense the Supernus Intellectual Property in accordance with this Agreement and, to the best of Supernus' knowledge as of the Effective Date, the use of the Supernus Intellectual Property under the terms and conditions contemplated by this Agreement will not infringe upon any Third Party's know-how, Patent or other intellectual property rights or constitute misuse of confidential information by United Therapeutics;

(c) To the best of its knowledge, there is no (i) action, suit, proceeding or investigation pending or threatened against Supernus that challenges the validity of this Agreement or the right of Supernus to enter into this Agreement, or to consummate the transactions contemplated hereby, or which might result, either individually or in the aggregate, in any material adverse change in the development of the Supernus Intellectual Property or commercial sales of a Licensed Product or Licensed Combination Product hereunder. The foregoing includes, without limitation, actions pending or threatened involving the prior employment of any of Supernus' employees, their use in connection with Supernus' business or any confidential information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers; (ii) any pending or threatened claims or litigation brought by a Third Party under any Third Party Patent, trade secret or other Third Party proprietary right in respect of Supernus' exploitation of the Supernus Intellectual Property; (iii) any basis upon which practice of the inventions described in the Licensed Patents or Supernus Intellectual Property would infringe on the rights of Third Parties; (iv) any licenses or other restrictions on the ability to develop, make, have made, use, import, market, promote, sell, have sold or otherwise practice the Supernus Intellectual Property; or (v) any scientific information, published or unpublished, relating to studies or experiments with the Supernus Intellectual Property, whether conducted by Supernus or by Third Parties, that would suggest development and commercialization of the Supernus Intellectual Property is not feasible;

(d) To the best of its knowledge, Supernus is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality that would have a material adverse effect on the license granted pursuant to clause 2.1;

(e) To the best of its knowledge, Supernus is not in violation of any applicable Laws or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties which violation would have a material adverse effect on the development and

commercialization of Licensed Products and Licensed Combination Products hereunder;

(f) To the best of its knowledge, Supernus nor any of its employees or consultants engaged in any Development Plan have been "debarred" by the United States Food and Drug Administration (the *"**FDA**"*), nor have any such debarment proceedings against it or any such employees or consultants been commenced.

(g) A complete list of (i) all Patents included in the Licensed Patents as of the Effective Date and (ii) all Patents owned by Third Parties and validly and exclusively licensed to Supernus, with the unrestricted right except as may be qualified herein to exclusively sublicense to United Therapeutics, is provided at Schedule 2 attached to this Agreement. Supernus owns or controls under valid licenses and has the right to license or sublicense, except as may be qualified herein all right, title and interest in and to any Third Party Patents listed on Schedule 2; and

(h) It has made available to United Therapeutics all material Supernus Know-How, Non-Clinical Development Data and Supernus Confidential Information in its possession or control that is required for the development and commercialization of the Supernus Intellectual Property as permitted in clause 2.1, including without limitation the development, use, manufacture and sale of Licensed Products.

18.3 By United Therapeutics. United Therapeutics represents and warrants to Supernus as of the Effective Date that:

(a) It has the full right, power and authority to enter into this Agreement, perform this Agreement and to grant all of the rights, property and authorizations granted in this Agreement; that this Agreement has been duly executed and delivered by United Therapeutics and is a legal, valid and binding obligation enforceable against United Therapeutics in accordance with its terms; that, to the best of its knowledge, there are no agreements, commitments or obstacles, technical or legal, including intellectual property rights of others, which could prevent it from carrying out all of its obligations hereunder; and that the execution, delivery and performance of this Agreement does not and will not violate any law, statute, local ordinance, state or federal regulation, court order, or administrative order ruling, its corporate charter or bylaws, nor any agreement by which it is bound;

(b) It has the power and right to commercialize Licensed Products and Licensed Combination Products in accordance with this Agreement and, to the best of United Therapeutics' knowledge as of the Effective Date, the use of the United Therapeutics Intellectual Property and Confidential Information under the terms and conditions contemplated by this Agreement will not infringe upon any Third Party's know-how, Patent or other intellectual property rights or constitute misuse of confidential information by either Party hereto;

(c) To the best of its knowledge, there is no (i) action, suit, proceeding or investigation pending or threatened against United Therapeutics that challenges the validity of this Agreement or the right of United Therapeutics to enter into this Agreement, or to consummate the transactions contemplated hereby, or which might result, either individually or in the aggregate, in any material adverse change in the development of a Licensed Product or Licensed Combination Product hereunder. The foregoing includes, without limitation, actions pending or threatened involving the prior employment of any of United Therapeutics' employees, their use in connection with United Therapeutics' business or any confidential information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers; or (ii) any pending or threatened claims or litigation brought by a Third Party under any Third Party Patent, trade secret or other Third Party proprietary right in respect of United Therapeutics exploitation of the United Therapeutics Intellectual Property;

(d) To the best of its knowledge, United Therapeutics is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality that would have a material adverse effect on the development and commercialization of Licensed Products and Licensed Combination Products hereunder; and

(e) To the best of its knowledge, United Therapeutics is not in violation of any applicable Laws or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties which violation would have a material adverse effect on the development and commercialization of Licensed Products and Licensed Combination Products hereunder;

(f) To the best of its knowledge, United Therapeutics' nor any of its employees or consultants engaged in any Development Plan have been "debarred" by the United States Food and Drug Administration (the *"**FDA**"*), nor have any such debarment proceedings against it or any such employees or consultants been commenced.

18.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN EACH PARTY DISCLAIMS ALL WARRANTIES AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED. THE PARTIES EACH ACKNOWLEDGES AND AGREE THAT THE DEVELOPMENT ACTIVITIES HEREUNDER ARE EXPERIMENTAL IN NATURE AND THAT NEITHER PARTY MAKES A GUARANTEE AS TO THE RESULTS OR PERFORMANCE THEREOF THROUGH THE DEVELOPMENT STAGE. HOWEVER, THIS PROVISION IS NOT INTENDED TO MITIGATE OR REDUCE THE EFFECT OF THE INDEMNITY PROVISIONS SET FORTH HEREIN.

19. TERM

This Agreement commences on the Effective Date and, subject to earlier termination in accordance with clause 20, shall expire on a country-by-country and Licensed Product-by-

Licensed Product or Licensed Combination Product-by-Licensed Combination Product basis upon the date of the last to expire payment obligation pursuant to the Royalty Term.

20. TERMINATION

20.1 Either Party may terminate this Agreement by giving written notice to the other if the other Party commits any material breach of this Agreement, which, in the case of a breach capable of remedy, is not remedied by the Party in default within 60 days of receipt of a detailed notice requiring it to do so.

20.2 In the event of the institution by or against either Party of insolvency, receivership, bankruptcy proceedings, or any other proceedings for the settlement of a Party's debts which are not dismissed within sixty (60) days, or upon a Party's making an assignment for the benefit of creditors, or upon a Party's dissolution or ceasing to do business, the other Party may terminate this Agreement upon written notice. All rights and licenses granted to United Therapeutics under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that United Therapeutics, as a licensee of certain rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; provided however, nothing herein shall be deemed to constitute a present exercise of such rights and elections and such rights shall be no greater than provided pursuant to this Agreement. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Supernus under the U.S. Bankruptcy Code, and so long as United Therapeutics is not in material breach of this Agreement, United Therapeutics shall be entitled to reasonable access to appropriate Supernus Intellectual Property, unless Supernus elects to continue to perform all of its obligations under this Agreement

20.3 This Agreement may be terminated by United Therapeutics by notice in writing to Supernus at any time after Supernus has a reasonable opportunity to cure after receiving written notice (if a cure is possible) from United Therapeutics for a technical, strategic or market-related cause (including, without limitation, technical, safety, efficacy, regulatory, competition, patient-related issues, emergence of new technologies, etc. rendering further development unjustified in United Therapeutics' opinion) in its sole discretion upon written notice to Supernus. Termination by United Therapeutics shall immediately terminate all licenses granted hereunder.

20.4 If United Therapeutics or any Sub-Licensee, after having launched a Licensed Product or Licensed Combination Product in any country in the Territory, discontinues sale of such Licensed Product or Licensed Combination Product in such country for a period of [**] or more for reasons unrelated to Force Majeure (as defined in clause 22), regulatory or safety issues and subsequently fails to resume sales of any Licensed Product or Licensed Combination Product in such country within 120 days of having been notified in writing of such failure by Supernus, then Supernus may in its discretion terminate the license granted to United Therapeutics under this Agreement with respect to such discontinued Licensed Product or Licensed Combination Product in such country. For the purposes of this clause

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

20.5, sales of minimal or commercially insignificant quantities of a Licensed Product or Licensed Combination Product in a country shall be deemed to constitute a discontinuation of sales in such country.

21. CONSEQUENCES OF TERMINATION

21.1 On termination or expiration of this Agreement for any reason other than a material breach by Supernus, the license granted under clause 2.1 shall immediately cease and United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, immediately:

(a) subject to clause 21.3, cease to carry out any of the activities permitted by this Agreement (or any relevant Sub-License Agreement or Third Party Agreement) and cease to use or exploit in any way the Supernus Intellectual Property;

(b) within 30 days of the effective date of the termination, make all outstanding undisputed payments, including any Milestone Payments and royalty payments due to Supernus at the date of termination; and

(c) return, or at Supernus' option, destroy all Supernus Know-How and Supernus Confidential Information and any materials containing the Supernus Know-How and Supernus Confidential Information in its possession, custody or power except for such records as may be required by any Laws; provided however, that United Therapeutics may retain one copy of each document of Supernus' Confidential Information to enable United Therapeutics to determine its surviving obligations of confidentiality and non-use with respect to Supernus' Confidential Information, provided, however, that the copy (i) is kept in a secure place with access limited to the General Counsel only, and (ii) is returned to Supernus at the expiration of the last of any surviving obligations.

21.2 On termination or expiration of this Agreement for any reason, Supernus shall promptly return, or at United Therapeutics' option, destroy all United Therapeutics Know-How and United Therapeutics Confidential Information and any materials containing the United Therapeutics Know-How and United Therapeutics Confidential Information in its possession, custody or power except for such records as may be required by any Laws; provided however, that Supernus may retain one copy of each document of United Therapeutics Confidential Information to enable Supernus to determine its surviving obligations of confidentiality and non-use with respect to United Therapeutics Confidential Information, provided, however, that the copy (i) is kept in a secure place with access limited to the General Counsel only, and (ii) returned to United Therapeutics at the expiration of the last of any surviving obligations.

21.3 Subject to payment of royalty and related obligations, United Therapeutics, its Affiliates and its Sub-Licensees shall be entitled to continue to sell existing stocks of the Licensed Products and Licensed Combination Products in the Territory for a period of not longer than [**] following the date of termination in accordance with the terms and conditions of this Agreement.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

21.4 Upon the termination or expiration of this Agreement, United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, execute such documents as Supernus may reasonably require to record at all appropriate patent offices throughout the Territory that United Therapeutics or the relevant Sub-Licensee has ceased to be entitled to use and exploit the Licensed Patents.

21.5 Clauses 6, 8, 10, 12, 13, 14, 15, 16, 17 (for [**]), 18.2 and 18.3 (for three years), 19, 21, 25, and applicable definitions herein shall survive the termination or expiration of this Agreement.

21.6 Termination or expiration of this Agreement shall not relieve either Party of any liability that accrued hereunder prior to the effective date of such termination, nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice either Party's right to obtain performance of any obligation

21.7 Termination of this Agreement will be without prejudice to Supernus' right to receive payment of (i) all undisputed Development Costs, Milestone Payments or Royalties, incurred or committed to as of the effective date of the termination, and (ii) all Royalties for as long as the Licensed Products and Licensed Combination Products are sold by United Therapeutics, its Affiliates or Sub-Licensees.

21.8 In the event of termination of this Agreement, the Parties shall meet in good faith to discuss and endeavor to agree on the steps required to affect an orderly closure of any ongoing Development Plan. In the event that the termination of this Agreement occurred for a reason other than as a result of a material breach by Supernus, Supernus shall be entitled to reasonable payment for work carried out or for noncancellable or unavoidable work committed to by Supernus under a Development Plan and any reasonable and direct out-of-pocket expenses incurred or noncancellable or unavoidable reasonable and direct out-of-pocket expenses committed to by Supernus under a Development Plan as of the date of termination.

22. FORCE MAJEURE

22.1 Neither Party shall be entitled to terminate this Agreement or shall be liable to the other under this Agreement for loss or damages attributable to any act of God, earthquake, flood, labor strike or lockout, war, revolution, civil commotion, epidemic, blockage or embargo, failure or default of public utilities or common carriers, destruction of production facilities or materials, or similar catastrophic event (*"**Force Majeure**"*), provided the Party affected shall give prompt written notice thereof to the other Party. Subject to clause 21.2, the Party giving such notice shall be excused from such of its obligations hereunder for so long as it continues to be affected by Force Majeure and the non-performing Party takes commercially reasonable efforts to remove the condition.

22.2 Notwithstanding the foregoing, if any such Force Majeure continues unabated for a period of at least [**], the Parties will meet to discuss in good faith what actions to take or what

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

modifications should be made to this Agreement as a consequence of such Force Majeure in order to alleviate its consequences on the affected Party. If resolution has not been reached within [**] of good faith discussion, either Party shall have the right to terminate the Agreement on a country by country basis.

23. NOTICES

23.1 Any notice, consent or other document given under this Agreement shall be in writing in the English language, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given if (i) personally delivered or sent by prepaid first class certified or registered mail, express delivery service, or (ii) sent by fax transmission or e-mail and confirmed through one of the methods described in (i) above, to the address of the receiving Party as set out in clause 23.3, unless a different address or fax number has been notified to the other in writing for this purpose.

23.2 Each such notice or document shall:

(a) if personally delivered or if sent by express delivery service, be deemed to have been given when delivered at the relevant address;

(b) if sent by sent by prepaid first class certified or registered mail, be deemed to have been given seven days after posting; or

(c) if sent by fax transmission be deemed to have been given when transmitted provided that a confirmatory copy of such facsimile transmission shall have been sent by prepaid airmail within 24 hours of such transmission.

23.3 The address for services of notices and other documents on the Parties shall be:

To Supernus:

Address: 1550 East Gude Drive,
Rockville, Maryland
20850
United States of America
Fax: +301-424-1364
Attention: Jack Khattar
Chief Executive Officer

Copy To: Supernus Legal
Department and Mark I.Gruhin, Esq.
Schmeltzer, Aptaker & Shepard, P.C.

To United Therapeutics:

Address: One Park Drive
Research Triangle Park, NC 27709
United States of America
Fax: 919-485-8352
Attention: Roger Jeffs, Ph.D.
President & COO

Copy To: Paul A. Mahon, Esq.
General Counsel
United Therapeutics Corporation
1735 Connecticut Ave, NW
Washington, DC 20009

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

2600 Virginia Avenue, N.W.Suite 1000
Washington, D.C. 20037 **Fax:** 202-483-4006
Fax: 202-342-3434

24. ASSIGNMENT

24.1 Subject to clauses 24.2 and 24.3, neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other.

24.2 Notwithstanding the prohibition in clause 24.1, either Party may assign or transfer this Agreement to a wholly owned subsidiary or to a successor to the Party's business by merger, sale of stock, or sale of substantially all assets, provided that, in the case of any assignment or transfer of this Agreement to a wholly-owned subsidiary, the assigning or transferring Party shall remain fully liable for all of its obligations hereunder. Any permitted successor or assignee of rights and/or obligations hereunder shall, in writing to the other Party, expressly assume performance of such rights and/or obligations. This Agreement shall be binding upon and shall inure to the benefit of each Party's permitted successors-in-interest and permitted assigns. Any assignment or attempted assignment by either Party in violation of the terms of this clause 24.2 shall be null and void and of no legal effect

24.3 Notwithstanding the prohibition in clause 24.1, United Therapeutics may sub-license all or any of its rights or obligations under this Agreement provided that United Therapeutics and its Sub-Licensees comply with the obligations set out in clauses 3.1 and 25.16 of this Agreement.

25. GENERAL PROVISIONS

25.1 Independent Contractors. The status of the Parties under this Agreement shall be that of independent contractors. Neither Party shall have the right to enter into any agreements on behalf of the other Party, nor shall it represent to any person that it has any such right or authority. Nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between the Parties.

25.2 Dispute Resolution. Any disagreement between Supernus and United Therapeutics on the interpretation of this Agreement or any aspect of the performance by either Party of its obligations under this Agreement shall be resolved in accordance with the dispute resolution procedure set out in Schedule 4.

25.3 Further Actions. Each of the Parties shall do, execute and perform and shall procure to be done, executed and performed, all such further acts, deeds, declarations, documents and things as the other Party may reasonably require from time to time to give full effect to the terms of this Agreement and carry out the purposes and intent of this Agreement.

25.4 Costs. Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.

25.5 Entire Agreement. Except as otherwise set forth herein, this Agreement sets out the complete, final and exclusive agreement and understanding between the Parties in respect of the subject matter hereof, and all of the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to such subject matter, and supersedes and terminates any prior agreements and understandings, either oral or written, with respect to such subject matter. It is further agreed that:

(a) there are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to such subject matter other than as are set forth herein;

(b) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party which is not expressly set out in this Agreement;

(c) no Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party or for any breach of warranty which is not contained in this Agreement;

(d) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation: and

(e) this Agreement supersedes any inconsistent language contained in any Feasibility Agreement.

25.6 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Nothing in this Agreement shall operate to:

(a) exclude any provision implied into this Agreement by law and which may not be excluded by law; or

(b) limit or exclude any liability, right or remedy to a greater extent than is permissible under law.

25.7 Amendment. No extension, termination, alteration, amendment, modification, change, addition to or other variation of this Agreement shall be binding upon the Parties unless it is in writing and signed by an authorized officer of each Party. Unless expressly agreed, no such amendment or variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

25.8 Severability. If and to the extent that any provision of this Agreement is held to be illegal, void, invalid or unenforceable, such provision shall be

given no effect and shall he deemed

not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

25.9 No Waiver. No failure or delay by either Party in enforcing a Party's rights under this Agreement or exercising any right or remedy provided by law under or pursuant to this Agreement, or any waiver as to a particular default or other matter, shall be construed as a waiver of such Party's rights to the future enforcement of its rights under this Agreement or impair such right or remedy or operate or preclude its exercise at any subsequent time, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

25.10 Remedies Cumulative. The rights and remedies of each of the Parties under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

25.11 No Prejudice to Licensed Patents. If in any jurisdiction the effect of any provision of this Agreement or the absence from this Agreement of any provision would be to prejudice the Licensed Patents or any remedy under the Licensed Patents, the Parties will make such amendments to this Agreement and execute such further agreements and documents limited to that part of the Territory which falls under such jurisdiction as may be necessary to remove such prejudicial effects.

25.12 Counterparts. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

25.13 Governing Law; Jurisdiction and Venue. Except as maybe otherwise set forth herein, this Agreement will be governed and construed in accordance with the Laws of the State of Maryland. No lawsuit pertaining to any matter arising under or growing out of this Agreement shall be instituted in any jurisdiction other than in the courts located in the State of Maryland, and the Parties consent to exclusive jurisdiction before the federal or state courts of the State of Maryland without reference to the choice of law provisions of any other jurisdiction.

25.14 Legal Fees. If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

25.15 Maintenance of Records. Each Party shall keep and maintain all records required by law or regulation with respect to development of a Licensed Product or Licensed Combination Product and shall make copies of such records available to the other Party upon request.

25.16 Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights.

(a) United Therapeutics acknowledges that Supernus represents that it has certain contractual agreements with subsidiaries of Shire plc ("**Shire**") pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Restricted Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Restricted Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, "**Restricted Compounds**" means any and all of: (A)(I) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) United Therapeutics hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the purpose of this Agreement and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Restricted Compounds in any field of use. The provisions of this clause 25.16 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customer names from time to time for monitoring purposes and United Therapeutics hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this clause 25.16. United Therapeutics acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this clause 25.16, at the written request of Shire, Supernus shall provide Shire and

its subsidiaries with an executed copy of this Agreement, and United Therapeutics hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event United Therapeutics breaches or threatens to breach the provisions of this clause 25.16, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Restricted Compounds then, in addition to any rights that Supernus may have against United Therapeutics, United Therapeutics acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against United Therapeutics for any and all damages suffered or incurred by Shire and its subsidiaries as a result of United Therapeutics' breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this clause 25.16, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this clause 25.16, and such action is unsuccessful, United Therapeutics shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which United Therapeutics may be entitled. United Therapeutics further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. United Therapeutics agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) United Therapeutics agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could he asserted by United Therapeutics against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. United Therapeutics further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this clause 25.16 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state. Each of the Parties hereto acknowledges and agrees that this provision of

this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this provision of this Agreement.

(f) Each of the Parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to this provision of this Agreement and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the Parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the Parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint [name to be inserted], as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS CLAUSE 25.16.

AS WITNESS WHEROF this Agreement has been signed by the duly authorized representatives of the Parties on the day and year first above written.

SIGNED for and by behalf of **SUPERNUS PHARMACEUTICALS, INC.**	)	/s/ Jack Khattar
	)	Jack Khattar, CEO **Print Name and Title**
SIGNED for and by behalf of **UNITED THERAPEUTICS CORPORATION**	)	/s/ David Mottola
	)	David Mottola, VP-Product Dev.
	)	**Print Name and Title**

SCHEDULE 1

Feasibility Agreements and Expansions

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

SCHEDULE 2
Licensed Patents -Issued Patents and Patent Applications

- **G** = Granted; **I** = Inactive; **F** = Filed

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

SCHEDULE 3

United Therapeutics Patents

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

SCHEDULE 4

Dispute Resolution Procedure

The Parties agree to consult and negotiate in good faith to try to resolve any dispute, controversy or claim that arises out of or relates to this Agreement.

1.1 In the event of any controversy or claim arising out of, relating to or in connection with an ongoing Development Program, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to the Development Team. Within 10 Business Days of receipt of a written request from either Party to the other, the Development Team shall meet to discuss and in good faith try to resolve any claim, dispute, controversy, or disagreement (a *"**Dispute**"*) between the Parties arising out of or in connection with such Development Program without recourse to legal proceedings.

1.2 In the event of a Dispute in connection with this Agreement, or the rights or obligations of the Parties hereunder, that is not related to an ongoing Development Program, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to Group Legal Counsel of the Parties (the *"**Legal Counsel**"*) for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and within fifteen Business Days of receipt of such notice, the Legal Counsel shall meet to discuss and in good faith try to resolve such Dispute arising out of or in connection with the terms (or interpretation of the terms) of this Agreement without recourse to legal proceedings.

1.3 If resolution of the Dispute does not occur within 20 Business Days after the Development Team meeting or the meeting of the Legal Counsel, as the case may be, the matter shall be escalated for determination by the respective Presidents of the Parties ***(the "Officers"***) who may resolve the matter themselves or jointly appoint a mediator or an independent expert. The Officers shall negotiate in good faith to achieve a resolution of the Dispute referred to them within 20 Business Days after such notice is received. If the Officers are unable to settle the Dispute between themselves within 20 Business Days, and the Officers are unable to agree on the appointment of an independent expert, they shall report to the Parties on the progress of the negotiations in writing and the Dispute shall then be referred to mediation as set forth in the following subsection 1.3.

Mediation

1.4 Upon the Parties receiving the Officers' report that the Dispute referred to them pursuant to subsection 1.3 has not been resolved, the Dispute shall be referred to mediation by written notice from either Party to the other. The mediation shall be conducted pursuant to the rules of the American Arbitration Association ("***AAA***"). The place of the mediation shall be Washington, D.C., United States and the language of the mediation shall be English.

1.5 If after the procedures set forth in subsections 1.2 to 1.4, the Dispute has not been resolved, a Party shall have the right to pursue its action in a court of law or equity having jurisdiction over the matter.

Exhibit 10.13

EXCLUSIVE OPTION AND LICENSE AGREEMENT

THIS EXCLUSIVE OPTION AND LICENSE AGREEMENT is made as of April 27, 2006 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Afecta Pharmaceuticals, Inc. a California corporation with principal offices located at 2102 Business Center Drive, Irvine, California 92612 ("Afecta").

RECITALS:

WHEREAS, Afecta has the right and desires to grant exclusive licenses to Afecta Products in the Field (as hereinafter defined);

WHEREAS, Afecta has agreed to grant to Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth herein; and

WHEREAS, Supernus desires to obtain this exclusive option and potential licensing rights to Afecta Products selected on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and the Warrant, the parties agree as follows:

ARTICLE 1.

DEFINITIONS

1.1. **"Afecta Filed Products"** shall mean any Afecta inventions in the Field or that could be used in the Field for which a patent application has been filed in the Major Markets prior to the execution of the Notice Letter and offered in the Offer Letter.

1.2. **"Afecta IP Products"** shall mean any Afecta Inventions in the Field or that could be used in the Field for which a patent has been issued to Afecta by the USPTO ("USPTO") prior to the execution of the Notice Letter and offered in the Offer Letter.

1.3. **"Afecta Intellectual Property Rights"** shall mean Afecta Patent Rights and all intellectual property rights including Afecta Know How belonging to Afecta in connection with Afecta Products.

1.4. **"Afecta Invention"** means any Invention in the Field or that could be used in the Field generated solely by employees or agents of Afecta prior to execution of the Notice Letter in connection with Afecta Licensed Products.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.5 **"Afecta Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether patentable or not), modifications or enhancements that was generated by Afecta outside of this Agreement.

1.6. **"Afecta Licensed Products"** shall mean Afecta Products licensed to Supernus in accordance with the terms and conditions of this Agreement.

1.7. **"Afecta Patent Rights"** shall mean collectively Afecta's right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit C; (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents that existed prior to execution of the Notice Letter and (c) any improvements, modifications or expansions to the patent(s) as a result of work produced solely by Afecta in fields other than the Field with regard to Afecta Products. Notwithstanding the foregoing, the definition of Afecta Patent Rights shall exclude any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter, which rights shall belong to Supernus.

1.8. **"Afecta Pre-IP Products"** shall mean any Invention in the Field or that could be used in the Field that is not an Afecta Filed Product or an Afecta IP Product generated solely by employees or agents of Afecta and presented to Supernus by Afecta in an Offer Letter but prior to the Notice Letter.

1.9. **"Afecta Products"** shall mean Afecta IP Products, Afecta Filed Products and Afecta Pre-IP Products that existed prior to execution of the Notice Letter,

1.10. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.11. **"Agreement"** shall mean this Agreement.

1.12. **"Confidential Information"** shall mean (a) any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to the prosecution, maintenance or defense of the Afecta Patent Rights or Afecta Intellectual Property Rights, (c) all information relating to the prosecution, maintenance or defense of the Supernus Patent Rights or Supernus Intellectual Property Rights, and (d) Net Sales.

1.13. **"Due Diligence"** shall mean all necessary activities to be conducted by Supernus in its sole discretion following receipt of an Offer Letter to determine its interest in licensing an Afecta Product.

1.14. **"Due Diligence Period"** shall mean [**] for a single Afecta Product or [**] for a second Afecta Product submitted within 60 days of previously submitted Afecta Product from the receipt date of the Offer Letter by Supernus as defined in Article 2.

1.15. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.16. **"Development Costs"** shall mean all costs required to be expended to develop and obtain regulatory approval including costs to compensate a Third Party for the Afecta Licensed Products in the Territory; all costs to file, maintain and defend all intellectual property pertaining to the Licensed Products; all costs to third parties who may have interests in the Afecta Licensed Products or some aspect of them; all manufacturing, post-approval research, development and clinical costs; and all sales, marketing and administrative costs required to market the Afecta Licensed Product(s) in the Territory.

1.17. **"Effective Date"** shall mean the date of this Agreement.

1.18. **"First Commercial Sale"** shall mean the initial transfer of a Afecta Licensed Product to a Third Party in exchange for cash or some equivalent to which value can be assigned for purposes of determining Net Sales.

1.19. **"First Efficacy Trial"** shall mean testing the efficacy and safety of the Afecta Licensed Product in a population of patients within the Field.

1.20. **"Field"** shall mean pharmaceutical products for the treatment, diagnosis or prevention of central nervous system related diseases and indications in humans and animals.

1.21. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute, casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any unforeseen delays associated with clinical trials of the Afecta Licensed Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Afecta Licensed Product, labor, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.22. **"GAAP"** shall mean United States generally accepted accounting principles consistently applied.

1.23. **"Invention"** means any invention, discovery, or innovation, whether patentable or not, invented, discovered, or conceived either prior to the Notice Letter or after the Notice Letter by either party as the case may be or in collaboration as the case may be.

1.24. **"Major Markets"** shall mean the United States, Canada, United Kingdom, France, Spain, Germany, Italy, and Japan.

1.25. **"Net Sales"** shall mean all revenues recognized in accordance with GAAP from the sale of Licensed Products by Supernus and its Affiliates to Third Parties, less returns and allowances (actually paid and allowed, including, but not limited to, prompt payment and volume discounts, charge backs from wholesalers and other allowances granted to customers, whether in cash or trade), freight, packing, insurance, rebates actually paid and allowed, and sales and other taxes based on sales prices when included in gross sales, but not including taxes when assessed on income derived from such sales.

1.26. **"Party"** shall mean Supernus or Afecta, as the case may be, and **"Parties"** shall mean Supernus and Afecta collectively.

1.27. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.28 **"Purpose"** shall mean the research, development and commercialization of the Afecta Licensed Products.

1.29 **"Similar Product"** shall mean i) any product that contains same active ingredient and is approved for the same indications as for an Afecta Licensed Product after Effective Date.

1.30. **"Supernus Formulations"** shall mean ProPhile™, ProScreen®, OptiScreen®, RADAR™, Avert™, Microtrol®, Solutrol®, and EnSoTrol® technologies and such other technologies that existed prior to the date of this Agreement or are developed or acquired by Supernus during the course of this Agreement and as applied to Afecta Licensed Products.

1.31. **"Supernus Intellectual Property Rights"** shall mean Supernus Patent Rights and all intellectual property rights including Supernus Know How belonging to Supernus in connection with Supernus Formulations.

1.32. **"Supernus Invention"** means any Invention generated solely by employees or agents of Supernus or in collaboration with employees or agents of Afecta in connection with Afecta Licensed Products following execution of the Notice Letter.

1.33 **"Supernus Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether

patentable or not), modifications or enhancements that was generated by Supernus outside of this Agreement.

1.34. **"Supernus Patent Rights"** shall mean collectively Supernus' right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit D and (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents and (c) the intellectual property rights in any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter

1.35. **"Territory"** shall mean the World.

1.36. **"Third Party"** shall mean any Person other than Afecta and Supernus or its Affiliates.

1.37. **"Valid Claim"** shall mean a claim of an issued and unexpired patent included within the Afecta Patent Rights which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

ARTICLE 2

EXCLUSIVE OPTION AND WORLDWIDE LICENSE

2.1. **Exclusive Option Grant to Supernus**. Afecta hereby grants to Supernus an exclusive option to acquire exclusive worldwide licenses (including the right to sublicense) in Afecta Products to be offered to Supernus. Afecta agrees to review with Supernus all Afecta Products in the Field upon signing of this Agreement and no less than annually thereafter to jointly prioritize which Afecta Products will be formally offered to Supernus. Based on the joint prioritization Afecta will offer Supernus from time to time but no less than [**] times during the term of this Agreement, Afecta Products for potential worldwide license. The information required to be set forth in each offer shall be in accordance with the requirements of the Offer Letter attached hereto as Exhibit A and made a part hereof by this reference. For Each Afecta Product offered to Supernus, Supernus shall have [**] to conduct due diligence ("Due Diligence Period") to determine whether or not it desires to obtain from Afecta an exclusive worldwide license in said Afecta Product. In the event that more than one Afecta Product is offered to Supernus within a period of [**], the Due Diligence Period for the second Afecta Product shall be extended to [**]. Afecta hereby agrees to cooperate, on a "time is of the essence" basis, with Supernus and provide Supernus with such information it has in its possession or readily available to it that Supernus may reasonably require for it to conduct its due diligence process. In the event, Supernus desires to obtain a worldwide license, it shall notify Afecta of same prior to the expiration of the Due Diligence Period by executing and delivering the Notice Letter attached hereto as Exhibit B and made a part hereof by this reference. Supernus' license rights in the Afecta Product shall

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

commence from the date of notification set forth in the Notice Letter in accordance with the terms of this Agreement. Failure of Supernus to notify Afecta shall be deemed to be an election by Supernus not to secure a license. Each Afecta Product licensed within the relative option period shall be identified as an "Afecta Licensed Product." Each Afecta Licensed Product licensed to Supernus shall be covered under the terms of a specific and separate License Agreement for each Afecta Product, the terms of which shall be in substantial agreement with the terms of this Agreement.

2.2. License Grant to Supernus.

2.2.1. Grant to Supernus. On the terms and conditions set forth herein, and effective only upon Supernus' timely execution and delivery of the Notice Letter to Afecta for each Afecta Product to be licensed, Afecta hereby grants to Supernus and its Affiliates an exclusive license, with the right to grant sub-licenses solely pursuant to Section 2.2.2, in the Afecta Intellectual Property Rights and the Afecta Licensed Product identified in the Notice Letter(s) to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale the Afecta Licensed Product in the Field anywhere in the Territory.

2.2.2. Sub-licenses. Supernus shall have the right to grant sublicenses under this Agreement without the prior written consent of Afecta, provided however, that (i) Supernus agrees that its sublicensing agreements will not conflict with any of its obligations hereunder; (ii) Supernus agrees to provide to Afecta a redacted copy of any fully executed sublicense agreement within 5 **business** days of execution.

2.2.3. No Other Licenses. This Agreement confers no license or rights by implication, estoppel or otherwise to Supernus in any Afecta Products except as offered herein or as may be obtained in accordance with the terms and conditions of this Agreement.

2.3. License Grant to Afecta.

2.3.1. Grant to Afecta. On the terms and conditions set forth in Article 5.3 and herein, and effective only upon Supernus' sole election to terminate the Agreement of an Afecta Licensed Product ("Terminated Licensed Product"), per Article 10, 10.2 or 10.3 or Default under 10.4 or 10.5 herein, Supernus will at the request of Afecta grant to Afecta and its Affiliates the right to obtain an exclusive license with the right to grant sub-licenses solely pursuant to Section 2.3.2,in (i) Supernus Formulations, (ii) Supernus Intellectual Property Rights, and (iii) Supernus Inventions only as they relate to and are required for the development, manufacturing and sale of the Terminated Licensed Product. Supernus will also at the request of Afecta grant to Afecta and its Affiliates the right to obtain an exclusive access to and use of (i) data generated under the Agreement, and (ii) other Confidential Information all of which only relate to the Terminated Licensed Product and were reduced to practice to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale of the Terminated Licensed Product in the Field anywhere in the Territory.

2.3.2. Sub-licenses. Subject to Articles 2.3.1 and 11 Afecta, shall have the right to grant sublicenses with the prior written consent of Supernus, provided however, that (i) Afecta agrees to offer Supernus a first right of refusal to license the Product for a period of [**] following Afecta's decision to seek a sublicensee and written notice to Supernus of that intention, (ii) Afecta agrees that its

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

sublicensing agreements will not conflict with any of its obligations hereunder and in particular its obligations under Article 11; (ii) Afecta agrees to provide to Supernus a redacted copy of any fully executed sublicense agreement within 5 **business** days of execution.

2.3.3. **No Other Licenses.** This Agreement confers no license or rights by implication, estoppel or otherwise to Afecta in any data generated under the Agreement, Supernus Formulations, Supernus Intellectual Property Rights, Supernus Inventions, and other Confidential Information except as offered herein or as may be obtained in accordance with the terms and conditions of this section 2.3 and associated Supernus form license agreement that will be required to be executed between the Parties.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Representations and Warranties of Supernus.

3.1.1. **Corporate Power.** Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. **Due Authorization.** Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. **Binding Agreement.** This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. **No Other Warranties.** Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties. Supernus does not warrant the validity or enforceability of the Supernus Patent Rights and makes no representations whatsoever with regard to the scope of the Supernus Patent Rights, or that the Supernus Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE SUPERNUS PATENT RIGHTS OR SUPERNUS INTELLECTUAL PROPERTY RIGHTS. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE LICENSED PRODUCTS.

3.2. Representations and Warranties of Afecta.

3.2.1. Corporate Power. Afecta is duly organized and validly existing under the laws of the State of California and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. Afecta is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Afecta's behalf has been duly authorized to do so by all requisite corporate action. Licensor represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Afecta, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Afecta does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. Afecta warrants to Supernus that it will not file an invention disclosure or patent application for any Supernus Invention that is revealed following the Offer Letter.

3.2.5. No Other Warranties. Afecta offers as warranties the statements set forth herein. Afecta makes no other warranties. Afecta does not warrant the validity or enforceability of the Afecta Patent Rights and makes no representations whatsoever with regard to the scope of the Afecta Patent Rights, or that the Afecta Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. AFECTA MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE AFECTA PATENT RIGHTS OR AFECTA INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 4

DEVELOPMENT AND COMMERCIALIZATION

4.1. Development and Commercialization. Supernus, in its sole discretion, shall have the right to make all decisions relating to the development and commercialization of Afecta Licensed Products including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of Afecta Licensed Products, and the promotion, advertising, marketing and pricing of Afecta Licensed Products. Supernus shall use its commercially reasonable efforts to actively develop and market all Afecta Licensed Products in the Territory. Notwithstanding the foregoing, Supernus at its sole discretion

will consult with Afecta and seek its input before making its final decisions relating to the development and commercialization of Afecta Licensed Products.

4.2. **Reports.** Supernus shall deliver to Afecta, on a quarterly basis, project updates on Supernus development activities for the Afecta Licensed Products.

ARTICLE 5

CONSIDERATION

5.1. **License Fee Payments.** In consideration for the grant of the rights and licenses set forth in Section 2.1, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta (i) for each Afecta IP Product chosen by Supernus during its relative Due Diligence Period, $[**] within thirty (30) days of the date of notification of the Notice Letter, and an additional $[**] upon the successful completion of the First Efficacy Trial of the Afecta IP Product; or (ii) for each Afecta Filed Product or Afecta Pre IP Product chosen by Supernus during its relative Due Diligence Period , $[**] within thirty (30) days of the date of notification of the Notice Letter, and an additional $[**] upon the successful completion of the First Efficacy Trial and a third payment of $[**] upon issuance of the first patent.

5.2. **Royalties.**

5.2.1. **Net Sales.** In consideration for the grant of the rights and licenses set forth in Section 2.2, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta in immediately available funds royalties on Net Sales in accordance with the following schedule: If the Afecta Licensed Product is Afecta IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is Afecta Filed Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is Afecta Pre IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis.

5.2.2. **Participation in Development Costs.** Afecta may elect to participate in the Development Cost or to decline participation in the Development Costs within 120 days of the licensing of an Afecta Licensed Product to Supernus. To the extent, Afecta agrees to participate in Development Costs prior to completion of the first Phase II study of a particular Licensed Product, Afecta's share of Net Sales set forth in 5.2.1. shall increase in accordance with the schedule below depending upon the amount Afecta contributes toward the payment of Development Costs ("Pre-Phase II Participation").

In the event that Afecta contributes less than [**]% in the Pre-Phase II Participation or does not participate until after completion of Phase II ("Post Phase II Participation") Afecta's share of Net Sales shall be the higher of: (i) [**] or (ii) that described in Article 5.2.1. herein.

Percent of Total Development Costs Contributed by Afecta	Percent of Licensed Product Net Sales Payable to Afecta		
	Afecta IP Product	Afecta Filed Product	Afecta Pre IP Product
[**]%	[**]%	[**]%	[**]%
[**]% -[**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
>[**]%	[**]%	[**]%	[**]%

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.2.3. **No Multiple Royalties.** Royalties under this Section 5.2 shall be payable on an Afecta Licensed Product-by-Afecta Licensed Product basis, and shall be imposed only once with respect to any sale of the same unit of Afecta Licensed Product by Supernus or its sub-licensees, and no multiple royalties shall be payable by Supernus because any Afecta Licensed Product is covered by more than one of the Afecta Patent Rights or one or more claims of the Afecta Patent Rights.

5.2.4. **Expiration of Royalty Payments.** Supernus' obligation to pay royalties to Afecta on a country-by-country basis for each Afecta Licensed Product shall expire upon the earlier of:

5.2.4.1. [**] or [**], or

5.2.4.2. [**], or

5.2.4.3. [**].

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.3. **License Fees and Royalties for Grant of License to Afecta.**

Pursuant to Article 2.3 herein and grant of licenses there under Afecta will pay to Supernus per Terminated Licensed Product:

5.3.1 Supernus' Development Costs plus [**]% (not to include any costs borne by a Supernus sub-licensee or other development partner) that were actually paid by Supernus to produce data relevant to the Terminated Licensed Product that Afecta at its sole discretion may select to have exclusive access to and use of. Such payment shall occur at the time of grant of exclusive access and use of the data to Afecta.

5.3.2 Supernus' Development Costs plus [**]% (not to include any costs borne by a Supernus sub-licensee or other development partner) that were actually paid by Supernus to produce data relevant to the Terminated Licensed Product that Afecta at its sole discretion may select to have exclusive access to and use of. In addition certain License fees and Royalties for use of: (i) Supernus Formulations, (ii) Supernus Intellectual Property Rights, (iii) Supernus Inventions, which are employed by Afecta or sublicensee in the final formulation of the Terminated Licensed Product. The exact amounts of the License fees and Royalties shall be determined on a Terminated Licensed Product by Terminated Licensed Product basis.

5.4 **Payment of Royalties; Reports.**

5.4.1. **First Commercial Sale.** Supernus shall report to Afecta the date of First Commercial Sale of an Afecta Licensed Product within thirty (30) days of such occurrence.

5.4.2. **Royalty Statements.** Supernus shall deliver to Afecta, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of Afecta Licensed Products during such calendar quarter (including the country of manufacture and an itemized calculation of the amount of Net Sales in the United States, its territories and possessions) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.4.3. **Manner of Payment.** All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by Afecta.

5.4.4. **Currency.** If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to the [**] by the Federal Reserve Bank of New York (available on Bloomberg L.P. and Reuters).

5.4.5. **Taxes.** All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish Afecta with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

5.4.6. Overdue Payments. Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at the [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by Afecta.

ARTICLE 6

RECORDS; AUDIT

6.1 Record Retention. Supernus shall keep complete and accurate records in sufficient detail to permit Afecta to confirm the accuracy of reported royalties hereunder, including without limitation, Development Costs, general accounting ledgers, invoice/sale registers, original invoices and shipping documents, tax returns, inventory and manufacturing records, sublicense and distributor agreements and price lists, product catalogs and other marketing materials. Such records shall be retained by Supernus for at least the longer of one (1) year after completion of the audit thereof (if an audit has been requested) or three (3) years following the calendar year in which any such payments were made hereunder.

6.2 Royalty Audit. Once per each twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties due available for examination by Afecta during normal business hours. Afecta shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.2 shall indicate that any payment due hereunder was underpaid, Supernus shall promptly pay the amount of any underpayment. If any audit performed under this Section 6.2 shall indicate that any payment hereunder was in error to Afecta's detriment by more than [**] percent for any annual period, Supernus shall pay the cost of the audit.

ARTICLE 7

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

7.1. Patent and Intellectual Property Rights Maintenance. During the term of this Agreement, Afecta, using its sole business judgment,shall have the right to maintain the Afecta Patent Rights or

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Afecta Intellectual Property Rights. Afecta shall consult with Supernus and keep Supernus regularly advised of Afecta's strategies, plans, progress and results of any such maintenance. If Afecta elects not to maintain within Afecta Patent Rights or any intellectual property within Afecta Intellectual Property Rights, Afecta shall timely notify Supernus of such decision, and Supernus may, elect to maintain, such patent or intellectual property rights upon providing written notice of such election to Afecta. Supernus shall consult with Afecta and keep Afecta regularly advised of Supernus' strategies, plans, progress and results of any such maintenance action. Such costs relating to maintenance of such patent and/or intellectual property rights, including attorney fees, shall be included in Development Costs.

7.2. Infringement of Third Party Rights.

7.2.1. Notice of Infringement. In the event of a Party becoming aware that the exercise of either Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 7.2.2 and 7.2.3 below.

7.2.2. Afecta Licensed Product. Subject to Section 7.2.3, if the Third Party claim is specifically related to the Afecta Licensed Product, Supernus will defend any suit resulting directly from such claim. Afecta hereby agrees to be joined in such suit, should Afecta be found to be an indispensable party to the proper defense of such suit. Afecta may choose to obtain its own counsel for such litigation.

7.2.3. Afecta Invention. If the Third Party claim is related solely to the Afecta Invention, and not to the Afecta Licensed Product, Afecta will defend such suit or claim. Supernus hereby agrees to be joined in such suit, should Supernus be found to be an indispensable party to the proper defense of such suit. Supernus may choose to obtain its own counsel for such litigation.

7.2.4. Change to Royalty Payments. Royalty Payments due to Afecta under Article 5 with respect to Afecta Licensed Product sold in such country will be reduced (i) if Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent, which would be infringed by the manufacture, use, offer for sale, sale or import of the Product by Supernus, its Affiliates, Subcontractors, or Sublicensees, or (ii) if Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. If the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to such Third Party under such license with respect to such country. In addition, such costs relating to defense or prosecution of such patent and/or intellectual property rights, including attorney fees, shall be included in Development Costs.

7.3. Infringement of Afecta Patents or Supernus Patents.

7.3.1. Notice of Third Party Infringement. In the event that either Party becomes aware of any Third Party infringement or suspected infringement of any Afecta Patents or Supernus Patents used in connection with the Afecta Licensed Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

7.3.2. Necessary Steps. The Parties shall, after receipt of notice referred to in Section 7.3.1, promptly discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent, terminate, or otherwise address such Third Party infringement.

7.3.3. Action After No Agreement. If within twenty (20) days of the date of the notice referred to in Section 7.3.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

7.3.3.1. If the patent is an Afecta Patent or a Supernus Patent that contains one or more claims specifically directed to the Afecta Licensed Product or the manufacture, use or sale thereof then Supernus shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide Afecta with prior notice of the initiation of any such action or proceedings and shall keep Afecta informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement and the patent is an Afecta Patent, then Afecta may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

7.3.3.2. If the patent is an Afecta Patent not covered by Section 7.3.3.1 above, then Afecta shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Afecta shall provide Supernus with prior notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that Afecta has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

7.3.4. Prior Written Consent. The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

7.3.5. Cooperation. Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's requests and, to the extent possible, provide or procure the provision of such reasonable assistance in commencing and prosecuting any such action or any proceedings.

7.3.6. **Award of Damages.** Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under Article 7 shall be divided between the Parties as follows:

7.3.6.1. The Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings;

7.3.6.2. after deducting the costs and expenses identified in 7.3.6.1 the other Party shall, to the extent possible, recover its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings; and

7.3.6.3. thereafter, any remaining recovery shall be disbursed to Supernus and shall be treated as Net Sales for purposes of this Agreement.

7.4. **Afecta's Ownership in Intellectual Property.** Subject to the exclusive license(s) to Afecta Licensed Product(s) granted to Supernus in accordance with the terms and conditions of this Agreement, Afecta shall retain all right, title and interest in and to Afecta Patent Rights and Afecta Intellectual Property Rights that existed prior to the Effective Date of the Notice Letter but excluding data to the extent that it relates solely to Supernus Patent Rights, Supernus' Intellectual Property or Supernus Formulations. At Afecta's request, Supernus will sign any documents and do all such things as Afecta may deem reasonably necessary to vest such rights in Afecta, so long as such things do not interfere with Supernus' exclusive option granted and exclusive license rights granted to it under this Agreement.

7.5. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest to all in and to Supernus Patent Rights, Supernus Intellectual Property Rights and Supernus Formulations that existed prior to the Effective Date of this Agreement and shall become the owner of all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products, but excluding data to the extent that it relates solely to Afecta Patent Rights, or Afecta Intellectual Property Rights. At Supernus' request, Afecta will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

7.6. **Invention Ownership.** Supernus shall have the sole and exclusive ownership of any Supernus Invention. Subject to the exclusive option and exclusive license rights granted under this Agreement to Supernus, Afecta shall have the sole and exclusive ownership of any Afecta Invention or Afecta Products.

7.7. **Execution of Documents.** Each party shall sign such documents and do such things, or procure the signing of such documents or the doing of such things, as is reasonably necessary to vest the relevant Intellectual Property Rights in the other party.

7.8. **Filing of Patent Applications.** In the event a party decides to file a patent application for an invention, it will give reasonable advance notice in writing of its intent to file, and will provide a draft of the application to the other party at least 20 days prior to filing. Except as provided below, the respective inventing party shall, in respect of a sole Invention (i) exclusively control

the preparation, filing and prosecution of any patent applications directed to such party's sole Invention; (ii) exclusively be responsible for all related fees, costs, and expenses associated with such party's sole Invention; and (iii) exclusively control and pay for the maintenance of any patents resulting therefrom.

7.9. **Supernus' Inventions.** Supernus shall exclusively control the preparation, filing, prosecution and maintenance of any patent applications in respect of Supernus Inventions. Supernus will provide Afecta with copies of all relevant documents relating to Supernus Inventions that relate to all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products but excluding data to the extent that it relates solely to Supernus Inventions held by Supernus prior to the Notice Letter or relates solely to Supernus Formulations so that Afecta may be informed and apprised of the continuing prosecution of patent applications in connection with the Afecta Licensed Products. Afecta agrees to cooperate and work together in good faith with Supernus' filing such patent applications.

ARTICLE 8

CONFIDENTIALITY

8.1. **Confidentiality.** For the term of this Agreement and any extensions and for a period of [**] thereafter, each Party agrees to keep confidential and not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement, any Confidential Information disclosed to it by the other Party, except that each Party shall not be prevented from disclosing information:

8.1.1. which it can demonstrate by written records was previously known to it;

8.1.2. which is, or becomes in the future, public knowledge through no fault or omission attributable to the receiving Party;

8.1.3. which is lawfully obtained without restriction by the receiving party from sources independent of the disclosing Party without breach of a confidentiality obligation; or

8.1.4. which was independently discovered or developed by the disclosing Party without access to or the use of the other Party's Confidential Information, as can be documented by written records created at the time of such independent discovery or development.

8.2. **This Agreement.** The Parties agree that the material terms of the Agreement shall be considered Confidential Information of both Parties. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any SEC filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its SEC filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

8.3. Authorized Disclosure.

8.3.1. Disclosable Information. Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following:

8.3.1.1. enforcing and or defending rights or obligations under this Agreement; and

8.3.1.2. complying with any court order;

provided however that the Party required to or intending to disclose the other Party's Confidential Information under this Section 8.3 shall have first given prompt notice to the other Party to enable it to seek any available exemptions from or limitations on such disclosure, and shall reasonably cooperate in such efforts by the other Party.

8.3.2. Advance Notice of Disclosure. Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to this Section 8.3, it will give reasonable advance notice to the other Party of such disclosure and use reasonable commercial efforts to secure confidential treatment of such information. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification by Supernus.

9.1.1. Scope. Supernus shall indemnify, defend and hold harmless Afecta, its officers, directors, employees, stockholders, agents and representatives (collectively, "Afecta Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the research, development, marketing, design, manufacture, distribution, use and/or sale of Afecta Licensed Products by, on behalf of, or under authority of, Supernus or its sub-licensees; or Supernus Patent Rights or Supernus Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Afecta Indemnitee shall be entitled to indemnification under this Section 9.01 against any Losses arising out of such Afecta Indemnitee's negligence or willful misconduct.

9.1.2. Notification of Claim. Each Afecta Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Afecta Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Afecta Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the Afecta Indemnitee may defend the Claim, at Supernus' expense; provided that the Afecta Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The Afecta Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the Afecta Indemnitee's control.

9.2 Indemnification by Afecta.

9.2.1. Scope. Afecta shall indemnity, defend and hold harmless Supernus, its officers, directors, employees, stockholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the warranties and representations made by Afecta in the Agreement; or Afecta Patent Rights or Afecta Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 9.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct.

9.2.2. Notification of Claim. Each Supernus Indemnitee shall notify Afecta in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of

Afecta's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Afecta shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Afecta's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by Afecta. If Afecta does not assume the defense of the Claim, the Supernus Indemnitee may defend the Claim, at Afecta's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of Afecta, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with Afecta and will make available to Afecta all pertinent information under the Supernus Indemnitee's control.

9.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

9.4. Insurance. Each party shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

ARTICLE 10

TERMINATION

10.1. Term. The exclusive option granted to Supernus under this Agreement shall commence on the Effective Date and terminate on the 5th anniversary of the Effective Date. The exclusive licenses granted to Supernus hereunder shall commence in accordance with the terms of this Agreement and shall automatically expire with regard to each Licensed Product after six months from the discontinuation of the commercial sale of the Afecta Licensed Product on a country-by-country basis.

10.2. Termination by Supernus. Supernus may terminate, in whole or in part, any of the licenses granted by Afecta to Supernus with 30 days' prior written notice to Afecta. All licenses so terminated shall revert back to Afecta in accordance with Section 2.3. Termination of a specific license shall not affect Supernus' exclusive option rights to other Afecta Products or other Afecta Licensed Products licensed to Supernus.

10.3. Termination for Discontinuation of Development. Subject to the Force Majeure provision set forth herein in Section 11.3, in the event that Supernus and its sub-licensees have discontinued all development and commercialization activities relating to a specific Afecta Licensed Product for a period of [**], this Agreement as it relates to that specific Afecta Licensed Product shall terminate and all licenses under the Afecta Patent Rights granted to Supernus and its sub-licensees hereunder in connection with that specific Afecta Licensed Product only shall revert to Afecta thirty (30) days thereafter in accordance with Section 2.3. All other licenses granted hereunder not affected by the

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

discontinuance of all development and commercialization in connection with a specific Afecta Licensed Product shall remain in good standing

10.4. **Termination for Default.** In the event of a Default by Supernus in its capacity as a Licensee under this Agreement, Afecta may terminate the license for the specified Afecta Licensed Product in the specified country subject to the Default granted to Supernus hereunder by written notice to Supernus, and upon Supernus' receipt of such notice, said license granted to Supernus shall revert to Afecta. All other licenses granted hereunder not affected by the Default shall remain in good standing.

In the event of a Default by Afecta under this Agreement, the License to Supernus will become irrevocable and fully paid.

10.5. **Insolvency or Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by the Parties are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that each Party, in its capacity as a licensee of such rights under this Agreement, shall retain all licenses granted to it hereunder and may fully exercise all of its rights and elections under the United States Bankruptcy Code, subject to payment to the other Party of any royalties or other payments due pursuant to Article 5. The Parties further agree that, in the event of commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code, the Party hereto which is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property, and all embodiments of such intellectual property, and same, if not already in its possession, shall be promptly delivered to it (i) upon any such commencement of a bankruptcy proceeding upon its written request therefore, unless the Party subject to such proceeding elects to continue to perfonn all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefore by any non-subject Party.

10.6 Surviving Obligations. The provisions of Articles 3,7,8,9 and Sections 10.4, 10.7, 11.1, 11.5, 11.10, 11.11 and 11.14 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

10.7. **Effects of Termination.** Upon termination of this Agreement in its entirety or otherwise with respect to rights in any Afecta Licensed Product in accordance with Section 10.3, Supernus and its sub-licensees shall thereupon have the right to sell that amount of any such Afecta Licensed Product that Supernus and its sub-licensees then have on hand, provided however, that with respect to any such Afecta Licensed Product for which any payment is due under Article 5 hereof, Supernus shall make such payment to Afecta as required therein.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1. Supernus Arrangement with Shire.

Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights. (a) Afecta acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc **("Shire")** pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A)(1) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Afecta hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section 11 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers's names from time to time for monitoring purposes and Afecta hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section 11. Afecta acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section 11, at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Afecta hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Afecta breaches or threatens to breach the provisions of this Section 11, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the

Compounds then, in addition to any rights that Supernus may have against Afecta, Afecta acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Afecta for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Afecta's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is unsuccessful, Afecta shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Afecta may be entitled. Afecta further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Afecta agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Afecta agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Afecta against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Afecta further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this Section 11 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Section 11 and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in

the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc, as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS SECTION 11.1.

11.2 Assignment. Neither this Agreement nor any interest hereunder shall be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 11.2 shall be void. Nothing herein shall preclude Supernus from sublicensing its exclusive licensing rights.

11.3. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

11.4. Force Majeure. Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

11.5. Notices. All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Chief Executive Officer
Facsimile: (301) 424-1364

With a copy to:
Schmeltzer, Aptaker & Shepard, P.C.
The Watergate
2600 Virginia Avenue, N.W.
Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.

If to Afecta addressed to:

Afecta Pharamaceuticals, Inc.
2102 Business Center Drive
Irvine, California 92612
Attention: Chief Executive Officer
Facsimile: _____

With a copy to:

_____

11.6. **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

11.7. **Waiver.** No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

11.8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

11.9. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

11.10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Delaware, without reference to the conflicts of law principles thereof, and the Parties hereby submit to the exclusive jurisdiction of the Delaware courts, both state and federal.

11.11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any or all of the Afecta Patent Rights or Afecta Intellectual Property rights as it relates to an Afecta Licensed Product shall not affect Supernus' license rights in and to the remaining Afecta Patent Rights or Intellectual Property Rights as it related to the other Afecta Licensed Products.

11.12. **Entire Agreement of the Parties.** This Agreement (including all Exhibits attached hereto, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

11.13. **Dispute Resolution.** The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

11.14. **Independent Contractors.** The relationship between Afecta and Supernus created by this Agreement is one of independent contractors, and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

11.15. **Use of Name.** No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Afecta", without the prior written consent of the owning Party.

11.16. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.		**AFECTA PHARMACEUTICALS, INC.**	
BY:	/s/ Jack Khattar	**BY:**	/s/ Bruce Kovacs, M.D.
TITLE:	President & CEO	**TITLE:**	President

Exhibit A
OFFER LETTER TEMPLATE

THIS OFFER LETTER is executed as of DATE by and between Supernus Pharmaceuticals, Inc. ("Supernus") and Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

NOW THEREFORE, in accordance with the terms of the Agreement and this Offer Letter, Afecta is offering commencing on the effective date of this Offer Letter an Afecta Product to Supernus for potential worldwide license following the Due Diligence Period and issuance of the Notice Letter. The Afecta Product offered herein is as defined below and includes the following:

1. Compound Name:
2. Currently Approved Indications:
3. Proposed Indications for Supernus:
4. Summary and rationale of Afecta Product
5. Historical Overview of Afecta Product:
    a. Physician or specialist interviews
    b. Market research
    c. Supportive articles
    d. Study designs and outcomes
6. Intellectual Property Summary
    a. Invention Disclosures or other summaries
    b. Patent Applications
    c. Patents
    d. Freedom to operate searches
7. Summary of Strategy for Afecta Product
    a. Market potential
    b. Competitive Analysis
    c. Forecasts
    d. Clinical & Regulatory Strategy

Afecta Pharmaceuticals, Inc.		**Supernus Pharmaceuticals, Inc**	
By:	_____	**By:**	_____
Title:	_____	**Title:**	_____
Date:	_____	**Date:**	_____

Exhibit B
NOTICE LETTER TEMPLATE

THIS NOTICE LETTER is issued as of DATE by Supernus Pharmaceuticals, Inc. ("Supernus") to Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

WHEREAS, in accordance with the terms of the Agreement, Afecta has offered an Afecta Product per the Offer Letter dated DATE ("Offer Letter") and Supernus has completed the Due Diligence Period;

NOW THEREFORE, in accordance with the terms of the Agreement, Supernus hereby notifies Afecta by way of this Notice Letter ("Notice Letter") of its intention to obtain a worldwide exclusive license to the Afecta Product as identified in the Offer Letter. By issuance of this Notice Letter by Supernus, and by its receipt by Afecta, the License Grant defined in Section 2.2 of the Agreement becomes fully effective and such Afecta Product becomes an Afecta Licensed Product.

Supernus Pharmaceuticals, Inc

By: _____
Title: _____
Date: _____

Exhibit C
AFECTA PATENT RIGHTS

AFECTA ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit D

SUPERNUS PATENT RIGHTS

SUPERNUS PATENT RIGHTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit D (cont'd)

SUPERNUS PATENT RIGHTS

SUPERNUS PATENT RIGHTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit 10.14

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made as of June 9, 2006 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Rune Healthcare Limited, an English corporation, with principal offices located at 9a Magdala Road, Nottingham NG3 5DE, United Kingdom ("RH").

RECITALS:

WHEREAS, RH has developed and owns the RH Concept (as hereinafter defined);

WHEREAS, RH has agreed to sell to Supernus and Supernus has agreed to buy from RH the RH Concept on the terms and conditions set forth herein; and

WHEREAS, RH has agreed not to compete, recreate or sell the RH Concept to any other party on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **"RH Concept"** shall mean RH pharmaceutical Product concepts, RH Market Analysis, any supportive data, information, reports, intelligence, or other data that may be in the possession of RH prior to the Effective Date (attached herein as Schedule 1) or may be obtained by RH at any time during the term of this Agreement that may be applicable or supportive to any Product, or Supernus Product.

1.2. **"Supernus Product"** shall mean any Product that is developed by or on behalf of Supernus and is based on the RH Concept.

1.3. **"RH Market Analysis"** shall mean those items set forth on Schedule I including but not limited to (i) Market Review with comparison of Product Profile vs. competitive products, (ii) RH Concept Analysis - publication search, (iii) Patent Search - Worldwide search dated, albeit minimal analysis done by patent experts, (iv) Primary Research - 50 structured experts' interviews at an international conference held in Europe and (v) Preliminary Forecasting Analysis based on said Primary Research, all such documents having been provided by RH to Supernus in writing prior to the Effective Date.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.4. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.5. **"Agreement"** shall mean this Agreement.

1.6. **"Confidential Information"** shall mean any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to RH Concept and Supernus Product.

1.7. **"Due Diligence"** shall mean all necessary activities to be conducted by Supernus in its sole discretion and at its own cost following the Effective Date through the Due Diligence Period.

1.8. **"Due Diligence Period"** shall mean [**] from the Effective Date.

1.9. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.10. **"Effective Date"** shall mean the date of this Agreement.

1.11. **"First Commercial Sale"** shall mean the initial sale of a Supernus Product by Supernus to a Third Party in exchange for cash or some equivalent to which value can be assigned for purposes of determining Net Sales.

1.12. **"Field"** shall mean the treatment, diagnosis or prevention of diseases in humans or animals.

1.13. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute (other than strike, lockout or labor dispute of a Party's own employees), casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any reasonably unforeseen delays associated with clinical trials of the Supernus Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Supernus Product, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

1.14. **"Net Sales"** means the gross amount invoiced by Supernus, its Affiliates or its Licensees for the sale of the Supernus Products in the Territory commencing upon the date of First Commercial Sale, after deducting the following:

1. trade quantity or ordinary discounts including prompt payment and volume discounts; chargebacks from wholesalers and other allowances granted to customers (whether in cash or trade);

2. allowances for Product returns;

3. sales or excise taxes, VAT or other taxes charged or levied on sales (but excluding taxes on the income of Supernus, its Affiliates or its Licensees);

4. rebates or similar payments made in connection with sales of Supernus Product to any governmental or regulatory authority in respect of any State or Federal Medicare, Medicaid or similar programs in any country of the Territory.

Sales or other transfers between Supernus and its Affiliates or Licensees shall be excluded from the computation of Net Sales, and

5. freight, packing, freight insurance and rebates.

1.15. **"Party"** shall mean Supernus or RH, as the case may be, and "**Parties**" shall mean Supernus and RH collectively.

1.16. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.17. **"Product"** shall mean [**] or formulations thereof for the [**].

1.18. **"Territory"** shall mean the World.

1.19. **"Third Party"** shall mean any Person other than RH and Supernus or an Affiliate.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.20. **"Licensee"** shall mean a person or entity appointed by Supernus as a licensee under this Agreement and shall include any sub-licensee appointed by such Licensee.

ARTICLE 2

PURCHASE AND SALE OF RH CONCEPT

2.1. **RH Concept Purchase.** On the terms and subject to the conditions and exceptions contained herein, RH agrees to sell to Supernus and Supernus agrees to purchase from RH on the Closing Date, free and clear of all liens, claims, liabilities, obligations and encumbrances (except those liens, encumbrances and security interests set forth on Schedule 2.1 (the "Permitted Encumbrances")) all of Seller's right, title and interest in and to the RH Concept including but not limited to all of RH's right, title and interest in any copyrights or other intellectual property or ownership rights in and to the RH Concept.

2.2. **Due Diligence Period.** Supernus shall have the Due Diligence Period to determine whether or not it desires to close on the purchase of the RH Concept. RH hereby agrees to cooperate on a timely basis, with Supernus and provide Supernus with such information it has in its possession or readily available to it that Supernus may reasonably require for it to conduct its Due Diligence process. In the event Supernus desires not to purchase the RH Concept for any reason, it shall notify RH of same prior to the expiration of the Due Diligence Period by executing and delivering written notice attached hereto as Exhibit 2.2. and made a part hereof by this reference. If no notice is sent by Supernus to RH prior to the expiration of the Due Diligence Period, the parties shall close the purchase and sale of the RH Concept on the Closing Date.

2.3. **Closing.** The transactions contemplated herein shall be consummated (the "Closing") within thirty (30) calendar days following the expiration of the due diligence period or at such other time mutually acceptable by the parties hereto at the offices of Schmeltzer, Aptaker & Shepard, P.C., 2600 Virginia Avenue, N.W., Suite 1000, Washington, D.C. 20037.

2.4. **Non-Competition and Related Matters.** At the Closing, RH shall enter into a non-competition, non-solicitation, non-disclosure and non-circumvention agreement **(the "Noncompetition Agreement")** with Supernus in the form attached as Exhibit 2.4.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

Whenever the terms "knowledge" or "Supernus' knowledge" are used in this Agreement, including this Article 3, such terms shall mean the knowledge, after reasonably diligent inquiry, of Supernus. In order to induce RH to enter into this Agreement and to consummate the transactions contemplated herein, and with the knowledge that the RH is relying on the representations, warranties and covenants herein contained, Supernus

represents and warrants to RH on the date hereof, to be ratified in all respects as of the Closing Date.

3.1. Representations and Warranties of Supernus. Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties.

3.1.1. Corporate Power. Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. Due Authorization. Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. No Other Warranties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE RH CONCEPT OR SUPERNUS PRODUCTS.

3.2. Representations and Warranties of RH. RH offers as warranties the statements set forth herein. RH makes no other warranties.

Whenever the terms "knowledge" or "RH's knowledge" are used in this Agreement, including this Article 3, such terms shall mean the knowledge, after reasonably diligent inquiry of RH. In order to induce Supernus to enter into this Agreement and to consummate the transactions contemplated herein, and with the knowledge that the Supernus is relying on the representations, warranties and covenants herein contained, RH represents and warrants to Supernus on the date hereof, to be ratified in all respects as of the Closing Date.

3.2.1. Corporate Power. RH is duly organized and validly existing under the laws of England and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. RH is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on RH's behalf has been duly authorized to do so by all requisite corporate

action. Licensor represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon RH, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by RH does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. No Undisclosed Liabilities. There are no liabilities or obligations (whether absolute, accrued, contingent or otherwise) in connection with the RH Concept.

3.2.5. Good Title. RH has and, upon consummation of the transactions contemplated hereby Supernus will have, good and marketable title to the RH Concept, free and clear of any lien, pledge, mortgage, security interest or encumbrance of any kind.

3.2.6. No Notice. RH has not received any notice from any government agency or any other third party which is applicable to the RH Concept and which would have a Material Adverse Effect on Supernus' full rights to develop the RH Concept or the Supernus Product as contemplated herein after the Closing Date.

3.2.7. No Other Contracts. Other than this Agreement, Seller is not a party to any oral or written contract, or understanding with any other party in connection with the RH Concept. RH is not in default under any contract, agreement or other understanding relating to the RH Concept to which it is or was a party.

3.2.8. No Litigation. RH is not party to any litigation and to the best of RH's knowledge no litigation is pending or threatened and no ground or basis exists which, either absolute or contingently would give rise to any litigation in connection with the RH Concept.

3.2.9. No Warranties Regarding Intellectual Property or Fitness. RH does not warrant that it has any intellectual property rights in the RH Concept except as described in this Agreement and makes no representations whatsoever with regard to the scope of the RH Concept or that the Supernus Product may he exploited without infringing other patents or other intellectual property rights of Third Parties. RH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE RH MARKET ANALYSIS. RH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE RH CONCEPT OR ANY SUPERNUS PRODUCT.

3.2.10. True Information. The information including but not limited to the RH Concept furnished by or on behalf of RH to Supernus in connection with this Agreement does not contain any untrue statement of a material fact and does not omit to state any

material fact necessary to make the statements made, in the context in which made, not false or misleading. Notwithstanding any knowledge or facts determined or which might have been determined by Supernus pursuant to any rights hereunder to investigate, Supernus shall be entitled to rely fully upon all representations, warranties, covenants and agreements and other undertakings contained in this Agreement or in any schedule, document or instrument delivered pursuant hereto or otherwise made pursuant to this Agreement, in Supernus' determination to consummate the transactions contemplated by this Agreement.

ARTICLE 4

DEVELOPMENT AND COMMERCIALIZATION

4.1. **Development and Commercialization.** Supernus, in its sole discretion and at its sole cost and risk, shall have the right to make all decisions relating to the development and commercialization of the Supernus Products under the RH Concept including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of the RH Concept, and the promotion, advertising, marketing and pricing of the Supernus Products. Supernus shall use its commercially reasonable efforts and judgment to actively develop and market the Supernus Product(s) throughout the Territory.

4.2. **Reports.** Supernus shall deliver to RH, on a semi-annual basis, project updates on Supernus development activities for the Supernus Product (including project timelines and the identities of actual partners).

ARTICLE 5

CONSIDERATION

5.1. **Consideration.** In consideration for the sale of the RH Concept and the execution of the Non-Competition Agreement, in addition to the other payments set forth in this Article 5, Supernus shall pay to RH the U.S. equivalent of £25,000 at Closing.

5.2. **Royalties.**

5.2.1. Net Sales. In consideration for the sale of the RH Concept and the execution of the Non-Competition Agreement in addition to the other payments set forth in this Article 5, Supernus shall pay to RH in immediately available funds royalties of [**]% of Net Sales of the Supernus Product.

5.2.2. No Multiple Royalties. Royalties under this Section 5.2 shall be payable on a Supernus Product-by-Supernus Product basis, and shall be imposed only once with respect to any sale of the same unit of Supernus Product by Supernus and no multiple royalties shall be payable by Supernus.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.2.3. Expiration of Royalty Payments. Supernus' obligation to pay royalties to RH on a country by country basis shall expire upon the earlier of:

5.2.3.1. Ten (10) years from the date of First Commercial Sale of an Supernus Product or

5.2.3.2. The market entry in a country of the Territory of a Product by any entity other than Supernus, an Affiliate of Supernus, or its Licensees.

5.2.3.3. Reduction of Royalty Payments. Supernus' obligation to pay royalties to RH shall at Supernus' sole discretion be reduced by the full amount of any damages or expenses resulting from RH's inability to fulfill any of its obligations under this Agreement including but not limited to Article 10 herein.

5.3. Payment of Royalties; Reports.

5.3.1. First Commercial Sale. Supernus shall report to RH the date of First Commercial Sale of a Supernus Product within thirty (30) days of such occurrence in each country of the Territory.

5.3.2. Royalty Statements. Supernus shall deliver to RH, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of the Supernus Product during such calendar quarter (including the country of sale and an itemized calculation of the amount of Net Sales) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.3.3. Manner of Payment. All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by RH.

5.3.4. Currency. If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to [**] by the Federal Reserve Bank of New York (available on Bloomberg L.P. and Reuters).

5.3.5. Taxes. All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish RH with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.3.6. Overdue Payments. Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by RH as cleared funds.

ARTICLE 6

AUDIT

6.1 Audit. Once per twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties and the calculation of Net Sales due available for examination by RH during normal business hours. RH shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties or calculation of Net Sales hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.1 shall indicate that any payment due hereunder was underpaid, incorrect or unverifiable, Supernus shall promptly pay the amount of any underpayment, correct the figures or provide verification (as appropriate). If any audit performed under this Section 6.1 shall indicate that any payment hereunder was in error to RH's detriment by more than 8 percent for any annual period, Supernus shall pay the cost of the audit. Supernus undertakes to maintain true and accurate records of all transactions concerning the payment of royalties and the calculations of Net Sales.

ARTICLE 7

CLOSING

7.1. Conditions to Supernus' Obligations. Each and every obligation on the part of Supernus to be performed hereunder, including the payment of the Consideration, shall be subject to the prior satisfaction (in accordance with the terms of this Agreement) of each and every one of the following conditions precedent, provided that all transfers contemplated by this Agreement shall be deemed to take place simultaneously at Closing and to be interdependent, so that Supernus shall not be obligated to consummate any transfer unless all of the conditions precedent relating to all transfers shall have been satisfied in full:

7.1.1. Delivery of Documents By RH. Prior to or at the Closing, RH shall have executed and/or delivered to Supernus:

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(i) Such instruments of sale, transfer, assignment, conveyance and delivery in the form set out in Exhibit 7.1.1;

(ii) The Noncompetition Agreement;

(iii) The RH Concept including but not limited to all items scheduled on Schedule 1.1;

(iv) A copy, certified by the secretary of RH, of resolutions of the board of directors of RH authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby together with evidence of Seller's qualification and good standing in England and any required approval by the Shareholders; and

(v) Such other, further and different certificates, assurances and documents as Supernus may reasonably request (i) in order to evidence the accuracy of RH's representations and warranties, the performance of its covenants and agreements to be performed at or prior to the Closing Date, and the fulfillment of the conditions to Supernus' obligations; or (ii) which are otherwise necessary to consummate the transactions contemplated in this Agreement.

7.1.2. Closing Certificate. Supernus shall have received at Closing a closing certificate in the form attached hereto as Exhibit 7.1.2. signed by RH.

7.1.3. Consents; Regulatory Approvals. RH shall have obtained all contractual and governmental consents, approvals, and authorizations which are necessary or reasonably required to effectuate the consummation of the transactions contemplated hereby and the satisfaction of the conditions precedent to the obligations of Supernus under terms acceptable to Supernus in the exercise of its business judgment. RH agrees to cooperate with Supernus in effectuating the timely transfer of any and all permits and licenses, if any, which may require governmental consent and/or approval.

7.1.4. No Pending Litigation. As of the Closing Date, no litigation, order, enforcement action, or claim exists and to the best of RH's knowledge no litigation shall be pending or threatened against RH or any person holding an equity interest therein, seeking to enjoin, or to procure damages or fines as a result of, the consummation or the proposed consummation of the transactions contemplated herein.

7.1.5. Unrestricted Control. As of the Closing Date, the Seller shall have unrestricted control, possession of and title to the RH Concept.

7.2.1. Conditions to Seller's Obligations. The obligation of RH to consummate the transactions contemplated hereby is subject to Supernus executing and/or delivering to RH at or prior to the Closing the following:

(i) Payment of the Consideration due at Closing;

(ii) The Noncompetition Agreement; and

(iii) A copy, certified by the secretary of Supernus, of resolutions of Supernus' governing body authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby.

ARTICLE 8

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

8.1. Infringement of Third Party Rights.

8.1.1. Notice of Infringement. In the event that RH becomes aware that the rights and title acquired by Supernus under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify Supernus in writing and provide it with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 8.2.2 and 8.2.3 below.

8.1.2. Supernus Product. Subject to Section 8.2.3, if the Third Party claim is specifically related to the RH Concept or the Supernus Product, Supernus will defend any suit resulting directly from such claim. RH hereby agrees to be joined in such suit, should RH be found to be an indispensable party to the proper defense of such suit provided that Supernus reimburses RH's costs unless the claim is directly linked to a RH breach of warranty as set forth in Article 3. RH may choose to obtain its own counsel for such litigation in which event it shall be liable for its own costs.

8.1.3. Change to Royalty Payments. Royalty Payments in respect of the Product due to RH under Article 5 with respect to RH Product Concept Product sold in such country will be reduced to the extent that (i) Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent, which would be infringed by the manufacture, use, offer for sale, sale or import of the Product by Supernus, its Affiliates, contractors, or licensees, or (ii) Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. To the extent that the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to such Third Party under such license with respect to such country. Supernus will use reasonable efforts to minimize any such required payments to Third Parties.

8.1.4. Cooperation. Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's reasonable requests and, to the extent reasonably

possible, provide or procure the provision of such reasonable assistance in defending any such action or any proceedings.

8.2. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest in and to shall become the owner of all Intellectual Property Rights in the RH Concept and all Supernus Products developed thereunder. At Supernus' request, RH will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

ARTICLE 9

CONFIDENTIALITY AND NON-COMPETITION

9.1. **This Agreement.** The Parties agree that the material terms of the Agreement, the documents, information and data comprising the RH Concept and RH Market Analysis and such other trade secrets or intellectual property sold by RH to Supernus, all financial statements, financial information, projections, forecasts, business plans, development plans, formulations, product profiles, methods, ideas, concepts, materials, documents, records, computer programs, customer lists, referral sources, work, models, processes, designs, drawings, plans, inventions, devices, parts, improvements, other physical and intellectual property or other information in any form whatsoever relating directly or indirectly to the RH Concept and the documents generated pursuant to the obligations hereunder shall be considered Confidential Information of the Party providing or disclosing the same to the other.

9.2. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") or the London Stock Exchange or to any applicable government authority including but not limited to the applicable taxing authorities, those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any such filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

ARTICLE 10

INDEMNIFICATION

10.1 Indemnification by Supernus.

10.1.1. Scope. Supernus shall indemnify, defend and hold harmless RH, its officers, directors, employees, stockholders, shareholders, agents and representatives (collectively, "RH Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to any breach of this Agreement (including any the warranties and representations made by Supernus in the Agreement) by Supernus, its affiliates or Licensees or arising out of or relating to the research, development, marketing, design, manufacture, promotion, marketing, distribution, use and/or sale of Supernus Product by, on behalf of, or under authority of, Supernus, its Affiliates or its Licensees.

10.1.2. Notification of Claim. Each RH Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the RH Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the RH Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the RH Indemnitee may defend the Claim, at Supernus' expense; provided that the RH Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The RH Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the RH Indemnitee's control.

10.2. Indemnification by RH.

10.2.1. Scope. RH shall indemnify, defend and hold harmless Supernus, its officers, directors, employees, stockholders, shareholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses") arising out of or relating any breach of this Agreement (including the warranties and representations made by RH in the Agreement) by RH. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 10.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct or breach of warranties and representations made by Supernus in the Agreement.

10.2.2. Notification of Claim. Each Supernus Indemnitee shall notify RH in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of RH's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. RH shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and RH's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by RH. If RH does not assume the defense of the Claim, the Supernus Indemnitee may defend the Claim, at RH's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of RH, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with RH and will make available to RH all pertinent information under the Supernus Indemnitee's control.

10.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

10.4. Insurance.

10.4.1. Supernus shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

10.4.2. Subject to Article 5.2.3.3 herein Rune shall purchase and maintain general liability, casualty product liability or such other insurance necessary to secure its obligations to Supernus hereunder including but not limited to its indemnity obligations. The insurance policies shall be with companies authorized to do business in the state of Maryland, satisfactory to Supernus. Copies of the policies shall be delivered to Supernus together with proof of payment no later than fifteen days from Closing. Supernus shall be listed as a named insured under all such policies. Such insurance policies shall not be cancelable without the permission of Supernus provided Rune may cancel same, provided it replaces the insurance with the same or better insurance coverage with another company meeting the obligations above. Further, the insurance companies shall be obligated to provide reasonable notice to Supernus in the event Rune cancels or defaults on its payment obligations in connection with said insurance. Notwithstanding anything to the contrary herein, Rune's maximum obligation for total insurance coverage shall be [**] annual coverage for a period of [**] commencing from the date of Closing.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 11

TERMINATION

11.1. **Termination by Supernus.** Supernus may terminate this Agreement prior to the expiration of the Due Diligence Period. In the event of termination by Supernus, Supernus shall not compete with the RH Concept.

11.2. **Termination for Discontinuation of Development.** In the event that Supernus and/or its Licensees discontinue all development or commercialization activities relating to a specific Supernus Product for a period of [**], RH shall have a right of first refusal to continue such development or commercialization activities relating to said specific Supernus Product provided RH agrees to a license from Supernus on terms and conditions mutually acceptable by the parties. Said right of first refusal shall expire if the parties are unable to reach a negotiated agreement within [**].

11.3. **Termination for Default.** In the event of a Default by Supernus in its payment of Royalties or breach of its representations or warranties as set forth under this Agreement, RH's sole recourse is to sue Supernus for damages. RH shall have no recourse to reacquire or obtain any right title or interest or have a security interest in the RH Concept or any Supernus Product. In the event of a Default by RH in a breach of its representations or warranties as set forth under this Agreement, in addition to all of its other rights under law or equity, Supernus shall have the right to offset its damages and expenses in connection therewith against future Royalty payments.

11.4. **Surviving Obligations.** The provisions of this Article and Articles 3, 5, 6, 8, 9, 10, 11 and Articles 12.1, 12.4, 12.8, 12.9, 12.11, 12.12 and 12.13 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

ARTICLE 12

12.1. **Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 12.1 shall be void. Nothing herein shall preclude Supernus from licensing its rights purchased herein.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

12.2. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

12.3. **Force Majeure.** Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

12.4. **Notices.** All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Chief Executive Officer
Facsimile: (301) 424-1364

With a copy to:

Schmeltzer, Aptaker & Shepard, P.C.
The Watergate
2600 Virginia Avenue, N.W.
Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.

If to RH addressed to:

Rune Healthcare Limited
9a Magdala Road
Nottingham, NG3 5DE

United Kingdom
Facsimile: +44 (0) 115 969 2017

12.5. **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

12.6. **Waiver.** No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

12.7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

12.8. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

12.9. **Governing Law.** Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Agreement, and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding, and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent, and that the annual cost of maintaining such agent shall be paid for by Supernus on RH's behalf, and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc. as such agent.

12.10. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any of the provisions herein as it relates to an RH Concept Product shall not

affect Supernus' ownership rights in and to the RH Concept or any other Supernus Products.

12.11. Entire Agreement of the Parties. This Agreement (including all Exhibits and Schedules attached hereto and documents referred to, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

12.12. Dispute Resolution. The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

12.13. Use of Name. No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Rune," without the prior written consent of the owning Party.

12.14. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement.

12.15. No Brokers. Neither Supernus nor RH nor any Shareholder has engaged, or caused to be incurred any liability to, any finder, broker, or sales agent in connection with the origin, negotiation, execution, delivery, or performance of this Agreement or the transactions contemplated hereby.

12.16. Public Announcements. Except as required by law, prior to the Closing, RH shall make no public announcement of the transactions contemplated hereby without the prior written consent of Supernus. After the Closing, Supernus and RH may make public announcements regarding the transactions contemplated hereby with respective mutual consent.

12.17 Interpretation. The parties hereby agree that each party has reviewed and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.

BY: /s/ Jack Khattar

TITLE: President & CEO

DATE: 6/9/06

RUNE HEALTHCARE LIMITED

BY: /s/ Russ Pendleton

TITLE: CEO

DATE: 12/6/06

EXHIBIT 2.4

NON-COMPETITION, NON-SOLICITATION, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

THIS NON-COMPETITION, NON-SOLICITATION, NON-DISCLOSURE AND NON-C1RCUMVENTION AGREEMENT ("Agreement") is made and entered into as of the 9th day of June, 2006 (the "Effective Date"), by and between Supernus Pharmaceuticals Inc., a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 (the "Company" or "Supernus"), and Rune Healthcare Limited, an English corporation with principal offices located at 9a Magdala Road, Nottingham NG3 5DE, United Kingdom and any of its affiliates or any of their respective officers, directors, shareholders, partners, members, employees or agents (collectively, "RH" or "Seller").

All initially capitalized terms used, but not defined herein, shall have the meanings ascribed thereto in the Purchase Agreement, as defined below.

RECITALS:

WHEREAS, on the Effective Date, the Company has consummated the purchase of the RH Concept of Seller, as defined in and pursuant to the terms of that certain Purchase and Sale Agreement dated as of June 9, 2006 (the "Purchase Agreement"), between the Company and Seller; and

WHEREAS, the Company is willing to consummate the purchase and sale contemplated in the Purchase Agreement upon the Seller's execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the consideration provided pursuant to the Purchase Agreement, the parties hereto hereby agree as follows:

1. Non-Competition.

(a) The Seller covenants and agrees that until the expiration of the Royalty Term in the Purchase Agreement (the "Applicable Period"), they shall not, directly or indirectly, as a principal, shareholder, partner, member, representative, agent.

contemplated in the RH Concept" shall mean and refer to any business, directly or indirectly researching, promoting, developing, manufacturing, marketing, selling, distributing, or licensing the RH Concept or any Products in the Field.

(b) The Seller shall not be treated as engaging in an activity that competes with the business of the Company solely by reason of: (i) owning an equity interest of less than 1% of the capital and profits of a corporation, partnership, limited liability company or other entity whose securities are publicly traded on national exchange; or (ii) owning a debt obligation of any entity, provided that such debt obligation entitles Seller to receive only interest that is fixed, or varies by reference to an index or formula that is not based on the value or results of operations of such entity.

(c) If for any reason a court of competent jurisdiction shall determine that the foregoing covenant is unenforceable by reason of the scope of the term [or the territory] involved, the parties agree that the term [or territory] shall be reduced to the maximum amount or amounts enforceable under applicable law.

2. Non-Solicitation. During the Applicable Period, the Seller covenants and agrees (a) not to, directly or indirectly, interfere with, attempt to disrupt any account, customer, client, supplier or other person or entity with whom the Seller is aware or the Company notifies the Seller that the Company has a material business relationship and which would have a materially negative impact on the development or commercialization of the Supernus Product (b) not to, directly or indirectly, induce or attempt to induce any of the employees of the Company or any of its subsidiaries or affiliates to leave the employment of the Company or any of its subsidiaries or affiliates.

3. Non-Disclosure

(a) The Seller covenants and agree not to disclose the Confidential Information (hereinafter defined) to any person; provided, however, the Seller may disclose the Confidential Information only (i) in response to a valid order or subpoena issued by a court or administrative agency of competent jurisdiction (provided, however, the Seller shall immediately notify the Company of any such order or subpoena in order to provide the Company the opportunity to protect its interest in such Confidential Information); or (ii) to such other persons as are expressly approved by the written consent of the Company prior to the disclosure of the Confidential Information.

(b) In no event shall the Seller utilize the Confidential Information to promote or otherwise enhance the business of the Seller in competition with the Company or for any other commercial purpose whatsoever.

(c) The term "Confidential Information" means and includes any and all non-public and proprietary information regarding the RH Concept or the Supernus Product in the Field in any therapeutic dose, and such other trade secrets or intellectual property sold by RH to Supernus pursuant to the Purchase Agreement. The term "Confidential Information" shall include, without limitation, all financial statements, financial information, projections, forecasts, business plans, development plans,

formulations, product profiles, methods, ideas, concepts, materials, documents, records, computer programs, customer lists, referral sources, work, models, processes, designs, drawings, plans, inventions, devices, parts, improvements, other physical and intellectual property or other information in any form whatsoever relating directly or indirectly to the RH Concept.

4. Non-Circumvention.

(a) The Seller agrees not to contact or initiate contact at any time for any purpose, either directly or indirectly, in connection with the RH Concept or Supernus Products, or any other property or properties whose identity was revealed through the efforts of the Company (or its subsidiaries or affiliates), unless such approval is specifically granted in written form by Company on a case-by-case basis. The Seller further agrees not to undertake any transaction or a series of transactions of any kind in connection with any Company Opportunity (hereinafter defined) or to collect any fees in connection with a Company Opportunity without the express prior written consent of Company, which consent may be withheld in Company's sole discretion.

(b) The term "Company Opportunity" means and includes each and every business opportunity that is within the scope and purpose of the RH Concept or Supernus Products.

5. Equitable Relief. The Seller acknowledges, stipulates and agrees that irreparable harm will result to the Company if the Seller violates any provision of Sections 1 through 4 hereof, and that monetary damages will not adequately compensate the Company for such violation. Accordingly, the Seller agrees that the Company shall be entitled to enjoin and restrain the Seller from continuing any act that violates the provisions of Sections 1 through 4 hereof; provided, however, nothing contained in this Section 5 shall be construed as a waiver or election by the Company to forego any other remedy or remedies that may be available to it hereunder or at law or in equity and, if the Seller violates any provision of Sections 1 through 4 hereof, it shall be liable to the Company for any and all loss, cost or damage suffered by the Company, including, without limitation, profits received by the Seller or any other person and attorneys' fees.

6. Miscellaneous.

(a) *Notice.* All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Chief Executive Officer
Facsimile: (301) 424-1364

With a copy to:
Schmeltzer, Aptaker & Shepard, P.C.
The Watergate
2600 Virginia Avenue, N.W.
Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.

If to RH addressed to:

Rune Healthcare Limited
9a Magdala Road
Nottingham, NG3 5DE
United Kingdom
Facsimile: +44 (0) 115 969 2017

(b) *Interpretation.* The parties hereby agree that each party has reviewed and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(c) *Incorporation.* All agreements and instruments referred to herein are hereby incorporated by reference into this Agreement as fully as if copied herein verbatim.

(d) *No Waiver.* No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

(e) *Attorneys' Fees.* If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement and such action is successful, the prevailing parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses, even if not taxable or assessable as court costs

(including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

(f) *Section Headings.* The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

(g) *Governing Law.* This Agreement shall be governed in all respects, including validity, interpretation and effect by, and shall he enforceable in accordance with the internal laws of the State of Delaware without regard to conflicts of laws principles.

(h) *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any of the provisions herein as it relates to an RH Concept Product shall not affect Supernus' ownership rights in and to the RH Concept or any other Supernus Products.

(i) *Counterpart Execution.* This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

(j) *Successors and Assigns.* This Agreement is binding on the successors and assigns of all parties hereto.

(k) *Amendments.* No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

(l) *Entire Agreement.* This Agreement contains the entire agreement between the parties regarding the subject matter hereof. Any prior agreements, discussions or representations not expressly contained herein shall be deemed to be replaced by the provisions hereof, and no party has relied on any such prior agreements, discussions or representations as an inducement to the execution hereof.

(m) *Rules of Construction.* As used in this Agreement:

(i) All defined terms in the singular and plural shall have comparable meanings when used in the plural and vice-versa, unless otherwise specified.

(ii) Any reference to a "person" shall mean and refer to any individual, partnership, firm, corporation, limited liability company, association, joint

venture, trust or other entity, or any governmental or political subdivision or agency department or instrumentality thereof.

(iii) Any reference to a "business day" shall mean and refer to any day that is not a Saturday, Sunday or any other day on which national banks located in Montgomery County, Maryland, arc required or permitted to close their regular banking business.

(iv) All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

(v) The words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not any particular provision of this Agreement.

(vi) The word "party" or "Parties" when used in this Agreement means only those persons or entities who are signatories to this Agreement.

(vii) References to all documents, contracts, agreements or instruments shall include any and all supplements and amendments thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COMPANY:

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar

Name: Jack Khattar

Title: President & CEO

Address: 1550 E. Gude Drive
Rockville, MD 20850

Attn: J.W. Bryan
Telephone: 301-838-2681
Facsimile: 301-424-1364

SELLER:

RUNE HEALTHCARE LIMITED, an English corporation

By: /s/ Russ Pendleton
CEO

Address: 9A Magdala Road
Nottingham, UK, NG3 5DE
Telephone: +44 115 969 2016
Facsimile: +44 115 969 2017

Exhibit 10.15

EXCLUSIVE LICENSE AGREEMENT

THIS EXCLUSIVE LICENSE AGREEMENT is made as of November 2, 2007 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Afecta Pharmaceuticals, Inc. a California corporation with principal offices located at 2102 Business Center Drive, Irvine, California 92612 ("Afecta").

RECITALS:

WHEREAS, Afecta has granted to Supernus an exclusive option per the Exclusive Option and License Agreement dated April 27, 2006 ("the Option Agreement") to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products; and

WHEREAS, Afecta has granted an exclusive license to Supernus for the Afecta Licensed Product in the Field as noted in the Notice Letter dated March 14, 2007 (as hereinafter defined);

WHEREAS, by way of the Notice Letter dated March 14, 2007 the Afecta Product has become an Afecta Licensed Product; and

WHEREAS, Supernus and Afecta desire to define the exclusive licensing rights to the Afecta Licensed Product on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and the Warrant, the parties agree as follows:

ARTICLE 1.

DEFINITIONS

1.1. For the purposes of this Agreement the Definitions for Afecta Pre-IP Products, Afecta Filed Products, and Afecta IP Products will be as defined in The Option Agreement.

1.2 "Afecta Intellectual Property Rights" shall mean Afecta Patent Rights and all intellectual property rights including Afecta Know How belonging to Afecta in connection with the Afecta Licensed Product that is the subject of this Agreement.

1.3. "Afecta Invention" means any Invention in the Field or that could be used in the Field generated solely by employees or agents of Afecta prior to execution of the Notice Letter in connection with the Afecta Licensed Product that is the subject of this Agreement..

1.4 "Afecta Know How" shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

patentable or not), modifications or enhancements that was generated by Afecta outside of this Agreement with respect to the Afecta Licensed Product that is the subject of this Agreement.

1.5. **"Afecta Licensed Product"** as used herein shall mean molindone and it salts, racemic mixtures, isomers, derivatives, and analogues thereof as licensed to Supernus in accordance with the terms and conditions of this Agreement.

1.6. **"Afecta Patent Rights"** shall mean collectively Afecta's right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit A; (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents that existed prior to execution of the Notice Letter. Notwithstanding the foregoing, the definition of Afecta Patent Rights shall exclude any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter, which rights shall belong to Supernus.

1.7. **"Afecta Product"** shall mean Afecta IP Products, Afecta Filed Products and Afecta Pre-IP Products that existed prior to execution of the Notice Letter and pertain to: molindone and any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, metabolites or any other derivatives thereof; and any compound involving forming or breaking a bond or bonds with molindone or any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, metabolites or any other derivatives thereof where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is in the Field (as hereinafter defined).

1.8. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.9. **"Agreement"** shall mean this Agreement.

1.10. **"Confidential Information"** shall mean (a) any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to the prosecution, maintenance or defense of the Afecta Patent Rights or Afecta Intellectual Property Rights, (c) all information relating to the prosecution, maintenance or defense of the Supernus Patent Rights or Supernus Intellectual Property Rights, and (d) Net Sales.

1.11. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.12. **"Development Costs"** shall mean all costs required to be expended by either party to develop and obtain regulatory approval including but not limited to personnel, out of pocket, subcontract and any other costs to compensate a Third Party for the Afecta Licensed Product in the Territory; all costs to file, maintain and defend the intellectual property pertaining to the Afecta Licensed Product; all manufacturing, post-approval research, development and clinical costs; and all sales, marketing and administrative costs required to market the Afecta Licensed Product in the Territory.

1.13. **"Effective Date"** shall mean the date of this Agreement.

1.14. **"First Commercial Sale"** shall mean the initial transfer of the Afecta Licensed Product to a Third Party in exchange for cash or some equivalent to which value will be assigned for purposes of determining Net Sales.

1.15. **"First Efficacy Trial"** shall mean testing the efficacy and safety of the Afecta Licensed Product in a population of patients within the Field.

1.16. **"Field"** shall mean for the treatment, diagnosis or prevention of central nervous system related diseases and indications in humans and animals.

1.17. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute, casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any unforeseen delays associated with clinical trials of the Afecta Licensed Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Afecta Licensed Product, labor, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

1.18. **"GAAP"** shall mean United States generally accepted accounting principles consistently applied.

1.19. **"Invention"** means any invention, discovery, or innovation, whether patentable or not, invented, discovered, or conceived either prior to the Notice Letter or after the Notice Letter by either party as the case may be or in collaboration as the case may be as related to the Afecta Licensed Product.

1.20. **"Major Markets"** shall mean the United States, Canada, United Kingdom, France, Spain, Germany, Italy, and Japan.

1.21. **"Net Sales"** shall mean all revenues recognized in accordance with GAAP from the sale of the Afecta Licensed Product by Supernus and/or its Affiliates to Third Parties, less returns and allowances (actually paid and allowed, including, but not limited to, prompt payment and volume discounts, charge backs from wholesalers and other allowances granted to customers, whether in cash or trade), freight, packing, insurance, rebates actually paid and allowed, and sales and other taxes based on sales prices when included in gross sales, but not including taxes when assessed on income derived from such sales.

1.22. **"Notice Letter"** shall mean the Notice Letter dated March 14, 2007 attached herein as Exhibit B and signed by Supernus and Afecta that grants Supernus an exclusive license the Afecta Licensed Product in accordance with the Option Agreement.

1.23 **"Party"** shall mean Supernus or Afecta, as the case may be, and **"Parties"** shall mean Supernus and Afecta collectively.

1.24. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.25. **"Purpose"** shall mean the research, development and commercialization of the Afecta Licensed Products.

1.26 **"Similar Product"** shall mean any product that contains same active ingredient and is approved for the same indications as for the Afecta Licensed Product that is the subject of this Agreement after Effective Date.

1.27. **"Supernus Formulations"** shall mean ProPhile®, ProScreen®, OptiScreen®, RADAR™, Avert®, Microtrol®, Solutrol®, and EnSoTrol® technologies and such other technologies that existed prior to the date of this Agreement or are developed or acquired by Supernus during the course of this Agreement and as applied to Afecta Licensed Products.

1.28. **"Supernus Intellectual Property Rights"** shall mean Supernus Patent Rights and all intellectual property rights including Supernus Know How belonging to Supernus in connection with Supernus Formulations.

1.29. **"Supernus Invention"** means any Invention generated solely by employees or agents of Supernus or in collaboration with employees or agents of Afecta in connection with Afecta Licensed Product following execution of the Notice Letter.

1.30. **"Supernus Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether patentable or not), modifications or enhancements that was generated by Supernus outside of this Agreement.

1.31. **"Supernus Patent Rights"** shall mean collectively Supernus' right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit C and (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation,

supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents and (c) the intellectual property rights in any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter

1.32. **"Territory"** shall mean the World.

1.33. **"Third Party"** shall mean any Person other than Afecta and Supernus or its Affiliates.

1.34. **"Valid Claim"** shall mean a claim of an issued and unexpired patent included within the Afecta Patent Rights which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

ARTICLE 2

EXCLUSIVE WORLDWIDE LICENSE

2.1. License Grant to Supernus.

2.1.1. Grant to Supernus. On the terms and conditions set forth herein, and effective from the Effective Date of the Notice Letter to Afecta for the Afecta Product, Afecta hereby grants to Supernus and its Affiliates an exclusive license, with the right to grant sub-licenses solely pursuant to Section 2.1.2, in the Afecta Intellectual Property Rights and the Afecta Licensed Product identified in the Notice Letter dated March 14, 2007 to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale the Afecta Licensed Product in the Field anywhere in the Territory.

2.1.2. Sub-licenses. Supernus shall have the right to grant sublicenses under this Agreement without the prior written consent of Afecta, provided however, that (i) Supernus agrees that its sublicensing agreements will not conflict with any of its obligations hereunder; (ii) Supernus agrees to provide to Afecta a redacted copy of any fully executed sublicense agreement within 5 business days of execution.

2.1.3. No Other Licenses. This Agreement confers no license or rights by implication, estoppel or otherwise to Supernus in any other Afecta Products except as offered herein or as may be obtained in accordance with the terms and conditions of this Agreement.

2.2. License Grant to Afecta.

2.2.1. Grant to Afecta. Upon Supernus' sole election to terminate this Agreement, per Articles 10.2, 10.3, 10.4 or 10.5 herein, Supernus will at the request of Afecta negotiate the appropriate licenses with Afecta and its Affiliates according to Sections 2.2, 2.3, and 5.3 of the Option Agreement for the right to grant to Afecta an exclusive license with the right to grant sub-licenses solely pursuant to,(i) data

generated under the Notice Letter or this Agreement, (ii) Supernus Formulations, (iii) Supernus Intellectual Property Rights, and (iv) Supernus Inventions only as they relate to and are required for the development, manufacturing and sale of the Afecta Licensed Product that is subject of this Agreement and the Notice Letter.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Representations and Warranties of Supernus.

3.1.1. Corporate Power. Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. Due Authorization. Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. Invention Disclosure. Supernus warrants to Afecta that it will not file an invention disclosure or patent application for any Afecta Invention that is revealed prior to the Notice Letter with respect to the Afecta Licensed Product.

3.1.5. No Other Warranties. Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties. Supernus does not warrant the validity or enforceability of the Supernus Patent Rights and makes no representations whatsoever with regard to the scope of the Supernus Patent Rights, or that the Supernus Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE SUPERNUS PATENT RIGHTS OR SUPERNUS INTELLECTUAL PROPERTY RIGHTS. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE LICENSED PRODUCTS.

3.2. Representations and Warranties of Afecta.

3.2.1. Corporate Power. Afecta is duly organized and validly existing under the laws of the State of California and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. Afecta is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Afecta's behalf has been duly authorized to do so by all requisite corporate action. Afecta represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Afecta, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Afecta does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. Invention Disclosure. Afecta warrants to Supernus that it will not file an invention disclosure or patent application for any Supernus Invention that is revealed after the Notice Letter with respect to the Afecta Licensed Product that is the subject of this Agreement.

3.2.5 Afecta Ownership. Afecta warrants that it is the sole and exclusive owner of all legal and equitable title to the Afecta Patent Rights and has good and valid title to such rights free and clear of all encumbrances.

3.2.6. No Other Warranties. Afecta offers as warranties the statements set forth herein. Afecta makes no other warranties. Afecta does not warrant the validity or enforceability of the Afecta Patent Rights and makes no representations whatsoever with regard to the scope of the Afecta Patent Rights, or that the Afecta Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. AFECTA MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE AFECTA PATENT RIGHTS OR AFECTA INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 4

DATA, DEVELOPMENT AND COMMERCIALIZATION

4.1 As soon as practicable after the Effective Date and from time to time thereafter, Afecta shall provide Supernus in a timely manner with copies of all data and information generated in connection with any Development Plans, including without limitation all related Afecta Intellectual Property, that is necessary for Supernus to develop and commercialize the Afecta Licensed Product under this Agreement.

4.2 **Development and Commercialization.** Supernus, in its sole discretion, shall have the right to make all decisions relating to the development and commercialization of the Afecta Licensed Product including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of the Afecta Licensed Products and the promotion, advertising, marketing and pricing of the Afecta Licensed Product. Supernus shall use its commercially reasonable efforts to actively develop and market the Afecta Licensed Product in the Territory. Notwithstanding the foregoing, Supernus at its sole discretion will consult with Afecta and seek its input before making its final decisions relating to the development and commercialization of the Afecta Licensed Product.

4.3. **Reports.** Supernus shall deliver to Afecta, on a quarterly basis, in a mutually agreed format, written project updates on Supernus development activities for the Afecta Licensed Product.

4.4 **Regulatory Filings.** Supernus shall, at its own cost, retain sole responsibility for the preparation, filing, prosecution and maintenance of all filings and applications for all regulatory approvals relating to the Afecta Licensed Product. Supernus shall solely in its direction manage all applications, requests for authorization, submissions of information and data and for all interactions with the FDA or applicable governing health authority for the purpose of attempting to obtain registration of the Afecta Licensed Products within the Territory. Supernus shall solely and exclusively own all regulatory applications, approvals, data and Afecta Licensed Product registrations obtained by Supernus or its Affiliates with respect to the Afecta Licensed Product, including retaining control and ownership of each Drug Master File related to the Afecta Licensed Product.

4.5 **Afecta Assistance.** Afecta shall provide Supernus with reasonable assistance in any IND, NDA or other regulatory filings and meetings worldwide relating to the Afecta Licensed Product. Supernus shall have the right to reference all related data and Afecta Intellectual Property to the extent necessary to support its worldwide regulatory filings and compliance program.

ARTICLE 5

CONSIDERATION

5.1. **License Fee Payments.** In consideration for the grant of the rights and licenses set forth in this Agreement and the Notice Letter dated March 14, 2007, in addition to the other payments set forth in Article 5 of this Agreement and the $[**] payment already made by Supernus to Afecta, Supernus shall pay to Afecta $[**] upon the successful completion of the First Efficacy Trial.

5.1.1 **Change License Fee Payments.** Following execution by Supernus of this Agreement, it is possible that based on certain research and exploratory activities that Supernus may conduct or as a result of regulatory approvals or disapprovals unknown to Supernus at this time, Supernus may opt to use the Afecta Licensed Product in a manner that qualifies the licensed Afecta Product as Afecta Filed Product or as Afecta IP Product (as defined in the Option Agreement). If Supernus makes such a decision, Supernus will pay to Afecta [**] payment equal to [**] in accordance with the terms of the Option Agreement. Thereafter, Supernus shall pay Afecta all future considerations as set forth in the Option Agreement

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

applicable to the determined category of the Afecta Licensed Product in accordance with the terms of this Agreement.

5.2. Royalties.

5.2.1. Net Sales. In consideration for the grant of the rights and licenses set forth in Section 2.1, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta in immediately available funds royalties on Net Sales in accordance with the following schedule: If the Afecta Licensed Product is categorized as an Afecta IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is categorized as an Afecta Filed Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is categorized as an Afecta Pre IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis.

5.2.2. Participation in Development Costs. Afecta may elect to participate in the Development Cost or to decline participation in the Development Costs within 120 days of the licensing of the Afecta Licensed Product to Supernus. To the extent, Afecta agrees to participate in Development Costs prior to completion of the first Phase II study of the Afecta Licensed Product, then Afecta's share of Net Sales set forth in 5.2.1 shall increase in accordance with the schedule below depending upon the amount Afecta contributes toward the payment of Development Costs ("Pre-Phase II Participation").

In the event that Afecta contributes less than [**]% in the Pre-Phase II Participation or does not participate until after completion of Phase II ("Post Phase II Participation") Afecta's share of Net Sales shall be the higher of: (i) [**] or (ii) that described in Article 5.2.1. herein.

Percent of Total Development Costs Contributed by Afecta	Percent of Licensed Product Net Sales Payable to Afecta		
	Afecta IP Product	Afecta Filed Product	Afecta Pre IP Product
<[**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
>[**]%	[**]%	[**]%	[**]%

5.2.3. No Multiple Royalties. Royalties under this Section 5.2 shall be payable on an Afecta Licensed Product-by-Afecta Licensed Product basis, and shall be imposed only once with respect to any sale of the same unit of Afecta Licensed Product by Supernus or its sub-licensees, and no multiple

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

royalties shall be payable by Supernus because any Afecta Licensed Product is covered by more than one of the Afecta Patent Rights or one or more claims of the Afecta Patent Rights.

5.2.4. Expiration or Reduction of Royalty Payments. Supernus' obligation to pay royalties to Afecta on a country-by-country basis in the Territory for the Afecta Licensed Product shall expire or be reduced upon the earlier of:

5.2.4.1. [**] or [**], or

5.2.4.2. [**], or

5.2.4.3. [**]. However, in the event Supernus or its Sublicensee continues to promote the Afecta Licensed Product when the Similar Product is: (i) an [**] and (ii) the [**] Supernus' obligation to pay royalties to Afecta shall be reduced to [**] of the applicable Afecta Pre-IP royalty rate specified in Article 5.2.2 and only for a period of time that does not extend the royalty obligation beyond what is contemplated under clause 5.2.4.2.

5.3. Payment of Royalties; Reports.

5.3.1. First Commercial Sale. Supernus shall report to Afecta the date of First Commercial Sale of the Afecta Licensed Product within thirty (30) days of such occurrence.

5.3.2. Royalty Statements. Supernus shall deliver to Afecta, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of Afecta Licensed Products during such calendar quarter (including the country of manufacture and an itemized calculation of the amount of Net Sales in the United States, its territories and possessions) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.3.3. Manner of Payment. All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by Afecta.

5.3.4. Currency. If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to the [**] by the Federal Reserve Bank of New York (available on Bloomberg L. P. and Reuters).

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.3.5. **Taxes.** All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish Afecta with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

5.3.6. **Overdue Payments.** Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by Afecta.

ARTICLE 6

RECORDS; AUDIT

6.1 **Record Retention.** Supernus shall keep complete and accurate records in sufficient detail to permit Afecta to confirm the accuracy of reported net sales and royalties hereunder, including without limitation, Development Costs, general accounting ledgers, invoice/sale registers, original invoices and shipping documents, tax returns, inventory and manufacturing records, sublicense and distributor agreements and price lists, product catalogs and other marketing materials. Such records shall be retained by Supernus for at least the longer of one (1) year after completion of the audit thereof (if an audit has been requested) or three (3) years following the calendar year in which any such payments were made hereunder. Such records shall be made available within 30 days of Afecta's request without cost to Afecta.

6.2 **Royalty Audit.** Once per each twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties due available for examination by Afecta during normal business hours. Afecta shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.2 shall indicate that any payment due hereunder was underpaid, Supernus shall promptly pay the amount of any underpayment. If any audit performed under this Section 6.2 shall indicate that any payment hereunder was in error to Afecta's detriment by more than [**] percent for any annual period, Supernus shall pay the cost of the audit.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 7

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

7.1. **Patent and Intellectual Property Rights Maintenance.** During the term of this Agreement, Afecta, using its sole business judgment, shall have the right to maintain the Afecta Patent Rights or Afecta Intellectual Property Rights. Afecta shall consult with Supernus and keep Supernus regularly advised of Afecta's strategies, plans, progress and results of any such maintenance. If Afecta elects not to maintain Afecta Patent Rights or any intellectual property within Afecta Intellectual Property Rights then Afecta shall notify Supernus of such decision on a timely basis, and Supernus may elect to maintain on behalf of Afecta, such patent or intellectual property rights upon providing written notice of such election to Afecta. Supernus shall consult with Afecta and keep Afecta regularly advised of Supernus' strategies, plans, progress and results of any such maintenance action on behalf of Afecta. Such costs incurred by Supernus relating to maintenance of such patent and/or intellectual property rights on behalf of Afecta, including attorney fees, shall be deducted from the Royalty Payments due to Afecta under Section 5.2.

7.2. **Infringement of Third Party Rights.**

7.2.1. **Notice of Infringement.** In the event of a Party becoming aware that the exercise of either Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 7.2.2 and 7.2.3 below.

7.2.2. **Afecta Licensed Product.** Subject to Section 7.2.3, if the Third Party claim is specifically related to the Afecta Licensed Product, Supernus will defend any suit resulting directly from such claim. Afecta hereby agrees to be joined in such suit, should Afecta be found to be an indispensable party to the proper defense of such suit. Afecta may choose to obtain its own counsel for such litigation.

7.2.3. **Afecta Invention.** If the Third Party claim is related solely to the Afecta Invention, and not to the Afecta Licensed Product, Afecta will defend such suit or claim. Supernus hereby agree to be joined in such suit, should Supernus be found to be an indispensable party to the proper defense of such suit. Supernus may choose to obtain its own counsel for such litigation.

7.2.4. **Change to Royalty Payments.** Royalty Payments due to Afecta under Article 5 with respect to Afecta Licensed Product sold in such country as there is Third Party infringement will be reduced: (i) if Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent covering the Afecta Licensed Product, which would be infringed by the manufacture, use, offer for sale, sale or import of the Afecta Licensed Product by Supernus, its Affiliates, Subcontractors, or Sublicensees, or (ii) if Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. If the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to

such Third Party under such license with respect to such country unless such license requirement or infringement is predicated on Supernus Formulations or Supernus Intellectual Property Rights.

7.3. Infringement of Afecta Patents or Supernus Patents.

7.3.1. Notice of Third Party Infringement. In the event that either Party becomes aware of any Third Party infringement or suspected infringement of any Afecta Patents or Supernus Patents used in connection with the Afecta Licensed Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

7.3.2. Necessary Steps. The Parties shall, after receipt of notice referred to in Section 7.3.1, promptly discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent, terminate, or otherwise address such Third Party infringement.

7.3.3. Action After No Agreement. If within twenty (20) days of the date of the notice referred to in Section 7.3.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

7.3.3.1. If the patent is an Afecta Patent or a Supernus Patent that contains one or more claims specifically directed to the Afecta Licensed Product or the manufacture, use or sale thereof then Supernus shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide Afecta with prior notice of the initiation of any such action or proceedings and shall keep Afecta informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement and the patent is an Afecta Patent, then Afecta may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

7.3.3.2. If the patent is an Afecta Patent not covered by Section 7.3.3.1 above, then Afecta shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Afecta shall provide Supernus with prior notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that Afecta has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

7.3.4. **Prior Written Consent.** The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

7.3.5. **Cooperation.** Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's requests and, to the extent possible, provide or procure the provision of such reasonable assistance in commencing and prosecuting any such action or any proceedings.

7.3.6. **Award of Damages.** Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under Article 7 shall be divided between the Parties as follows:

7.3.6.1. The Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs (including any attorneys' and expert fees) incurred in connection with the action or proceedings;

7.3.6.2. after deducting the costs and expenses identified in 7.3.6.1 the other Party shall, to the extent possible, recover its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings; and

7.3.6.3. thereafter, any remaining recovery shall be disbursed to Supernus and shall be treated as Net Sales for purposes of this Agreement.

7.4. **Afecta's Ownership in Intellectual Property.** Subject to the exclusive license(s) to Afecta Licensed Product granted to Supernus in accordance with the terms and conditions of this Agreement, Afecta shall retain all right, title and interest in and to Afecta Patent Rights and Afecta Intellectual Property Rights that existed prior to the Effective Date of the Notice Letter but excluding data to the extent that it relates solely to Supernus Patent Rights, Supernus' Intellectual Property or Supernus Formulations. At Afecta's request, Supernus will sign any documents and do all such things as Afecta may deem reasonably necessary to vest such rights in Afecta, so long as such things do not interfere with Supernus' exclusive option granted and exclusive license rights granted to it under this Agreement.

7.5. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest to all in and to Supernus Patent Rights, Supernus Intellectual Property Rights and Supernus Formulations that existed prior to the Effective Date of this Agreement and shall become the owner of all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products, but excluding data to the extent that it relates solely to Afecta Patent Rights, or Afecta Intellectual Property Rights. At Supernus' request, Afecta will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

7.6. **Invention Ownership.** Subject to the exclusive license rights granted under this Agreement, Supernus shall have the sole and exclusive ownership of any Supernus Invention and Afecta shall have the sole and exclusive ownership of any Afecta Invention or Afecta Products.

7.7. **Execution of Documents.** Each party shall sign such documents and do such things, or procure the signing of such documents or the doing of such things, as is reasonably necessary to vest the relevant Intellectual Property Rights in the other party.

7.8. **Filing of Patent Applications.** In the event a party decides to file a patent application for an invention covering the Afecta Licensed Product, it will give reasonable advance notice in writing of its intent to file, and will provide a draft of the application to the other party at least 20 days prior to filing. Except as provided below, the respective inventing party shall, in respect of a sole Invention (i) exclusively control the preparation, filing and prosecution of any patent applications directed to such party's sole Invention; (ii) exclusively be responsible for all related fees, costs, and expenses associated with such party's sole Invention; and (iii) exclusively control and pay for the maintenance of any patents resulting there from.

7.9. **Supernus' Inventions.** Supernus shall exclusively control the preparation, filing, prosecution and maintenance of any patent applications in respect of Supernus Inventions. Supernus will provide Afecta with copies of all relevant documents relating to Supernus Inventions that relate to all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products but excluding data to the extent that it relates solely to Supernus Inventions held by Supernus prior to the Notice Letter or relates solely to Supernus Formulations so that Afecta may be informed and apprised of the continuing prosecution of patent applications in connection with the Afecta Licensed Products. Afecta agrees to cooperate and work together in good faith with Supernus' filing such patent applications.

ARTICLE 8

CONFIDENTIALITY

8.1. **Confidentiality.** For the term of this Agreement and any extensions and for a period of [**] thereafter, each Party agrees to keep confidential and not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement, any Confidential Information disclosed to it by the other Party, except that each Party shall not be prevented from disclosing information:

8.1.1. which it can demonstrate by written records was previously known to it;

8.1.2. which is, or becomes in the future, public knowledge through no fault or omission attributable to the receiving Party;

8.1.3. which is lawfully obtained without restriction by the receiving party from sources independent of the disclosing Party without breach of a confidentiality obligation; or

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

8.1.4. which was independently discovered or developed by the disclosing Party without access to or the use of the other Party's Confidential Information, as can be documented by written records created at the time of such independent discovery or development.

8.2. **This Agreement.** The Parties agree that the material terms of the Agreement shall be considered Confidential Information of both Parties. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any SEC filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its SEC filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

8.3. **Authorized Disclosure.**

8.3.1. **Disclosable Information.** Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following:

8.3.1.1. Enforcing and or defending rights or obligations under this Agreement; and

8.3.1.2. Complying with any court order;

provided however that the Party required to or intending to disclose the other Party's Confidential Information under this Section 8.3 shall have first given prompt notice to the other Party to enable it to seek any available exemptions from or limitations on such disclosure, and shall reasonably cooperate in such efforts by the other Party.

8.3.2. **Advance Notice of Disclosure**. Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to this Section 8.3, it will give reasonable advance notice to the other Party of such disclosure and use reasonable commercial efforts to secure confidential treatment of such information. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification by Supernus.

9.1.1. Scope. Supernus shall indemnify, defend and hold harmless Afecta, its officers, directors, employees, stockholders, agents and representatives (collectively, "Afecta Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the research, development, marketing, design, manufacture, distribution, use and/or sale of Afecta Licensed Products by, on behalf of, or under authority of, Supernus or its sub-licensees; or Supernus Patent Rights or Supernus Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Afecta Indemnitee shall be entitled to indemnification under this Section 9.01 against any Losses arising out of such Afecta Indemnitee's negligence or willful misconduct.

9.1.2. Notification of Claim. Each Afecta Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Afecta Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Afecta Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the Afecta Indemnitee may defend the Claim, at Supernus' expense; provided that the Afecta Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The Afecta Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the Afecta Indemnitee's control.

9.2 Indemnification by Afecta.

9.2.1. Scope. Afecta shall indemnify, defend and hold harmless Supernus, its officers, directors, employees, stockholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the warranties and representations made by Afecta in the Agreement; or Afecta Patent Rights or Afecta Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 9.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct.

9.2.2. Notification of Claim. Each Supernus Indemnitee shall notify Afecta in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Afecta's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Afecta shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Afecta's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by Afecta. If Afecta does not assume the defense of the

Claim, the Supernus Indemnitee may defend the Claim, at Afecta's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of Afecta, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with Afecta and will make available to Afecta all pertinent information under the Supernus Indemnitee's control.

9.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

9.4. Insurance. Each party shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

ARTICLE 10

TERMINATION

10.1. Term. The exclusive licenses granted to Supernus hereunder shall commence at the Date of the Notice Letter in accordance with the terms of this Agreement and shall automatically expire with regard to each Licensed Product after six months from the discontinuation of the commercial sale and collection of revenues generated by the Afecta Licensed Product on a country-by-country basis.

10.2. Termination by Supernus. Supernus may terminate, in whole or in part, any of the licenses granted by Afecta to Supernus with 30 days' prior written notice to Afecta. All licenses so terminated shall revert back to Afecta in accordance with Section 2.2. Termination of a specific license shall not affect Supernus' exclusive option rights to other Afecta Products or other Afecta Licensed Products licensed to Supernus.

10.3. Termination for Discontinuation of Development. Subject to the Force Majeure provision set forth herein in Section 11.3, in the event that Supernus and its sub-licensees have discontinued all development and commercialization activities relating to a specific Afecta Licensed Product for a period of [**] this Agreement as it relates to that specific Afecta Licensed Product shall terminate and all licenses under the Afecta Patent Rights granted to Supernus and its sub-licensees hereunder in connection with that specific Afecta Licensed Product only shall revert to Afecta thirty (30) days thereafter in accordance with Section 2.2. All other licenses granted hereunder not affected by the discontinuance of all development and commercialization in connection with a specific Afecta Licensed Product shall remain in good standing.

10.4. Termination for Default. In the event of a Default by Supernus in its capacity as a Licensee under this Agreement, Afecta may terminate the license for the specified Afecta Licensed Product in any specified country subject to the Default granted to Supernus hereunder by written notice to Supernus,

---

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

and upon Supernus' receipt of such notice, said license granted to Supernus shall revert immediately to Afecta. All other licenses granted hereunder not affected by the Default shall remain in good standing. In the event of a Default by Afecta under this Agreement, the License to Supernus will become irrevocable and fully paid.

10.5. Insolvency or Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by the Parties are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that each Party, in its capacity as a licensee of such rights under this Agreement, shall retain all licenses granted to it hereunder and may fully exercise all of its rights and elections under the United States Bankruptcy Code, subject to payment to the other Party of any royalties or other payments due pursuant to Article 5. The Parties further agree that, in the event of commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code, the Party hereto which is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property, and all embodiments of such intellectual property, and same, if not already in its possession, shall be promptly delivered to it (i) upon any such commencement of a bankruptcy proceeding upon its written request therefore, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefore by any non-subject Party.

10.6 Surviving Obligations. The provisions of Articles 3, 6, 7, 8, 9 and Sections 10.4, 10.7, 11.1, 11.5, 11.10, 11.11 and 11.14 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

10.7. Effects of Termination. Upon termination of this Agreement in its entirety or otherwise with respect to rights in any Afecta Licensed Product in accordance with this Article 10, Supernus and its sub-licensees shall thereupon have the right to sell that amount of any such Afecta Licensed Product that Supernus and its sub-licensees then have on hand, provided however, that with respect to any such Afecta Licensed Product for which any payment is due under Article 5 hereof, Supernus shall make such payment to Afecta as required therein.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1. Supernus Arrangement with Shire.

Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights, (a) Afecta acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc ("**Shire**") pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable,

exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A) (1) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Afecta hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section 11 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers's names from time to time for monitoring purposes and Afecta hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section 11. Afecta acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section 11, at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Afecta hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Afecta breaches or threatens to breach the provisions of this Section 11, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Compounds then, in addition to any rights that Supernus may have against Afecta, Afecta acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Afecta for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Afecta's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all

such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is unsuccessful, Afecta shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Afecta may be entitled. Afecta further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Afecta agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Afecta agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Afecta against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Afecta further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this Section 11 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Section 11 and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the

State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc, as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS SECTION 11.1.

11.2 Assignment. Neither this Agreement nor any interest hereunder shall be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 11.2 shall be void. Nothing herein shall preclude Supernus from sublicensing its exclusive licensing rights.

11.3. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

11.4. Force Majeure. Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

11.5. Notices. All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Chief Executive Officer
Facsimile: (301) 424-1364

With a copy to:

Saul Ewing LLC.
The Watergate
2600 Virginia Avenue, N.W.
Suite 1000
Washington, D.C. 20037
Attention: Mark I. Gruhin, Esq.

If to Afecta addressed to:

Afecta Pharmaceuticals, Inc.
2102 Business Center Drive
Irvine, California 92612
Attention: Chief Executive Officer
Facsimile: 562 498 0205

With copy to:

Tilles, Webb, Kulla and Grant LLC
433 North Camden Drive
Suite 1010
Beverly Hills, CA 90210
Attention: Ronald J. Grant, Esq.

11.6. **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

11.7. **Waiver.** No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

11.8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

11.9. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

11.10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Delaware, without reference to the conflicts of law principles thereof, and the Parties hereby submit to the exclusive jurisdiction of the Delaware courts, both state and federal.

11.11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any or all of the Afecta Patent Rights or Afecta Intellectual Property rights as it relates to an Afecta Licensed Product shall not affect Supernus' license rights in and to the remaining Afecta Patent Rights or Intellectual Property Rights as it related to the other Afecta Licensed Products.

11.12. **Entire Agreement of the Parties.** This Agreement (including all Exhibits attached hereto, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

11.13. **Dispute Resolution.** The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

11.14. **Independent Contractors.** The relationship between Afecta and Supernus created by this Agreement is one of independent contractors, and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

11.15. **Use of Name.** No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Afecta", without the prior written consent of the owning Party.

11.16. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.

AFECTA PHARMACEUTICALS, INC.

BY:	/s/ Jack Khattar	**BY:**	/s/ Bruce Kovacs, M.D.
TITLE:	President & CEO	**TITLE:**	President

Exhibit A

AFECTA PATENT RIGHTS

AFECTA ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit B
NOTICE LETTER

THIS NOTICE LETTER is issued as of March 14, 2007 by Supernus Pharmaceuticals, Inc. ("Supernus") to Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

WHEREAS, in accordance with the terms of the Agreement, Afecta has offered an Afecta Pre-IP Product and Supernus has completed the Due Diligence Period;

NOW THEREFORE, in accordance with the terms of the Agreement, Supernus hereby notifies Afecta by way of this Notice Letter ("Notice Letter") of its intention to obtain a worldwide exclusive license to the Afecta Product as identified herein as molindone and salts, racemic mixtures, isomers, derivatives, or analogues thereof. By issuance of this Notice Letter by Supernus, and by its receipt by Afecta, the License Grant defined in Section 2.2 of the Agreement and Consideration as defined for an Afecta Pre-IP Product in Article 5 of the Agreement becomes fully effective and such Afecta Product becomes an Afecta Licensed Product.

Following execution by Supernus of this Notice Letter, it is possible that based on certain research and exploratory activities that Supernus may conduct or as a result of regulatory approvals or disapprovals unknown to Supernus at this time, Supernus may decide to use the Afecta Product in a manner that qualifies the Afecta Pre-IP Product as Afecta Filed Product or as Afecta IP Product as of the date of the Notice Letter. If Supernus makes such a decision, Supernus will pay to Afecta [**] equal to [**] per the terms of the Agreement. Thereafter, Supernus shall pay Afecta all future considerations as set forth in the Agreement applicable to the determined category of the Afecta Licensed Product.

Supernus Pharmaceuticals, Inc		**Afecta Pharmaceuticals, Inc**	
By:	/s/ Jack Khattar	**By:**	/s/ Bruce Kovacs, M.D.
Title:	President & CEO	**Title:**	President

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit C

Supernus Patent Rights

SUPERNUS ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit 10.21

6/7/2005

Dr. Jones W. Bryan
314 Alfandre Street
Gaithersburg, MD 20878

Dear Woody:

As you are aware, the assets of Shire Laboratories Inc. ("Shire") are being purchased by Supernus Pharmaceuticals, Inc. ("Supernus" or "the Company"). Contingent upon the successful closing of this asset purchase, we are pleased to offer you a full-time position with Supernus as Vice President, Business Development, reporting to Jack Khattar, President & CEO. At this time, it appears as if your first day of employment with Supernus will be the day after the closing of the transaction, which is anticipated sometime in June of 2005. The exact timing may change if the closing of the asset purchase is delayed for any reason. You will receive further communication as details of the changeover become concrete.

The terms of your employment with Supernus are as follows:

Compensation: Your base compensation will remain the same at $15,000.00 monthly (which is $180,000.00 annualized), paid in accordance with the Company's regular payroll schedule, which is presently semi-monthly. Your position is classified as "exempt" under the Fair Labor Standards Act and therefore you are not eligible to receive overtime. Performance reviews will be conducted periodically and, depending upon the results of those reviews, you may be eligible for future increases in your compensation.

Bonuses: Supernus intends to establish a bonus plan for particular employees in which you will be eligible to participate. Based on your job level, you will be eligible for an annual bonus of up to 25%. Bonuses are contingent upon both employees and company performance. The precise terms of the plan have not yet been established and will be communicated to you once they have been confirmed by the CEO and the Board.

Benefits: Provided you remain employed in full-time status, you will be eligible for participation in the Supernus employee benefit plans, which include group medical, dental, short and long-term disability, life insurance, EAP, and flexible benefit plans.

Retirement Plan: Supernus will establish and maintain a qualified 401(k) plan, which will enable you to direct a portion of your income on a pre-tax basis into your plan account. The Company will provide a matching contribution of up to 4%. At this time, it is anticipated that the accounts of all former employees of Shire who commence employment at Supernus with no break in service will be transferred directly from the Shire 401(k) plan into the new Supernus 401(k) plan. More information about the Supernus 401(k) plan will be provided to you in the weeks to come.

Vacation: You will continue to receive the same vacation allotment as you receive in your employment with Shire, which according to our records is 4 weeks annually. Any vacation

accrued to date will be paid to you in a lump sum payment no later than the first payroll of the new company.

Employment At Will: Since continued employment is based upon mutual satisfaction and reward, this offer should not be construed as a contract for any fixed period. Rather, you will be employed in an "at will" status, which means that either you or the Company may discontinue your employment at any time for any reason, with or without notice.

Severance: In the event your position is eliminated due to restructuring of the Company, you will be entitled to six (6) months of severance pay. Severance does not apply if you voluntarily resign, are terminated for cause, or for the inability to perform your job.

Stock Option Plan: You will be eligible to participate in Supernus' Stock Option Plan. Assuming a post-closing capitalization of Supernus of 62.5 million shares, you will be granted options that will vest over a 4-year period to purchase 200,000 shares of common stock of Supernus. An additional grant of 75,000 options will be given to you based on specific success milestone events that will be determined by the Board of Directors. The precise terms of the Supernus Stock Option Plan and your grants have not yet been finalized and will be communicated to you once they have been confirmed by the CEO and the Board. All option grants are subject to approval by the Board of Directors.

Enclosed are two copies of this offer letter. Please sign both copies to indicate your agreement with the terms of employment. Please return one executed copy back to your supervisor within three (3) business days upon receipt and retain the other copy for your records. Your acceptance below indicates that you will review and comply with Company rules and regulations, particularly those relating to safety. As a condition of employment, you will be required to complete a confidentiality, patent assignment and non-compete agreement with the Company.

This is an exciting time for our organization and we look forward to working with you as a team to accomplish both our corporate and personal professional goals. If you have any questions, please contact me at (301) 838-2556.

Sincerely,

/s/ David S. Schappelle
David S. Schappelle, PHR
Manager, Human Resources

I have read and agree with the terms of employment as set forth above.

/s/ Jones W. Bryan	6/7/05
Jones W. Bryan	Date

Exhibit 10.22

6/10/2005

Dr. Padmanabh P. Bhatt
314 Prettyman Dr.
Rockville, MD 20850

Dear Padmanabh:

As you are aware, the assets of Shire Laboratories Inc. ("Shire") are being purchased by Supernus Pharmaceuticals, Inc. ("Supernus" or "the Company"). Contingent upon the successful closing of this asset purchase, we are pleased to offer you a full-time position with Supernus as Vice President, Pharmaceutical Sciences, reporting to Jack Khattar, President & CEO. At this time, it appears as if your first day of employment with Supernus will be the day after the closing of the transaction, which is anticipated sometime in June of 2005. The exact timing may change if the closing of the asset purchase is delayed for any reason. You will receive further communication as details of the changeover become concrete.

The terms of your employment with Supernus are as follows:

Responsibilities: Your responsibilities will be to lead and manage the Drug Delivery Sciences, Preformulations, Pharmaceutical Technology, Technology Development, and Intellectual Property functions. Three months after a new Director of Drug Delivery Sciences and Pharmaceutical Technology starts with the Company, you will have the additional responsibility of leading and managing the Analytical Sciences function. As the VP of Pharmaceutical Sciences you will be an officer of Supernus and a member of the Executive Management Team.

Compensation: Your base compensation will remain the same at $18,333.34 monthly (which is $220,000.00 annualized), paid in accordance with the Company's regular payroll schedule, which is presently semi-monthly. This compensation will change to $19,583.34 monthly (which is $235,000.00 annualized) at the time you are given the additional responsibility of managing the Analytical Sciences function. Your position is classified as "exempt" under the Fair Labor Standards Act and therefore you are not eligible to receive overtime. Performance reviews will be conducted periodically and, depending upon the results of those reviews, you may be eligible for future increases in your compensation.

Bonuses: Supernus intends to establish a bonus plan for particular employees in which you will be eligible to participate. Based on your job level, you will be eligible for an annual bonus of up to 25%. Bonuses are contingent upon both employees and company performance. The precise terms of the plan have not yet been established and will be communicated to you once they have been confirmed by the CEO and the Board.

Benefits: Provided you remain employed in full-time status, you will be eligible for participation in the Supernus employee benefit plans, which include group medical, dental, short and long-term disability, life insurance, EAP, and flexible benefit plans.

Retirement Plan: Supernus will establish and maintain a qualified 401(k) plan, which will enable you to direct a portion of your income on a pre-tax basis into your plan account. The Company will provide a matching contribution of up to 4%. At this time, it is anticipated that the accounts of all former employees of Shire who commence employment at Supernus with no break in service will be transferred directly from the Shire 401(k) plan into the new Supernus 401(k) plan. More information about the Supernus 401(k) plan will be provided to you in the weeks to come.

Vacation: You will continue to receive the same vacation allotment as you receive in your employment with Shire, which according to our records is 4 weeks annually. Any vacation accrued to date will be paid to you in a lump sum payment no later than the first payroll of the new company.

Employment At Will: Since continued employment is based upon mutual satisfaction and reward, this offer should not be construed as a contract for any fixed period. Rather, you will be employed in an "at will" status, which means that either you or the Company may discontinue your employment at any time for any reason, with or without notice.

Severance: In the event your position is eliminated due to restructuring of the Company, you will be entitled to six (6) months of severance pay. Severance does not apply if you voluntarily resign, are terminated for cause, or for the inability to perform your job.

Stock Option Plan: You will be eligible to participate in Supernus' Stock Option Plan. Assuming a post-closing capitalization of Supernus of 62.5 million shares, you will be granted options that will vest over a 4-year period to purchase 200,000 shares of common stock of Supernus. An additional grant of 75,000 options will be given to you based on specific success milestone events that will be determined by the Board of Directors. The precise terms of the Supernus Stock Option Plan and your grants have not yet been finalized and will be communicated to you once they have been confirmed by the CEO and the Board. All option grants are subject to approval by the Board of Directors.

Enclosed are two copies of this offer letter. Please sign both copies to indicate your agreement with the terms of employment. Please return one executed copy back to your supervisor within three (3) business days upon receipt and retain the other copy for your records. Your acceptance below indicates that you will review and comply with Company rules and regulations, particularly those relating to safety. As a condition of employment, you will be required to complete a confidentiality, patent assignment and non-compete agreement with the Company.

This is an exciting time for our organization and we look forward to working with you as a team to accomplish both our corporate and personal professional goals. If you have any questions, please contact me at (301) 838-2556.

Sincerely,

/s/ David S. Schappelle
David S. Schappelle, PHR
Manager, Human Resources

I have read and agree with the terms of employment as set forth above.

/s/ Padmanabh P. Bhatt	June 10, 2005
Padmanabh P. Bhatt	Date

Exhibit 10.23

AMENDED AND RESTATED
EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement") is made February 29, 2012 by and between Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Employer"), and Jack Khattar (the "Executive"). In consideration of the mutual covenants contained in this Agreement, the Employer and the Executive agree as follows:

WHEREAS the Executive and the Employer originally entered into an employment agreement dated December 22, 2005; and

WHEREAS the Executive and the Employer have agreed to execute the Agreement to govern their relationship effective as of January 1, 2012 (the "Effective Date").

NOW THEREFORE, in consideration of the foregoing premises and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be bound hereby, agree as follows:

1. Employment. The Employer agrees to employ the Executive and the Executive agrees to be employed by the Employer on the terms and conditions set forth in this Agreement.

2. Capacity. The Executive shall continue to serve the Employer as President and Chief Executive Officer. The Executive shall also serve the Employer in such other or additional offices as the Executive may be requested to serve by the Board of Directors of the Employer (the "Board of Directors"), provided that (a) such other offices are commensurate with the Executive's background and skills and his position as a Member of the Board and (b) the Executive reports directly to the Board of Directors in such other offices. In such capacity or capacities, the Executive shall perform such services and duties in connection with the business, affairs and operations of the Employer as may be assigned or delegated to the Executive from time to time by or under the authority of the Board of Directors.

3. At-Will Employment. The Employer and the Executive agree and acknowledge that the Executive's employment is at-will and may be terminated by either party at any time for any or no reason.

4. Compensation and Benefits. The regular compensation and benefits payable to the Executive under this Agreement shall be as follows:

(a) Salary. For all services rendered by the Executive under this Agreement, the Employer shall pay the Executive a salary (the "Salary") at the annual rate of Four Hundred Thirty-Two Thousand Seven Hundred Eighty-Six Dollars ($432,786), subject to increase from time to time in the discretion of the Board of Directors or the Compensation Committee of the Board of Directors (the "Compensation Committee"). The Salary shall be payable in periodic installments in accordance with the Employer's usual practice for its senior executives.

(b) Bonus. The Executive shall be entitled to participate in an annual bonus program established by the Board of Directors or the Compensation Committee with such terms as may be established in the sole discretion of the Board of Directors or Compensation

Committee, provided that the gross amount of such annual bonus paid to the Executive, if any, shall not exceed forty percent (40%) of the Executive's Salary for that calendar year.

(c) Regular Benefits. The Executive shall also be entitled to participate in any employee benefit plans, incentive plans, medical insurance plans, life insurance plans, disability income plans, retirement plans, vacation plans, expense reimbursement plans and other benefit plans which the Employer may from time to time have in effect for employees at or above the level of Executive Vice President, as well as any benefits that may be made available to all or a majority of lower- level senior executives. Such participation shall be subject to the terms of the applicable plan documents, generally applicable policies of the Employer, applicable law and the discretion of the Board of Directors, the Compensation Committee or any administrative or other committee provided for in or contemplated by any such plan. Nothing contained in this Agreement shall be construed to create any obligation on the part of the Employer to establish any such plan or to maintain the effectiveness of any such plan which may be in effect from time to time.

(d) Vacation. The Executive is entitled to paid vacation of twenty (20) days per year, or such greater number as may be provided in Employer's policy for senior executives, in addition to all holidays provided in such policies. The amount of accrued but unused vacation time payable to the Executive upon termination of the Executive's employment shall be calculated pro rata based on the number of months the Executive worked in the year of termination, reduced by the number of vacation days taken by the Executive in the year of termination.

(e) Taxation of Payments and Benefits. All payments made by the Employer under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Employer under applicable law. Nothing in this Agreement shall be construed to require the Employer to make any payments to compensate the Executive for any adverse tax effect associated with any payments or benefits or for any deduction or withholding from any payment or benefit.

(f) Exclusivity of Salary and Benefits. The Executive shall not be entitled to any payments or benefits other than those provided under this Agreement.

5. Extent of Service. During the Executive's employment under this Agreement, the Executive shall, subject to the direction and supervision of the Board of Directors, devote the Executive's full business time, best efforts and business judgment, skill and knowledge to the advancement of the Employer's interests and to the discharge of the Executive's duties and responsibilities under this Agreement. The Executive shall not engage in any other business activity, except as may be approved by the Board of Directors; provided that nothing in this Agreement shall be construed as preventing the Executive from:

(a) investing the Executive's assets in any company or other entity in a manner not prohibited by Section 7(d) and in such form or manner as shall not require any material activities on the Executive's part in connection with the operations or affairs of the companies or other entities in which such investments are made; or

(b) engaging in religious, charitable or other community or non-profit activities that do not impair the Executive's ability to fulfill the Executive's duties and responsibilities under this Agreement.

6. Termination Benefits. Unless otherwise specifically provided in this Agreement or otherwise required by law, all compensation and benefits payable to the Executive under this Agreement shall terminate on the date of termination of the Executive's employment.

(a) Termination Benefits. Notwithstanding the provisions of Section 3, if the Executive's employment is terminated by the Executive for Good Reason, or by the Executive for Good Reason after a Change of Control, or by the Employer without Cause, the Employer shall provide to the Executive the following termination benefits ("Termination Benefits"), subject to the Executive's execution of a release of any and all legal claims in a form satisfactory to the Employer no later than 45 days following the date of such termination and subject to the Executive not revoking such release:

(i) payments, made in substantially equal periodic installments until the date that is eighteen months following such date of termination on the Employer's regular payroll dates for its senior executives, the sum of which is equivalent to the sum of (A) eighteen (18) months of the Executive's Salary at the rate in effect as of the date of termination pursuant to Section 4(a), and (B) the most recent bonus paid to the Executive by the Employer pursuant to Section 4(b); and

(ii) a monthly payment made on the Employer's first regular payroll date of each month during the installment period described in Section 6(a)(i) above equal on an after-tax basis (as determined on an estimated basis by the Company using such reasonable assumptions as the Company shall determine in its discretion) to the monthly amount that the Company was paying for the Executive and his family's medical and dental coverage as in effect immediately prior to termination;

provided, that Termination Benefits shall first become payable on the first regular payroll date for senior executives that is at least 60 days after the date of termination and that the first payment of Termination Benefits shall include such amounts as would have been paid to the Executive had such payments begun with the first payroll date for senior executives following the date of termination.

(b) Taxes. Anything in this Agreement to the contrary notwithstanding, in the event that any payment or distribution by the Employer to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, including but not limited to the Termination Benefits (the "CIC Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the following provisions shall apply:

(A) If the CIC Payments, reduced by the sum of (1) the Excise Tax and (2) the total of the federal, state, and local income and employment taxes payable by the Executive on the amount of the CIC Payments which are in excess of the

Threshold Amount, are greater than or equal to the Threshold Amount, the Executive shall be entitled to the full benefits payable under this Agreement; or

(B) If the Threshold Amount is less than (x) the CIC Payments, but greater than (y) the CIC Payments reduced by the sum of (1) the Excise Tax and (2) the total of the federal, state, and local income and employment taxes payable by the Executive on the amount of the CIC Payments which are in excess of the Threshold Amount, then the benefits payable under this Agreement shall be reduced (but not below zero) to the extent necessary so that the maximum CIC Payments shall not exceed the Threshold Amount. To the extent that there is more than one method of reducing the CIC Payments to bring them within the Threshold Amount, the CIC Payments shall be reduced to the Threshold Amount in the following order: (i) first, by reducing the Termination Benefits to the extent necessary, (ii) second, if necessary, by reducing CIC Payments other than Termination Benefits that are not subject to the rule described in Treasury Regulation Section 1.280G-1 Q&A 24(c), and (iii) third, if necessary, by reducing CIC Payments other than Termination Benefits that are subject to the rule described in Treasury Regulation Section 1.280G-1 Q&A 24(c); *provided*, however, that in each case where amounts are paid in more than one installment, each installment shall be reduced proportionally; and *provided*, *further*, that in each case payments are reduced starting with any cash payments that shall be exempt from Section 409A and proceeding to other payments that are not exempt from Section 409A.

For the purposes of this Section 6(b), "Threshold Amount" shall mean three times the Executive's "base amount" within the meaning of Section 280G(b)(3) of the Code and the regulations promulgated thereunder less one dollar ($1.00); and "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code.

The determination as to which of the alternative provisions set forth above shall apply to the Executive shall be made by a nationally recognized accounting firm selected by the Employer (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Employer and the Executive within 15 business days of the date of termination of the Executive's employment, if applicable, or at such earlier time as is reasonably requested by the Employer or the Executive. For purposes of determining which of the alternative provisions set forth above shall apply, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality of the Executive's residence on the date of termination of the Executive's employment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. Any determination by the Accounting Firm shall be binding upon the Employer and the Executive.

(c) Cause. Only the following shall constitute "Cause" for purposes of this Agreement:

(i) the commission by the Executive of criminal acts involving moral turpitude, deceit, dishonesty or fraud;

(ii) gross negligence, willful misconduct or insubordination of the Executive with respect to the Employer or any affiliate of the Employer;

(iii) material breach by the Executive of any of the Executive's obligations under this Agreement or under any other agreement the Executive has entered into with the Employer; or

(iv) the inability of the Executive to perform the Executive's duties for a period of six (6) months or more as a result of a disability, provided that the Employer has a long-term disability insurance policy in place at such time which provides for payment of up to 60% of an eligible employee's salary and the Executive qualifies for same.

If any question shall arise as to whether during any period the Executive is disabled so as to be unable to perform the Executive's duties, the Executive may, and at the request of the Employer shall, submit to the Employer a certification in reasonable detail by a physician selected by the Employer to whom the Executive or the Executive's guardian has no reasonable objection as to whether the Executive is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Executive shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Executive shall fail to submit such certification, the Employer's determination of such issue shall be binding on the Executive.

(d) Good Reason. Only the following shall constitute "Good Reason" prior to a Change of Control for purposes of this Agreement:

(i) a reduction of the Executive's salary, other than a reduction that (1) is based on the Employer's financial performance or (2) is similar to the reduction made to the salaries provided to all or most other senior executives of the Employer; or

(ii) a significant change in the Executive's responsibilities and/or duties which constitutes, when compared to the Executive's previous responsibilities and/or duties, a demotion; or

(iii) the relocation of the offices at which the Executive is principally employed to a location more than fifty (50) miles from such offices, which relocation is not approved by the Executive.

The Executive shall provide the Employer with reasonable notice and an opportunity to cure any of the events listed in this Section 6(d) and shall not be entitled to compensation pursuant to this Section 6 unless the Employer fails to cure within a reasonable period.

(e) Good Reason After Change of Control. Only the following shall constitute "Good Reason" after a Change of Control for purposes of this Agreement:

(i) a reduction of the Executive's salary after a Change of Control; or

(ii) a significant change in the Executive's responsibilities and/or duties which constitutes, when compared to the Executive's responsibilities and/or duties before the Change of Control, a demotion; or

(iii) the relocation of the offices at which the Executive is principally employed as of the Change of Control to a location more than fifty (50) miles from such offices, which relocation is not approved by the Executive.

The Executive shall provide the Employer with reasonable notice and an opportunity to cure any of the events listed in this Section 6(e) and shall not be entitled to compensation pursuant to this Section 6 unless the Employer fails to cure within a reasonable period.

(f) Change of Control. "Change of Control" shall mean the occurrence of one or more of the following events:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) becomes a "beneficial owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) (other than the Employer, any trustee or other fiduciary holding securities under an employee benefit plan of the Employer, or any corporation owned, directly or indirectly, by the stockholders of the Employer, in substantially the same proportions as their ownership of stock of the Employer), directly or indirectly, of securities of the Employer, representing fifty percent (50%) or more of the combined voting power of the Employer's then outstanding securities; or

(ii) persons who, as of the date of this Agreement, constituted the Employer's Board of Directors (the "Incumbent Board") cease for any reason including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board of Directors, provided that any person becoming a director of the Employer subsequent to the date of this Agreement whose election was approved by at least a majority of the directors comprising the Incumbent Board at the time of such approval shall, for purposes of this Agreement, be considered a member of the Incumbent Board; or

(iii) the stockholders of the Employer approve a merger or consolidation of the Employer with any other corporation or other entity, other than (1) a merger or consolidation which would result in the voting securities of the Employer outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Employer or such surviving entity outstanding immediately after such merger or consolidation or (2) a merger or consolidation effected to implement a recapitalization of the Employer (or similar transaction) in which no "person" (as hereinabove defined) acquires more than fifty percent (50%) of the combined voting power of the Employer's then outstanding securities; or

(iv) the stockholders of the Employer approve a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of the Employer's assets.

7. Confidential Information, Noncompetition and Cooperation.

(a) Confidential Information. As used in this Agreement, "Confidential Information" means information belonging to the Employer which is of value to the Employer in the course of conducting its business and the disclosure of which could result in a competitive or other disadvantage to the Employer. Confidential Information includes, without limitation, financial information, reports, and forecasts; inventions, improvements and other intellectual property; trade secrets; know-how; designs, processes or formulae; software; market or sales information or plans; customer lists; and business plans, prospects and opportunities (such as possible acquisitions or dispositions of businesses or facilities) which have been discussed or considered by the management of the Employer. Confidential Information includes information developed by the Executive in the course of the Executive's employment by the Employer, as well as other information to which the Executive may have access in connection with the Executive's employment. Confidential Information also includes the confidential information of others with which the Employer has a business relationship. Notwithstanding the foregoing, Confidential Information does not include information in the public domain, unless due to breach of the Executive's duties under Section 7(b).

(b) Confidentiality. The Executive understands and agrees that the Executive's employment creates a relationship of confidence and trust between the Executive and the Employer with respect to all Confidential Information. At all times, both during the Executive's employment with the Employer and after its termination, the Executive will keep in confidence and trust all such Confidential Information, and will not use or disclose any such Confidential Information without the written consent of the Employer, except as may be necessary in the ordinary course of performing the Executive's duties to the Employer.

(c) Documents, Records, etc. All documents, records, data, apparatus, equipment and other physical property, whether or not pertaining to Confidential Information, which are furnished to the Executive by the Employer or are produced by the Executive in connection with the Executive's employment will be and remain the sole property of the Employer. The Executive will return to the Employer all such materials and property as and when requested by the Employer. In any event, the Executive will return all such materials and property immediately upon termination of the Executive's employment for any reason. The Executive will not retain with the Executive any such material or property or any copies thereof after such termination. The Executive will not retain with the Executive any such material or property or any copies thereof after such termination without the Employer's knowledge and consent. The Employer's consent shall not be unreasonably withheld with regard to personnel information related exclusively to the Executive's compensation or evaluations of the Executive's performance.

(d) Noncompetition and Nonsolicitation. During the Executive's employment with the Employer and for twelve (12) months thereafter (or during the Termination Benefits period, if longer), the Executive (i) will not, directly or indirectly, whether as owner, partner,

shareholder, consultant, agent, employee, co-venturer or otherwise, engage, participate, assist or invest in any Competing Business (as hereinafter defined); (ii) will refrain from directly or indirectly employing, attempting to employ, recruiting or otherwise soliciting, inducing or influencing any person to leave employment with the Employer (other than terminations of employment of subordinate employees undertaken in the course of the Executive's employment with the Employer); and (iii) will refrain from soliciting or encouraging any customer or supplier to terminate or otherwise modify adversely its business relationship with the Employer. The Executive understands that the restrictions set forth in this Section 7(d) are intended to protect the Employer's interest in its Confidential Information and established employee, customer and supplier relationships and goodwill, and agrees that such restrictions are reasonable and appropriate for this purpose. For purposes of this Agreement, the term "Competing Business" shall mean a business conducted anywhere in the world whose primary business is the development, manufacture or marketing of oral drug delivery technologies. Notwithstanding the foregoing, the Executive may own up to one percent (1%) of the outstanding stock of a publicly held corporation which constitutes or is affiliated with a Competing Business.

(e) Third-Party Agreements and Rights. The Executive hereby confirms that the Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way the Executive's use or disclosure of information or the Executive's engagement in any business. The Executive represents to the Employer that the Executive's execution of this Agreement, the Executive's employment with the Employer and the performance of the Executive's proposed duties for the Employer will not violate any obligations the Executive may have to any such previous employer or other party. In the Executive's work for the Employer, the Executive will not disclose or make use of any information in violation of any agreements with or rights of any such previous employer or other party, and the Executive will not bring to the premises of the Employer any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.

(f) Litigation and Regulatory Cooperation. During and after the Executive's employment, the Executive shall cooperate fully with the Employer in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Employer which relate to events or occurrences that transpired while the Executive was employed by the Employer. The Executive's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Employer at mutually convenient times. During and after the Executive's employment, the Executive also shall cooperate fully with the Employer in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Executive was employed by the Employer. The Employer shall reimburse the Executive for any reasonable out-of-pocket expenses incurred in connection with the Executive's performance of obligations pursuant to this Section 7(f). To the extent the Employer has control over scheduling, Employer shall use its best efforts to schedule all matters requiring the Executive's participation at times that do not result in a financial burden to Executive or adversely impact his subsequent employment.

(g) Injunction. The Executive agrees that it would be difficult to measure any damages caused to the Employer which might result from any breach by the Executive of the promises set forth in this Section 7, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, subject to Section 8 of this Agreement, the Executive agrees that if the Executive breaches, or proposes to breach, any portion of this Agreement, the Employer shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Employer.

8. Arbitration of Disputes. Any controversy or claim arising out of or relating to this Agreement or the breach thereof or otherwise arising out of the Executive's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in Washington, D.C. in accordance with the Employment Dispute Resolution Rules of the AAA, including, but not limited to, the rules and procedures applicable to the selection of arbitrators. In the event that any person or entity other than the Executive or the Employer may be a party with regard to any such controversy or claim, such controversy or claim shall be submitted to arbitration subject to such other person or entity's agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Section 8 shall be specifically enforceable. Notwithstanding the foregoing, this Section 8 shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or a preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Section 8. It is understood that in the event that (a) the Executive initiates an arbitration proceeding for the purpose of challenging a decision by Employer to terminate Executive's employment for Cause (a "Cause Arbitration"), or (b) Employer initiates an arbitration proceeding for the purpose of challenging a decision by the Executive to resign for Good Reason (whether prior to or after a Change of Control), that time is of the essence and that arbitration of such issues, and the determination of whether the Executive is entitled to Termination Benefits must be completed as soon as practicable. To the extent permitted by law, the Employer shall be responsible for any fees charged by AAA for a Cause Arbitration unless the arbitrator orders otherwise as a remedy. The arbitrator will have the power to award all damages that would otherwise be available in a court of law. The arbitrator shall also award the prevailing party its reasonable costs and attorneys fees unless the arbitrator finds that the non-prevailing party acted in good faith and with a reasonable belief that its conduct was not in violation of this Agreement.

9. Section 409A.

(a) Notwithstanding anything to the contrary in this Agreement, if at the time of the Executive's termination of employment, the Executive is a "specified employee," as defined below, any and all amounts payable under this Agreement on account of such separation from service that would (but for this provision) be payable within six (6) months following the date of termination and that constitute nonqualified deferred compensation subject to the

requirements of Section 409A of the Code, shall instead be paid on the next business day following the expiration of such six (6) month period or, if earlier, upon the Executive's death.

(b) For purposes of this Agreement, all references to "termination of employment" and correlative phrases shall be construed to require a "separation from service" (as defined in Section 1.409A-1(h) of the Treasury regulations after giving effect to the presumptions contained therein), and the term "specified employee" means an individual determined by the Employer to be a specified employee under Treasury regulation Section 1.409A-1(i).

(c) Each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

10. Consent to Jurisdiction. To the extent that any court action is permitted consistent with or to enforce Section 8 of this Agreement, the parties hereby consent to the jurisdiction of the courts of the State Maryland and the United States District Court for the District of Maryland. Accordingly, with respect to any such court action, the Executive (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

11. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements (including, without limitation, the employment agreement between the Executive and the Employer dated December 22, 2005) between the parties with respect to any related subject matter; provided, that this Agreement shall not supersede the Option Agreement. The parties agree that in the event of any conflict between the terms of this Agreement and the terms of the Option Agreement, the terms of the Option Agreement shall control.

12. Assignment; Successors and Assigns, etc. Neither the Employer nor the Executive may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other party; provided that the Employer may assign its rights under this Agreement without the consent of the Executive in the event that the Employer shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, partnership, organization or other entity. This Agreement shall inure to the benefit of and be binding upon the Employer and the Executive, their respective successors, executors, administrators, heirs and permitted assigns.

13. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

15. Notices. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Executive at the last address the Executive has filed in writing with the Employer or, in the case of the Employer, at its main offices, attention of the Chief Financial Officer, and shall be effective on the date of delivery in person or by courier or three (3) days after the date mailed.

16. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Employer.

17. Governing Law. This is a Maryland contract and shall be construed under and be governed in all respects by the laws of the State of Maryland, without giving effect to the conflict of laws principles of such State. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the Fourth Circuit.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by the Employer, by its duly authorized officer, and by the Executive, as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Greg Patrick
Name: Greg Patrick
Title: Chief Financial Officer

/s/ Jack Khattar
Jack Khattar

Exhibit 10.24

CONSULTING AGREEMENT

THIS IS A CONSULTING AGREEMENT ("Agreement") effective as of March 14, 2012 by and between Supernus Pharmaceuticals, Inc., having its principal place of business in Rockville, Maryland ("Supernus"), and Paolo Baroldi having an address at 10616 Morning Field Drive, Potomac, Maryland ("Consultant").

WHEREAS, Consultant has been an executive officer of Supernus since 2009; and

WHEREAS, the Consultant has resigned from his current position at Supernus and terminated his employment relationship effective as of March 13, 2012; and

WHEREAS, Supernus desires to engage Consultant to perform certain professional services as hereinafter defined for the period specified; and

WHEREAS, Consultant is willing and able to provide such consulting services to Supernus.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual promises set forth below, Supernus and Consultant hereby agree as follows:

1. Consulting Services. Supernus hereby retains the Consultant to provide professional services in the areas of clinical development, medical affairs and regulatory matters as requested from time to time by Supernus during the Term of this Agreement ("Consulting Services").

2. Stock Options. Consultant holds certain stock options granted to him by Supernus during the course of his employment, of which options to purchase 213,750 shares of Common Stock are vested and exercisable as of March 13, 2012 (the "Vested Options"). All options that are not Vested Options shall terminate at the close of business on March 13, 2012 and Consultant shall not be entitled to any additional vesting during the Term of this Agreement.

3. Term, Extension, Termination of Agreement. The consulting period shall extend from March 14, 2012 through and including September 12, 2012 (the "Term") unless sooner terminated as provided herein. Supernus and Consultant may mutually agree in writing to extend the Term following its expiration.

Either party may terminate this Agreement upon thirty (30) days prior written notice ("Notice"). Consultant shall not be liable to provide the Consulting Services beyond such thirty (30) day notice period. Consultant shall not be liable or otherwise responsible for, or be required to reimburse or otherwise make payment to Supernus of, fees associated with Consulting Services paid prior to termination of the Agreement pursuant to this paragraph.

Notwithstanding anything else in this Section 3, this Agreement shall terminate automatically upon the death or disability of Consultant. "Disability" means the inability of Consultant to perform the material aspects of the Consulting Services for a period of thirty (30) days due to a physical or mental condition. Supernus shall not have any right to recover from Consultant or receive reimbursement of fees paid or payable to Consultant prior to termination of the Agreement pursuant to this paragraph.

4. Reporting. Consultant shall furnish periodic written reports relating to the status of the Consulting Services at such intervals, in such form and containing such detail, as Supernus shall require.

5. Confidential Information. Supernus considers all information acquired by Consultant in conjunction with the performance of the Consulting Services, including all information gathered, prepared or transmitted in any way during the term of this Agreement by either party, to be confidential information to Supernus . Such confidential information shall include, but not be limited to, plans for future developments, and information about costs, customers, profits, markets, sales, products, key personnel, pricing policies, operational methods, technical processes and other business affairs and methods and other information not available to the public or in the public domain (hereinafter referred to as "Confidential Information"). Except as otherwise required for performance of the Consulting Services, Consultant shall not disclose Confidential Information to third parties either during or after the Consulting Term (or any extension thereof). For purposes of this Agreement, Confidential Information shall not include, and the obligations of confidentiality and nondisclosure shall not apply to, information that: (i) is already or becomes publicly available through no fault of Consultant; (ii) is disclosed to Consultant by a third party, unless Consultant has knowledge that the third party is not authorized to disclose such or has knowledge that such information is confidential; (iii) is already known to Consultant, as shown by his prior written records, and not subject to confidentiality; or (iv) is required by law, regulation or order of a governmental authority, court or other tribunal to be disclosed.

Consultant will use Confidential Information furnished by Supernus only for the purpose of fulfilling the obligations under this Agreement, and not for his/her own benefit. Upon expiration or termination of this Agreement, Consultant shall promptly return to Supernus (i) all Confidential Information in his possession, as well as all documents and materials that contain such Confidential Information, and (ii) all other documents, materials and other property belonging to Supernus that are in the possession or under the control of Consultant.

All obligations set forth in this Section 5 will survive, without limitation, the expiration or termination of this Agreement. Consultant acknowledges that in the event of his/her breach or threat of breach of this Section 5, Supernus, in addition to other legal remedies that may be available to it, shall be entitled to appropriate injunctive relief or other equitable relief in order to enforce or prevent any such violation.

6. Non-Solicitation. During the term of this Agreement, and for a period of two years thereafter, Consultant shall not, without prior written approval of the chief executive officer of Supernus, directly or indirectly through any other person, firm or corporation, whether

individually or in conjunction with any other person, or as an employee, agent, representative, partner or holder of any interest in any other person, firm, corporation or other association:

Solicit, entice or induce any person who presently is or at any time during the term hereof shall be an employee of Supernus to become employed by any other person, firm or corporation, and Consultant shall not approach any such employee for such purpose or authorize or knowingly approve the taking of such actions by any other person.

In the event of any breach or violation of any restriction contained in this Section, the period specified therein shall abate during the time of any violation thereof and that portion remaining at the time of commencement of any violation shall not begin to run until such violation has been fully and finally cured.

7. Consulting fees and expenses. During the Term and except as stated below in this paragraph, Consultant will provide the Consulting Services and Supernus shall pay Consultant for such services at the rate of $300 per hour for time spent; provided that (i) to the extent Consultant travels at the request of Supernus in connection with rendering services under this Agreement, then the travel time shall be accounted for as 50% of actual service time and (ii) the maximum hours per month that Consultant will spend rendering services under this Agreement will be 60. In addition, in case the Consulting Services entail Consultant being accessible on a 24/7 basis to the Clinical Investigators and the Contract Research Organization's Safety Officer to respond in the event any safety issue arises during the Term, Supernus will pay Consultant $2,000 per month. Consultant shall be responsible for all ordinary and reasonable expenses, which he may incur in connection with rendering services under this Agreement. Supernus agrees, however, to reimburse Consultant for all reasonable and necessary travel and material expenses previously approved in writing by Supernus.

8. Taxes. Consultant shall assume full responsibility for payment of federal, state and local taxes, contributions required under Social Security and any other taxes imposed with respect to his receipt of compensation and commissions hereunder.

9. Consultant's Service Obligation. Performance of Services for Others. Consultant's service obligation hereunder is to use its best efforts and skills to perform the Consulting Services. Consultant shall determine, with reasonable input from Supernus, the general manner in which Consultant shall provide the Consulting Services, but in all other respects Consultant shall be free to structure its performance of the Consulting Services as it deems reasonable, and Supernus shall not control or direct the details, manner or means by which Consultant performs such services.

10. Intellectual Property. Any inventions, improvements, concepts, or ideas made or conceived by Consultant in connection with and during the performance of the Consulting Services hereunder shall be considered the sole and exclusive property of Supernus. Any work performed by the Consultant under this Agreement shall be considered a Work Made for Hire as that phrase is defined by the United States Copyright laws and shall be owned by and for the express benefit of Supernus. In the event it should be established that such work does not qualify as a Work Made for Hire, Consultant agrees to and does hereby assign to Supernus all of its

right, title and interest in such work product including, but not limited to, all copyrights, patents, trademarks and other proprietary rights. Both during the Term of this Agreement and thereafter, Consultant shall fully cooperate with Supernus in the protection and enforcement of any intellectual property rights that may derive as a result of the services performed by Consultant under the terms of this Agreement. This shall include executing, acknowledging and delivering to Supernus all documents or papers which may be necessary to enable Supernus to publish or protect said inventions, improvements, and ideas.

11. Independent Contractor. Supernus and Consultant mutually understand and agree that Consultant shall at all times be acting and performing as an independent contractor during his/her performance of the Consulting Services. The parties hereto agree that no action or inaction of Consultant shall be construed to make or render Consultant the agent, employee or servant of Supernus. Consultant specifically recognizes and agrees that he/she shall have no claim against Supernus hereunder for pension benefits, health, worker's compensation, life or disability insurance coverages, vacation, holiday or sick pay or other benefits of any kind.

12. Transition. Consultant agrees to a minimum of 1 week transition of all Intellectual Property and status of all functions and operations to Supernus upon termination of this contract.

13. Notices. Any notice, request, demand or other communication made hereunder shall be deemed to have been given when delivered personally, when sent by overnight courier service (such as DHL or Federal Express) or when mailed by certified or registered mail, postage prepaid, to the party to whom it is to be delivered, sent or mailed at the following address (or such other address as the party shall designate by notice hereunder):

If to Consultant, to:

10616 Morning Field Drive
Potomac, MD
Attention: Paolo Baroldi

If to Supernus, to:

1550 East Gude Drive
Rockville, MD 20850
Attention: Jack Khattar

14. Entire Agreement; Amendment. This Agreement encompasses the entire agreement of the parties with respect to the subject matter hereof and there are no other related agreements or understandings, written or oral. This Agreement may not be amended, modified or superseded except by a writing signed by both parties.

15. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforceable to the fullest extent of the law. If any clause or provision of this Agreement is determined by a court to be unenforceable because of its duration or scope, the parties expressly agree that such court shall have the power to reduce the duration and/or restrict the scope of such clause or provision to the extent necessary to permit enforcement of such clause or provision in reduced or restricted form.

16. Binding Effect. This Agreement shall inure to the benefit of and be binding upon Supernus, Consultant and their respective heirs, executors, personal representatives, successors and assigns.

17. Assignability. Consultant agrees that the services to be provided by him/her under this Agreement are unique and constitute a personal obligation. Consultant shall have no right to assign this Agreement or any of the rights or obligations inuring to or imposed upon him/her herein, and any attempted or purported assignment shall be null and void and of no effect. Supernus may assign this Agreement with the consent of Consultant, which consent shall not be unreasonably withheld.

18. Waiver. Any term or provision of this Agreement may be waived in writing at any time by the party entitled to the benefit thereof. The failure of either party at any time to require performance of any provision of this Agreement shall not affect such party's right at a later time to enforce such provision. No consent or waiver by either party to any default or to any breach of a condition or term in this Agreement shall be deemed or construed to be a consent or waiver to any other default or breach.

19. Resolution of Disputes — Jurisdiction. For any action or proceeding arising out of or relating to this Agreement, Supernus and Consultant agree to submit to mandatory and final binding arbitration administered by the American Arbitration Association ("AAA"), except that the parties specifically agree that any request for temporary or preliminary injunctive relief shall be non-arbitrable, and instead will be addressed in court.

For purposes of such temporary or preliminary injunctive enforcement, Consultant hereby irrevocably and unconditionally submits to non-exclusive jurisdiction of the United States District Court for the State of Maryland, or if such court does not have jurisdiction or will not accept jurisdiction, in any court of general jurisdiction in the State of Maryland, and waives any objection which Consultant may have to the laying of venue of any such suit, action or proceeding in any such court. Consultant and Supernus waive the right to a jury trial in the event of any dispute which arises under this Agreement.

In furtherance of the mutual agreements in this paragraph, Consultant and Supernus specifically agree and acknowledge that any dispute under this Agreement will proceed with temporary and preliminary injunctive relief, if such relief is sought, exclusively in court, followed by a proceeding for permanent injunctive relief and/or damages in AAA arbitration.

20. Remedies. In the event that Consultant breaches, or Supernus reasonably believes that Consultant is about to breach, any of the covenants contained in this Agreement, Consultant agrees that Supernus will be entitled to injunctive relief. Consultant recognizes that Supernus will suffer immediate and irreparable harm and that money damages alone will not be adequate to compensate Supernus or to protect and preserve the status quo. Therefore, in addition to any and all other remedies Supernus may have under this Agreement, all of which are cumulative, Consultant hereby consents to the issuance of a temporary restraining order, with or without notice, and a preliminary or permanent injunction ordering:

(a) That Consultant immediately return to Supernus all Confidential Information as defined in this Agreement, in any form, whether original, copied, computerized, handwritten, or recreated, and that Consultant be enjoined and restrained from using or disclosing all said Confidential Information and records; and

(b) That, for a period of two years, commencing from the date any injunction is issued by a court pursuant to this Agreement, Consultant be enjoined from (i) soliciting, enticing or inducing any person, firm or corporation which presently is or at any time during the Term shall be a client or customer of Supernus to become a client or customer of any other person, firm or corporation that competes with the business of Supernus, or to otherwise discontinue, in whole or in part, its patronage and business relationship with Supernus , (ii) approaching any such person, firm or corporation for such purpose or authorizing, assisting, facilitating or knowingly approving the taking of such actions by any other person; and (iii) further, that Consultant be enjoined from accepting or doing business with any customer or client of Supernus whom Consultant has solicited in violation of this Agreement; and

(c) That, for a period of two years, commencing from the date any injunction is issued by a court pursuant to this Agreement, Consultant be enjoined from (i) soliciting, enticing, recruiting or inducing any person who presently is or at any time during the term of this Agreement shall be an employee, agent or representative of Supernus to become employed or retained by any other person, firm or corporation, and (ii) approaching any such employee or representative for such purpose or authorizing, assisting, facilitating or knowingly approving the taking of such actions by any other person.

Consultant further agrees and understands that the restraints set forth above shall apply to each and every client or customer of Supernus. Consultant understands that the identity of some of Supernus' clients sometimes may be ascertained from public sources or be discernible by competitors of Supernus. Nonetheless, Consultant agrees that he will be acting as an agent and representative of Supernus and Consultant will be using Supernus' assets and resources, and will be benefiting from Supernus' goodwill, name recognition and reputation in regard to these customers and clients.

21. Survival. Anything herein to the contrary notwithstanding the provisions of Sections 5, 6, 9, 10, 18, 19 and 20 shall survive the termination of this Agreement or expiration of the Term and shall thereafter, as the case may be, be enforceable.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to the conflicts of law principles thereof. Supernus and Consultant agree that any action related to or to enforce any term or provision of this Agreement shall be brought in the appropriate court located within the State of Maryland.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Supernus Pharmaceuticals, Inc.

Signature: /s/ Jack Khattar

Name: Jack Khattar

Title: President & CEO

Consultant

Signature: /s/ Paolo Baroldi

Name: Paolo Baroldi

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 15, 2012, in Amendment No. 4 to the Registration Statement (Form S-1 No. 333-171375) and related Prospectus of Supernus Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

McLean, Virginia
March 15, 2012