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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q

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

for the quarterly period ended March 31, 2018

OR

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

COMMISSION FILE NUMBER: 001-37590

Cerecor Inc.

(Exact name of registrant as specified in its charter)

Delaware	**45-0705648**
(State of incorporation)	(I.R.S. Employer Identification No.)
400 E. Pratt Street, Suite 606 **Baltimore, Maryland 21202**	**(410) 522-8707**
(Address of principal executive offices)	(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

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

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

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

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

As of May 9, 2018, the registrant had 31,413,035 shares of common stock outstanding.

CERECOR INC.

FORM 10-Q

For the Quarter Ended March 31, 2018

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

CERECOR INC. and SUBSIDIARIES

Condensed Consolidated Balance Sheets

	March 31, 2018 (unaudited)	December 31, 2017
Assets		
Current assets:		
Cash and cash equivalents	$ 2,523,927	$ 2,472,187
Accounts receivable, net	2,830,354	2,935,025
Other receivables	55,578	427,241
Escrowed cash receivable	3,754,455	3,752,390
Inventory, net	3,440,148	382,153
Prepaid expenses and other current assets	774,310	703,225
Restricted cash—current portion	13,955	1,959
Total current assets	13,392,727	10,674,180
Property and equipment, net	58,205	44,612
Intangibles assets, net	33,100,071	17,664,480
Goodwill	18,678,495	14,292,282
Restricted cash, net of current portion	131,359	131,353
Total assets	$ 65,360,857	$ 42,806,907
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 3,165,940	$ 1,298,980
Accrued expenses and other current liabilities	7,739,269	7,531,122
Income taxes payable	2,266,548	2,259,148
Long-term debt— current portion	787,500	—
Contingent consideration—short term	829,263	—
Total current liabilities	14,788,520	11,089,250
Long term debt, net of current portion	14,590,254	—
Contingent consideration—long term	9,821,818	2,576,633
Deferred tax liability, net	23,057	7,144
License obligations	1,250,000	1,250,000
Other long-term liabilities	304,233	24,272
Total liabilities	40,777,882	14,947,299
Stockholders' equity:		
Preferred stock—$0.001 par value; 5,000,000 shares authorized at March 31, 2018 and December 31, 2017; zero shares issued and outstanding at March 31, 2018 and December 31, 2017	—	—
Common stock—$0.001 par value; 200,000,000 shares authorized at March 31, 2018 and December 31, 2017; 31,410,335 and 31,266,989 shares issued and outstanding at March 31, 2018 and December 31, 2017	31,411	31,268
Additional paid-in capital	83,944,207	83,338,136
Contingently issuable shares	2,655,464	2,655,464
Accumulated deficit	(62,048,107)	(58,165,260)
Total stockholders' equity	24,582,975	27,859,608
Total liabilities and stockholders' equity	$ 65,360,857	$ 42,806,907

See accompanying notes to the condensed consolidated financial statements.

CERECOR INC. and SUBSIDIARIES

Condensed Consolidated Statements of Operations (Unaudited)

	Three Months Ended March 31,	
	2018	**2017**
Revenues		
Product revenue, net	$ 4,260,119	$ —
Sales force revenue	222,656	—
Grant revenue	—	384,206
Total revenues, net	4,482,775	384,206
Operating expenses:		
Cost of product sales	863,624	—
Research and development	1,649,778	953,071
General and administrative	2,918,916	1,330,264
Sales and marketing	1,524,816	—
Amortization expense	1,017,408	—
Total operating expenses	7,974,542	2,283,335
Loss from operations	(3,491,767)	(1,899,129)
Other (expense) income:		
Change in fair value of contingent consideration, warrant liability and unit purchase option liability	(286,020)	(3,761)
Other income	18,655	—
Interest expense, net	(100,402)	(57,748)
Total other expense, net	(367,767)	(61,509)
Net loss before taxes	(3,859,534)	(1,960,638)
Income tax expense	23,313	—
Net loss	$ (3,882,847)	$ (1,960,638)
Net loss per share of common stock, basic and diluted	$ (0.12)	$ (0.19)
Weighted-average shares of common stock outstanding, basic and diluted	31,316,246	10,216,014

See accompanying notes to the condensed consolidated unaudited financial statements.

CERECOR INC. and SUBSIDIARIES

Condensed Consolidated Statements of Cash Flows (Unaudited)

	Three Months Ended March 31,	
	2018	**2017**
Operating activities		
Net loss	$ (3,882,847)	$ (1,960,638)
Adjustments to reconcile net loss provided by (used in) to net cash used in operating activities:		
Depreciation and amortization	1,023,040	5,830
Stock-based compensation expense	242,824	332,219
Deferred taxes	15,913	—
Amortization of inventory fair value associated with acquisition of TRx and Avadel	45,450	—
Non-cash interest expense	105,451	13,389
Change in fair value of warrant liability and unit purchase option liability	23,251	3,761
Change in fair value of contingent consideration and long term royalty obligation	262,769	—
Changes in assets and liabilities:		
Accounts receivable, net	104,671	—
Grants receivable	—	(54,891)
Other receivables	371,663	—
Inventory, net	(554,445)	—
Prepaid expenses and other assets	(71,085)	141,650
Escrowed cash receivable	(2,065)	—
Accounts payable	1,866,960	(414,333)
Income taxes payable	7,400	—
Accrued expenses and other liabilities	160,627	(303,452)
Net cash used in operating activities	(280,423)	(2,236,465)
Investing activities		
Acquisition of business	(1)	—
Purchase of property and equipment	(19,224)	(1,801)
Net cash used in investing activities	(19,225)	(1,801)
Financing activities		
Proceeds from option and warrant exercises	363,390	—
Proceeds from sale of shares under common stock purchase agreement	—	1,186,564
Principal payments on term debt	—	(874,700)
Payment of offering costs	—	(190,905)
Net cash provided by financing activities	363,390	120,959
Increase (decrease) in cash, cash equivalents and restricted cash	63,742	(2,117,307)
Cash, cash equivalents, and restricted cash at beginning of period	2,605,499	5,201,897
Cash, cash equivalents, and restricted cash at end of period	$ 2,669,241	$ 3,084,590
Supplemental disclosures of cash flow information		
Cash paid for interest	$ —	$ 44,003

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the condensed consolidated balance sheets that sum to the total of the same such amounts shown in the condensed consolidated statements of cash flows:

	March 31,	
	2018	2017
Cash and cash equivalents	$ 2,523,927	$ 3,001,553
Restricted cash, current	13,955	20,203
Restricted cash, non-current	131,359	62,834
Total cash, cash equivalents and restricted cash	$ 2,669,241	$ 3,084,590

See accompanying notes to the condensed consolidated financial statements.

CERECOR INC. and SUBSIDIARIES

Notes to Unaudited Condensed Consolidated Financial Statements

1. Business

Cerecor Inc. (the "Company," or "Cerecor") is an integrated biopharmaceutical company that is focused on pediatric healthcare. The Company has a diverse portfolio of marketed products. Our marked products are led by our prescribed dietary supplements and prescribed drugs. Our prescribed dietary supplements include Poly-Vi-Flor and Tri-Vi-Flor which are prescription vitamin and fluoride supplements used in infants and children to treat or prevent deficiency of essential vitamins and fluoride, often caused by poor diet or low levels of fluoride in drinking water and other sources. Poly-Vi-Flor and Tri-Vi-Flor are available in various formulations, including an oral suspension and chewable tablets. The Company also markets a number of prescription drugs that treat a range of pediatric diseases, disorders and conditions. Cerecor's prescription drugs include Millipred®, Veripred®, Ulesfia®, Karbinal™ ER, AcipHex® Sprinkle™ and Cefaclor for Oral Suspension. Finally, the Company has one marketed medical device, Flexichamber™. The Company's pipeline is led by CERC-301, which is currently in a Phase I safety study for Neurogenic Orthostatic Hypotension ("nOH"). In March 2018, Cerecor gained clearance of its Investigational New Drug ("IND") application from the U.S. Food & Drug Administration to initiate clinical studies of CERC-301 in nOH. The Company is also developing three preclinical stage compounds, CERC-611,CERC-406 and CERC-425.

Cerecor was incorporated in 2011 and commenced operations in the second quarter of 2011. In August 2017, the Company sold its worldwide rights to CERC-501 to Janssen Pharmaceuticals, Inc. (“Janssen”) in exchange for initial gross proceeds of $25 million, of which $3.75 million was deposited into a twelve-month escrow to secure indemnification obligations to Janssen, as well as a potential future $20 million regulatory milestone payment. The terms of the agreement provide that Janssen will assume ongoing clinical trials and be responsible for any new development and commercialization of CERC-501. On November 17, 2017, the Company acquired TRx Pharmaceuticals, LLC (“TRx”) and its wholly-owned subsidiaries (see "TRx Acquisition" in Note 4 below for a description of the transaction).

On February 16, 2018, Cerecor purchased and acquired all rights to Avadel Pharmaceuticals PLC’s (“Avadel”) marketed pediatric products (the “Acquired Products”) for the assumption of certain of Avadel's financial obligations to Deerfield CSF, LLC ("Deerfield"), which includes $15.3 million in debt due in January 2021 and its related interest payments as well as a 15% annual royalty on net sales of the Acquired Products through February 2026 (see "Avadel Pediatric Products Acquisition" in Note 4 below for a description of the transaction).

Liquidity

For the three months ended March 31, 2018, Cerecor generated a net loss of $3.9 million and negative cash flow from operations of $0.3 million. As a result of the TRx and Avadel acquisitions, the Company's commercial operations are expected to generate positive cash flows from product sales.

As of March 31, 2018, Cerecor had an accumulated deficit of $62.0 million and a balance of $2.5 million in cash and cash equivalents. The Company anticipates generating positive cash flows from the Company's commercial operations to offset costs related to its preclinical programs, clinical development for CERC-301 in nOH, business development, costs associated with its organizational infrastructure and debt principal and interest payments to be incurred from the acquisition of Avadel products. The Company applies a disciplined decision making methodology as it evaluates the optimal allocation of the Company's resources between investing in the Company's current commercial product line, the Company's development portfolio and acquisitions or in-licensing of new assets in order to meet its cash flow needs. The Company, however, may require additional financing to continue to execute its clinical development strategy. The Company plans to meet its capital requirements primarily through gross profits from product sales and potentially some combination of equity or debt financings, collaborations, or out-licensing arrangements, strategic alliances, federal and private grants, marketing, distribution or licensing arrangements.

The Company expects its cash on hand as of March 31, 2018 and its cash flows from operations to fund future expenses and other non-operating payments such as debt payments through at least May 2019.

2. Significant Accounting Policies

Basis of Presentation

The Company's unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). Any reference in these notes to applicable guidance is meant to refer to the authoritative GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") of the Financial Accounting Standards Board ("FASB").

In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which are necessary to present fairly the Company's financial position, results of operations and cash flows. The condensed consolidated balance sheet at December 31, 2017 has been derived from audited financial statements at that date. The interim results of operations are not necessarily indicative of the results that may occur for the full fiscal year. Certain information and footnote disclosure normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to instructions, rules and regulations prescribed by the United States Securities and Exchange Commission ("SEC"). Certain prior period amounts have been reclassified to conform to the current year presentation.

The Company believes that the disclosures provided herein are adequate to make the information presented not misleading when these unaudited condensed consolidated financial statements are read in conjunction with the December 31, 2017 audited consolidated financial statements.

Reclassification

The company has reclassified $317,287 from accrued expenses and other current liabilities to accounts receivable, net in the December 31, 2017 balance sheet to conform with current period presentation. During 2018, the Company concluded that going forward it would net amounts due to distributors against open receivable balances.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of Cerecor Inc. and its wholly-owned subsidiaries after elimination of all intercompany balances and transactions.

Variable Interest Entities

The primary beneficiary of a variable interest entity ("VIE") must consolidate the related assets and liabilities. Certain disclosures are required by sponsors, significant interest holders in VIEs and potential VIEs. The Company regularly assesses its relationships with contractual third party and other entities for potential VIEs. In making this assessment, the Company considers the potential that its contracts or other arrangements provide subordinated financial support, absorb losses or rights to residual returns of the entity and the ability to directly or indirectly make decisions about the entities' activities. Based on the Company's assessments performed, management concluded that there were no relationships that constitute a VIE for which the Company was determined to be the primary beneficiary at March 31, 2018. If the Company's management makes the determination that it is the primary beneficiary of a VIE, the Company will consolidate the statements of operations and financial condition of the VIE into its condensed consolidated financial statements.

Fair Value Measurements

Fair value is a market-based measurement, not an entity-specific measurement. The objective of a fair value measurement is to estimate the price to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. Such transactions to sell an asset or transfer a liability are assumed to occur in the principal market for that asset or liability, or in the absence of the principal market, the most advantageous market for the asset or liability.

Assets and liabilities subject to fair value measurement disclosures are required to be classified according to a three-level fair value hierarchy with respect to the inputs (or assumptions) used to determine fair value. The level in which an asset or liability is disclosed within the fair value hierarchy is based on the lowest level input that is significant to the related fair value measurement in its entirety. The guidance under the fair value measurement framework applies to other existing accounting guidance in the FASB codification that requires or permits fair value measurements. Refer to related disclosures in Note 5, Fair Value Measurements.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and related disclosures. On an ongoing basis, management evaluates its estimates, including estimates related to but not limited to, revenue recognition, share-based compensation, fair value measurements (including those relating to contingent consideration), income taxes, goodwill and other intangible assets, and clinical trial accruals. The Company bases its estimates on historical experience and other market-specific or other relevant assumptions that it believes to be reasonable under the circumstances. Actual results may differ from those estimates or assumptions.

Net Income (Loss) per Share, Basic and Diluted

Earnings per share are computed using the two-class method. The two-class method of computing earnings per share is an earnings allocation formula that determines earnings per share for common stock and any participating securities according to dividends declared (whether paid or unpaid) and participation rights in undistributed earnings. Shares of the unexercised warrants issued in the Armistice private placement (See Note 9) in 2017 are considered participating securities because these warrants contain a non-forfeitable right to dividends irrespective of whether the warrants are ultimately exercised. Under the two-class method, earnings per common share for the common stock and participating warrants are computed by dividing the sum of distributed earnings to common shareholders and undistributed earnings allocated to common shareholders by the weighted-average number of shares of common stock and participating warrants outstanding for the period. In applying the two-class method, undistributed earnings are allocated to common stock and participating warrants based on the weighted-average shares outstanding during the period. As the warrants issued in the Armistice transaction do not share in net losses of the Company, they are excluded from weighted average shares and warrants outstanding during periods of net loss.

Diluted net income (loss) per share includes the potential dilutive effect of common stock equivalents as if such securities were converted or exercised during the period, when the effect is dilutive. Common stock equivalents include: (i) outstanding stock options issued under the Company's long-term incentive plans, which are included under the "treasury stock method" when dilutive; (ii) common stock to be issued upon the assumed conversion of the Company's unit purchase option shares, which are included under the "if-converted method" when dilutive; (iii) the contingently issuable shares in the TRx acquisition if contingencies would have been satisfied if the end of the contingency period were as of the balance sheet date under the “if converted method” when dilutive; and (iv) common stock to be issued upon the exercise of outstanding warrants which are included under the "treasury stock method" when dilutive. Because the impact of these items is generally anti-dilutive during periods of net loss, there is no difference between basic and diluted loss per common share for periods with net losses. In addition, net losses are not allocated to the participating securities.

Contingently issuable shares are included in the calculation of basic income (loss) per share as of the beginning of the period in which all the necessary conditions have been satisfied. Contingently issuable shares are included in diluted net income (loss) per share based on the number of shares, if any, that would be issuable under the terms of the arrangement if the end of the reporting period was the end of the contingency period, if the results are dilutive.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. The carrying amounts reported in the balance sheets for cash and cash equivalents are valued at cost, which approximates their fair value.

Escrowed Cash Receivable

On August 14. 2017, the Company sold all of its rights to CERC-501 to Janssen in exchange for initial gross proceeds of $25 million, of which $3.75 million was deposited into a twelve-month escrow to secure certain indemnification obligations to Janssen. The Company evaluates its escrowed cash receivable balance each reporting period and establishes a reserve for amounts deemed uncollectible. No reserve was recorded as of March 31, 2018 and December 31, 2017.

Restricted Cash

The Company established the Employee Stock Purchase Plan in 2016 (the "Plan"). Eligible employees can purchase common stock through accumulated payroll deductions at such times as are established by the Plan administrator. At March 31, 2018, approximately $14,000 of deposits had been made by employees for potential future stock purchases.

In 2016, the Company entered into a bank services pledge agreement with Silicon Valley Bank. In exchange for receiving business credit card services from Silicon Valley Bank, the Company deposited $50,000 as collateral with Silicon Valley Bank. This amount will remain deposited with Silicon Valley Bank for the duration the business credit card services are used by the Company. In

addition, the Company has deposited $13,000 with the landlord of the Company's office space as a security deposit. These deposits are recorded as restricted cash, net of current portion on the balance sheet as of March 31, 2018 and December 31, 2017.

The Company adopted ASU 2016-18 effective January 1, 2018 and now includes restricted cash balances within the cash, cash equivalents and restricted cash balance on the statement of cash flows. All prior periods were retrospectively adjusted to conform to the current period presentation.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents. The Company maintains a portion of its cash and cash equivalent balances in the form of a money market account with a financial institution that management believes to be creditworthy. The Company has no financial instruments with off-balance sheet risk of loss.

Inventory

Inventory consists primarily of finished goods stated at the lower of cost or net realizable value, with cost determined on a first-in, first-out basis. The Company reviews the composition of inventory at each reporting period in order to identify obsolete, slow-moving, quantities in excess of expected demand, or otherwise non-saleable items. If non-saleable items are observed and there are no alternate uses for the inventory, the Company will record a write-down to net realizable value in the period that the decline in value is first recognized. These valuation adjustments are recorded based upon various factors for the Company's products, including the level of product manufactured by the Company, the level of product in the distribution channel, current and projected product demand, the expected shelf life of the product and firm inventory purchase commitments.

Goodwill

Goodwill relates to the amount that arose in connection with the acquisitions of TRx and Avadel. Goodwill represents the excess of the purchase price over the fair value of the net assets acquired when accounted for using the acquisition method of accounting for business combinations. Goodwill is not amortized but is evaluated for impairment on an annual basis or more frequently if an event occurs or circumstances change that would more-likely-than-not reduce the fair value of the Company's reporting unit below its carrying amount.

Intangible Assets

Intangible assets with definite useful lives are amortized over their estimated useful lives and reviewed for impairment if certain events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Intangible assets subject to amortization are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an intangible asset might not be recoverable. Impairment losses are measured and recognized to the extent the carrying value of such assets exceeds their fair value.

Contingent Consideration

The Company's business acquisitions involve the potential for future payment of consideration that is contingent upon the achievement of operational and commercial milestones and royalty payments on future product sales. The preliminary fair value of contingent consideration liabilities was determined at the acquisition date using unobservable level 3 inputs. These inputs include the estimated amount and timing of projected cash flows, the probability of success (achievement of the contingent event) and the risk-adjusted discount rate used to present value the probability-weighted cash flows. Subsequent to the acquisition date, at each reporting period, the contingent consideration liability is remeasured at current fair value with changes recorded in the condensed consolidated statements of operations. Changes in any of the inputs may result in a significantly different fair value adjustment.

License and Other Revenue

The Company recognizes revenues from collaboration, license or other research or sale arrangements when or as performance obligations are satisfied. For milestone payments, the Company assesses, at contract inception, whether the milestones are considered probable of being achieved. If it is probable that a significant revenue reversal will occur, the Company will not record revenue until the uncertainty has been resolved. Milestone payments that are contingent upon regulatory approval are not considered probable of being achieved until the approvals are obtained as it is outside the control of the Company. If it is probable that a significant revenue reversal will not occur, the Company will estimate the milestone payments using the most likely amount method. The Company will re-assess the milestones each reporting period to determine the probability of achievement.

Grant Revenue

Grant revenues are derived from government grants that support the Company's efforts on specific research projects. We have determined that the government agencies providing grants to the Company are not our customers. The Company recognizes grant revenue when there is reasonable assurance of compliance with the conditions of the grant and reasonable assurance that the grant revenue will be received.

Product Revenues, net

The Company generates substantially all of its revenue from sales of prescription pharmaceutical products to its customers and has identified a single product delivery performance obligation, which is the provision of prescription pharmaceutical products to its customers based upon Master Service Agreements in place with wholesaler distributors, purchase orders from retail pharmacies or other direct customers and a contractual arrangement with a specialty pharmacy. The performance obligation is satisfied at a point in time, when control of the product has been transferred to the customer, either at the time the product has been received by the customer or to a lesser extent when the product is shipped. The Company determines the transaction price based on fixed consideration in its contractual agreements and the transaction price is allocated entirely to the performance obligation to provide pharmaceutical products. In determining the transaction price, a significant financing component does not exist since the timing from when the Company delivers product to when the customers pay for the product is less than one year and the customers do not pay for product in advance of the transfer of the product.

Revenues from sales of products are recorded net of any variable consideration for estimated allowances for returns, chargebacks, distributor fees, prompt payment discounts, government rebates and other common gross-to-net revenue adjustments. The identified variable consideration is recorded as a reduction of revenue at the time revenues from product sales are recognized. The Company recognizes revenue only to the extent that it is probable that a significant revenue reversal will not occur in a future period.

Provisions for returns and government rebates are included within current liabilities in the condensed consolidated balance sheet. Provisions for prompt payment discounts and distributor fees, are included as a reduction to accounts receivable. Calculating these items involves estimates and judgments based on sales or invoice data, contractual terms, historical utilization rates, new information regarding changes in these programs' regulations and guidelines that would impact the amount of the actual rebates, our expectations regarding future utilization rates for these programs, and channel inventory data. These estimates may differ from actual consideration amount received and the Company will re-assess these estimates and judgments each reporting period to adjust accordingly.

The following table presents net revenues disaggregated by type (in thousands):

	For the period ended	
	March 31, 2018	**March 31, 2017**
Prescribed dietary supplements	$ 2,231	$ —
Prescription drugs	2,029	—
Sales force revenue	223	—
Grant revenue	—	384
Total revenue	$ 4,483	$ 384

Concentration with Customer

The Company sells its prescription pharmaceutical products in the United States primarily through wholesale distributors and a specialty contracted pharmacy. Wholesale distributors account for substantially all of the Company's net product revenues and trade receivables. In addition, the Company earns revenue from sales of its prescription pharmaceutical products directly to retail pharmacies and research and development grants. For the three months ended March 31, 2018, the Company's three largest customers accounted for approximately 22%, 25% and 29%, respectively, of the Company's total net product revenues from sale of prescription pharmaceutical products.

Concentrations of Products and Sales

Six of the Company's products accounted for 100% of the Company's total product revenue, net for three months ended March 31, 2018.

Concentration with Vendor

The Company's top five vendors accounted for approximately 51% and 57% of the Company's accounts payable at March 31, 2018 and 2017, respectively.

Returns and Allowances

Consistent with industry practice, the Company maintains a return policy that allows customers to return product within a specified period both prior to and, in certain cases, subsequent to the product's expiration date. The Company's return policy generally allows customers to receive credit for expired products within six months prior to expiration and within one year after expiration. The provision for returns and allowances consists of estimates for future product returns, pricing adjustments and delivery errors. The primary factors considered in estimating potential product returns include:

- the shelf life or expiration date of each product;
- historical levels of expired product returns;
- external data with respect to inventory levels in the wholesale distribution channel;
- external data with respect to prescription demand for the Company's products; and
- the estimated returns liability to be processed by year of sale based on analysis of lot information related to actual historical returns.

The Company's estimate for returns and allowances may be impacted by a number of factors, but the principal factor relates to the level of inventory in the distribution channel. If the Company becomes aware of an increase in the level of inventory of its products in the distribution channel, the Company considers the reasons for the increase to determine whether the Company believes the increase is temporary or other-than-temporary. Increases in inventory levels assessed as temporary will not result in an adjustment to the provision for returns and allowances. Conversely, other-than-temporary increases in inventory levels may be an indication that future product returns could be higher than originally anticipated and, accordingly, the Company may need to adjust the provision for returns and allowances. Some of the factors that may be an indication that an increase in inventory levels will be other-than-temporary include:

- declining sales trends based on prescription demand;
- regulatory approvals that could shorten the shelf life of our products, which could result in a period of higher returns related to older product still in the distribution channel;
- introduction of new product or generic competition; and
- increasing price competition from generic competitors.

Distribution Fees and Rebates

Consistent with pharmaceutical industry practices, the Company establishes contracts with wholesalers that provide for Distribution Service Fees ("DSA fees"). Settlement of DSA fees may generally occur on a monthly or quarterly basis based on net sales for the period. DSA fee accruals are based on contractual fees to be paid to the wholesaler distributors applied to purchases of our products.

The Company is also subject to rebates on sales made under governmental pricing programs. For example, Medicaid rebates are amounts owed based upon contractual agreements or legal requirements with public sector (Medicaid) benefit providers after the final dispensing of the product by a pharmacy to a benefit plan participant. Medicaid reserves are based on expected payments, which are driven by patient us age, contract performance and field inventory that will be subject to a Medicaid rebate. Medicaid rebates are typically billed up to 180 days after the product is shipped, but can be as much as 270 days after the quarter in which the product is dispensed to the Medicaid participant. In addition to the estimates mentioned above, the Company's calculation also requires other estimates, such as estimates of sales mix, to determine which sales are subject to rebates and the amount of such rebates. Periodically, the Company adjusts the Medicaid rebate provision based on actual claims paid. Due to the delay in billing, adjustments to actual claims paid may incorporate revisions of this provision for several periods. Because Medicaid pricing programs involve particularly difficult interpretations of complex statutes and regulatory guidance, our estimates could differ from actual experience.

In determining estimates for these rebates, the Company considers the terms of the contracts, relevant statutes, historical relationships of rebates to revenues, past payment experience, estimated inventory levels and estimated future trends.

Chargebacks and Sales Discounts

Chargeback accruals are based on the differentials between product acquisition prices paid by wholesalers and lower government contract pricing paid by eligible customers covered under federally qualified programs. Sales discounts accruals are based on payment terms extended to customers.

Sales Force Revenue

Pursuant to a Marketing Agreement with Pharmaceutical Associates, Inc. (“PAI”), the Company receives a monthly marketing fee to promote, market and sell certain products on behalf of PAI. The Company also receives a matching fee payment for each month of the term of the Marketing Agreement if certain provisions calculated in accordance with the terms and inputs set forth in the Marketing Agreement are met. Marketing fees and any matching payments are recognized as sale force revenue when all the performance obligations have been satisfied, as earned on a monthly basis.

Accounting Policy Elections

The Company elected the following practical expedients in applying Topic 606 to its identified revenue streams:

- Portfolio approach - contracts within each revenue stream have similar characteristics and the Company believes this approach would not differ materially than if applying Topic 606 to each individual contract.
- Modified retrospective approach - the Company applied Topic 606 only to contracts with customers which were not completed at the date of initial application, January 1, 2018.
- Significant financing component - the Company does not adjust the promised amount of consideration for the effects of a significant financing component as the Company expects, at contract inception, that the period between when the Company transfers a promised good or service to a customer and when the customer pays for that good or service will be one year or less.
- Shipping and handling activities - the Company considers any shipping and handling costs that are incurred after the customer has obtained control of the product as a cost to fulfill a promise and will account for them as an expense.
- Contract costs - the Company recognizes the incremental costs of obtaining a contract as an expense when incurred if the amortization period of the asset that the Company otherwise would have recognized is one year or less.

The Company does not incur costs to obtain a contract or costs to fulfill a contract that would result in the capitalization of contract costs. Specifically, internal sales commissions are costs to fulfill a contract and are expensed in the same period that revenue is recognized, which is typically within the same quarterly reporting period. Contract costs are expensed or amortized in “Operating expenses” on the accompanying Condensed Consolidated Statements of Operations.

The Company has not made significant changes to the judgments made in applying ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606) ("ASU 2014-09") for the three months ended March 31, 2018.

Cost of Product Sales

Cost of product sales is comprised of (i) costs to acquire products sold to customers, (ii) royalty, license payments and other agreements granting the Company rights to sell related products, (iii) distribution costs incurred in the sale of products, and (iv) the value of any write-offs of obsolete or damaged inventory that cannot be sold. The Company acquired the rights to sell certain of its commercial products through license and assignment agreements with the original developers or other parties with interests in these products. These agreements obligate the Company to make payments under varying payment structures based on its net revenue from related products.

Shipping, Handling, and Freight

The Company includes the cost of shipping, handling, and freight associated with product sales as part of cost of goods sold.

Research and Development

Research and development costs are expensed as incurred. These costs include, but are not limited to, employee-related expenses, including salaries, benefits and stock-based compensation of research and development personnel; expenses incurred under agreements with contract research organizations and investigative sites that conduct clinical trials and preclinical studies; the cost of acquiring, developing and manufacturing clinical trial materials; other supplies; facilities, depreciation and other expenses, such as direct and allocated expenses for rent, utilities and insurance; and costs associated with preclinical activities, regulatory operations, pharmacovigilance, quality and travel.

Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, or information provided to the Company by its vendors, such as clinical research organizations, with respect to their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected in the financial statements as prepaid or accrued research and development expense, as the case may be.

Sales and Marketing Expenses

Sales and marketing expenses consist primarily of professional fees, advertising and marketing cost and salaries, benefits and related costs for sales and sales support personnel, including stock-based compensation and travel expenses.

Amortization Expense

Amortization expense includes the amortization of the Company's acquired intangible assets.

Comprehensive Loss

Comprehensive loss is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive loss was equal to net loss for all periods presented.

Income Taxes

The Company accounts for income taxes under the asset and liability method in accordance with ASC 740, Income Taxes (“ASC 740”). Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Deferred tax assets primarily include net operating loss and tax credit carryforwards, accrued expenses not currently deductible and the cumulative temporary differences related to certain research and patent costs. Certain tax attributes, including net operating losses and research and development credit carryforwards, may be subject to an annual limitation under Sections 382 and 383 of the Internal Revenue Code (the "Code"). See Note 11. Income Taxes for further information. The portion of any deferred tax asset for which it is more likely than not that a tax benefit will not be realized must then be offset by recording a valuation allowance. The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not to be sustained upon examination based on the technical merits of the position. The amount for which an exposure exists is measured as the largest amount of benefit determined on a cumulative probability basis that the Company believes is more likely than not to be realized upon ultimate settlement of the position. The Company’s policy is to record interest and penalties on uncertain tax positions as income tax expense. As of March 31, 2018, the Company did not believe any material uncertain tax positions were present.

On December 22, 2017, President Trump signed into law the “Tax Cuts and Jobs Act” ("TCJA"), that significantly reforms the Internal Revenue Code of 1986, as amended. The TCJA, among other things, includes changes to U.S. federal tax rates, imposes significant additional limitations on the deductibility of interest and net operating loss carryforwards, allows for the expensing of capital expenditures, and puts into effect the migration from a “worldwide” system of taxation to a territorial system. See Note 11 below for further discussion related to the tax impact to the Company.

Stock-Based Compensation

The Company applies the provisions of ASC 718, Compensation—Stock Compensation (“ASC 718”), which requires the measurement and recognition of compensation expense for all stock-based awards made to employees and non-employees, including employee stock options, in the statements of operations.

For stock options issued to employees and members of the board of directors for their services, the Company estimates the grant date fair value of each option using the Black-Scholes option pricing model. The use of the Black-Scholes option pricing model requires management to make assumptions with respect to the expected term of the option, the expected volatility of the common stock consistent with the expected life of the option, risk-free interest rates and expected dividend yields of the common stock. For awards subject to service-based vesting conditions, including those with a graded vesting schedule, the Company recognizes stock-based compensation expense equal to the grant date fair value of stock options on a straight-line basis over the requisite service period, which is generally the vesting term. Forfeitures are recorded as they are incurred as opposed to being estimated at the time of grant and revised.

For stock option grants with market-based conditions, compensation expense is recognized ratably over the attribution period. The Company estimates the fair value of the market-based stock option grants using a Monte-Carlo simulation. The Company generally estimates fair value using assumptions, including the risk-free interest rate, the expected volatility of a peer group of similar companies, the expected term of the awards and the expected dividend yield. The expected term for market-based stock option awards is based on the expected term calculated using a Monte-Carlo simulation. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

For stock options issued to non-employees, the Company initially measures the options at their grant date fair values and revalues as the underlying equity instruments vest and are recognized as expense over the earlier of the period ending with the performance commitment date or the date the services are completed in accordance with the provisions of ASC 718 and ASC 505-50, Equity-Based Payments to Non-Employees ("ASC 505-50").

Clinical Trial Expense Accruals

As part of the process of preparing its financial statements, the Company is required to estimate its expenses resulting from its obligations under contracts with vendors, clinical research organizations and consultants and under clinical site agreements in connection with conducting clinical trials. The financial terms of these contracts are subject to negotiations, which vary from contract to contract and may result in payment flows that do not match the periods over which materials or services are provided under such contracts. The Company's objective is to reflect the appropriate trial expenses in its financial statements by matching those expenses with the period in which services are performed and efforts are expended. The Company accounts for these expenses according to the progress of the trial as measured by subject progression and the timing of various aspects of the trial. The Company determines accrual estimates by taking into account discussion with applicable personnel and outside service providers as to the progress or state of consummation of trials, or the services completed. During the course of a clinical trial, the Company adjusts its clinical expense recognition if actual results differ from its estimates. The Company makes estimates of its accrued expenses as of each balance sheet date based on the facts and circumstances known to it at that time. The Company's clinical trial accruals are dependent upon the timely and accurate reporting of contract research organizations and other third-party vendors. Although the Company does not expect its estimates to be materially different from amounts actually incurred, its understanding of the status and timing of services performed relative to the actual status and timing of services performed might vary and might result in it reporting amounts that are too high or too low for any particular period. For the three months ended March 31, 2018 and 2017, there were no material adjustments to the Company's prior period estimates of accrued expenses for clinical trials.

Segment Information

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker, or decision-making group, in making decisions on how to allocate resources and assess performance. The Company's chief operating decision maker is currently represented by the Company's management team and consists of the Company's Chief Executive Officer, Chief Commercial Officer and Chief Financial Officer. The Company and the management team view the Company's operations and manage its business as one operating segment. All long-lived assets of the Company reside in the United States. The Company and the management team view the Company's operations and manage its business as one operating segment.

Recently Adopted Accounting Pronouncements

Adoption of ASC 606

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606) ("ASU 2014-09"). Topic 606, along with amendments issued in 2015, 2016 and 2017, supersedes the revenue recognition requirements in Topic 605, *Revenue Recognition*, including most industry-specific revenue recognition guidance throughout the Industry Topics of the Accounting Standards Codification. ASU 2014-09 provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer in an amount that reflects the consideration it expects to receive in exchange for those goods or services. On January 1, 2018, the Company adopted the new revenue recognition standard for all contracts not completed as of the adoption date using the modified retrospective method. The implementation of the new revenue recognition standard did not have a material quantitative impact on the Company's condensed consolidated financial statements as the timing of revenue recognition for product sales did not significantly change. In addition, the Company did not have a material cumulative effect adjustment to Accumulated deficit upon adoption of the new revenue recognition standard on January 1, 2018. The information presented for the periods prior to January 1, 2018 has not been restated and is reported under Topic 605.

The Company recognizes revenue when its performance obligations with its customers have been satisfied. At contract inception, the Company determines if a contract is within the scope of Topic 606 and then evaluates the contract using the following five steps: (1) identify the contract with the customer; (2) identify the performance obligations; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

Other Adopted Accounting Pronouncements

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business* ("ASU 2017-01"). The standard provides guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. If substantially all of the fair value of the gross assets acquired (or disposed of) is concentrated in a single asset or a group of similar assets, the assets acquired (or disposed of) are not considered a business. ASU 2017-01 is effective for fiscal periods beginning after December 15, 2017 (including interim periods within those periods) with early adoption permitted. The Company adopted this standard on January 1, 2018.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation-Stock Compensation (Topic 718) - Scope of Modification Accounting* ("ASU 2017-09") to clarify when to account for a change to the terms or conditions of a share-based payment award as a modification. Under the new guidance, modification accounting is required only if the fair value, the vesting conditions, or the classification of the award (as equity or liability) changes as a result of the change in terms or conditions. The guidance is effective prospectively for all companies for annual periods and interim periods within those annual periods, beginning on or after December 15, 2017. The adoption of this standard on January 1, 2018 did not have a significant impact on the Company's financial statements.

In November 2016, the FASB issued ASU No. 2016-18, *Restricted Cash ("*ASU 2016-18"*)*. The guidance is intended to address the diversity that currently exists in the classification and presentation of changes in restricted cash on the statement of cash flows. The new standard requires that entities show the changes in the total of cash and cash equivalents, restricted cash and restricted cash equivalents on the statement of cash flows and no longer present transfers between cash and cash equivalents, restricted cash and restricted cash equivalents on the statement of cash flows. The new standard is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company adopted this standard on January 1, 2018. Upon adoption of ASU 2016-18 the Company applied the retrospective transaction method for each period presented and included $133,312 and $145,314 of restricted cash in the beginning period and end of period cash, cash equivalents and restricted cash balance. The March 31, 2017 statement of cash flows has been updated to include $83,037 of restricted cash balances.

In October 2016, the FASB issued ASU No. 2016-16, " *Income Taxes (Topic 740), Intra-Entity Transfers of Assets Other Than Inventory*" ("ASU 2016-16"), which requires companies to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. ASU 2016-16 is effective for annual reporting periods, and interim periods therein, beginning after December 15, 2017. The adoption of this standard on January 1, 2018 did not have a significant impact on the Company's financial statements.

In August 2016, the FASB issued ASU No. 2016-15 *Statement of Cash Flows, Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"), which reduces existing diversity in the classification of certain cash receipts and cash payments on the statements of cash flows. ASU 2016-15 is effective for fiscal years beginning after December 15, 2017, and for interim periods within those fiscal years. The adoption of this standard on January 1, 2018 did not have a significant impact on the Company's financial statements.

Recent Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases* (Topic 842) ("ASU 2016-02"). This guidance revises existing practice related to accounting for leases under ASC No. 840, *Leases* ("ASC 840") for both lessees and lessors. The new guidance in ASU 2016-02 requires lessees to recognize a right-of-use asset and a lease liability for nearly all leases (other than leases that meet the definition of a short-term lease). The lease liability will be equal to the present value of lease payments and the right-of-use asset will be based on the lease liability, subject to adjustment such as for initial direct costs. For income statement purposes, the new standard retains a dual model similar to ASC 840, requiring leases to be classified as either operating leases or capital leases. For lessees, operating leases will result in straight-line expense (similar to current accounting by lessees for operating leases under ASC 840) while capital leases will result in a front-loaded expense pattern (similar to current accounting by lessees for capital leases under ASC 840). The new standard is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those fiscal years. Early application is permitted. The Company does not currently believe the adoption of ASU 2016-02 will have a significant impact on the Company's financial statements, but is still in the process of finalizing its evaluation.

In January 2017, the FASB issued ASU No. 2017-04 " *Intangibles-Goodwill and Other (Topic 350)*: *Simplifying the Test for Goodwill Impairment*" ("ASU 2017-04"). ASU-2017 eliminates step two of the goodwill impairment test and specifies that goodwill

impairment should be measured by comparing the fair value of a reporting unit with its carrying amount. Additionally, the amount of goodwill allocated to each reporting unit with a zero or negative carrying amount of net assets should be disclosed. ASU 2017-04 is effective for annual or interim goodwill impairment tests performed in fiscal years beginning after December 15, 2019 and early adoption is permitted. The Company is currently evaluating the potential impact of the adoption of this standard on its financial statements.

3. Net Loss Per Share of Common Stock, Basic and Diluted

The following table sets forth the computation of basic and diluted net loss per share of common stock for the three months ended March 31, 2018 and 2017, which includes both classes of participating securities:

	Three Months Ended March 31,	
Net loss per share, basic and diluted calculation	**2018**	**2017**
Basic and diluted loss per share:		
Net loss	$ (3,882,847)	$ (1,960,638)
Weighted average shares, basic and diluted		
Common stock	31,316,246	10,216,014
Participating warrants	—	—
	31,316,246	10,216,014
Basic and diluted loss per share:		
Common stock	$ (0.12)	$ (0.19)

The following outstanding securities at March 31, 2018 and 2017 have been excluded from the computation of diluted weighted shares outstanding, as they could have been anti-dilutive:

	Three Months Ended March 31,	
	2018	**2017**
Stock options	3,909,384	2,067,095
Warrants on common stock	18,986,659	7,400,934
Underwriters' unit purchase option	40,000	40,000

4. Acquisitions

Avadel Pediatric Products Acquisition

On February 16, 2018, the Company entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Avadel US Holdings, Inc., Avadel Pharmaceuticals (USA), Inc., Avadel Pediatrics, Inc., Avadel Therapeutics, LLC and Avadel Pharmaceuticals PLC (collectively, the “Sellers”) to purchase and acquire all rights to the Sellers’ pediatric products. Total consideration transferred to the Sellers consisted of a cash payment of $1 and contingent consideration with a fair value of $240,744 at the acquisition date related to future royalty obligations for the use of the Sellers' LiquiTime process technology. In addition, the Company assumed existing seller debt due in January 2021 with a fair value of $(15.3) million and contingent consideration, referred to as Deferred payments, relating to royalty obligation through February 2026 with a fair value at acquisition date of approximately $7.9 million. As a result of the Avadel Acquisition, the Company recorded goodwill of $4.4 million, which is deductible over 15 years for income tax purposes.

The transaction was accounted for as a business combination under the acquisition method of accounting. Accordingly, the tangible and identifiable intangible assets acquired and liabilities assumed were recorded at fair value as of the date of acquisition, with the remaining purchase price recorded as goodwill. The goodwill recognized is attributable primarily to strategic opportunities related to an expanded commercial footprint and diversified pediatric product portfolio that is expected to provide revenue and cost synergies. Transaction costs of $0.1 million were included as general and administrative expense in the condensed consolidated statements of operations for the three months ended March 31, 2018.

The following table summarizes the preliminary fair values of the assets acquired and liabilities assumed at the date of acquisition:

	At February 16, 2018 (preliminary)
Inventory	$ 2,549,000
Intangible assets	16,453,000
Fair value of debt assumed	(15,272,303)
Fair value of contingent consideration and deferred payments	(7,875,165)
Total net liabilities assumed	(4,145,468)
Consideration exchanged	240,745
Goodwill	$ 4,386,213

Based on valuation estimates utilizing the income approach, a step-up in the value of inventory of $1,597,000 was recorded in the opening balance sheet, of which approximately $16,196 was charged to cost of goods sold during the post-acquisition period, February 16, 2018 through March 31, 2018.

The purchase price allocation has been prepared on a preliminary basis and is subject to change as additional information becomes available concerning the fair value and tax basis of the assets acquired and liabilities assumed. Any adjustments to the purchase price allocation will be made as soon as practicable but no later than one year from the February 16, 2018 acquisition date.

The fair values of intangible assets, including marketing rights, licenses, developed technology and IPR&D, were determined using variations of the income approach. Varying discount rates were also applied to the projected net cash flows. We believe the assumptions are representative of those a market participant would use in estimating fair value. The preliminary fair value of intangible assets includes the following:

	At February 16, 2018 (preliminary)	Useful Life
Acquired Product Marketing Rights - Karbinal	$ 6,221,000	16 years
Acquired Product Marketing Rights - AcipHex	2,520,000	10 years
Acquired Product Marketing Rights - Cefaclor	6,291,000	7 years
Acquired Developed Technology - Flexichamber	1,131,000	10 years
Acquired IPR&D - LiquiTime formulations	290,000	Indefinite
Total	**$ 16,453,000**	

TRx Acquisition

On November 17, 2017, the Company entered into, and consummated the transactions contemplated by, an Equity Interest Purchase Agreement (the “TRx Purchase Agreement”) by and among the Company, TRx, Fremantle Corporation and LRS International LLC, the selling members of TRx (collectively, the “TRx Sellers”) which provided for the purchase of all of the equity and ownership interests of TRx by the Company (the "TRx Acquisition"). The consideration for the TRx acquisition consists of $18.9 million in cash, as adjusted for Estimated Working Capital, Estimated Cash on Hand, Estimated Indebtedness and Estimated Transaction Expenses, as well as 7,534,884 shares of the Company’s common stock having an aggregate value on the closing date of $8.5 million (the "Equity Consideration") and certain contingent payments, if any become payable. Upon closing, the Company issued 5,184,920 shares of its common stock to the TRx Sellers. Pursuant to the TRx Purchase Agreement, the issuance of the remaining 2,349,968 shares is subject to Cerecor stockholder approval and entirely contingent upon gaining such stockholder approval. These shares have been recorded within stockholder's equity on the condensed consolidating balance sheet date. As a result of the TRx Acquisition, the Company recorded goodwill of $14.3 million, of which $9.2 million was deductible for income taxes.

The November 17, 2017 acquisition-date fair value of the consideration transferred is as follows:

Cash	$	18,900,000
Common stock (including contingently issuable shares)		8,514,419
Contingent payments		2,576,633
Total consideration transferred	$	29,991,052

The TRx Acquisition was accounted for as a business combination under the acquisition method of accounting. Accordingly, the tangible and identifiable intangible assets acquired and liabilities assumed were recorded at fair value as of the date of acquisition, with the remaining purchase price recorded as goodwill. The goodwill recognized is attributable primarily to strategic opportunities related to leveraging TRx's research and development, intellectual property, and processes.

The following table summarizes the provisional amounts recognized for assets acquired and liabilities assumed as of the acquisition date. There were no measurement adjustments recorded through March 31, 2018. The purchase price of $30.0 million was allocated as follows:

		Amounts Recognized as of Acquisition Date (as previously reported)
Fair value of assets acquired:		
Cash and cash equivalents	$	11,068
Accounts receivable, net		2,872,545
Inventory		495,777
Prepaid expenses and other current assets		134,281
Identifiable Intangible Assets:		
Acquired product marketing rights - Metafolin		10,465,000
PAI sales and marketing agreement		2,334,000
Acquired product marketing rights - Millipred		4,714,000
Acquired product marketing rights - Ulesfia		555,000
Total assets acquired	$	21,581,671
Fair value of liabilities assumed:		
Accounts payable	$	192,706
Accrued expenses and other current liabilities		4,850,422
Deferred tax liability		839,773
Total liabilities assumed		5,882,901
Total identifiable net assets		15,698,770
Fair value of consideration transferred		29,991,052
Goodwill	$	14,292,282

Based on valuation estimates utilizing the income approach, a step-up in the value of inventory of $0.2 million was recorded in the opening balance sheet, of which approximately $29,254 was charged to cost of goods sold during the three months ended March 31, 2018.

The purchase price allocation has been prepared on a preliminary basis and is subject to change as additional information becomes available concerning the fair value and tax basis of the assets acquired and liabilities assumed. Any adjustments to the purchase price allocation will be made as soon as practicable but no later than one year from the November 17, 2017 acquisition date.

The intangible assets acquired included a sales and marketing agreement with an estimated useful life of two years; and the product marketing rights to Metafolin, Millipred, and Ulesfia, which are estimated to have useful lives of fifteen, four, and three years, respectively. The fair values of intangible assets, including product marketing rights, were determined using variations of the income approach, specifically the multi-period excess earnings method. Varying discount rates were also applied to the projected net cash flows. The Company believes the assumptions are representative of those a market participant would use in estimating fair value.

The Company has received written notice to terminate the PAI Sales and Marketing Agreement. As such, once the 30 day notice period has ended, the contract will be terminated. The termination will likely result in an impairment write-off of the remaining asset value in the second quarter of 2018. There was $2.3 million of fair value assigned to the agreement at the acquisition date as part of our purchase price allocation.

Pro Forma Impact of Business Combinations

The following supplemental unaudited pro forma information presents Cerecor's financial results as if the acquisitions of the Avadel pediatric products business, which was completed on February 16, 2018, and of TRx, which was completed on November 17, 2017, had each occurred on January 1, 2017:

	Three Months Ended March 31,	
	2018	2017
	Pro forma	Pro forma
Total revenues, net	$ 6,187,775	$ 5,052,790
Net loss	$ (4,928,446)	$ (3,732,319)
Diluted net loss per share	$ (0.16)	$ (0.36)

The above unaudited pro forma information was determined based on the historical GAAP results of Cerecor, TRx, and Avadel. The unaudited pro forma condensed consolidated results are provided for informational purposes only and are not necessarily indicative of what Cerecor's condensed consolidated results of operations would have been had the acquisition been completed on the dates indicated or what the condensed consolidated results of operations will be in the future.

5. Fair Value Measurements

ASC No. 820, *Fair Value Measurements and Disclosures* ("ASC 820"), defines fair value as the price that would be received to sell an asset, or paid to transfer a liability, in the principal or most advantageous market in an orderly transaction between market participants on the measurement date. The fair value standard also establishes a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1—inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market.
- Level 2—inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.
- Level 3—inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability.

As of March 31, 2018 and December 31, 2017, the Company's financial instruments included cash and cash equivalents, restricted cash, accounts payable, accrued expenses and other current liabilities, the term loan warrant liability, contingent consideration and the underwriters' unit purchase option liability. The carrying amounts reported in the accompanying condensed consolidated financial statements for cash and cash equivalents, restricted cash, accounts payable, accrued expenses, long-term debt - current portion and other current liabilities approximate their respective fair values because of the short-term nature of these accounts. The estimated fair value of the Company's long-term debt of $14.6 million as of March 31, 2018 was based on current interest rates for similar types of borrowings and is in Level 2 of the fair value hierarchy.

The following table presents, for each of the fair value hierarchy levels required under ASC 820, the Company's assets and liabilities that are measured at fair value on a recurring basis:

	March 31, 2018 Fair Value Measurements Using		
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets			
Investments in money market funds*	$ 258,966	$ —	$ —
Liabilities			
Contingent consideration	$ —	$ —	$ 10,651,081
Royalties payable	$ —	$ —	$ 304,020
Warrant liability	$ —	$ —	$ 15,590
Unit purchase option liability	$ —	$ —	$ 42,837

	December 31, 2017 Fair Value Measurements Using		
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets			
Investments in money market funds*	$ 471,183	$ —	$ —
Liabilities			
Contingent consideration	$ —	$ —	$ 2,576,633
Warrant liability	$ —	$ —	$ 8,185
Unit purchase option liability	$ —	$ —	$ 26,991

*Investments in money market funds are reflected in cash and cash equivalents on the accompanying Balance Sheets.

Level 3 Valuation

The Company's TRx and Avadel Pediatric Products acquisitions (see Note 4) involve the potential for future payment of consideration that is contingent upon the achievement of operational and commercial milestones. The fair value of contingent consideration is determined using unobservable inputs. These inputs include the estimated amount and timing of projected cash flows, the probability of success (achievement of the contingent event) and the risk-adjusted discount rate used to present value the probability-weighted cash flows. Subsequent to the acquisition date, at each reporting period, the contingent consideration liability is remeasured at current fair value with changes recorded in the Company's condensed consolidated statements of operations. Changes in any of the inputs may result in a significantly different fair value adjustment.

The warrant liability (which relates to warrants to purchase shares of common stock) is marked-to-market each reporting period with the change in fair value recorded to other income (expense) in the accompanying statements of operations until the warrants are exercised, expire or other facts and circumstances lead the warrant liability to be reclassified to stockholders' equity. The fair value of the warrant liability is estimated using a Black-Scholes option-pricing model. The significant assumptions used in preparing the option pricing model for valuing the warrant liability as of March 31, 2018, include (i) volatility of 55%, (ii) risk free interest rate of 2.39%, (iii) strike price ($8.40), (iv) fair value of common stock ($4.29), and (v) expected life of 2.55 years.

The underwriters' unit purchase option (the "UPO") was issued to the underwriters of the Company's initial public offering ("IPO") in 2015 and provides the underwriters the option to purchase up to a total of 40,000 units. The units underlying the UPO will be, immediately upon exercise, separated into shares of common stock, underwriters' Class A warrants and underwriters' Class B warrants (such warrants together referred to as the Underwriters' Warrants). The Underwriters' Warrants are warrants to purchase shares of common stock (see Note 9 for additional information on the UPO). The Company classifies the UPO as a liability as it is a freestanding marked-to-market derivative instrument that is precluded from being classified in stockholders' equity. The UPO liability is marked-to-market each reporting period with the change in fair value recorded to other income (expense) in the accompanying statements of operations until the UPO is exercised, expires or other facts and circumstances lead the UPO to be reclassified to stockholders' equity. The fair value of the UPO liability is estimated using a Black-Scholes option-pricing model within a Monte Carlo simulation model framework. The

significant assumptions used in preparing the simulation model for valuing the UPO as of March 31, 2018, include (i) volatility range of 35% to 50%, (ii) risk free interest rate range of 1.63% to 2.34%, (iii) unit strike price ($7.48), (iv) underwriters' Class A warrant strike price ($5.23), (v) underwriters' Class B warrant strike price ($4.49), (vi) fair value of underlying equity ($4.29), and (vii) optimal exercise point of immediately prior to the expiration of the underwriters' Class B warrants, which occurred on April 20, 2017.

The tables presented below are a summary of changes in the fair value of the Company's Level 3 valuations for the warrant liability, UPO liability and contingent consideration for the three months ended March 31, 2018 and 2017:

	Warrant liability	Unit purchase option liability	Contingent Consideration	Royalty Obligation	Total
Balance at December 31, 2017	$ 8,185	$ 26,991	$ 2,576,633	$ —	$ 2,611,809
Issuance of contingent consideration and royalty	—	—	7,875,165	240,744	8,115,909
Change in fair value	7,405	15,846	199,283	63,486	286,020
Balance at March 31, 2018	$ 15,590	$ 42,837	$ 10,651,081	$ 304,230	$11,013,738

	Warrant liability	Unit purchase option liability	Total
Balance at December 31, 2016	$ 5,501	$ 51	$ 5,552
Change in fair value	(2,795)	6,556	3,761
Balance at March 31, 2017	$ 2,706	$ 6,607	$ 9,313

No other changes in valuation techniques or inputs occurred during three months ended March 31, 2018 and 2017. No transfers of assets between Level 1 and Level 2 of the fair value measurement hierarchy occurred during the three months ended March 31, 2018 and 2017.

6. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

	As of	
	March 31, 2018	December 31, 2017
Sales returns and allowances	$ 4,374,892	$ 3,829,030
Compensation and benefits	1,096,107	1,401,514
General and administrative	1,042,952	1,001,454
Royalties payable	755,641	743,010
Research and development expenses	236,279	299,480
Other	233,398	256,634
Total accrued expenses and other current liabilities	$ 7,739,269	$ 7,531,122

7. Agreements

Significant changes to our outstanding Agreements since December 31, 2017 are as follows:

Development Agreements

IPR-D LiquiTime

On February 16, 2018, in connection with the acquisition of Avadel's pediatric products, the Company entered into a Licensing and Development Agreement with Flamel Ireland Limited ("Avadel Ireland"), a subsidiary of Avadel, under which Avadel Ireland will develop and provide the Company with four stable product formulations utilizing its proprietary LiquiTime® and Micropump® technology. Upon transfer of the product formulations, the Company will assume all remaining development and regulatory costs. Once approved and marketed, the Company will pay Avadel Ireland a royalty equal to 6.0% of net sales of such products

Commercial, Supply, and Distribution Agreements

Acquired Product Marketing Rights - Karbinal

On February 16, 2018, in connection with the acquisition of Avadel's pediatric products, the Company entered into a supply and distribution agreement with TRIS Pharma (the "Karbinal Agreement"), under which the Company is granted the exclusive right to distribute and sell the product in the United States. The initial term of the Karbinal Agreement is 20 years. The Company will pay TRIS a royalty equal to 23.5% of net sales. Avadel has agreed to pay the Company a make-whole payment equal to 8.5% of fiscal year 2018 and 2019 net sales of Karbinal. The make-whole payment is capped at $750,000 each year. The Karbinal Agreement also contains minimum unit sales commitments. The Karbinal Agreement also has multiple commercial milestone obligations that aggregate up to $3.0 million based on cumulative net sales, the first of which is triggered at $40.0 million.

Acquired Product Marketing Rights - AcipHex

On February 16, 2018, in connection with the acquisition of Avadel's pediatric products, the Company assumed the License and Assignment Agreement for AcipHex ("AcipHex Agreement") between Eisai, Inc. and FSC Therapeutics, LLC dated June 2014 and the Supply Agreement between Eisai, Inc. and FSC Laboratories, Inc. dated June 2014. Per the AcipHex Agreement, the Company is granted the exclusive license to exploit the products in the territory (U.S.) and an exclusive license to use Eisai trademarks to sell the products. Eisai will manufacture and supply the requirements for supply of the products. The term of the AcipHex Agreement is perpetual unless terminated per the agreement. Eisai will receive (a) a royalty with respect to the sales of AcipHex equal to 15.0% of Net Sales. The royalties are payable until the first commercial sale of an unauthorized generic product in the territory or the date that is five years from the effective date of the agreement. A maximum $8.0 million of sales-based milestone payments is possible should AcipHex accumulated net sales exceed $50.0 million.

Acquired Product Marketing Rights- Cefaclor

On February 16, 2018, in connection with the acquisition of Avadel's pediatric products, the Company assumed the License, Supply and Distribution Agreement for Cefaclor between Yung Shin Pharm. Ind, Co., Ltd. and FSC Therapeutics, LLC dated March 2015 ("Cefaclor Agreement"). The initial term of the Cefaclor Agreement runs through December 31, 2024 and will automatically renew for additional, successive twelve-month periods unless terminated by either party. Yung Shin will receive a royalty equal to 15.0% of Net Sales of Cefaclor. A maximum $6.5 million of sales-based milestone payments is possible should Cefaclor accumulated net sales exceed $40.0 million.

8. Deerfield Obligation

In relation to the Company's acquisition of the Avadel pediatric products on February 16, 2018, the Company assumed an obligation that Avadel had to Deerfield CSF, (the "Deerfield Obligation"). The payment obligation assumed consists of the two components described below.

Deerfield Debt Obligation

	March 31, 2018	December 31, 2017
Deerfield Obligation	$ 15,377,754	$ —
Less: debt discount	—	—
Deerfield Obligation, net of debt discount	15,377,754	—
Less: current portion	787,500	—
Long term debt, net of current portion and debt discount	$ 14,590,254	$ —

Beginning in July 2018 through October 2020, the Company will pay a quarterly payment of $262,500 to Deerfield. In January 2021, a balloon payment of $15,250,000 is due. On the acquisition date, the Company determined the fair value of these payments to be $15,272,303 using its estimated cost of debt. Management performed a credit risk analysis that determined the Company's credit rating to be B to BB plus the yield on a ten-year treasury security. The difference between the gross value and fair value of these payments will be recorded as interest expense in the Company's condensed consolidated statements of operations through January 2021 using the effective interest method. Interest expense for the three months ended March 31, 2018 was $105,451. The amounts due within the next year are included in Current portion of long-term debt on the Company's condensed consolidated balance sheets. The amounts due in greater than one year are included in Long-term debt on the Company's condensed consolidated balance sheets.

Deerfield Contingent Consideration

The Deerfield Contingent Consideration represents potential future royalty payments that are contingent upon the achievement of net sales volumes. Management estimated the amount and timing of projected cash flows, the probability of success (achievement of the contingent event) and the risk-adjusted discount rate used to present value the probability-weighted cash flows and determined the fair value of the Deerfield Contingent Consideration on the acquisition date was $7,875,165. Subsequent to the acquisition date, at each reporting period, the Deerfield Contingent Consideration liability will be remeasured at its current fair value with changes recorded in the Company’s condensed consolidated statements of operations. At March 31, 2018, the fair value of the Deerfield Contingent Consideration was $7,920,356 which resulted in a charge of $45,191 to change in fair value on the statement of operations.

9. Capital Structure

According to the Company's amended and restated certificate of incorporation, the Company is authorized to issue two classes of stock, common stock and preferred stock. As of March 31, 2018, the total number of shares of capital stock the Company was authorized to issue was 205,000,000 of which 200,000,000 was common stock and 5,000,000 was preferred stock. All shares of common and preferred stock have a par value of $0.001 per share. On April 27, 2017, the Company further amended its certificate of incorporation in connection with the closing of the Armistice Private Placement (as defined below) with the filing of a Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (“Series A Preferred Stock”) of Cerecor Inc. (the “Certificate of Designation”). The Certificate of Designation authorized the issuance of 4,179 shares of Series A Preferred Stock to Armistice with a stated value of $1,000 per share, convertible into 11,940,000 shares of the Company’s common stock at a conversion price of $0.35 per share and was approved by its shareholders on June 30, 2017. On July 6, 2017, Armistice converted all of its outstanding shares of Series A Preferred Stock into common stock. Subsequent to the conversion of Armistice’s Series A Preferred Stock into common stock, Armistice has a majority voting control over the Company.

Common Stock

The Aspire Capital Transaction

On September 8, 2016, the Company entered into a common stock purchase agreement (the “Aspire Purchase Agreement”) with Aspire Capital Fund, LLC ("Aspire Capital"), pursuant to which Aspire Capital committed to purchase up to an aggregate of $15.0 million of shares of the Company’s common stock over the 30-month term of the Purchase Agreement. Under the Aspire Purchase Agreement, on any trading day selected by the Company on which the closing price of the Company’s common stock exceeds $0.50, the Company may, in its sole discretion, present a purchase notice directing Aspire Capital to purchase up to 50,000 shares of common stock per day, up to $15.0 million of the Company’s common stock in the aggregate at a per share price calculated by references to the prevailing market price of the Company’s common stock. Upon execution of the Aspire Purchase Agreement, the Company issued and sold to Aspire Capital 250,000 shares of common stock at a price per share of $4.00, for gross proceeds of $1.0 million, and concurrently entered into

a registration rights agreement with Aspire Capital registering the shares of the Company's common stock that have been and may be issued to Aspire Capital under the Purchase Agreement. Additionally, as consideration for Aspire Capital entering into the Aspire Purchase Agreement, the Company issued 175,000 shares of common stock as a commitment fee. The net proceeds of the Aspire Capital transaction, after offering expenses, to the Company were approximately $1.9 million for the year ended December 31, 2016. During the twelve months ended December 31, 2017, the Company sold an additional 965,165 shares of common stock to Aspire Capital under the terms of the Aspire Purchase Agreement for gross proceeds of approximately $789,000. The Board of Directors approved a board resolution to terminate this agreement on January 20, 2018.

The Maxim Group Equity Distribution Agreement

On January 27, 2017, the Company entered into an Equity Distribution Agreement with Maxim Group LLC ("Maxim"), as sales agent, pursuant to which the Company could offer and sell, from time to time, through Maxim, up to $12,075,338 in shares of its common stock. This agreement expired on January 16, 2018, and as of this date, the Company had sold 1,336,433 shares of its common stock through Maxim under the Equity Distribution Agreement for total gross proceeds of $905,000, including $33,000 of issuance costs.

Armistice Private Placement

On April 27, 2017, the Company entered into a securities purchase agreement with Armistice, pursuant to which Armistice purchased $5.0 million of the Company's securities, consisting of 2,345,714 shares of the Company's common stock at a purchase price of $0.35 per share and 4,179 shares of Series A Preferred Stock at a price of $1,000 per share. The Company received $4.65 million in net proceeds from the Armistice Private Placement. The number of shares of common stock that were purchased in the private placement constituted approximately 19.99% of the Company's outstanding shares of common stock immediately prior to the closing of the Armistice Private Placement. Armistice also received warrants to purchase up to 14,285,714 shares of the Company's common stock at an exercise price of $0.40 per share. Under the terms of the securities purchase agreement, the Series A Preferred Stock were not convertible into common stock, and the warrants were not exercisable until the Company received approval of the private placement by the Company's shareholders as required by the rules and regulations of the NASDAQ Capital Market. The Company received shareholder approval for this transaction on June 30, 2017, at which time the warrants became exercisable and the Series A Preferred Stock became convertible into common stock.

As multiple instruments were issued in a single transaction, the Company initially allocated the issuance proceeds among the preferred stock, common stock and warrants using the relative allocation method. As the warrants were determined to be indexed to the Company's stock, and would only be settled in common shares, entirely in the control of the Company, the warrant instrument was accounted for as an equity instrument. Fair value of the warrants was initially determined upon issuance using the Black-Scholes Model (level 3 fair value measurement). Armistice converted all of the Series A Preferred Stock into 11,940,000 shares of common stock on July 6, 2017.

Contingently Issuable Shares

Under the terms of TRx acquisition noted above in Note 4, the Company is required to issues common stock having an aggregate value as calculated in the TRx Purchase Agreement on the Closing Date of $8.1 million (the "Equity Consideration"). Upon closing, the Company issued 5,184,920 shares of its common stock. Pursuant to the TRx Purchase Agreement, the issuance of the remaining 2,349,968 shares as a part of the Equity Consideration is subject to stockholder approval and entirely contingent upon gaining such stockholder approval at the Company's 2018 Annual Stockholder's Meeting.

Voting

Common stock is entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders, including the election of directors, and does not have cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election.

Dividends

The holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by the board of directors out of legally available funds.

Liquidation

In the event of the Company's liquidation, dissolution or winding up, holders of the Company's common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all debts and other liabilities.

Rights and Preferences

Holders of the Company's common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the Company's common stock.

Common Stock Warrants

At March 31, 2018, the following common stock warrants were outstanding:

Number of shares underlying warrants	Exercise price per share	Expiration date
80,966	$ 28.00	August 2018
4,551,700	$ 4.55	October 2018
40,000*	$ 5.23	October 2018
3,571	$ 28.00	December 2018
22,328*	$ 8.40	October 2020
2,380*	$ 8.68	May 2022
14,285,714	$ 0.40	June 2022
18,986,659		

*Accounted for as a liability instrument (see Note 5)

10. Stock-Based Compensation

2016 Equity Incentive Plan

On April 5, 2016, the Company's board of directors adopted the 2016 Equity Incentive Plan (the "2016 Plan") as the successor to the 2015 Omnibus Plan (the "2015 Plan"). The 2016 Plan was approved by the Company's stockholders and became effective on May 18, 2016 (the "2016 Plan Effective Date").

As of the 2016 Plan Effective Date, no additional grants will be made under the 2015 Plan or the 2011 Stock Incentive Plan (the "2011 Plan"), which was previously succeeded by the 2015 Plan effective October 13, 2015. Outstanding grants under the 2015 Plan and 2011 Plan will continue according to their terms as in effect under the applicable plan.

Upon the 2016 Plan Effective Date, the 2016 Plan reserved and authorized up to 600,000 additional shares of common stock for issuance, as well as 464,476 unallocated shares remaining available for grant of new awards under the 2015 Plan. During the term of the 2016 Plan, the share reserve will automatically increase on the first trading day in January of each calendar year, beginning in 2017, by an amount equal to 4% of the total number of outstanding shares of common stock of the Company on the last trading day in December of the prior calendar year. As of March 31, 2018, there were no shares available for future issuance under the 2016 Plan.

Option grants to employees and directors expire after ten years. Employee options typically vest over four years. Options granted to directors typically vest over three years. Directors may elect to receive stock options in lieu of board compensation which vest immediately. For stock options granted to employees and non-employee directors, the estimated grant date fair market value of the Company's stock-based awards is amortized ratably over the individuals' service periods, which is the period in which the awards vest.

For stock options issued to non-employees, the Company measures the options at their fair value on the date at which the related service is complete. Expense is recognized over the period during which services are rendered by such non-employees until completed. At the end of each financial reporting period prior to the completion of the service, the fair value of the awards is remeasured using the then current fair market value of the Company's common stock and updated assumptions in the Black-Scholes option pricing model. Stock-based compensation expense includes stock options and ESPP shares. The amount of stock based compensation expense recognized for the three months ended March 31, 2018 and 2017 as follows:

	Three Months Ended March 31,	
	2018	2017
Research and development	$ 11,497	$ 48,852
General and administrative	207,382	283,367
Sales and marketing	23,945	—
Total stock-based compensation	$ 242,824	$ 332,219

Stock options with service-based vesting conditions

The Company has granted awards that contain service-based vesting conditions. The compensation cost for these options is recognized on a straight-line basis over the vesting periods. A summary of option activity for the three months ended March 31, 2018 is as follows:

	Options Outstanding			
	Number of shares	Weighted average exercise price	Grant date fair value of options	Weighted average remaining contractual term (in years)
Balance at December 31, 2017	2,823,489	$ 3.93		7.29
Granted	1,030,070	$ 3.77	$ 2,335,255	
Exercised	(143,148)	$ 2.53		
Forfeited	(301,027)	$ 2.21		
Balance at March 31, 2018	3,409,384	$ 4.09		9.48
Exercisable at March 31, 2018	1,671,978	$ 5.03		6.68

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's common stock for those stock options that had exercise prices lower than the fair value of the Company's common stock. As of March 31, 2018, the aggregate intrinsic value of options outstanding, vested and expected to vest was $3.7 million. The total grant date fair value of shares which vested during the three months ended March 31, 2018 was $355,527. The per-share weighted-average grant date fair value of the options granted during three months ended March 31, 2018 was estimated at $2.27. There were 122,932 options that vested during the three months ended March 31, 2018 with a weighted average grant date fair value of $2.89. There were 143,148 options exercised during three months ended March 31, 2018.

Stock options with market-based vesting conditions

The Company has granted awards that contain market-based vesting conditions. Activity for the market-based options was as follows for the three months ended March 31, 2018:

	Options Outstanding			
	Number of shares	Weighted average exercise price	Weighted average remaining contractual term (in years)	Aggregate intrinsic value (1)
Balance at December 31, 2017	—			
Granted	500,000	$ 4.24		
Exercised	—			
Forfeited	—			
Balance at March 31, 2018	500,000	$ 4.24	9.99	0
Exercisable at March 31, 2018	—			

(1) The aggregate intrinsic value in the above table represents the total pre-tax amount that a participant would receive if the option had been exercised on the last day of the respective fiscal period. Options with a market value less than its exercise value are not included in the intrinsic value amount.

The weighted-average grant-date fair value of share options granted during the first three months of fiscal year 2018 was $2.52 per share or $1,260,000. At March 31, 2018, there was $1,255,068 of total unrecognized compensation cost related to nonvested market-based vesting conditions awards. This compensation cost is expected to be recognized over the next 2.8 years.

Stock-based compensation assumptions

The following table shows the assumptions used to compute stock-based compensation expense for stock options granted to employees and members of the board of directors under the Black-Scholes valuation model, and the assumptions used to compute stock-based compensation expense market-based stock option grants under a Monte Carlo simulation, for the three months ended March 31, 2018:

Service-based options	
Expected dividend yield	—%
Expected volatility	55 - 65%
Expected life (in years)	5.0 - 6.25
Risk-free interest rate	2.53 - 2.69%
Market-based options	
Expected dividend yield	—%
Expected volatility	60%
Expected life (in years)	10
Risk-free interest rate	2.84%

Restricted Stock Award

The Company granted restricted stock awards ("RSA") to its CEO as an incentive for joining the Company. The Company measures the fair value of the restricted awards using the stock price on the date of the grant. The restricted shares vest annually over a four year period beginning on the first anniversary of the award. The stock compensation expense on this award during the three months ended March 31, 2018 was $3,047. At March 31, 2018, there was $1,976,368 of total unrecognized compensation cost related to the RSA grants. This compensation cost is expected to be recognized over the next 4 years.

The following table summarizes the Company's RSA grants for the three months ended March 31, 2018:

	Non-vested RSAs Outstanding	
	Number of shares	Weighted average grant date fair value
Non-vested RSAs at December 31, 2017	—	$ —
Granted	400,000	$ 4.24
Vested	—	$ —
Forfeited	—	$ —
Non-vested RSAs at March 31, 2018	400,000	

Employee Stock Purchase Plan

On April 5, 2016, the Company’s board of directors approved the 2016 Employee Stock Purchase Plan (the “ESPP”). The ESPP was approved by the Company’s stockholders and became effective on May 18, 2016 (the “ESPP Effective Date”).

Under the ESPP, eligible employees can purchase common stock through accumulated payroll deductions at such times as are established by the administrator. The ESPP is administered by the compensation committee of the Company's board of directors. Under the ESPP, eligible employees may purchase stock at 85% of the lower of the fair market value of a share of the Company's common stock (i) on the first day of an offering period or (ii) on the purchase date. Eligible employees may contribute up to 15% of their earnings during the offering period. The Company's board of directors may establish a maximum number of shares of the Company's common stock that may be purchased by any participant, or all participants in the aggregate, during each offering or offering period. Under the ESPP, a participant may not accrue rights to purchase more than $25,000 of the fair market value of the Company's common stock for each calendar year in which such right is outstanding.

Upon the ESPP Effective Date, the Company reserved and authorized up to 500,000 shares of common stock for issuance under the ESPP. On January 1 of each calendar year, the aggregate number of shares that may be issued under the ESPP shall automatically increase by a number equal to the lesser of (i) 1% of the total number of shares of the Company's capital stock outstanding on December 31 of the preceding calendar year, and (ii) 500,000 shares of the Company's common stock, or (iii) a number of shares of the Company's common stock as determined by the Company's board of directors or compensation committee. The number of shares increased by 94,341 and 312,669 on January 1, 2017 and January 1, 2018, respectively. As of March 31, 2018, 826,390 shares remained available for issuance.

In accordance with the guidance in ASC 718-50, the ability to purchase shares of the Company's common stock at the lower of the offering date price or the purchase date price represents an option and, therefore, the ESPP is a compensatory plan under this guidance. Accordingly, stock-based compensation expense is determined based on the option's grant-date fair value and is recognized over the requisite service period of the option. The Company used the Black-Scholes valuation model and recognized stock-based compensation expense of $3,046 for the three months ended March 31, 2018, which is included in the table above with stock-based compensation from stock options.

11. Income Taxes

The provision for income taxes was $23,313 for the three months ended March 31, 2018 and represents an increase in deferred tax liabilities related to indefinite lived intangibles as well as an insignificant amount of state income tax estimated to be due from product sales generated from our TRx acquisition in 2017.

The TCJA was passed late in the fourth quarter of 2017, ongoing guidance and accounting interpretation are expected over the next year, and significant data and analysis is required to finalize amounts recorded pursuant to the TCJA. In accordance with Accounting Bulletin No. 118, Income Tax Accounting Implications for the Tax Act ("SAB 118"), the Company considers the accounting for the deferred tax re-measurements and other items to be incomplete due to the forthcoming guidance and its ongoing analysis of final year-end data and tax positions. SAB 118 allows the Company to record provisional amounts during a measurement period not to extend beyond one year from the enactment date. Since the Tax Act was passed late in the fourth quarter of 2017, ongoing guidance and accounting interpretation are expected over the next year, and significant data and analysis is required to finalize amounts recorded pursuant to the Tax Act, the Company considers the accounting for the deferred tax re-measurements and other items to be incomplete due to the forthcoming guidance and its ongoing analysis of final year-end data and tax positions. The Company expects to complete its analysis within the measurement period in accordance with SAB 118. The Company did not change any provisional estimates recognized in 2017 in the current quarter. Any adjustments to these amounts will be recorded to current tax expense in 2018 when the analysis is complete.

12. Commitments and Contingencies

Office Lease

In 2013, the Company entered into a lease for new corporate office space location in Baltimore, Maryland. The lease provided for three months of rent abatement and includes escalating rent payments. Rent expense is recognized on a straight-line basis over the term of the lease. Rent expense under the lease amounted to approximately $44,000 for the three months ended March 31, 2018 and 2017. The lease expires on December 31, 2018. The Company's management is currently evaluating other office space for occupancy beyond 2018.

13. Subsequent Events

TRx entered into a Marketing Agreement with PAI, effective April 1, 2017. Under the agreement, TRx promoted, marketed and sold PSP 10 and PSP 20 on behalf of PAI. PAI was obligated to pay a monthly fee of $62,500. PAI and TRx also agreed to share the net revenues from sales of the products, after reimbursing certain expenditures, in a manner designed to achieve a 50/50 split of net revenues above the "break even" point, calculated in accordance with the terms and inputs set forth in the agreement. The revenue sharing continued for a period of six months after termination of the agreement. The agreement had an initial six-month term. On October 1, 2017 the agreement expired by its term. During the first quarter of 2018 the agreement was extended through an addendum with certain modifications to the original agreement related to the revenue sharing and termination clauses. Either party can terminate the agreement under the addendum without cause upon providing 30 days written notice. The Company has received written notice to terminate the PAI Sales and Marketing Agreement. As such, once the 30 day notice period has ended, the contract will be terminated. The termination will likely result in an impairment write-off of the remaining asset value in the second quarter of 2018. There was $2.3 million of fair value assigned to the agreement at the acquisition date as part of our purchase price allocation. Operating expenses will not be materially impacted by the termination of the agreement.

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

This Quarterly Report on Form 10-Q and the information incorporated herein by reference contain forward-looking statements that involve a number of risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Forward-looking statements can be identified by the use of forward-looking words such as "believes," "expects," "may," "will," "plans," "intends," "estimates," "could," "should," "would," "continue," "seeks," "aims," "projects," "predicts," "pro forma," "anticipates," "potential" or other similar words (including their use in the negative), or by discussions of future matters such as the development of product candidates or products, technology enhancements, possible changes in legislation, and other statements that are not historical. Although our forward-looking statements reflect the good faith judgment of our management, these statements can only be based on facts and factors currently known by us. Consequently, forward-looking statements are inherently subject to risks and uncertainties, and actual results and outcomes may differ materially from results and outcomes discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those below and elsewhere in this Quarterly Report on Form 10-Q, particularly in Part II – Item 1A, "Risk Factors," as well as in our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on April 2, 2018, and in our other filings with the SEC. Statements made herein are as of the date of the filing of this Quarterly Report on Form 10-Q with the SEC and should not be relied upon as of any subsequent date. Unless otherwise required by applicable law, we do not undertake, and we specifically disclaim any obligation to update any forward-looking statements to reflect occurrences, developments, unanticipated events or circumstances after the date of such statement.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited financial statements and related notes that appear in Item 1 of this Quarterly Report on Form 10-Q and with our audited financial statements and related notes for the year ended December 31, 2017 appearing in our Annual Report on Form 10-K filed with the SEC on April 2, 2018.

Overview

We are an integrated biopharmaceutical company dedicated to making a difference in the lives of patients. Our goal is to become a self-sustained, integrated pharmaceutical company focused on pediatric healthcare. We apply a disciplined decision making methodology as we evaluate the optimal allocation of our resources between investing in our current commercial product line, our development portfolio and acquisitions or in-licensing of new assets. We have a diverse portfolio of commercial products we sell and product candidates in development. We were incorporated in 2011 and commenced operations in the second quarter of 2011. On November 17, 2017, we acquired TRx Pharmaceuticals, LLC ("TRx") and its wholly-owned subsidiaries (see Recent Developments below for a description of the transaction). On February 16, 2018, we acquired all rights in the Avadel U.S. Holdings, Inc's ("Avadel") marketed pediatric products (see Recent Developments below for a description of the transaction).

Prior to the TRx and Avadel pediatric products acquisitions, we were a biopharmaceutical company focused exclusively on the development of innovative drug candidates for neurologic and psychiatric disorders. Our operations, since inception, had been focused on organizing and staffing our company, acquiring rights to and developing certain product candidates, business planning and raising capital. Our pipeline is led by CERC-301, which is currently in a Phase I safety study for Neurogenic Orthostatic Hypotension ("nOH"). In March 2018, we gained clearance of its Investigational New Drug ("IND") application from the U.S. Food & Drug Administration to initiate clinical studies of CERC-301 in nOH. The Company is also developing three preclinical stage compounds, CERC-611, CERC-406 and CERC-425.

Our portfolio of product candidates is summarized below:

- **CERC-301:** ***Orphan Neurological Indication***. CERC-301 belongs to a class of compounds known as antagonists of the N-methyl-D-aspartate, or NMDA, receptor, a receptor subtype of the glutamate neurotransmitter system that is responsible for controlling neurologic adaptation. We believe CERC-301 selectively blocks the NMDA receptor subunit 2B, or NR2B (also called GluN2B). Given its specific mechanism of action and demonstrated tolerability profile, we believe CERC-301 may be well suited to address unmet medical needs in neurologic indications. We intend to initiate a Phase I study in 2018 for neurogenic orthostatic hypotension ("nOH"), a condition that is part of a larger category called orthostatic hypotension (OH), which is also known as postural hypotension. nOH is caused by dysfunction in the autonomic nervous system and causes people to feel faint when they stand or sit up. We will continue to explore the use of CERC-301 in orphan neurologic conditions in preclinical and clinical studies.

- **CERC-611:** ***Adjunctive Treatment of Partial-Onset Seizures in Epilepsy.*** CERC-611 is a potent and selective antagonist of transmembrane alpha-amino-3-hydroxy-5-methyl-4-isoxazolepropionic acid (AMPA) receptor regulatory protein ("TARP")-ã8-dependent AMPA receptor in preclinical development. TARPs are a recently discovered family of proteins that have been found to associate with, and modulate the activity of, AMPA receptors. TARP y8-dependent AMPA receptors are localized primarily in the hippocampus, a region of the brain with importance in complex partial seizures and particularly relevant to seizure origination and/or propagation. We believe CERC-611 is the first drug candidate to selectively target and functionally block region-specific AMPA receptors after oral dosing, which we believe may improve the efficacy and side effect profile of CERC-611 over current anti-epileptics. Research also suggests that selectively targeting individual TARPs may enable selective modulation of specific brain circuits without globally affecting synaptic transmission. We intend to develop CERC-611 as an adjunctive therapy for the treatment of partial-onset seizures in patients with epilepsy.
- **CERC-406 and CERC-425:** ***Residual Motoric and Cognitive Impairment.*** CERC-406 and CERC-425 are preclinical candidates from our proprietary platform of compounds that inhibit catechol-O-methyltransferase, or COMT, within the brain, which we refer to as our COMTi platform. We believe they may have the potential to be developed for the treatment of residual cognitive impairment symptoms such as Parkinson's disease.

Our strategy for increasing shareholder value includes:

- Growing sales of the existing commercial products in our portfolio, including by identifying and investing in growth opportunities such as new treatment indications and new geographic markets;
- Acquiring or licensing rights to clinically meaningful and differentiated products that are already on the market for pediatric use or in late-stage development for pediatric indications that are near market launch; and
- Pursuing targeted, differentiated clinical stage product candidates for rare disorders or orphan diseases.

For the three months ended March 31, 2018, the Company generated a net loss of $3.9 million and negative cash flows from operations of $0.3 million. As a result of the TRx and Avadel acquisitions, we expect our commercial operations to generate positive cash flows from the profits of our product sales. We apply a disciplined decision-making methodology as we evaluate the optimal allocation of our resources between investing in our current commercial product line, our development portfolio and acquisitions or in-licensing of new assets.

We may seek future funding for our development programs and operations from further offerings of equity or debt securities, non-dilutive financing arrangements such as federal grants, collaboration agreements or out-licensing arrangements. However, we may be unable to raise additional funds or enter into such other agreements or transactions on favorable terms, or at all.

Since inception, our operations have included organizing and staffing our company, acquiring strategic companies and commercial products, raising capital and developing our product candidates. We have incurred losses in most periods since our inception. As of March 31, 2018, we had an accumulated deficit of $62.0 million. We expect to use the profits from our commercial products for the expansion of our portfolio of commercial products, development of our product candidates, and operating expenses.

We have financed our operations primarily through a public offering, private placements of our common stock and convertible preferred stock, the issuance of debt and the sale of our rights to CERC-501. Our ability to remain profitable depends on our ability to continue to generate product gross profit, control spending related to research and development, control administrative and compliance costs associated with being a public company and control costs associated with the integration of commercial operations and related infrastructure.

Recent Developments

Avadel Pediatric Products Acquisition

On February 16, 2018, we purchased and acquired all rights to Avadel Pharmaceuticals PLC's ("Avadel") marketed pediatric products (the "Avadel Products") for the assumption of certain of Avadel's financial obligations to Deerfield CSF, LLC, which includes a loan with a face value of $15 million due in January 2021 and its related interest payments as well as a 15% annual royalty on net sales of the Avadel Products through February 2026 (the "Avadel Acquisition"). The Avadel Products consist of Karbinal™ ER, AcipHex® Sprinkle™, Cefaclor for Oral Suspension, and Flexichamber™.

Additionally, under the terms of the Avadel Acquisition, Avadel will develop and provide us with four stable product formulations of our choosing, utilizing its proprietary LiquiTime™ and Micropump® technology. Three of these development projects are already underway. We will reimburse Avadel for any approved costs associated with the development of the Avadel Products in

excess of $1.0 million in aggregate. Upon transfer of the Avadel Products formulations, we will assume all remaining development and regulatory costs.

The Avadel Acquisition aligns with our strategy to become a leading U.S. pediatric pharmaceutical company. See Item 1, Note 4 to the unaudited condensed consolidated financial statements in this Quarterly Report on Form 10-Q for more information on the Avadel Pediatric Products Acquisition.

TRx Acquisition

On November 17, 2017, we acquired TRx, including its wholly-owned subsidiary Zylera Pharmaceuticals, LLC and its franchise of commercial medications led by Poly-Vi-Flor® (multivitamin and fluoride supplement tablet, chewable), Tri-Vi-Flor® (multivitamin and fluoride supplement suspension/drops), Millipred®, Veripred® and Ulesfia®. Zylera Pharma Corp, and Princeton, LLC. Under the terms of the transaction, we paid $18.9 million in cash and $8.5 million in Cerecor common stock. TRx shareholders will be eligible to receive up to an additional $7 million in contingent payments upon achievement of certain commercial and regulatory milestones.

The acquisition of TRx and its subsidiaries is a pivotal move in our strategic shift towards becoming an integrated pediatric pharmaceutical company. Operationally, we believe the transaction adds a highly-effective commercial unit that will drive a solid, profitable revenue stream to help us advance our pipeline of drug candidates for rare neurologic diseases.

Components of Operating Results

License, other and grant revenue

Prior to the acquisitions of TRx and Avadel, we derived revenue primarily from the sale of CERC-501 to Janssen Pharmaceuticals, Inc. ("Janssen") in August 2017 and research grants from the National Institutes of Health.

In April 2016, we received a research and development grant from the National Institute on Drug Abuse, or NIDA, at the National Institutes of Health to provide additional resources for the period from May 2016 through April 2017 for a Phase 2 clinical trial for CERC-501. Additionally, in July 2016, we received a research and development grant from the National Institute on Alcohol Abuse and Alcoholism, or NIAAA, at the National Institutes of Health to provide additional resources for the period of July 2016 through December 2017 to progress the development of CERC-501 for the treatment of alcohol use disorder. We recognize revenue under grants in earnings on a systemic basis in the period the related expenditures for which the grants are intended to compensate are incurred. Grant revenues are derived from government grants that support the Company's efforts on specific research projects. We have determined that the government agencies providing grants to the Company are not our customers.

Product revenue, net

We generate substantially all of our revenue from sales of prescription pharmaceutical products to our customers and have identified a single product delivery performance obligation, which is the provision of prescription pharmaceutical products to our customers based upon Master Service Agreements in place with wholesaler distributors, purchase orders from retail pharmacies or other direct customers and a contractual arrangement with a specialty pharmacy. The performance obligation is satisfied at a point in time, when control of the product has been transferred to the customer, either at the time the product has been received by the customer or to a lesser extent when the product is shipped. We determine the transaction price based on fixed consideration in its contractual agreements and the transaction price is allocated entirely to the performance obligation to provide pharmaceutical products. In determining the transaction price, a significant financing component does not exist since the timing from when we deliver product to when the customers pay for the product is less than one year and the customers do not pay for product in advance of the transfer of the product.

Revenues from sales of products are recorded net of any variable consideration for estimated allowances for returns, chargebacks, distributor fees, prompt payment discounts, government rebates and other common gross-to-net revenue adjustments. The identified variable consideration is recorded as a reduction of revenue at the time revenues from product sales are recognized. We recognize revenue only to the extent that it is probable that a significant revenue reversal will not occur in a future period.

Provisions for returns and government rebates are included within current liabilities in the condensed consolidated balance sheet. Provisions for prompt payment discounts and distributor fees, are included as a reduction to accounts receivable. Calculating these items involves estimates and judgments based on sales or invoice data, contractual terms, historical utilization rates, new information regarding changes in these programs' regulations and guidelines that would impact the amount of the actual rebates, our

expectations regarding future utilization rates for these programs, and channel inventory data. These estimates may differ from actual consideration amount received and we will re-assess these estimates and judgments each reporting period to adjust accordingly.

Returns and Allowances

Consistent with industry practice, we maintain a return policy that allows customers to return product within a specified period both subsequent to and, in certain cases, prior to the product's expiration date. Our return policy generally allows customers to receive credit for expired products within six months prior to expiration and within one year after expiration. The provision for returns and allowances consists of estimates for future product returns, pricing adjustments and delivery errors. The primary factors considered in estimating potential product returns include:

- the shelf life or expiration date of each product;
- historical levels of expired product returns;
- external data with respect to inventory levels in the wholesale distribution channel;
- external data with respect to prescription demand for our products; and
- the estimated returns liability to be processed by year of sale based on analysis of lot information related to actual historical returns.

The Company's estimate for returns and allowances may be impacted by a number of factors, but the principal factor relates to the level of inventory in the distribution channel. If we become aware of an increase in the level of inventory of its products in the distribution channel, we consider the reasons for the increase to determine whether we believe the increase is temporary or other-than-temporary. Increases in inventory levels assessed as temporary will not result in an adjustment to the provision for returns and allowances. Conversely, other-than-temporary increases in inventory levels may be an indication that future product returns could be higher than originally anticipated and, accordingly, we may need to adjust the provision for returns and allowances. Some of the factors that may be an indication that an increase in inventory levels will be other-than-temporary include:

- declining sales trends based on prescription demand;
- regulatory approvals that could shorten the shelf life of our products, which could result in a period of higher returns related to older product still in the distribution channel;
- introduction of new product or generic competition; and
- increasing price competition from generic competitors.

Distribution Fees and Rebates

Consistent with pharmaceutical industry practices, we establish contracts with wholesalers that provide for Distribution Service Fees (“DSA fees”). Settlement of DSA fees may generally occur on a monthly or quarterly basis based on net sales for the period. DSA fee accruals are based on contractual fees to be paid to the wholesaler distributors applied to purchases of our products.

We are also subject to rebates on sales made under governmental pricing programs. For example, Medicaid rebates are amounts owed based upon contractual agreements or legal requirements with public sector (Medicaid) benefit providers after the final dispensing of the product by a pharmacy to a benefit plan participant. Medicaid reserves are based on expected payments, which are driven by patient us age, contract performance and field inventory that will be subject to a Medicaid rebate. Medicaid rebates are typically billed up to 180 days after the product is shipped, but can be as much as 270 days after the quarter in which the product is dispensed to the Medicaid participant. In addition to the estimates mentioned above, our calculation also requires other estimates, such as estimates of sales mix, to determine which s ales are subject to rebates and the amount of such rebates. Periodically, we adjust the Medicaid rebate provision based on actual claims paid. Due to the delay in billing, adjustments to actual claims paid may incorporate revisions of this provision for several periods. Because Medicaid pricing programs involve particularly difficult interpretations of complex statutes and regulatory guidance, our estimates could differ from actual experience.

In determining estimates for these rebates, we consider the terms of the contracts, relevant statutes, historical relationships of rebates to revenues, past payment experience, estimated inventory levels and estimated future trends.

Chargebacks and Sales Discounts

Chargeback accruals are based on the differentials between product acquisition prices paid by wholesalers and lower government contract pricing paid by eligible customers covered under federally qualified programs. Sales discounts accruals are based on payment terms extended to customers.

Sales Force Revenue

Pursuant to a Marketing Agreement with Pharmaceutical Associates, Inc. ("PAI"), we receive a monthly marketing fee to promote, market and sell certain products on behalf of PAI. We also receive a matching fee payment for each month of the term of the Marketing Agreement if certain provisions calculated in accordance with the terms and inputs set forth in the Marketing Agreement are met. Marketing fees and any matching payments are recognized as sale force revenue when all the performance obligations have been satisfied, as invoiced on a month basis.

Accounting Policy Elections

We elected the following practical expedients in applying Topic 606 to its identified revenue streams:

- Portfolio approach - contracts within each revenue stream have similar characteristics and we believe this approach would not differ materially than if applying Topic 606 to each individual contract.
- Modified retrospective approach - we applied Topic 606 only to contracts with customers which were not completed at the date of initial application, January 1, 2018.
- Significant financing component - we did not adjust the promised amount of consideration for the effects of a significant financing component as we expect, at contract inception, that the period between when we transfer a promised good or service to a customer and when the customer pays for that good or service will be one year or less.
- Shipping and handling activities - we consider any shipping and handling costs that are incurred after the customer has obtained control of the product as a cost to fulfill a promise and will account for them as an expense.
- Contract costs - we recognize the incremental costs of obtaining a contract as an expense when incurred if the amortization period of the asset that we otherwise would have recognized is one year or less.

We do not incur costs to obtain a contract or costs to fulfill a contract that would result in the capitalization of contract costs. Specifically, internal sales commissions are costs to fulfill a contract and are expensed in the same period that revenue is recognized, which is typically within the same quarterly reporting period. Contract costs are expensed or amortized in "Operating expenses" on the accompanying Condensed Consolidated Statements of Earnings.

We have not made significant changes to the judgments made in applying Topic 606 for the three months ended March 31, 2018.

Cost of product sales

Cost of product sales is comprised of (i) costs to acquire products sold to customers; (ii) royalty, license payments and other agreements granting the Company rights to sell related products; (iii) distribution costs incurred in the sale of products; (iv) the value of any write-offs of obsolete or damaged inventory that cannot be sold.

Research and Development Expenses

Our research and development expenses consist primarily of costs incurred developing, testing and seeking marketing approval for our product candidates. These costs include both external costs, which are study-specific costs, and internal research and development costs, which are not directly allocated to our product candidates.

External costs include:

- expenses incurred under agreements with third-party contract research organizations and investigative sites that conduct our clinical trials, preclinical studies and regulatory activities;
- payments made to contract manufacturers for drug substance and acquiring, developing and manufacturing clinical trial materials;
- payments related to acquisitions of our product candidates and preclinical platform; and
- milestone payments, and fees associated with the prosecution and maintenance of patents.

Internal costs include:

- personnel-related expenses, including salaries, benefits and stock-based compensation expense;

- consulting costs related to our internal research and development programs; allocated facilities, depreciation and other expenses, which include rent and utilities, as well as other supplies and licensing fees; and
- product liability insurance.

Research and development costs are expensed as incurred. We record costs for some development activities, such as clinical trials, based on an evaluation of the progress to completion of specific tasks using data such as subject enrollment, clinical site activations or information provided to us by our vendors.

We track external costs by program and subsequently by product candidate once a product candidate has been selected for development. Product candidates in later stage clinical development generally have higher research and development expenses than those in earlier stages of development, primarily due to the increased size and duration of the clinical trials.

As of March 31, 2018, we had three full-time employees who were primarily engaged in research and development.

General and Administrative Expenses

General and administrative expenses consist primarily of professional fees, patent costs and salaries, benefits and related costs for executive and other personnel, including stock-based compensation and travel expenses. Other general and administrative expenses include facility-related costs, communication expenses and professional fees for legal, including patent-related expenses, consulting, tax and accounting services, insurance, depreciation, integration and general corporate expenses.

Sales and Marketing Expenses

Sales and marketing expenses consist primarily of professional fees, advertising and marketing cost and salaries, benefits and related costs for sales and sales support personnel, including stock-based compensation and travel expenses.

Amortization Expense

Amortization expense includes the amortization of the Company's acquired intangible assets.

Change in Fair Value of Warrant Liability and Unit Purchase Option Liability

In 2014, we issued warrants to purchase 625,208 shares of Series B convertible preferred stock. Upon the closing of our initial public offering, or IPO, in October 2015 these warrants became warrants to purchase 22,328 shares of common stock, in accordance with their terms. These warrants represent a freestanding financial instrument that is indexed to an obligation, which we refer to as the Warrant Liability. These warrants are classified as a liability at fair value. This liability is remeasured at each balance sheet date and the change in fair value is recorded within our statement of operations.

As part of our IPO, the underwriter received a unit purchase option, or UPO, to purchase up to 40,000 units, whereby a unit is comprised of one share of our common stock, one Class A warrant to purchase one share of our common stock and one Class B warrant to purchase one-half share of our common stock. The Class B warrants expired in April 2017. The UPO is classified as a liability at its respective fair value. This liability is remeasured at each balance sheet date and the change in fair value is recorded within our statement of operations.

Interest Expense, net

Net interest expense is primarily related to interest expense pursuant to the terms of our debt obligation assumed on February 16, 2018 as described in Note 8. Deerfield Obligation.

Critical Accounting Policies and Significant Judgments and Estimates

This discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America, or GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported period. In accordance with GAAP, we base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances.

On an ongoing basis, we evaluate our estimates and assumptions, including those related to clinical and preclinical trial expenses and stock-based compensation. Actual results may differ from these estimates under different assumptions or conditions.

There have been no significant changes to our critical accounting policies from those disclosed in our 2017 Annual Report on Form 10-K except for the adoption of new accounting standards, including the new standard related to revenue recognition, as described in Note 2 to the interim unaudited condensed consolidated financial statements. For further details regarding revenues and cash flows arising from contracts with customers, refer to Note 2 to the interim unaudited condensed consolidated financial statements.

Non-GAAP Financial Metrics

In addition to disclosing financial results that are determined in accordance with GAAP, we also use the following non-GAAP financial metrics to understand and evaluate our operating performance:

EBITDA, which we define as GAAP net income adjusted to exclude (i) taxes, (ii) interest expense, (iii) interest income, (iv) depreciation, (v) amortization of acquired intangibles, and (vi) inventory step-up adjustment;

Adjusted EBITDA, which we define as EBITDA as defined above further adjusted to exclude (i) share-based compensation expense, (ii) one-time severance payments, (iii) restructuring costs, (iv) acquisition and integration-related expenses, and (v) arbitration costs related to the Lachlan transaction.

We believe that providing this additional information is useful to the reader to better assess and understand our operating performance, primarily because management typically monitors the business adjusted for these items in addition to GAAP results. These non-GAAP financial metrics should be considered supplemental to and not a substitute for financial information prepared in accordance with GAAP. Our definition of these non-GAAP metrics may differ from similarly titled metrics used by others. We view these non-GAAP financial metrics as a means to facilitate our financial and operational decision-making, including evaluation of our historical operating results and comparison to competitors' operating results. These non-GAAP financial metrics reflect an additional way of viewing aspects of our operations that, when viewed with GAAP results may provide a more complete understanding of factors and trends affecting our business. The determination of the amounts that are excluded from these non-GAAP financial metrics is a matter of management judgment and depends upon, among other factors, the nature of the underlying expense or income amounts. Because non-GAAP financial metrics exclude the effect of items that will increase or decrease our reported results of operations, we strongly encourage investors to review our consolidated financial statements and periodic reports in their entirety.

The following tables present reconciliations of these non-GAAP financial metrics to the most directly comparable GAAP financial measure for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
GAAP Net loss	$ (3,883)	$ (1,961)
Adjustments:		
Income tax expense	23	—
Interest expense, net	100	58
Amortization of intangibles	1,017	—
Depreciation	6	6
Inventory step-up adjustment	45	—
EBITDA	$ (2,692)	$ (1,897)
Non-GAAP Adjustments:		
Share based compensation	243	332
Restructuring costs	213	—
Acquistion and integration related expenses	378	—
Lachlan legal arbitration costs	423	—
Total Non-GAAP Adjustments	1,257	332
Adjusted EBITDA	$ (1,435)	$ (1,565)

Results of Operations

Comparison of the Three Months Ended March 31, 2018 and 2017

The following table summarizes our revenue for the three months ended March 31, 2018 and 2017

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Product revenue, net	$ 4,260	$ —
Sales force revenue	$ 223	$ —
Grant revenue	$ —	$ 384

Product revenue, net

Product revenue, net was $4.3 million for the three months ended March 31, 2018, and represents revenues from the sale of our pediatric products. There were no product revenues reported for the three months ended March 31, 2017.

Sales force revenue

Sales force revenue was $0.2 million for the three months ended March 31, 2018. There are no sales force revenues reported for three months ended March 31, 2017.

Grant revenue

There was no grant revenue for the three months ended March 31, 2018, compared to $0.4 million for the three months ended March 31, 2017. Our grant revenues related to CERC-501 and were dependent upon the timing and progress of the underlying studies and development activities. The grant revenue and study costs related to these grants were discontinued with the sale of CERC-501 to Janssen in 2017.

Cost of product sales

Cost of product sales was $0.9 million for the three months ended March 31, 2018, and relate primarily to the cost of product sales from Poly-Vi Flor, which accounted for approximately 58% of the sales. There are no costs of product sales reported for the three months ended March 31, 2017.

Research and Development Expenses

The following table summarizes our research and development expenses for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Preclinical expenses	$ 887	$ 28
Clinical expenses	341	196
CMC expenses	107	292
Internal expenses not allocated to programs:		
Salaries, benefits and related costs	240	349
Stock-based compensation expense	11	49
Other	64	39
	$ 1,650	$ 953

Research and development expenses were $1.7 million for the three months ended March 31, 2018, increased by $0.7 million compared to the three months ended March 31, 2017. Preclinical expenses increased by $859,000 from the three months ended March 31, 2017, primarily due to toxicology studies in support of clinical development. Clinical costs increased by $145,000 from the prior year period primarily due to start-up activities for our clinical study in nOH. CMC costs decreased $185,000 in 2018 due to higher prior year spending on clinical trial material stability and drug product to support clinical development.

General and Administrative Expenses

The following table summarizes our general and administrative expenses for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Salaries, benefits and related costs	$ 617	$ 333
Legal, consulting and other professional expenses	1,986	580
Stock-based compensation expense	207	283
Other	109	134
	$ 2,919	$ 1,330

General and administrative expenses were $2.9 million for the three months ended March 31, 2018, increased by $1.6 million compared to the three months ended March 31, 2017. Salaries, benefits and related costs increased by $284,000 due to the current year recognition of severance costs of senior executives that resigned in 2018. Legal, consulting and other professional expenses increased by $1,406,000 primarily as a result of the legal, compliance and integration costs associated with our acquisitions. Stock-based compensation expense decreased by $76,000. Other general and administrative expenses decreased by $25,000 due to efforts to reduce certain other operating costs.

Sales and Marketing Expenses

The following table summarizes our sales and marketing expenses for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Salaries, benefits and related costs	$ 952	$ —
Logistics, insurance and other commercial operations expenses	91	—
Stock-based compensation expense	24	—
Advertising and marketing expense	177	
Other	280	—
	$ 1,524	$ —

The Company began to incur sales and marketing expenses on November 17, 2017. These costs were $1.5 million for the three months ended March 31, 2018. Salaries, benefits and related costs were $952,000 as a result of obtaining sales and sales support personnel. Logistics, insurance and other commercial operations expenses were $91,000 in order to support commercial operations. Advertising and marketing expenses were incurred to support the portfolio of pediatric drug products for sale.

Amortization Expense

The following table summarizes our amortization expense for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Amortization of intangible assets	$ 1,017	$ —

Amortization expense was $1.0 million for the three months ended March 31, 2018. No amortization expense was recognized for the three months ended March 31, 2017. The amortization expense relates to the acquisition of $34.5 million of intangible assets as part of the TRx and Avadel Pediatric Products acquisitions.

Income tax expense

The provision for income taxes was $23,000 for the three months ended March 31, 2018. Our annual effective tax rate as of March 31, 2018 was approximately 0%.

Liquidity and Capital Resources

Historically, we have devoted most of our cash resources to research and development, general and administrative activities and our acquisitions. We plan to fund our drug development and clinical trials from gross profits generated by sales of our marketed pediatric products acquired in the TRx and Avadel Pediatric Products transactions. We apply a disciplined decision-making methodology as we evaluate the optimal allocation of our resources between investing in our current commercial product line, our development portfolio and acquisitions or in-licensing of new assets.

We incurred net losses of $3.9 million and $2.0 million for the three months ended March 31, 2018 and 2017, respectively. As of March 31, 2018, we had an accumulated deficit of $62.0 million, net working capital of $(1.4) million and cash and cash equivalents of $2.5 million. Historically, we have financed our operations principally through private and public placements of common stock, private placements of convertible preferred stock and convertible and nonconvertible debt. In April 2017, we raised gross proceeds of $5.0 million from a private placement of our equity securities. On August 14, 2017, we sold all of our rights to CERC-501 to Janssen in exchange for initial gross proceeds of $25 million, of which $3.75 million was deposited into a twelve-month escrow to secure indemnification obligations to Janssen. Under this agreement, we are also eligible for a potential future $20 million regulatory milestone payment. If our revenue does not grow at expected levels, we may require substantial additional financing to fund our operations to continue to execute our strategy. We may have to seek funding for our operations from further offerings of equity or debt securities, non-dilutive financing arrangements such as federal grants, collaboration agreements or out-licensing arrangements, and to explore strategic alternatives such as an acquisition, merger, or business combination. Based on our current research and development plans we expect that our existing cash and cash equivalents, together with the initial proceeds from the Janssen sale and anticipated revenue, will enable us to fund our operating expenses, capital expenditure requirements, and other non-operating cash payments such as principal payments on our outstanding debt balances through May 2019.

Uses of Liquidity

TRx Pharmaceuticals, LLC Acquisition

On November 17, 2017, Cerecor and TRx Pharmaceuticals, LLC ("TRx") entered into a purchase agreement in which we acquired TRx, including subsidiary Zylera Pharmaceuticals, LLC and its franchise of pediatric medications. The consideration for the acquisition consists of $18.9 million in cash, subject to working capital adjustments, as well as approximately 7.5 million shares of our common stock having a market value of $8.5 million and certain contingent consideration with a fair value of $2.6 million.

Avadel Acquisition

On February 16, 2018, we entered into an Asset Purchase Agreement with Avadel US Holdings, Inc. (“Avadel”), Avadel Pharmaceuticals (USA), Inc., Avadel Pediatrics, Inc., Avadel Therapeutics, LLC and Avadel Pharmaceuticals PLC (collectively “Avadel”) to purchase and acquire all rights in Avadel’s pediatric products. We made a nominal cash payment for the acquired assets, and assumed certain of Avadel’s financial obligations to Deerfield CSF, LLC, which include a $15.3 million loan due in January 2021 and certain royalty obligations through February 2026.

Deerfield Obligation

In relation to the Company's acquisition of the Avadel Pediatric Products on February 16, 2018, we assumed an obligation that Avadel had to Deerfield CSF, (the "Deerfield Obligation"). The payment obligation assumed consists of the two components described below.

Deerfield Debt Obligation

	March 31, 2018	December 31, 2017
Deerfield Obligation	$ 15,377,754	$ —
Less: debt discount	—	—
Deerfield Obligation, net of debt discount	15,377,754	—
Less: current portion	787,500	—
Long term debt, net of current portion and debt discount	$ 14,590,254	$ —

Beginning in July 2018 through October 2020, we will pay a quarterly payment of $262,500 to Deerfield. In January 2021, a balloon payment of $15,250,000 is due. On the acquisition date, we determined the fair value of these payments to be $15,272,303 using its estimated cost of debt. Management performed a credit risk analysis that determined the Company's credit rating to be B to BB plus the yield on a ten-year treasury security. The difference between the gross value and fair value of these payments will be recorded as interest expense in the Company's condensed consolidated statements of operations through January 2021 using the effective interest method. Interest expense for the three months ended March 31, 2018 was $105,451. The amounts due within the next year are included in current portion of long-term debt on our condensed consolidated balance sheets. The amounts due in greater than one year are included in long-term debt on our condensed consolidated balance sheets.

Deerfield Contingent Consideration

The Deerfield Contingent Consideration represents potential future royalty payments that are contingent upon the achievement of net sales volumes. Management estimated the amount and timing of projected cash flows, the probability of success (achievement of the contingent event) and the risk-adjusted discount rate used to present value the probability-weighted cash flows and determined the fair value of the Deerfield Contingent Consideration on the acquisition date was $7,875,165. Subsequent to the acquisition date, at each reporting period, the Deerfield Contingent Consideration liability will be remeasured at its current fair value with changes recorded on our condensed consolidated statements of operations. At March 31, 2018, the fair value of the Deerfield Contingent Consideration was $7,920,356.

Cash Flows

The following table summarizes our cash flows for the three months ended March 31, 2018 and 2017:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Net cash provided by (used in):		
Operating activities	$ (280)	$ (2,236)
Investing activities	(19)	(2)
Financing activities	363	121
Net increase (decrease) in cash and cash equivalents	$ 64	$ (2,117)

Net cash used in operating activities

Net cash used in operating activities was $(0.3) million for the three months ended March 31, 2018 and consisted primarily of a net loss of $(3.9) million, adjusted for non-cash stock-based compensation expense of $0.2 million, and depreciation and

amortization of $1.0 million, and changes in working capital, primarily, a change in accounts payable of $1.9 million and other receivables of $0.4 million, offset by a change in inventory of $0.6 million.

Net cash used in operating activities was $2.2 million for the three months ended March 31, 2017 and consisted primarily of a net loss of $2.0 million and cash used for changes in working capital of $0.6 million, offset by non-cash stock-based compensation expense of $0.3 million.

Net cash used in investing activities

Our net cash used in investing activities was $19,225 for the three months ended March 31, 2018, and $1,801 for the three months ended March 31, 2017, primarily for the purchase of property and equipment.

Net cash provided by financing activities

Net cash provided by financing activities was $0.4 million for the three months ended March 31, 2018 from the proceeds from option and warrant exercises.

Net cash provided by financing activities was $0.1 million for the three months ended March 31, 2017, which consisted of gross proceeds of $1.2 million from the sale of common stock to Aspire Capital and Maxim Group under their Purchase and Distribution Agreement offset by principal payments on our term loan of $875,000 and payment of offering costs of $191,000.

Operating and Capital Expenditure Requirements

For the three months ended March 31, 2018, the Company generated a net loss of $3.9 million and negative cash flows from operations of $0.3 million. Our commercial operations are expected to generate positive cash flows from the sales of our marketed products.

We expect to continue to incur significant legal, accounting and other expenses related to the integration of the recent TRx and Avadel acquisitions. In addition, the Sarbanes-Oxley Act, as well as rules adopted by the Securities and Exchange Commission, or SEC, and the NASDAQ Stock Market, requires public companies to implement specified corporate governance practices that were previously inapplicable to us as a private company. We expect these rules and regulations will continue to increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We may also acquire or in-license new product candidates for commercialization or development. Based on our plans, we expect that our existing cash and cash equivalents, plus anticipated revenue, should enable us to fund our operating expenses and capital expenditure requirements through 2019. However, we might require substantial additional financing to fund our operations and to continue to develop our product candidates.

We may have to seek funding for our operations from further offerings of equity or debt securities, non-dilutive financing arrangements such as federal grants, collaboration agreements or out-licensing arrangements, and to explore strategic alternatives such as an acquisition, merger, or business combination. Our future capital requirements will depend on many forward-looking factors, including:

- profits of our marketed products
- the progress of clinical trials for CERC-301 and any changes to our development plan with respect to CERC-301, if any;
- our plan and ability to enter into collaborative agreements for the development and commercialization of our product candidates;
- the scope, progress, results and costs of researching and developing our product candidates or any future product candidates, both in the United States and in territories outside the United States;
- the costs, timing and outcome of regulatory review of our product candidates or any future product candidates, both in the United States and in territories outside the United States;
- the costs and timing of future commercialization activities, including product manufacturing, marketing, sales and distribution for any of our product candidates for which we receive marketing approval;
- the costs and timing of any product candidate acquisition or in-licensing opportunities;

- any product liability or other lawsuits related to our products;
- the expenses needed to attract and retain skilled personnel;
- the profits, if any, received from commercial sales of our product candidates for which we receive marketing approval; and
- the costs involved in preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending our intellectual property-related claims, both in the United States and in territories outside the United States

Please refer to the section entitled "Risk Factors" at Item 1A of our Annual Report on Form 10-K filed with the SEC on April 2, 2018 for additional risks associated with our substantial capital requirements.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements, as defined by applicable SEC rules and regulations.

Recently Adopted Accounting Pronouncements

See Item 1 of Part I, "Notes to Unaudited Financial Statements," Note 2, of this Quarterly Report on Form 10-Q.

JOBS Act

The JOBS Act contains provisions that, among other things, reduce reporting requirements for an "emerging growth company." As an emerging growth company, we have elected to not take advantage of the extended transition period afforded by the JOBS Act for the implementation of new or revised accounting standards and, as a result, will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk

We maintain a short-term investment portfolio consisting mainly of highly liquid short-term money market funds, which we consider to be cash equivalents. These investments earn interest at variable rates and, as a result, decreases in market interest rates would generally result in decreased interest income. We do not believe that a 10% increase or decrease in interest rates would have a material effect on the fair value of our investment portfolio due to the short-term nature of these instruments, and accordingly we do not expect our operating results or cash flows to be materially affected by a sudden change in market interest rates.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The Company's management, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, carried out an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of March 31, 2018 (the "Evaluation"). Based upon the Evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that, as of such date, because of a material weakness in the Company's internal control over financial reporting, which was previously disclosed in the Company's 2017 Annual Report in the Form 10-K, the Company's disclosure controls and procedures were not effective as required under Rules 13a-15(e) and 15d-15(e) under the Exchange Act. The material weakness did not result in a material misstatement of the Company's financial statements and management has concluded that the weakness does not exist as of May 11, 2018.

Management had previously determined that the Company's internal controls did not operate effectively to prevent or timely detect unauthorized cash disbursement as of December 31, 2017. Specifically, these controls were not adequate to safeguard the Company's cash assets from unauthorized transfers resulting from the failure of certain members of the finance organization to exercise appropriate skepticism and oversight for disbursement of company-owned funds. This material weakness in the Company's controls resulted in the inability to prevent and timely detect the fraud loss.

Remediation of the Material Weakness

Upon identification of the material weakness, management began immediate implementation of the following actions:

- enhanced approval requirements for electronic disbursements;
- increased centralization and levels of review for the processing of disbursements;
- implemented limits on the amount of cash available for disbursement;
- increased internal communications to improve security awareness and to emphasize the importance of exercising professional skepticism; and
- established communications protocols for attempted fraudulent disbursements.

Management completed the remediation during the first quarter of 2018.

Changes in Internal Control Over Financial Reporting

Other than the changes associated with the remediation efforts described above, there was no change in the company's internal control over financial reporting that occurred during the company's three-months quarter ended March 31, 2018 period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

Attestation Report of Registered Public Accounting Firm

The Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm due to an exemption established by the JOBS Act for emerging growth companies.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

Lachlan Pharmaceuticals

In November 2017, we acquired TRx and its wholly-owned subsidiaries which included Zylera. The previous owners of TRx beneficially own more than 5% of our outstanding common stock. Zylera, which is now our wholly owned subsidiary, entered into the First Amended and Restated Distribution Agreement (the "Lachlan Agreement") with Lachlan Pharmaceuticals, an Irish company controlled by the previous owners of TRx ("Lachlan"), effective December 18, 2015. Pursuant to the Lachlan Agreement, Lachlan named Zylera as its exclusive distributor of Ulesfia in the U.S. and agreed to supply Ulesfia to Zylera exclusively for marketing and sale in the U.S.

Pursuant to an amended and restated distribution agreement entered into between Zylera and Lachlan dated, December 18, 2015, Zylera is obligated to purchase a minimum of 20,000 units per year, or approximately $1,177,000 worth of product, from Lachlan, subject to certain termination rights. Zylera must pay Lachlan management and handling fees that are equal to $3.66 per unit of fully packaged Ulesfia in 2018, and escalate at a rate of 10% annually, as well as reimburse Lachlan for all product liability insurance fees incurred by Lachlan. The distribution agreement also requires that Zylera make certain cumulative net sales milestone payments and royalty payments to Lachlan with a $3,000,000 annual minimum payment unless and until there has been a "Market Change" involving a new successful competitive product. Lachlan is obligated to pay identical amounts to an unrelated third party from which it obtained rights to Ulesfia.

On December 10, 2016, Zylera informed Lachlan that a market change had occurred due to the introduction of Arbor Pharmaceutical's lice product, Sklice®. According to the terms of the distribution agreement if there is a Market Change, the minimum purchase obligation is void. On June 5, 2017, Lachlan and Zylera entered into joint legal representation along with other unrelated third parties in negotiation and arbitration of dispute with Summers Laboratory, Inc regarding the ongoing arbitration proceeding with the ultimate recipient of the royalties over whether a Market Change has occurred. The Company has not made any payments to Lachlan in 2017 under the Lachlan Agreement subsequent to the acquisition date.

Item 1A. Risk Factors.

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on April 2, 2018, which could materially affect our business, financial condition or future results. Our risk factors as of the date of this Quarterly Report on Form 10-Q have not changed materially from those described in our Annual Report on Form 10-K. However, the risks described in our Annual Report on Form 10-K are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results of operations and the trading price of our common stock.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Description of Exhibit
2.1#+	Asset Purchase Agreement, dated February 12, 2018, by and between Cerecor Inc., Avadel US Holdings, Inc., Avadel Pharmaceuticals (USA), Inc., Avadel Pediatrics, Inc., Avadel Therapeutics, LLC and Avadel Pharmaceuticals PLC.
10.1	Employment Agreement, dated March 27, 2018, by and between Cerecor Inc. and Peter Greenleaf (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on April 2, 2018).
10.2#	License and Development Agreement, dated February 16, 2018, by and between Cerecor Inc. and Flamel Ireland Limited.
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of theSarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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.

* This certification is being furnished solely to accompany this Quarterly Report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

+ Certain exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A list of these exhibits and schedules is included after the table of contents in the Asset Purchase Agreement. The Company agrees to furnish a supplemental copy of such omitted exhibit or schedule to the Securities and Exchange Commission upon request.

SIGNATURES

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

Cerecor Inc.

Date: May 11, 2018

/s/ Peter Greenleaf

Peter Greenleaf
Chief Executive Officer
(on behalf of the registrant and as the registrant's Principal Executive Officer)

Date: May 11, 2018

/s/ Mariam E. Morris

Mariam E. Morris
Chief Financial Officer
(Principal Financial Officer)

Portions of this exhibit marked [*] are requested to be treated confidentially.

ASSET PURCHASE AGREEMENT

Dated as of February 12, 2018

between

CERECOR, INC.

and

AVADEL PHARMACEUTICALS (USA), INC.,

AVADEL PEDIATRICS, INC.,

FSC THERAPEUTICS, LLC,

AVADEL US HOLDINGS, INC.

AND

AVADEL PHARMACEUTICALS PLC

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") dated as of February 12, 2018 is entered into between Cerecor, Inc., a Delaware corporation ("Buyer"), Avadel Pharmaceuticals (USA), Inc., a Delaware corporation ("Pharma"), Avadel Pediatrics, Inc., a Delaware corporation (" Pediatrics"), FSC Therapeutics, LLC, a Delaware limited liability company ("Therapeutics"), Avadel US Holdings, Inc., a Delaware corporation (" US Holdings"), and Avadel Pharmaceuticals plc, an Irish corporation ("Parent"). Each of Pharma, Pediatrics, Therapeutics, US Holdings and Parent are individually referred to herein as a "Seller" and are collectively referred to as " Sellers". Buyer and Sellers are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties". Certain capitalized terms used herein have the meanings ascribed to them in Section 1.1.

RECITALS

WHEREAS, Sellers desire to sell all of each Seller's right, title and interest in, to and under the Purchased Assets and transfer the Assumed Liabilities to Buyer, and Buyer wishes to purchase from the Sellers all of each Seller's right, title and interest in, to and under the Purchased Assets and to assume the Assumed Liabilities, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, and of the representations, warranties, conditions, agreements and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I.

DEFINITIONS; INTERPRETATION

Section I.1. Definitions. For purposes of this Agreement, the following terms shall have the corresponding meanings set forth below:

"Act" means the United States Federal Food, Drug, and Cosmetic Act, as amended, and the rules, regulations, guidelines, guidance documents and requirements promulgated thereunder, as may be in effect from time to time.

"Action" means any claim, action, suit, arbitration, audit, proceeding, or formal investigation, in each case by or before a Governmental Authority.

"Acquisition" has the meaning set forth in Section 2.1(a).

"Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such first Person.

"Agreement" has the meaning set forth in the preamble hereof.

"Apportioned Obligations" has the meaning set forth in Section 5.2(b).

"Assumed Contracts" has the meaning set forth in Section 2.2(a)(i).

"Assumed Liabilities" means (a) all Liabilities arising out of or related to the Assumed Contracts and Purchased Assets following the Closing, (b) all Liabilities arising out or related to the operation of the Business by Buyer following the Closing and (c) all Liabilities set forth on Schedule 2.3.

"Bill of Sale, Assignment and Assumption Agreement " has the meaning set forth in Section 2.4(b)(iii).

"Books and Records" means all books, records, files and documents related to a Product, the Compound or any other Purchased Asset (including sales, pricing, promotional, research and development, data (including Data), customer and supplier lists, marketing studies, consultant reports, physician databases and correspondence (excluding invoices), complaint files and adverse drug experience files, correspondence with Governmental Authorities and, to the extent not originals, true and complete copies of all files relating to the filing, prosecution, issuance, maintenance, enforcement or defense of any Business Intellectual Property, including written Third Party correspondence, records and documents related to research and pre-clinical and clinical testing and studies for a Product or the Compound conducted by or on behalf of any Seller, including laboratory and engineering notebooks, procedures, tests, dosage, criteria for patient selection, safety and efficacy and study protocols, investigators brochures and all vigilance and other safety records) in all forms, including electronic, in which they are stored or maintained, and all data and information included or referenced therein, in each case that are licensed, owned or controlled by or otherwise in the possession of any Seller in respect of a Product or Compound, but in all cases excluding the Excluded Books and Records.

"Business" means the business of licensing and selling the Compound and the Products and the outsourcing of services in respect of the Compound or Products. For the avoidance of doubt, Sellers make no representations or warranties or any other statements with regard to the services performed by the third-parties to which the Company outsources such activities.

"Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York City are permitted or required by applicable Law to remain closed.

"Business Employee" has the meaning set forth in Section 5.11(a).

"Business Intellectual Property" means, other than the items set forth on Schedule 1.1(a), all Patents, Trademarks, Copyrights, Software, Trade Secrets and other Intellectual Property Rights, in each case Controlled by any Seller and that (i) relate to the Compounds or the Products or (ii) were acquired, conceived, or reduced to practice by Sellers in connection with Exploiting the Products, and the right to recover for past infringement of any of the foregoing.

"Buyer" has the meaning set forth in the preamble hereof.

"Buyer Indemnified Party" has the meaning set forth in Section 6.1(a).

"Cap" has the meaning set forth in Section 6.3(a)(iii).

"Closing" has the meaning set forth in Section 2.4(a).

"Closing Date" has the meaning set forth in Section 2.4(a).

"Code" means the Internal Revenue Code of 1986, as amended.

"Competing Product" has the meaning set forth in Section 5.1(b).

"Compound" means the compounds set forth in Schedule 1.1(b).

"Confidential Information" has the meaning set forth in Section 5.1(a)(ii).

"Confidentiality Agreement" means the Confidential Disclosure Agreement, dated January 2, 2018 between Pharma and Buyer.

"Contemplated Transactions" means the transactions contemplated by this Agreement and any Related Document.

"Contracts" means any legally binding loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement, distribution agreement or other legally binding contract, agreement, obligation, commitment, arrangement, understanding, instrument, permit, franchise or license, whether written or oral.

"Control" including its various tenses and derivatives (such as "controlled" and "controlling") means (a) when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by Contract or otherwise, (b) when used with respect to any security, the possession, directly or indirectly, of the power to vote, or to direct the voting of, such security or the power to dispose of, or to direct the disposition of, such security and (c) when used with respect to any Intellectual Property Rights, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to assign or grant a license, sublicense or other right to or under such Intellectual Property Rights or to compel another to do so.

"Data" means all databases and data, including all compilations thereof, and all rights therein, Controlled by any Seller that (i) were collected, compiled, generated or used in connection with the Business between February 5, 2016 (including all that were acquired by any Seller on that date) and the Closing Date, or (ii) otherwise are related to the Business and has been in Sellers' Control since February 5, 2016.

"Data Room" has the meaning set forth in Section 1.2.

"Deerfield Agreement" means the Membership Interest Purchase Agreement, dated as of February 5, 2016 by and among certain parties affiliated with the Sellers and Deerfield CSF, LLC.

"Deerfield Obligation" means the interest payment to be made on April 30, 2018 under the Deerfield Agreement.

"Development Agreement" means the License and Development Agreement in the form attached hereto as Exhibit 2.4(b)(ii).

"Disclosure Letter" means the disclosure letter delivered to Buyer by Sellers simultaneously with the execution of this Agreement; all references to Schedules shall refer to Schedules to the Disclosure Letter.

"Drop Dead Date" has the meaning set forth in Section 9.1.

"Dollars" or "$" means United States dollars.

"Excluded Assets" has the meaning set forth in Section 2.2(b).

"Excluded Books and Records" means Books and Records relating to the Excluded Assets.

"Excluded Contracts" means all Contracts of any Seller other than the Assumed Contracts.

"Excluded Liabilities" has the meaning set forth in Section 2.3(b).

"Exploit" means to make, have made, import, use, sell, offer for sale, and otherwise dispose of, including to research, develop, register, modify, enhance, improve, manufacture, have manufactured, store, formulate, optimize, export, transport, distribute, commercialize, promote, market, have sold and otherwise dispose of. "Exploitation" means the act of Exploiting a compound, product or process.

"FCPA" has the meaning set forth in Section 3.17(a).

"FDA" has the meaning set forth in Section 3.10(b).

"First Restricted Period" has the meaning set forth in Section 5.1(b)(i).

"GAAP" means the United States generally accepted accounting principles in effect at the time relevant to the context in which such term is used herein.

"Governmental Authority" means any Federal, state, local or foreign government, any court, tribunal, administrative, regulatory or other governmental agency, department, commission or authority or any non-governmental self-regulatory agency, commission or authority.

"Indemnified Party" has the meaning set forth in Section 6.4(a).

"Indemnifying Party" has the meaning set forth in Section 6.4(a).

"Indemnity Threshold" has the meaning set forth in Section 6.3(a)(i).

"Independent Accountant" has the meaning set forth in Section 2.6(a).

"Intellectual Property Rights" means any (a) patents, patent applications (including in each case any continuation, continuation-in-part, division, renewal, patent term extension (including any supplemental protection certificate), reexamination or reissue thereof) (collectively, "Patents"); (b) registered and unregistered trademarks, trade dress, trade names, logos, design rights, service marks, together with the goodwill pertaining to the foregoing, and all applications, registrations and renewals therefor (collectively, "Trademarks"); (c) registered and unregistered copyrights, works of authorship, copyrightable works (published or unpublished) and all applications, registrations and renewals therefor (collectively, "Copyrights"); (d) domain names; (e) software, computer programs and applications (whether in source code, object code or other form) algorithms, databases, documentation and technology supporting the foregoing (excluding off the shelf software) (collectively, "Software"); and (f) trade secrets ("Trade Secrets"), know-how (including all ideas, concepts, research and development, composition information and embodiments, manufacturing and production processes, techniques and information, specifications, technical and business data, Data, designs, drawings, suppliers lists, pricing and cost information, and data and know-how embodied in business and marketing plans and proposals), other proprietary information and other proprietary intellectual property rights, and all copies and tangible embodiments of the foregoing in whatever form or medium.

"Inventory" means all inventories of the Product, including all drug substances, drug product, clinical lots, reference standards, reserve samples, patient samples, patient images and scans, vials, reagents, vectors, DNA constructs, inventories of active pharmaceutical ingredients, intermediates, raw materials, components, consumables, work-in- process, finished goods, supplies, parts, labels and packaging (including rights and interests in goods in transit, consigned inventory, inventory sold on approval and rental inventory).

"Labeling" shall be as defined in Section 201(m) of the Act (21 U.S.C. § 321(m)) and other comparable foreign Law relating to the subject matter thereof, including a Product's label, packaging and instructions for use accompanying a Product, and any other written, printed,

or graphic materials accompanying a Product, including patient instructions or patient indication guides.

"Law" means any federal, state, local or foreign constitution, treaty, law, statute, ordinance, rule, regulation, interpretation, guidance document, directive, policy, award, Order and any other ruling or decision of any applicable Governmental Authority.

"Liabilities" means liabilities, obligations and commitments, whether accrued or fixed, absolute or contingent, known or unknown, determined or determinable, due or to become due, or otherwise.

"Lien" means any lien (statutory or otherwise), security interest, pledge, hypothecation, mortgage, assessment, lease, claim, levy, license, defect in title, charge, or any other Third Party right, license or property interest of any kind, or any conditional sale or other title retention agreement, right of first option, right of first refusal or similar restriction, any covenant not to sue, or any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership or any agreement to give any of the foregoing in the future or similar encumbrance of any kind or nature whatsoever.

"Losses" has the meaning set forth in Section 6.1(a).

"Marketing Authorization" means the receipt of all approvals from the relevant Regulatory Authority necessary to market and sell a Product in the United States (including all applicable approvals or determinations by a Regulatory Authority for the pricing or pricing reimbursement for a pharmaceutical product even if not legally required to sell the Product in the United States).

"Material Adverse Effect" means any change, effect, event, occurrence or fact that, individually or in the aggregate, would reasonably be expected to result in, or has resulted in, a materially adverse change or effect to (a) the assets, liabilities or condition of the Purchased Assets, taken as a whole, or (b) any Seller's ability to consummate the Contemplated Transactions; provided, however, that, for purposes of clause (a), none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (i) any change, effect, event, occurrence, state of facts or development relating to the economy in general in the United States or in any other jurisdiction in which any Seller has operations or conducts business, or conditions generally affecting the industries in which the Sellers operate the Business, so long as the effects do not have a materially disproportionate effect and adversely impact the Purchased Assets, taken as a whole, (ii) any change, effect, event, occurrence, state of facts or development reasonably attributable to conditions affecting the pharmaceutical industry (other than as may arise or result from regulatory action by a Regulatory Authority), so long as the effects do not have a materially disproportionate effect and adversely impact the Purchased Assets, taken as a whole (iii) the announcement, pendency or completion of the Contemplated Transactions, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with any Seller and the Business, (iv) earthquakes, hurricanes, tornadoes, natural disasters or global, national or regional political conditions,

including hostilities, military actions, political instability, acts of terrorism or war or any escalation or material worsening of any such hostilities, military actions, political instability, acts of terrorism or war existing or underway as of the date hereof (other than any of the foregoing that causes any material damage or destruction to or renders unusable any material Purchased Assets and so long as the effects do not have a materially disproportionate effect and adversely impact the Purchased Assets, taken as a whole), (v) any effect that results from any action taken at the express prior written request of Buyer or with Buyer's prior written consent, (vi) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures may nevertheless constitute a Material Adverse Effect, subject to the other provisions of this definition) or (vii) changes in Law or GAAP or any interpretation thereof (so long as the effects do not have a materially disproportionate effect and adversely impact the Purchased Assets, taken as a whole and it being understood that this clause (vii) shall not apply with respect to any representation or warranty contained in this Agreement the purpose of which is to address compliance with Law or GAAP or any interpretation thereof).

"Measurement Date" has the meaning set forth is Section 3.3.

"NDA" means a New Drug Application, filing pursuant to Section 510(k) of the Act, or similar application or submission for Marketing Authorization of a Product filed with the relevant Regulatory Authority to obtain Marketing Authorization for a pharmaceutical or diagnostic product in the United States.

"Order" means any writ, judgment, decree, injunction or similar order, including consent orders, of any Governmental Authority (in each such case whether preliminary or final).

"Ordinary Course of Business" means the ordinary course of business of the Business and Sellers consistent with Sellers' practices of operating the Business since February 5, 2016.

"Party" or "Parties" has the meaning set forth in the preamble hereof.

"Permitted Liens" means, (i) statutory liens for Taxes, assessments and governmental charges not yet due and payable or that are being contested in good faith by appropriate proceedings and, if required under GAAP, for which appropriate reserves have been created; (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, material men and other Liens imposed by law arising or incurred in the ordinary course of business for amounts that are not yet due and payable and, if required under GAAP, for which appropriate reserves have been created or that are being contested in good faith by appropriate proceedings and that are not resulting from any breach, violation or default by any Seller of any Contract or applicable Law; or (iii) other Liens that do not materially impair the usage, disposition, pledging or operation of the respective asset.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity or any Governmental Authority.

"Post-Closing Tax Period" means (i) any Tax period beginning after the Closing Date, and (ii) with respect to any Straddle Period, the portion of such period beginning after the Closing Date.

"Pre-Closing Tax Period" means (i) any Tax period ending on or before the Closing Date, and (ii) with respect to any Straddle Period, the portion of such period up to and including the Closing Date.

"Product" means the products set forth on Schedule 1.1(c).

"Purchase Price" means an amount equal to $1.00.

"Purchase Price Allocation" has the meaning set forth in Section 2.6(a).

"Purchased Assets" has the meaning set forth in Section 2.2(a).

"Regulatory Authority" means any applicable Governmental Authority with responsibility for granting licenses or approvals, including Marketing Authorizations, necessary for the marketing and sale of a Product in any jurisdiction, or that is concerned with the research, development, marketing, sale, use, handling and control, safety, efficacy, reliability or manufacturing of drug or biological products.

"Regulatory Authorizations" means (a) all licenses, permits, certificates, clearances, exemptions, approvals, consents and other authorizations that any Seller owns, holds or possesses, including those prepared for submission to or issued by any Regulatory Authority or research ethics committee (including pre-market notification clearances, pre-market approvals, investigational device exemptions, non-clinical and clinical study authorizations, product re- certifications, manufacturing approvals and authorizations, CE Mark certifications, pricing and reimbursement approvals, Labeling approvals, registration notifications or their foreign equivalent), that are required for or relate to the Purchased Assets or the Exploitation of the Purchased Assets, including those set forth on Schedule 3.10(a); and (b) all applications, supporting files, writings, data, studies and reports, and all correspondence to, with, or from the FDA or any other Regulatory Authority or research ethics committee, relating to any license, permit, certificate, clearance, exemption, approval, consent or other authorization described in clause (a).

"Related Documents" means, other than this Agreement, the Development Agreement, and all other agreements, certificates and documents signed and delivered by any Party in connection with this Agreement or the transactions contemplated hereby.

"Representatives" means, with respect to any Person, such Person's directors, officers, managers, employees, counsel, consultants, accountants, financial advisors, lenders and other agents and representatives (in each case, acting in such Person's capacity as such).

"Second Restricted Period" has the meaning set forth in Section 5.1(b)(ii).

"Seller" and "Sellers" has the meaning set forth in the preamble hereof.

"Seller Indemnified Party" has the meaning set forth in Section 6.2(a).

"Sellers' Organizational Documents" has the meaning set forth in Section 3.1.

"Sellers' Knowledge" (and similar phrases) means, with respect to any matter in question, the actual knowledge of the following individuals: Michael Anderson, Gregory Divis, Sandra Hatten, Michael Kanan and Phil Thompson.

"Social Security Act" has the meaning set forth in Section 3.10(e).

"Specified Representations" has the meaning set forth in Section 6.3(a).

"Straddle Period" means any taxable period that includes (but does not end on) the Closing Date.

"Subsidiary" of any Person means another Person, an amount of the voting securities, other voting rights or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

"Tax" or "Taxes" means (whether disputed or not) all (a) Federal, state, local and foreign income, property, sales, use, excise, withholding, payroll, employment, social security, capital gain, alternative minimum, transfer and other taxes and similar governmental charges, in each case in the nature of a tax, including any interest, penalties and additions with respect thereto, (b) liability for the payment of any amounts of the type described in clause (a) as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group or as a transferee or successor and (c) liability for the payment of any amounts as a result of being party to any tax sharing agreement or as a result of any express or implied obligation to indemnify any other Person with respect to the payment of any amounts of the type described in clause (a) or (b).

"Tax Benefit" has the meaning set forth in Section 6.3(d).

"Tax Refunds" has the meaning set forth in Section 2.2(b)(vi).

"Tax Return" means all returns (including amended returns), requests for extensions of time, claims for refund, declarations of estimated Tax payments, reports, estimates, information returns and statements, including any related or supporting information with respect to any of the foregoing, filed or required to be filed with any Taxing Authority in connection with the determination, assessment, collection or administration of any Taxes.

"Taxing Authority" means any Federal, state, local or foreign government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising tax regulatory authority.

"Third Party" means any Person other than: (a) any Seller or Buyer or (b) any Affiliates of any Seller or Buyer.

"Third Party Claim" has the meaning set forth in Section 6.4(a).

"Transfer Taxes" has the meaning set forth in Section 5.2(a).

"Treasury Regulations" means the final and temporary Regulations promulgated under the Code by the United States Department of the Treasury.

"Written Report" has the meaning set forth in Section 5.9(a).

Section I.2. Interpretation . When a reference is made in this Agreement to an Article, a Section or an Exhibit, such reference shall be to an Article of, a Section of, or an Exhibit to, this Agreement unless otherwise indicated. When a reference is made in this Agreement to a Schedule, such reference shall be to a Schedule of the Disclosure Letter. The table of contents and headings contained in this Agreement, any Related Document or in any Exhibit or Schedule to the Disclosure Letter hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, such Related Document or such Exhibit or Schedule to the Disclosure Letter. Whenever the words "include", "includes" or "including" are used in this Agreement or any Related Document, they shall be deemed to be followed by the words "without limitation". The word "or," when used in this Agreement, has the inclusive meaning represented by the phrase "and/or." The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to the "date hereof" refer to the date of this Agreement. "Extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if". For purposes of this Agreement and the Related Documents, the phrases "delivered or made available to Buyer prior to the date hereof", "delivered or made available to Buyer in the data room prior to the date hereof", "has made available to Buyer prior to the date hereof" or "has made available to Buyer in the data room prior to the date hereof" and similar expressions in respect of any document or information will be construed for all purposes of this Agreement and the Related Documents as meaning that a copy of such document or information was filed and made available for viewing by Buyer in the electronic data rooms hosted by Sellers' SharePoint site (the "Data Room") in each case no later than three Business Days prior to the date hereof (or, if after such third Business Day, then delivered directly to Buyer and its legal counsel). All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any Contract or statute defined or referred to herein or in any Contract that is referred to herein means (a) in the case of any statute, such statute and any comparable statute that from time to time replaces such statute by succession and (b) in the case of any Contract, such Contract and all amendments, modifications and attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. Any reference contained in this Agreement to specific governmental regulatory provisions or to any specific

Governmental Authority shall include any successor regulation or regulatory provisions, or successor Governmental Authority, as the case may be.

ARTICLE II.

PURCHASE AND SALE

Section II.1. Purchase and Sale of Purchased Assets; Purchase Price .

(a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Sellers shall sell, convey, deliver, transfer and assign to Buyer (or its designated Affiliate), free and clear of all Liens, other than Permitted Liens, and Buyer (or its designated Affiliate) shall purchase, take delivery of and acquire from Sellers all of each Seller's right, title and interest in, to and under all of the Purchased Assets. The purchase and sale of the Purchased Assets hereunder is referred to herein as the "Acquisition".

(b) In consideration of the sale, conveyance, delivery, transfer and assignment of the Purchased Assets to Buyer and Sellers' other covenants and obligations hereunder, at the Closing, upon the terms and subject to the conditions hereof:

(i) Buyer shall pay Sellers, by wire transfer of immediately available funds to the account set forth on Schedule 2.1(b)(i), the Purchase Price; and

(ii) Buyer shall assume the Assumed Liabilities.

Section II.2. Purchased Assets; Excluded Assets .

(a) The term "Purchased Assets" means all of the assets primarily used or held for use in the Business, including each Seller's right, title and interest in, to and under the following properties and assets (tangible or intangible), in each case to the extent used in the Business and in each case other than the Excluded Assets:

(i) the Contracts set forth on Schedule 2.2(a)(i) (collectively, the "Assumed Contracts"), including all rights thereunder;

(ii) all Regulatory Authorizations, including as set forth on Schedule 2.2(a)(ii);

(iii) all Business Intellectual Property, including the registrations and applications set forth on Schedule 2.2(a)(iii);

(iv) all Books and Records, other than the Excluded Books and Records;

(v) all Inventory, including as set forth on Schedule 2.2(a)(v), to be delivered to Buyer as set forth on such Schedule; and

(vi) all claims, counterclaims, credits, causes of action, choses in action, rights of recovery, and rights of indemnification or setoff against Third Parties and other claims arising out of or relating to the Purchased Assets or the Assumed Liabilities after the Closing and all other intangible property rights that relate to the Purchased Assets or the Assumed Liabilities.

(b) Other than the Purchased Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and the Sellers are not selling or assigning, any other assets or properties of any Seller or any of their Affiliates, and all such other assets and properties shall be excluded from the Purchased Assets (collectively, the "Excluded Assets"). The Excluded Assets shall include, but not be limited to, the following:

(i) all cash and cash equivalents, bank accounts and securities of Sellers, and all accounts receivable generated prior to the Closing Date;

(ii) all Contracts other than the Assumed Contracts (it being understood that, for the avoidance of doubt, all Excluded Contracts are Excluded Assets);

(iii) all statements of work, proposals or other similar documents executed pursuant to any Contract (including the Assumed Contracts) that are not related to the Business, a Product, the Compound or the Purchased Assets;

(iv) all rights, claims and credits of Sellers to the extent relating to any Excluded Asset or any Excluded Liability;

(v) all land, buildings, improvements and fixtures thereon owned or leased by Sellers;

(vi) any refunds, credits or other assets or rights (including interest thereon or claims therefor) with respect to any Taxes (the "Tax Refunds") relating to the Purchased Assets and attributable to any Pre-Closing Tax Period;

(vii) all Intellectual Property Rights of Sellers other than the Business Intellectual Property;

(viii) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of any Seller, and all Excluded Books and Records;

(ix) all insurance policies of Sellers and all rights to applicable claims and proceeds thereunder;

(x) all Tax assets (including duty and Tax refunds and prepayments) of Sellers or any of their Affiliates;

(xi) all assets, properties and rights used by Sellers in their businesses other than the Business;

(xii) except to the extent included in the Purchased Assets, all other properties, assets, goodwill and rights of Sellers of whatever kind and nature, real, personal or mixed, tangible or intangible; and

(xiii) the assets set forth on Schedule 2.2(b)(xiii).

Section II.3. Assumed Liabilities; Excluded Liabilities .

(a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Sellers shall sell, convey, deliver, transfer and assign to Buyer (or its designated Affiliate), and Buyer (or its designated Affiliate) shall assume from Sellers the Assumed Liabilities.

(b) Notwithstanding anything in this Agreement or the Related Documents to the contrary, other than the Assumed Liabilities: (i) Buyer shall not be the successor to any Seller or any Affiliates of any Seller, and (ii) Buyer expressly does not assume, and shall not become liable to pay, perform or discharge, any Liability whatsoever of any Seller or any Affiliates of any Seller, to the extent arising out of or otherwise relating in any way to the Purchased Assets. All such Liabilities are referred to herein as the "Excluded Liabilities". Without limitation of the foregoing, the Excluded Liabilities shall include the following Liabilities:

(i) any Liabilities to the extent relating to or arising out of the Excluded Assets;

(ii) any Liabilities of any Seller, or any member of any consolidated, affiliated, combined or unitary group of which any Seller is or has been a member, for Taxes (excluding, for the avoidance of doubt, any Taxes imposed with respect to any Post-Closing Tax Period that relate to the ownership or operation of the Purchased Assets; provided, that the Transfer Taxes and the Apportioned Obligations shall be paid in the manner set forth in Section 5.2;

(iii) any Liabilities of any Seller or any Affiliates of any Seller under this Agreement, the Related Documents or in connection with the Contemplated Transactions;

(iv) all Liabilities under Excluded Contracts (other than the Deerfield Obligation);

(v) any Liabilities (including all Actions relating to such Liabilities) of any Seller or any Affiliates of any Seller to any Person and claims from any Person to the extent relating to or arising out of circumstances existing on or prior to the Closing, including those to the extent relating to or arising out of any product liability, patent infringement, breach of warranty or similar claim for injury to person or property that resulted from the use, operation, ownership or misuse of the Purchased Assets or the operation of the business of Seller or any Affiliates of any Seller, to the extent such conduct occurred on or prior to the Closing;

(vi) any Liabilities (including all Actions relating to such Liabilities) to the extent relating to or arising out of the Intellectual Property Rights of any Person on or prior to the Closing, including any Liability for any loss or infringement, misappropriation, other violation thereof or for violation of privacy, personal information or data protection rights; and

(vii) any other Liabilities arising out of the Purchased Assets or the operation of the business of any Seller or any Affiliates of any Seller on or prior to the Closing, whether or not any such Liabilities are claimed prior to or after the Closing (other than the Assumed Liabilities).

Section II.4. Closing; Closing Deliverables .

(a) Closing. The closing of the Acquisition (the " Closing") shall take place remotely by exchange of electronic copies of the agreements, documents, certificates and other instruments set forth in this Section 2.4 on the second Business Day after all of the conditions to Closing set forth in Article VIII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Sellers and Buyer may mutually agree upon in writing. The date on which the Closing occurs is referred to herein as the "Closing Date" and, for all purposes of this Agreement, the Closing shall be deemed effective as of open of business on the Closing Date.

(b) Seller Closing Deliverables . At the Closing, Sellers shall deliver or cause to be delivered to Buyer:

(i) a certificate, dated as of the Closing Date, duly executed by the secretary of Parent, certifying that:

(A) all documents to be executed by Sellers and delivered at the Closing have been executed by a duly authorized officer of the applicable Seller;

(B) the resolutions adopted by the Board of Directors or other similar body of each Seller (the "Seller Boards") authorizing the execution, delivery and performance of this Agreement, as attached to the certificate, were duly adopted by the respective Seller Board and remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto; and

(C) Sellers' officer(s) executing this Agreement, and each of the other documents necessary for consummation of the Contemplated Transactions, is an incumbent officer, and the specimen signature on such certificate is a genuine signature;

(ii) the Development Agreement, duly executed by Parent and Flamel Ireland Limited;

(iii) the Bill of Sale, Assignment and Assumption Agreement, in the form of Exhibit 2.4(b)(iii) (the "Bill of Sale, Assignment and Assumption "), duly executed by each Seller;

(iv) a certificate of each Seller other than Parent, in compliance with Section 1.1445-2(b)(2) of the Treasury Regulations, listing such Seller's name, address and U.S. employer identification number and stating that such Seller is not a foreign person; provided, however, that if any Seller is treated as a disregarded entity under the Treasury Regulations issued under Code Section 7701, such Seller will not be required to provide a certificate, but rather, the "owner of the disregarded entity" (within the meaning of Treasury Regulations Section 1.445-2(b)(2)(iii)) shall provide such a certificate and identify thereon the disregarded entity that it owns;

(v) a duly completed and accurate Internal Revenue Service Form W-8 or W-9 for each Seller;

(vi) a fully executed wavier, pursuant to which Deerfield CSF, LLC, on behalf of itself and all its Affiliates, (a) waives its right to accelerate the Deferred Payments (as defined in the Deerfield Agreement) as a result of the Contemplated Transactions and (b) acknowledges that the Contemplated Transactions are not an Acceleration Trigger Event (as defined in the Deerfield Agreement); and

(vii) all forecasts since the Measurement Date that are required to be delivered pursuant to or in accordance with any of the Assumed Contracts.

(c) Buyer Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to Parent:

(i) the payments required pursuant to Section 2.1(b)(i);

(ii) a certificate, dated as of the Closing Date, duly executed by an authorized officer of Buyer, certifying that:

(A) all documents to be executed by Buyer and delivered at the Closing have been executed by a duly authorized signatory of Buyer;

(B) the resolutions adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement, as attached to the certificate, were duly adopted and remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto; and

(C) Buyer's officer executing this Agreement, and each of the other documents necessary for consummation of the Contemplated Transactions, is an incumbent officer, and the specimen signature on such certificate is a genuine signature;

(iii) the Development Agreement, duly executed by Buyer;

(iv) the Bill of Sale, Assignment and Assumption, duly executed by Buyer; and

(v) a guaranty, duly executed by Buyer's majority stockholder, Armistice Capital Master Fund, Ltd., in form and substance reasonably acceptable to the Sellers.

Section II.5. Non-assignable Assets.

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.5, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver has not been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, thereof; provided, however, that, subject to Sellers' compliance with this Section 2.5, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof. Following the Closing, Sellers and Buyer shall use, each at its own cost and expense, commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution or amendment required to novate all liabilities and obligations under any and all Assigned Contracts or other liabilities that constitute Assumed Liabilities or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer shall be solely responsible for such liabilities and obligations from and after the Closing Date; provided, however, that neither Sellers nor Buyer shall be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, Sellers shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable Transfer Taxes in connection with such sale, assignment, transfer, conveyance or license shall be paid by Buyer in accordance with Section 5.2(a) of this Agreement.

(b) To the extent that any Purchased Asset and/or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to this Section 2.5, Buyer and Sellers shall use, each at its own cost and expense, commercially reasonable efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Purchased Asset and/or Assumed Liability to Buyer as of the Closing and the performance by Buyer of its obligations with respect thereto. To the extent permitted under applicable Law, Sellers shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Purchased Asset and all income, proceeds and other monies received by Sellers to the extent related to such Purchased Asset in connection with the arrangements under this Section 2.5.

Notwithstanding anything herein to the contrary, the provisions of this Section 2.5 shall not apply to any consent or approval required under any antitrust, competition or trade regulation Law.

Section II.6. Purchase Price Allocation .

(a) The Purchase Price and other relevant items for Tax purposes shall be allocated among the Purchased Assets in accordance with the principles set forth in Section 1060 of the Code (and the Treasury Regulations promulgated thereunder). Buyer shall prepare a draft allocation statement in accordance with the aforementioned principles and provide a copy to Parent no later than sixty (60) calendar days after the Closing Date. Parent shall inform Buyer in writing within fifteen (15) calendar days of the receipt of such draft of any objection by Sellers to the draft allocation. To the extent that any such objection is received, the Buyer and Sellers shall attempt in good faith to resolve any dispute. If Buyer and Sellers are unable to reach such agreement within fifteen (15) days after receipt by Buyer of such notice, the disputed items shall be resolved by a nationally recognized accounting firm that is mutually acceptable to Buyer and Sellers (the "Independent Accountant"), and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within fifteen (15) days of having the item referred to it pursuant to such procedures as it may require. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers. The allocation as determined by agreement of the Parties or by the Independent Accountant, as the case may be (the "Purchase Price Allocation") shall be binding on the Parties.

(b) Each Seller and Buyer agree to act in accordance with the Purchase Price Allocation, as adjusted in accordance with Section 2.6(a) if applicable, in any Tax Return, including any forms or reports required to be filed pursuant to Section 1060 of the Code or any provisions of any comparable Law, unless otherwise required by a change in Law after the date hereof, or a final "determination," as defined in Section 1313(a) of the Code. Buyer and each Seller shall cooperate in the preparation of such Tax Returns and file such forms as required by applicable Law. Neither Buyer nor any Seller shall take a position inconsistent therewith upon examination of any Tax Return, in any refund claim, or in any litigation or investigation, without the prior written consent of the other Party (which consent, in the case of the Sellers, will be deemed to be given by all Sellers upon consent of Parent), except as required by applicable Law. In the event that the Purchase Price Allocation is disputed by any Taxing Authority, the Party receiving notice of the dispute shall promptly notify the other Party in writing of such notice and resolution of the dispute.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Schedules to the Disclosure Letter attached hereto (to the extent any such Schedule to the Disclosure Letter is numbered to correspond to a representation or warranty, such Schedule to the Disclosure Letter includes a cross reference to a Schedule to the Disclosure Letter corresponding to another representation or warranty, or the applicability of disclosure on a Schedule to the Disclosure Letter to another representation is

reasonably apparent based on the face of such disclosure), Sellers jointly and severally represent and warrant to Buyer that the statements contained in this Article III are true and correct for the period between February 5, 2016 and the date hereof.

Section III.1. Organization, Standing and Power . Each Seller is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and has all requisite corporate power and authority to own, lease or otherwise hold and operate the Purchased Assets and the Business, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to be material and adverse to the Business or the Purchased Assets, taken as a whole. Each Seller is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the Business operates, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing individually or in the aggregate has not been and would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Buyer, prior to the execution of this Agreement, complete and accurate copies of each Seller's certificate of incorporation, bylaws, certificate of organization, operating agreement, and any other applicable formation or organizational documents, in each case as amended to the date hereof (collectively, the "Sellers' Organizational Documents"). No Seller is in violation of any of the provisions of the Sellers' Organizational Documents.

Section III.2. Authority; Noncontravention . (a) Each Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the Related Documents by Sellers and the consummation by Sellers of the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Sellers and no other corporate proceedings on the part of Sellers are necessary to authorize this Agreement, the Related Documents or to consummate the Contemplated Transactions. Each of this Agreement and the Related Documents has been duly executed and delivered by each Seller and, assuming the due authorization, execution and delivery by Buyer, constitutes a legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies. The Seller Boards duly and unanimously adopted resolutions (a) approving and declaring advisable this Agreement, the other Related Documents, the Acquisition and the other Contemplated Transactions and (b) declaring that it is in the best interests of the stockholder(s) or member(s), as applicable, of each Seller that Sellers enter into this Agreement and the Related Documents and consummate the Contemplated Transactions on the terms and subject to the conditions set forth in this Agreement or such Related Documents, which resolutions have not been subsequently rescinded, modified or withdrawn in any way. No stockholder, member, or other equity holder approval is required on behalf of any Seller for the execution, delivery or performance of this Agreement or any Related Document.

(b) The execution and delivery of this Agreement and the Related Documents by each Seller do not, and the consummation of the Contemplated Transactions and compliance

by each Seller with the provisions of this Agreement and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon the Purchased Assets under, (i) Sellers' Organizational Documents, (ii) any Contract to which a Seller is a party in respect of the Business, or to which any of the Purchased Assets is subject or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to the Business or the Purchased Assets or (B) Order applicable to the Business or the Purchased Assets, except in the cases of clauses (ii) and (iii), where the conflict, violation, breach, default, termination, cancellation, acceleration or creation of a Lien, individually or in the aggregate, has not had a Material Adverse Effect.

(c) Except as set forth on Schedule 3.2(c), no consent, approval, order or authorization of, action by or in respect of, or registration, declaration or filing with, any Governmental Authority is required by or with respect to any Seller or the Purchased Assets in connection with the execution and delivery of this Agreement or any Related Document by any Seller, the transfer of the Purchased Assets to Buyer or the consummation of the Contemplated Transactions.

Section III.3. Absence of Certain Changes or Events . Since February 5, 2016 (the " Measurement Date") (a) no event has occurred which would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect and (b) there has been no material loss, destruction or damage (in each case, whether or not insured) affecting the Purchased Assets or any rights thereunder.

Section III.4. Good Title; Sufficiency of Assets .

(a) Except for the Business Intellectual Property (which is addressed in Section 3.5), (i) Sellers have good and marketable title to, or valid contract rights to or other valid rights to use, as applicable, all of the Purchased Assets free and clear of all Liens (other than Permitted Liens), and have complete power and rights to sell, assign, transfer and deliver to Buyer, as applicable, the Purchased Assets, (ii) there are no adverse claims of ownership to the Purchased Assets and no Seller has received written notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Purchased Assets, and (iii) at the Closing, Buyer will acquire from Sellers good title to, or valid contract rights to or other valid rights to use, as applicable, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens).

(b) Except for the Excluded Assets, the Purchased Assets constitute (i) all of the interests, assets and rights of any Seller or any Affiliates of any Seller acquired, conceived, collected, compiled, generated, reduced to practice or otherwise made or used in connection with the Business and (ii) all of the interests, assets and rights of any Seller or any Affiliates of any Seller used, held for use or intended to be used in connection with a Product, the Compound or the Business.

(c) The Purchased Assets include all assets required for Buyer to conduct the Business substantially as conducted by Sellers prior to the Closing, it being acknowledged by Buyer that the foregoing does not take into account cash and trademarks of Sellers that are Excluded Assets as well as certain other Excluded Assets, the absence of which would not have a material effect on Buyer's ability to operate the Business following the Closing.

Section III.5. Intellectual Property .

(a) Subject to Sections 3.5(b) and 3.5(f), Sellers exclusively own, or validly Control, all Business Intellectual Property (including all Intellectual Property Rights set forth on Schedule 2.2(a)(iii)), in each case free and clear of all Liens (other than Permitted Liens). All Business Intellectual Property will, immediately subsequent to the Closing, be transferred to, and Controlled by, Buyer on substantially the same terms with which Sellers, immediately prior to the Closing, Controlled such Business Intellectual Property. For the avoidance of doubt, this Section 3.5(a) does not constitute a representation or warranty of Sellers relating to infringement, misappropriation or other violation of the Intellectual Property Rights of any Person.

(b) To Sellers' Knowledge, (i) no Seller has infringed, misappropriated or otherwise violated and (ii) no Seller is infringing, misappropriating or otherwise violating (including with respect to the discovery, development, clinical testing, manufacture, distribution, advertising, use, Exploitation or sale by any Seller of a Product or the Compound) the rights of any other Person with regard to any Seller's possession or use of any Business Intellectual Property for the Business as presently conducted. To Sellers' Knowledge, no other Person or Persons has infringed, misappropriated or otherwise violated or is or are infringing, misappropriating or otherwise violating the Business Intellectual Property.

(c) No claims against any Seller are pending or, to Sellers' Knowledge, threatened with regard to (i) the Control or use of any Business Intellectual Property; (ii) any actual or potential infringement, misappropriation or unauthorized use of Business Intellectual Property; (iii) any actual or potential infringement, misappropriation or unauthorized use of any Third Party's Intellectual Property Rights with respect to any Business Intellectual Property or the Business; or (iv) the validity or enforceability of any Business Intellectual Property. Sellers have the right to bring actions for infringement, including all rights to recover damages for past infringement (to the extent permitted by applicable Law), of all Business Intellectual Property.

(d) Schedule 2.2(a)(iii) sets forth, as of the date hereof, a complete and accurate list of all patents and applications therefor, registered trademarks and applications therefor (if any), domain name registrations (if any), copyright registrations (if any) and all invention disclosures, that, in each case, are Controlled by any Seller and related to the Business, a Product or the Compound. The patent applications listed in Schedule 2.2(a)(iii) that are owned by any Seller are (and such applications that are otherwise Controlled by Sellers are, to Sellers' Knowledge) pending and have not been abandoned and have been and continue to be timely prosecuted. All patents, registered trademarks and applications therefor owned by Sellers that are related to the Business, a Product or the Compound have been (and all such patents, registered trademarks and applications otherwise Controlled by Sellers have been, to Sellers' Knowledge) duly registered or filed with or issued by each appropriate Governmental Authority in the

jurisdiction indicated in Schedule 2.2(a)(iii), all related necessary affidavits of continuing use have been (or, with respect to licenses, to Sellers' Knowledge have been) timely filed, and all related necessary maintenance fees have been (or, with respect to licenses, to Sellers' Knowledge have been) timely paid to continue all such rights in effect. None of the patents listed in Schedule 2.2(a)(iii) that are owned by Sellers have (and no such patents that are otherwise Controlled by Sellers have, to Sellers' Knowledge) expired, been disclaimed, in whole or in part, been declared invalid, in whole or in part, or held to be unenforceable by any Governmental Authority. None of the trademarks or trademark applications listed in Schedule 2.2(a)(iii) that are owned by Sellers are (and no such trademarks or trademark applications that are otherwise Controlled by Sellers are, to Sellers' Knowledge) involved in or the subject of any ongoing oppositions, cancellations or other proceedings. None of the patents or patent applications listed in Schedule 2.2(a)(iii) that are owned by Sellers are (and no such patents or patent applications that are otherwise Controlled by Sellers are, to Sellers' Knowledge) involved in or the subject of any material ongoing interferences, oppositions, reissues, reexaminations or other proceedings, including ex parte (other than ex parte proceedings in connection with such patent applications) and post-grant proceedings, in the United States Patent and Trademark Office or in any foreign patent office or similar administrative agency. Each of the patents and patent applications listed in Schedule 2.2(a)(iii) that are owned by Sellers properly identifies (and, to Sellers' Knowledge, such patents and applications otherwise Controlled by Sellers properly identify) each and every inventor of the claims thereof as determined in accordance with the Laws of the jurisdiction in which such patent is issued or such patent application is pending. Each inventor named on the patents and patent applications listed in Schedule 2.2(a)(iii) that are owned by Sellers has executed (and, to Sellers' Knowledge, such inventors named on such patents and applications that are otherwise Controlled by Sellers and material to the Business, a Product or the Compound have executed) an agreement assigning his, her or its entire right, title and interest in and to such patent or patent application, and the inventions embodied and claimed therein, to Sellers, or in the case of licensed Patents, to the appropriate owners. To Sellers' Knowledge, no such inventor has any contractual or other obligation that would preclude any such assignment or otherwise conflict with the obligations of such inventor to Sellers under such agreement with any Seller.

(e) No current or former director, officer, employee, contractor or consultant of any Seller owns any rights in or to any Business Intellectual Property. All current and former directors, officers, employees, contractors and consultants of any Seller who contributed to the discovery, creation or development of any Business Intellectual Property did so (i) within the scope of his or her employment such that it constituted a work made for hire and all Business Intellectual Property arising therefrom became the exclusive property of Sellers or (ii) pursuant to a written agreement assigning all of his or her rights in Business Intellectual Property to Sellers. No current or former directors, officers, employees, contractors or consultants of any Seller has made or, to Sellers' Knowledge, threatened to make any claim or challenge against any Seller or any Affiliates of any Seller in connection with their contribution to the discovery, creation or development of any Business Intellectual Property.

(f) Schedule 3.5(f) sets forth a complete and accurate list as of the date hereof of all options, rights, licenses or interests of any kind relating to any Business Intellectual Property (i) granted to any Seller by any other Person (other than software licenses for

commercially available off the shelf software and except pursuant to employee proprietary inventions agreements (or similar employee agreements)), or (ii) granted by any Seller to any other Person (including any obligations of such other Person to make any fixed or contingent payments, including royalty payments). All material obligations for payment of monies currently due and payable by any Seller and other material obligations in connection with such options, rights, licenses or interests have been satisfied in a timely manner.

(g) Sellers have used reasonable efforts to make all filings with Governmental Authorities and obtain all grants and registrations as may be reasonably necessary or appropriate to preserve and protect the Business Intellectual Property.

(h) Sellers have used reasonable efforts and taken commercially reasonable steps designed to maintain in confidence its Trade Secrets and other confidential information acquired, conceived, developed, collected, compiled, generated, reduced to practice or otherwise made or used in connection with the Business or related to a Product or the Compound, including through the development of a policy for the protection of intellectual property and periodic training for all employees of each Seller on the implementation of such policy; requiring all employees of each Seller to execute confidentiality agreements with respect to intellectual property developed for or obtained from Sellers; and entering into licenses and Contracts that generally require licensees, contractors and other Third Parties with access to the Trade Secrets or other confidential information to keep such Trade Secrets or other confidential information confidential.

(i) The execution and delivery of this Agreement and the Related Documents by Sellers do not, and the consummation of the Contemplated Transactions and compliance by Sellers with the provisions of this Agreement and any Related Document will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancellation or acceleration of any right or obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon or the transfer of, any Business Intellectual Property that is material to the Compound, a Product or the Business.

Section III.6. Assumed Contracts .

(a) There are no Contracts, other than the Assumed Contracts and Excluded Contracts, to which any Seller is a party or by which any Seller is bound, in either case, to which the Business or any of the Purchased Assets are subject.

(b) The Assumed Contracts are legal, valid and binding agreements of Sellers and are in full force and effect and are enforceable against the applicable Sellers and, to Sellers' Knowledge, each other party thereto, in accordance with their terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies. Each Seller has performed all material obligations required to be performed by it to date under the Assumed Contracts, and no Seller is or will be (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder and, to Sellers' Knowledge, no other party to any Assumed Contract is (with or

without notice or lapse of time, or both) in breach or default in any material respect thereunder. No Seller has received any written notice of intention to terminate any Assumed Contract or of any claim of breach with respect to the performance of any Seller's obligations under any Assumed Contract.

Section III.7. Compliance with Law . The Purchased Assets and the Business (i) have been since the Measurement Date and are conducted in all respects in compliance with all applicable Laws, except where the failure to be in compliance would not have a Material Adverse Effect, and (ii) have had since the Measurement Date and have all material Regulatory Authorizations, except where the failure to obtain or hold such Permits would not have a Material Adverse Effect. Each such Regulatory Authorization is valid and in full force and effect. There has occurred no material default by Seller under, or material violation by any Seller of, any such Permit. No Seller has received any written notice from any Governmental Authority or other Person to the effect that any Seller is not, or may not be, in compliance with any material Law with respect to the Purchased Assets or the Business.

Section III.8. Litigation . There is no Action pending or, to Sellers' Knowledge, threatened, that affects or, if successful, would reasonably be expected to be materially adverse to the Purchased Assets or that, if successful, would reasonably be expected to result in restraining, enjoining or otherwise preventing the completion by any Seller of the Contemplated Transactions. There is no outstanding Order of any Governmental Authority against any Seller arising out of or relating to the Purchased Assets or that would reasonably be expected to be materially adverse to the Purchased Assets or that would reasonably be expected to result in restraining, enjoining or otherwise preventing the completion by any Seller of the Contemplated Transactions.

Section III.9. Taxes .

(a) Each Seller has filed all material Tax Returns that it was required to file. Each Seller has timely withheld, remitted, or paid all Taxes required to be paid by it, the non-payment of which would result in a Lien (other than Permitted Liens) on any Purchased Asset, would otherwise adversely affect the Purchased Assets or would result in Buyer becoming liable or responsible therefor.

(b) Each Seller has established, in accordance with GAAP as applied on a basis consistent with that of preceding periods, adequate reserves for the payment of all Taxes that arise from or with respect to the Purchased Assets and are incurred or attributable to the Pre-Closing Tax Period, the non-payment of which would result in a Lien on any Purchased Asset, would otherwise adversely affect the Purchased Assets, or would result in Buyer becoming liable therefor.

Section III.10. Regulatory Matters .

(a) Schedule 3.10(a) sets forth a true and complete list of (i) all Regulatory Authorizations held by each Seller or under which any Seller conducts business, or that have been submitted by or on behalf of any Seller, in each case, relating to the Business or a Product,

and (ii) all applications or notifications or submissions for Regulatory Authorizations pending in relation thereto. Sellers possess all material Regulatory Authorizations that are required for or relate to the Business. Sellers are the sole and exclusive owner(s) of the Regulatory Authorizations and none of the Regulatory Authorizations has been sold, conveyed, delivered, transferred or assigned to another party. Each such Regulatory Authorization (A) has, to Sellers' Knowledge, been validly issued or acknowledged by the appropriate Regulatory Authority and is in full force and effect and (B) is transferable to Buyer. To Sellers' Knowledge, there are no facts, circumstances or conditions that would prevent the transfer of any Regulatory Authorization to Buyer on or after the Closing Date.

(b) Except as set forth on Schedule 3.10(b), all pre-clinical and clinical studies, trials and investigations conducted or sponsored in relation to the Business are being, and at all times have been, conducted in compliance in all material respects with all applicable clinical protocols, informed consents and applicable Laws administered or issued by applicable Regulatory Authorities, including (to the extent applicable) (i) the U.S. Food and Drug Administration ("FDA") or other health authority standards for conducting non-clinical laboratory studies contained in Title 21 part 58 of the Code of Federal Regulations and associated regulatory guidance, (ii) investigational new drug requirements and associated regulatory guidance, (iii) FDA or other health authority standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 312, 314, and 320 of the Code of Federal Regulations and associated regulatory guidance, (iv) federal and state laws or other regulatory authority standards for restricting the use and disclosure of individually identifiable health information, (v) the International Council for Harmonisation Guideline on Good Clinical Practice (ICH Topic E6) and associated regulatory guidance and (vi) communications or notices from Regulatory Authorities regarding the conduct of such studies, trials and investigations. Except as set forth on Schedule 3.10(b), there have been no drug-related adverse event or events in patients in a clinical trial conducted or sponsored in relation to the Business, the effect of which would reasonably be expected to (x) prevent Buyer from obtaining approval from a Regulatory Authority to market a Product in the United States or (y) delay such approval to such an extent that the delay (taking into account the expected length of such delay and the basis or reasons therefor) would materially impair the aggregate financial value to be derived by Buyer from a Product. All clinical trial adverse events in patients in a clinical trial conducted or sponsored in relation to the Business within the knowledge of any Seller have been disclosed to Buyer and all associated correspondence, including actual or potential claims for recompense, have been made available to Buyer.

(c) No Regulatory Authority has commenced, or, to Sellers' Knowledge, threatened to initiate, any Action to place a clinical hold order on, or otherwise terminate, delay or suspend any proposed or ongoing pre-clinical or clinical studies, trials, investigational new drug application or investigations conducted or proposed to be conducted in connection with the Business.

(d) No Seller has directly or indirectly received any written communication (including any warning letter, untitled letter, Form 483 or similar notice) from any Regulatory

Authority, and to Sellers' Knowledge there are no material Actions related to the Business pending or threatened (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case (i) relating to, arising under or alleging that any Seller or any of its officers, employees or agents is not currently in compliance with, any Law administered or issued by any Regulatory Authority or (ii) regarding any debarment action or investigation in respect of any Seller or any of its officers, employees or agents undertaken pursuant to 21 U.S.C. Sections 335(a), (b) and (c), or any similar regulation of a Regulatory Authority. There are no pending voluntary or involuntary destruction orders, seizures or other regulatory enforcement actions related to the Business and, to Sellers' Knowledge, no Data relating to a Product or the Compound that has been made public is the subject of any regulatory or other Action, either pending or threatened, by any Regulatory Authority relating to the truthfulness or scientific adequacy of such Data.

(e) Since the Measurement Date, neither any Seller nor, to Sellers' Knowledge, any officer, employee, agent or distributor of any Seller, has made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for any other Governmental Authority to invoke any similar policy. Neither any Seller nor, to Sellers' Knowledge, any officer, employee or agent of any Seller has been convicted of any crime or engaged in any conduct for which debarment is mandated by or authorized by 21 U.S.C. Sections 335(a), (b) and (c) or any similar Laws. Neither Seller nor, to Sellers' Knowledge, any officer, employee or agent of any Seller has been convicted of any crime or engaged in any conduct for which such Person would be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended (the "Social Security Act"), or any similar Laws.

(f) Each Seller is, and, since the Measurement Date, has been, in compliance with: (i) laws, regulations and guidance pertaining to state and federal Anti-Kickback Statutes (42 U.S.C. §§ 1320a-7b(b), et seq. and their implementing regulations) and the related Safe Harbor Statutes; (ii) laws, regulations and guidance pertaining to submission of false claims to governmental or private health care payors (31 U.S.C. §§ 3729, et seq. and its implementing regulations); and (iii) state laws and federal laws and regulations relating to providing and reporting of payments to health care professionals or health care entities.

(g) No Seller is a "covered entity" or a "business associate" pursuant to the Health Insurance Portability and Accountability Act of 1996 (as those terms are defined in 45 §160.103), and each Seller has complied in all material respects with all other applicable Laws relating to the privacy and security of individually identifiable information, including the Federal Trade Commission Act, the Children's Online Privacy Protection Act (COPPA), and similar applicable Laws in any foreign jurisdiction in which the applicable Seller does business.

Section III.11. Inventory . Schedule 2.2(a)(v) sets forth the Inventory as of the second Business Day prior to the date hereof. As of the date hereof, the Inventory is (a) free from any material defect or deficiency, (b) is in good and usable condition for its use in the Business and (c) meets in all material respects all of the applicable requirements and specifications.

Section III.12. Relationships with Suppliers . Since the Measurement Date, no supplier of a Product or any Person materially involved in the Exploitation of a Product has canceled or otherwise terminated, or provided written notice to any Seller of its intent, or to Sellers' Knowledge, threatened in writing, to terminate its relationship with any Seller with respect to a Product, or, since the Measurement Date, decreased or limited by more than five percent (5%), or provided written notice to any Seller of its intent, or, to Sellers' Knowledge, threatened in writing, to so decrease or limit its sales to Seller.

Section III.13. Brokers and Other Advisors . No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission for which Buyer could become responsible in connection with the Contemplated Transactions based upon arrangements made by or on behalf of any Seller.

Section III.14. Insurance . Each Seller maintains such policies of insurance relating to the Purchased Assets and the Business as are reasonably sufficient for compliance by such Seller with (i) all requirements of applicable Laws and (ii) all Assumed Contracts, and each Seller has complied in all material respects with the provisions of each such policy under which it is an insured party. No Seller has been refused any insurance with respect to any Purchased Asset or the Business, nor has any Seller's coverage been limited by any insurance carrier to which it has applied for insurance or with which it has carried insurance. To Sellers' Knowledge, there are no existing claims under any insurance policy relating to the Purchased Assets or the Business. No written notice of cancellation or termination has been received with respect to any insurance policy relating to the Purchased Assets or the Business.

Section III.15. Adequate Consideration; Solvency . Each Seller is (a) able to pay its debts as they become due and (b) solvent and will be solvent immediately following the Closing. As of the date of this Agreement, no Seller is engaged or intends to be engaged in business or a transaction for which its remaining assets and capital are or will be insufficient. As of the date of this Agreement, no Seller intends to incur Liabilities that would be beyond its ability to pay as such Liabilities matured. No Seller has entered into this Agreement for the purpose of hindering, delaying or defrauding its creditors.

Section III.16. Related Party Transactions. Schedule 3.15 describes any transaction between any Seller, on the one hand, and any current or former partner, director, officer, employee, manager, member or stockholder (who holds at least five percent (5%) of any Seller's outstanding capital stock) of any Seller, on the other hand, in each case, related to the Purchased Assets or the Business. No current or former partner, director, officer, employee, manager, member or stockholder (who holds at least five percent (5%) of Seller's outstanding capital stock) of any Seller has any ownership interest in the Purchased Assets, or, to Sellers' Knowledge, any Person that is a supplier of a Product or the Compound (directly or indirectly) or

actively engaged in the business of Exploiting a Competing Product (in each case, other than equity positions in companies that such Person does not Control).

Section III.17. Anticorruption Matters .

(a) Neither any Seller, nor any of its Affiliates, any of their respective directors, officers, managers or employees or, to Sellers' Knowledge, any of their other respective Representatives, in any way relating to the Purchased Assets or the Business: (i) has taken any action in violation of any applicable anticorruption Law, including the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. § 78 dd-1 et seq.); or (ii) has corruptly, offered, paid, given, promised to pay or give, or authorized the payment or gift of anything of value, directly or indirectly, to any "Public Official", as defined in this Section 3.17, for purposes of (A) influencing any act or decision of any Public Official in his official capacity; (B) inducing such Public Official to do or omit to do any act in violation of his lawful duty; (C) securing any improper advantage; or (D) inducing such Public Official to use his or her influence with a government, Governmental Authority, or commercial enterprise owned or controlled by any Governmental Authority (including state-owned or controlled veterinary or medical facilities), in order to assist any Seller or any Affiliates of any Seller, related in any way to the Purchased Assets or the Business, in obtaining or retaining business.

(b) No Seller's officers, directors, employees or agents acting on behalf of any Seller are themselves Public Officials.

(c) For purposes of this Section 3.17, "Public Official" means: (i) any officer, employee or representative of any regional, Federal, state, provincial, county or municipal government or government department, agency, or other division; (ii) any officer, employee or representative of any commercial enterprise that is owned or controlled by a government, including any state-owned or controlled veterinary or medical facility; (iii) any officer, employee or representative of any public international organization, such as the African Union, the International Monetary Fund, the United Nations or the World Bank; (iv) any person acting in an official capacity for any government or Governmental Authority, enterprise, or organization identified above; and (v) any official of a political party or candidate for political office.

(d) There are no pending proceedings against any Seller, its Affiliates, any of their respective directors, officers, managers or employees or, to Sellers' Knowledge, any of their other respective Representatives, with respect to the violation of any applicable anticorruption Law, including the FCPA, relating to the Purchased Assets or the Business.

(e) Each Seller and its Affiliates have been subject to an anticorruption compliance policy with respect to the Purchased Assets and the Business reasonably appropriate to ensure compliance with applicable anticorruption Laws, including the FCPA.

Section III.18. No Other Representations and Warranties. (A) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE III (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE LETTER), NO SELLER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR

WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, WITH RESPECT TO ANY SELLER, THE PURCHASED ASSETS, THE BUSINESS OR THE CONTEMPLATED TRANSACTIONS; AND (B) NO SELLER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, AS TO THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO BUYER AND ITS REPRESENTATIVES BY OR ON BEHALF OF SELLERS AND ANY INFORMATION, DOCUMENTS OR MATERIAL MADE AVAILABLE TO BUYER IN THE DATA ROOM, MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF THE CONTEMPLATED TRANSACTIONS, OTHER THAN IN THE CASE OF CLAUSE (B), TO THE EXTENT ANY SUCH INFORMATION, DATA OR MATERIAL IS ITSELF THE SUBJECT OF A REPRESENTATION OR WARRANTY CONTAINED IN THIS ARTICLE III (INCLUDING THE RELATED PORTION OF THE DISCLOSURE LETTER). EACH SELLER ACKNOWLEDGES AND AGREES THAT NONE OF BUYER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, WITH RESPECT TO BUYER EXCEPT AS SET FORTH IN ARTICLE IV.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as set forth in this Article IV.

Section IV.1. Organization, Standing and Power . Buyer is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has all requisite corporate power and authority to carry on its business as presently conducted, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to be material and adverse to Buyer, taken as a whole. Buyer is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing individually or in the aggregate has not been and would not reasonably be expected to be material and adverse to Buyer.

Section IV.2. Authority; Noncontravention .

(a) Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the Related Documents by Buyer and the consummation by Buyer of the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Buyer and no other corporate

proceedings on the part of Buyer are necessary to authorize this Agreement, the Related Documents or to consummate the Contemplated Transactions. Each of this Agreement and the Related Documents has been duly executed and delivered by Buyer and assuming the due authorization, execution and delivery by Sellers, constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies.

(b) The execution and delivery of this Agreement and the Related Documents by Buyer do not, and the consummation of the Contemplated Transactions and compliance by Buyer with the provisions of this Agreement and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon any of the properties or other assets of Buyer under (i) the certificate of incorporation or bylaws of Buyer, (ii) any Contract to which Buyer is a party or any of its respective properties or other assets is subject or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to Buyer or its properties or other assets or (B) Order applicable to Buyer or its properties or other assets, except in the cases of clauses (ii) and (iii), where the conflict, violation, breach, default, termination, cancellation, acceleration or creation of a Lien, individually or in the aggregate, would not reasonably be expected to prevent, materially impede or materially delay the consummation by Buyer of the Contemplated Transactions (including the payments required to be made pursuant to Article II).

(c) No consent, approval, order or authorization of, action by or in respect of, or registration, declaration or filing with, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any Related Document by Buyer or the consummation by Buyer of the Contemplated Transactions.

Section IV.3. Capital Resources; Solvency .

(a) Buyer has immediately available funds sufficient to consummate the Contemplated Transactions on the terms contemplated by this Agreement including the payment of all fees, expenses and obligations payable by Buyer in connection with the Contemplated Transactions.

(b) Immediately after giving effect to the Contemplated Transactions, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due and (b) have adequate capital to carry on its business.

Section IV.4. Litigation . There is no Action pending or, to the actual knowledge of Buyer's officers, threatened before any Governmental Authority, and there is no claim, investigation or administrative action of any Governmental Authority pending or, to the actual knowledge of Buyer's officers, threatened, that if successful, would reasonably be expected to result in restraining, enjoining or otherwise preventing the completion by Buyer of the Contemplated Transactions. There is no outstanding Order of any Governmental Authority

against Buyer that would reasonably be expected to result in restraining, enjoining or otherwise preventing the completion by Buyer of the Contemplated Transactions.

Section IV.5. Brokers and Other Advisors . No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission for which Seller could become responsible in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Buyer.

Section IV.6. Independent Investigation . Buyer has conducted its own independent investigation, review and analysis of the Purchased Assets and the Business and acknowledges that it has been provided access to the personnel, properties, assets, premises, books and records, and other documents and data of Sellers for such purpose. Buyer acknowledges and represents that in making its decision to enter into this Agreement and consummate the Contemplated Transactions, Buyer has relied solely on its own investigation and the express representations and warranties of Sellers set forth in Article III (including the Schedules to the Disclosure Letter) and Buyer is not relying on any representation or warranty, written or oral, statutory, express or implied, at common law or otherwise, with respect to any Seller, the Purchased Assets, the Business or the Contemplated Transactions not expressly set forth in Article III (including any information, data or other materials (written or oral) heretofore furnished to Buyer and its Representatives by or on behalf of Sellers and any information, documents or material made available to Buyer in the Data Room, management presentations or in any other form in expectation of the Contemplated Transactions, other than to the extent any such information, data or material is itself the subject of a representation or warranty contained in Article III).

ARTICLE V.

ADDITIONAL AGREEMENTS

Section V.1. Confidentiality; Non-Competition .

(a) Confidentiality.

(i) Each of Buyer and each Seller acknowledges that the information provided to them in connection with this Agreement and the consummation of the Contemplated Transactions is subject to the terms of the Confidentiality Agreement. Effective upon, and only upon, the Closing, the Confidentiality Agreement shall terminate with respect to information included in or related to the Business or the Purchased Assets.

(ii) Each Seller recognizes that it possesses information of a confidential or secret nature in both written and unwritten form, which has unique commercial value as related to the Business or the Purchased Assets (hereinafter referred to as "Confidential Information"). For purposes of this Agreement, the foregoing "Confidential Information" (A) shall include each of the following, to the extent

constituting a Purchased Asset: (1) any pre-clinical, clinical, pharmaceutical development, prescription, or sales and marketing data for a Product or the Compound; (2) Trade Secrets, processes, methods, data, know-how, prototypes, improvements, inventions, techniques, product plans, strategies and forecasts, including any development plans for the use of a Product or the Compound; (3) forms, contracts or promotional materials created for or used solely in relation to a Product or Compound; (4) any correspondence, memoranda or files related solely to a Product or Compound which contain Confidential Information; and (5) any information, knowledge and data solely related to the Business and (B) shall not include any information which (1) is or becomes generally available to and known by the general public (other than as a result of a disclosure through the actions of Seller or any of its Representatives in violation of this Section 5.1 or any other obligation of confidentiality owed to Buyer or any of its Affiliates), (2) is independently developed by any Seller after the Closing without reference to the Confidential Information or any Purchased Assets or (3) any information, forms, contracts or other items relating to the Excluded Assets. Information that is not novel or copyrighted may nonetheless be Confidential Information.

(iii) Each Seller agrees that, following the Closing, all Confidential Information shall be the sole property of Buyer and its assigns.

(iv) For a period of [*] after the Closing, each Seller will, and will cause its Affiliates and Representatives to, keep in strict confidence all Confidential Information and will not use or disclose any Confidential Information or anything relating to it, in whole or in part, nor permit others to use or disclose it in any way, without the prior written consent of Buyer. Each Seller further agrees to inform Buyer as promptly as practicable in writing in the event of any breach of this obligation of confidentiality that becomes known to any such Seller.

(v) Notwithstanding anything contained in this Agreement to the contrary, each Seller is permitted to disclose the Confidential Information pursuant to a court order or other requirement of a judicial, administrative or governmental proceeding, or otherwise to the extent required for Seller to comply with applicable Law, provided that, in each instance, Seller (A) notifies Buyer of the court order or other requirement promptly after Seller becomes aware of the court order or other requirement (unless such notification would be unlawful); (B) cooperates with Buyer in seeking a protective order or similar relief to protect the confidentiality of the information to be disclosed (in each case at the expense of Buyer); and (C) limits the disclosure to what is requested by the court order or other requirement.

(b) Non-Competition. Each Seller agrees that for a period of:

(i) [*] commencing upon the Closing Date (the " First Restricted Period "), no Seller or any direct or indirect subsidiary thereof (now existing or hereafter incorporated, formed or otherwise organized) shall, alone or in conjunction with any Third Party, directly or indirectly, conduct human clinical studies with respect to, or manufacture or commercialize, any product that is competitive with the Products, taking

into account the suggested indication and target market of each Product in any geographic area (such product, a "Competing Product"), other than pursuant to the Development Agreement.

(ii) [*] commencing upon the Closing Date (the " Second Restricted Period"), no Seller or any direct or indirect subsidiary thereof (now existing or hereafter incorporated, formed or otherwise organized) shall, alone or in conjunction with any Third Party, directly or indirectly, manufacture or commercialize, any Product or any other product containing a Compound in any geographic area (such product, a "Similar Product"), other than pursuant to the Development Agreement.

(iii) In the event that any Seller is acquired by or merges with a Third Party that is engaged in human clinical studies with respect to, or the manufacture or commercialization of, a Competing Product, then such Seller shall not be deemed to be in breach of this Section 5.1(b) with respect to any such Competing Product or Similar Product, and the terms of this Section 5.1(b) will not apply in any way to limit or restrict such Third Party or its Affiliates (other than such Seller and its direct and indirect subsidiaries).

(c) Acknowledgments, Interpretation and Validity.

(i) Each Seller agrees and acknowledges that the covenants in this Section 5.1 are reasonable and valid in all respects (including with respect to the subject matter, the First Restricted Period, the Second Restricted Period, and geographical area) and are necessary to protect the interests of Buyer in the Products, the Compound, the other Purchased Assets and the Confidential Information, and such covenants represent only a limited restraint. Further, each Seller acknowledges that, without the restrictions contained in this Section 5.1, the benefits of the Contemplated Transactions could be devalued, lost or circumvented, particularly in light of the nature and ongoing development of the Products and the Compound, and that Buyer would not have entered into this Agreement without the restrictions contained in this Section 5.1.

(ii) Each Seller acknowledges and agrees that the provisions of this Section 5.1 are necessary and reasonable to protect Buyer in the conduct of its business and are a material inducement to Buyer's execution and delivery of this Agreement and its willingness to enter into the Contemplated Transactions.

(iii) It is the desire and intent of the Parties that this Section 5.1 will be enforced to the fullest extent permissible under the Laws applied in each jurisdiction in which enforcement is sought. If any restriction set forth in this Section 5.1 is found by any court of competent jurisdiction to be unenforceable for any reason (*e.g.*, because it extends for too long a period of time, over too great a range of activities or in too broad a geographic area), this Section 5.1 shall be interpreted to extend over the maximum period of time, range of activities or geographic area as to which it may be enforceable. The agreements contained in this Section 5.1 shall each constitute a separate agreement independently supported by good and adequate consideration. For the avoidance of

[*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

doubt, the Parties hereby acknowledge that each Seller will benefit substantially from the consummation of the Contemplated Transactions and that the consideration that Sellers will receive upon such consummation is adequate to support each Seller's agreement to be bound by the covenants set forth herein.

(d) Remedies. In accordance with Section 7.8(c), Buyer will be entitled to injunctive or other equitable relief to enforce the provisions hereof, in addition to such other remedies to which Buyer may be entitled, including the recovery of money damages.

(e) Extensions of Limitations. If any Seller or any of its subsidiaries violate any term or provision of this Section 5.1, the duration set forth in this Section 5.1 shall automatically be extended as against each Seller and its subsidiaries for a period equal to the periods during which any Seller or such subsidiary shall have been in violation of this Section 5.1.

Section V.2. Certain Tax Matters .

(a) Transfer Taxes. All recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar Taxes, duties or governmental charges, and all recording or filing fees or similar costs, imposed or levied by reason of, in connection with or attributable to this Agreement, the Related Documents or the Contemplated Transactions (collectively, "Transfer Taxes") shall be the borne equally between Sellers, on the one hand, and Buyer, on the other.

(b) Allocation of Taxes.

(i) All ad valorem obligations levied with respect to the Purchased Assets for any Straddle Period (collectively, the "Apportioned Obligations") shall be apportioned between Sellers, on the one hand, and Buyer, on the other, on a per diem basis. Sellers shall be jointly and severally liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period.

(ii) All Taxes levied with respect to the Purchased Assets (other than the Apportioned Obligations) for any Straddle Period ("Other Taxes") shall be allocated between the Pre-Closing Tax Period and the Post-Closing Tax Period as follows: (i) in the case of Taxes other than income Taxes (however denominated), sales and use Taxes, value added Taxes and withholding Taxes, such Taxes shall be allocated on a per diem basis, and (ii) in the case of income Taxes (however denominated), sales and use Taxes, value added Taxes and withholding Taxes, such Taxes shall be allocated based on the assumption that the taxable period ended on the Closing Date. The Sellers shall be liable for all Other Taxes allocated to the Purchased Assets for the Pre-Closing Tax Period, and the Buyer shall be liable for all Other Taxes allocable to the Post-Closing Tax Period.

(c) Reimbursement. Apportioned Obligations, Other Taxes and Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by applicable Law. The paying Party (if not specified as the responsible Party therefor) shall be entitled to reimbursement from the non-paying Party in accordance with Section 5.2(a) or Section 5.2(b), as the case may be. Upon payment of any such Apportioned Obligation or Transfer 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 5.2(a) or Section 5.2(b), 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. For the avoidance of doubt, reimbursement for Transfer Taxes, Other Taxes or Apportioned Obligations shall be governed first by this Section 5.2(c) and, if unsatisfied, then pursuant to Article VI.

(d) Tax Withholding. The Parties agree that all payments under this Agreement will be made without any deduction or withholding for or on account of any Taxes or other amounts unless required by applicable Law. In the event Buyer determines that it is required under applicable Law to withhold and pay any Tax to any Taxing Authority in respect of any payments made to any Seller, the amount of such Tax shall be deducted by Buyer and paid to the relevant Taxing Authority, and Buyer shall notify the applicable Seller thereof and shall promptly furnish to such Seller all copies of any Tax certificate or other documentation evidencing such withholding. Buyer shall not be required to pay any additional amounts to any Seller in respect of any amounts paid to any Taxing Authority pursuant to the immediately preceding sentence. The Parties agree to reasonably cooperate with each other, including by completing or filing documents required under the provisions of any applicable income tax treaty or applicable Law, to claim any applicable exemption from, or reduction of, any such applicable Taxes. To the extent that any amounts are so deducted or withheld by Buyer from any payment hereunder to any Seller, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Seller. In the event any such amounts are not or can not be so deducted or withheld, Sellers will indemnify and promptly reimburse Buyer therefor, without regard to the limitations of Section 6.3 hereof.

(e) Cooperation and Exchange of Information. Each of the Sellers, on the one hand, and Buyer, on the other, shall (i) provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, audit or other examination by any Taxing Authority or Action relating to liability for Taxes in connection with the Purchased Assets or the Business, (ii) retain and provide the other with any records or other information that may be relevant to such Tax Return, audit or examination, Action or determination and (iii) provide the other with any final determination of any such audit or examination, Action or determination that affects any amount required to be shown on any Tax Return of the other for any period.

(f) Tax Treatment of Payments. Unless otherwise required by a change in Law after the date hereof, or a final "determination" as defined in Section 1313(a) of the Code, Sellers and Buyer shall treat any payment under Article VI as an adjustment to the Purchase Price for Tax purposes.

Section V.3. Public Announcements . Neither Buyer nor any Seller, nor any Affiliate of any Party, shall issue any press release or otherwise make any public statement with respect to the provisions of this Agreement or the Contemplated Transactions without the prior written consent of the other Party. Notwithstanding anything to the contrary in this Agreement or any Related Document, any Party may issue a press release or make a public statement with respect to the Contemplated Transactions without the consent of the other Party as may be required by Law or the rules and regulations of any applicable securities exchange or market (it being understood that Buyer may make a public announcement and file the appropriate filings with the Securities and Exchange Commission (including filing this Agreement), and conduct investor calls, with respect to this Agreement and the Contemplated Transactions). If any Party proposes to issue a press release or make a public statement with respect to the Contemplated Transactions pursuant to this Section 5.3, it will provide copies of such press release or public statement to the other Party before such press release or public statement is made to allow the other Party to comment upon and agree on such press release or public statement, unless the provision of such press release or public statement to the other Party before such press release or public statement is made (or any delay in reaching agreement with respect thereto) would be in breach of any Law or the rules and regulations of any applicable securities exchange or market, in which case a copy of such press release or public statement will be provided to the other Party as soon as reasonably practicable or in accordance with such Law, rules or regulations.

Section V.4. Regulatory Matters .

(a) Transfer of Regulatory Authorizations. At the Closing, each Seller shall transfer the exclusive benefit of the Regulatory Authorizations to Buyer free of all Liens, other than Permitted Liens, on the terms and conditions set forth in this Section 5.4. As soon as practicable following the Closing Date but in any event no later than 30 days after the Closing Date, each Seller shall make such notifications or filings with applicable Regulatory Authorities as may be necessary to effect the transfer of each of the Regulatory Authorizations to Buyer.

(b) Buyer Responsibilities. Subject to the provisions of Section 5.4(a), after the Closing Date, Buyer (on behalf of Sellers to the extent required under Applicable Law), at its cost, shall be solely responsible (subject to each Seller's obligations set forth in clause (c) below) and liable for (i) taking all actions, paying all fees and conducting all communication with the appropriate Regulatory Authority required by Law in respect of the Regulatory Authorizations, including preparing and filing all reports (including adverse drug experience reports) with the appropriate Regulatory Authority; (ii) investigating all complaints and reports of adverse drug experiences with respect to any Product or the Compound pursuant to such Regulatory Authorizations (whether Exploited before or after transfer of such Regulatory Authorizations); and (iii) fulfilling all other applicable legal and regulatory obligations of a holder of each Regulatory Authorization.

(c) Complaints. After the Closing Date, Sellers shall notify Buyer within 48 hours (or such shorter period required by Law) if any Seller receives a complaint or a report of an adverse drug experience with respect to any Product or the Compound. In addition, each

Seller shall use commercially reasonable efforts to assist Buyer (and Buyer shall reimburse the applicable Seller its reasonable expenses incurred in connection therewith) in connection with the investigation of and response to any complaint or adverse drug experience report related to ay Product or the Compound, to the extent attributable to the period prior to the Closing. All notifications pursuant to this Section 5.4(c) shall be by facsimile or electronic mail at such numbers or addresses agreed upon by the Parties' respective safety divisions.

(d) Cooperation. Each Seller shall cooperate with Buyer in supplying information or assistance in Buyer's fulfillment of its obligations under this Section 5.4.

Section V.5. Access .

(a) From and after the Closing Date for a period of 12 months, each Seller shall provide Buyer with reasonable access (which shall not unreasonably interfere with the business of the applicable Seller), upon reasonable written notice and during normal business hours, to the management and other personnel of each Seller for the purpose of (i) discussing all reasonable inquiries regarding the Purchased Assets or the Business and (ii) providing such other assistance as Buyer may reasonably request related to the sale, conveyance, delivery, transfer and assignment of the Purchased Assets.

(b) From and after the Closing Date, Buyer shall provide each Seller and its Representatives with reasonable access (which shall not unreasonably interfere with the business of Buyer), upon reasonable written notice and during normal business hours, to the Books and Records and the right to make copies and extracts therefrom (subject to Sellers' obligations under Section 5.1), to the extent that such access may be reasonably required by such Seller or any of its Representatives (i) to facilitate the investigation, litigation and final disposition of any Third Party Claim the defense or opposition of which Seller has assumed pursuant to Section 6.4 (unless such Third Party Claim is the subject of a dispute between Buyer and any Seller or any of their respective Affiliates), or (ii) in connection with the preparation of any Seller's Tax Returns or financial statements.

Section V.6. Expenses . Except as expressly set forth herein, each Seller and Buyer shall bear its own costs and expenses incurred in connection with this Agreement and the Contemplated Transactions.

Section V.7. Wrong Pockets . Subject to Section 2.5, for a period of up to 12 months after the Closing Date, if Buyer, on the one hand, or any Seller, on the other, becomes aware that any of the Purchased Assets have not been transferred to Buyer or that any of the Excluded Assets have been transferred to Buyer, it shall promptly notify the other Parties, and the Parties hereto shall, as soon as reasonably practicable, ensure that such assets are transferred, at Sellers' expense (except that Buyer shall be responsible for the shipping cost of any Inventory) and with any necessary prior Third Party consent or approval, to:

(a) Buyer, in the case of any Purchased Asset which was not transferred at the Closing; or

(b) Sellers, in the case of any Excluded Asset which was transferred at the Closing.

Section V.8. Further Assurances . Each Party shall, at any time and from time to time after the Closing Date, upon the request of the other Party(ies), do, execute, acknowledge, deliver and file, or cause to be done, executed, acknowledged, delivered or filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the transferring, conveying, assigning and assuring to Buyer, or for the aiding and assisting in the reducing to possession by Buyer of, any of the Purchased Assets, or for otherwise carrying out the purposes of this Agreement and the Related Documents and the consummation of the Contemplated Transactions.

Section V.9. TRIS Make-Whole Payments.

(a) By each of January 30, 2019 and January 30, 2020, Buyer will furnish to US Holdings a written report setting forth for the prior calendar year the Net Sales of Karbinal (including the number of units shipped times the invoiced price per unit and the details of all deductions from gross sales to arrive at Net Sales) (the "Written Report"). US Holdings shall inform Buyer in writing within fifteen (15) calendar days of the receipt of the Written Report of US Holdings acceptance or of any objection. If US Holdings does not so inform Buyer, Sellers shall be deemed to have accepted the Written Report. To the extent that any such objection is timely received, Buyer and US Holdings shall attempt in good faith to resolve any dispute. If Buyer and US Holdings are unable to reach such agreement within fifteen (15) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant, and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within fifteen (15) days of having the item referred to it pursuant to such procedures as it may require. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers.

(b) Upon resolution of the Written Report as described in Section 5.9(a) above, US Holdings shall pay Buyer an amount equal to [*] of the Net Sales of Karbinal set forth in such report; provided, however, that if the royalty rate pursuant to the Net Sales of Karbinal for the 2018 and 2019 calendar years is reduced, then US Holdings' obligation under this Section 5.9(b) shall be reduced in proportion to such royalty reduction.

(c) In no event shall the foregoing payments from US Holdings to Buyer under this Section 5.9 exceed $[*] per year.

(d) All capitalized terms used in this Section 5.9 have the meanings set forth for them in the Supply and Distribution Agreement dated as of August 9, 2013 by and between TRIS Pharma, Inc., a New Jersey corporation, and US Holdings, as amended from time to time.

Section V.10. Name. Buyer acknowledges and agrees that it shall (i) not obtain or retain any right, title or interest in or to the "Avadel" name or any, whether registered or unregistered, associated names, service marks, trademarks, trade names, identifying symbols, logos, emblems, signs or insignia related thereto or containing or comprising the foregoing,

including any name or mark confusingly similar thereto and (ii) immediately after the Closing, cease to hold itself out as having any affiliation with Sellers or any of their Affiliates other than under this Agreement and the Development Agreement.

Section V.11. Employment.

(a) Buyer shall, or shall cause its Affiliates to, offer employment to those employees of Seller who provide services exclusively or primarily with respect to the Business and who are listed on Schedule 5.11(a) (each, a "Business Employee"), as determined in the sole discretion of Buyer no later than five (5) days prior to the Closing Date. Buyer retains the sole discretion to determine the compensation and benefits offered to each Business Employee.

(b) Nothing herein shall provide or be construed to provide the rights of a third-party beneficiary on any Person, including any Business Employee or dependent or beneficiary thereof. Except as set forth herein, the provisions of this Section 5.11 shall not amend or other modify the terms of any compensation or employee benefit plan or arrangement of Sellers or Buyer or their respective Affiliates

Section V.12. Conduct of Business Prior to the Closing . From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall (x) conduct the Business in the Ordinary Course of Business and (y) use commercially reasonable efforts to maintain and preserve intact the Business' current organization and operations and to preserve the rights, goodwill and relationships of the Sellers with the Business Employees (it being understood and agreed Sellers shall not have any obligations or liabilities hereunder with respect to the other employees of Sellers or if a Business Employee refuses to accept employment with Buyer), customers, licensors, suppliers, distributors and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall not:

(a) waive or release any material right or material claim of the Business other than in the Ordinary Course of Business;

(b) sell, transfer, lease, license (other than in the Ordinary Course of Business), or otherwise dispose of any of the Purchased Assets;

(c) incur, assume, guarantee, issue, assume or otherwise become responsible for, any new indebtedness or create any new encumbrance or Lien on the Business or Purchased Assets (other than Permitted Liens);

(d) amend, waive, modify or consent to the termination of any Assumed Contracts, or amend, waive, modify or consent to the termination of any Seller's rights thereunder;

(e) initiate, settle, agree to settle, waive or compromise any Action;

(f) adopt a plan or agreement for or carry out any complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization;

(g) permit the lapse of any existing policy of insurance relating to the Business or its assets;

(h) permit the lapse of any material right relating to Intellectual Property Rights or any other intangible asset used in or related to the Business;

(i) increase or decrease the wages, salary, bonus or other compensation or benefits payable to any Business Employee (other than in the Ordinary Course of Business);

(j) hire any new director, officer or employee (other than in the Ordinary Course of Business) of the Business;

(k) sell any Product, it being understood and agreed that Sellers will, promptly after execution and delivery of this Agreement, transfer all Inventory under Sellers' control to Buyer pursuant to its written instructions so that Buyer can begin relabeling it, and that in the event this Agreement is terminated for any reason Buyer will at its expense return such Inventory to Sellers pursuant to their written instructions;

(l) increase or decrease marketing efforts of the Business from the levels conducted by the Sellers in the six (6) months prior to the date hereof; or

(m) agree or commit to do any of the foregoing.

ARTICLE VI.

INDEMNIFICATION

Section VI.1. Indemnification of Buyer . (a) From and after the Closing, Sellers shall jointly and severally indemnify Buyer and its Affiliates and each of their respective officers, directors, employees, equity holders, agents and Representatives (each, a "Buyer Indemnified Party") against and hold each Buyer Indemnified Party harmless from any and all losses, damages, Liabilities, costs or expenses (collectively, "Losses"), suffered or incurred by such Buyer Indemnified Party, arising from, relating to or otherwise in connection with:

(i) any breach of or inaccuracy in any representation or warranty of any Seller contained in this Agreement (without giving effect to any materiality threshold or qualifier contained therein, including any Material Adverse Effect qualifier, except that this parenthetical shall not apply to Section 3.3(a));

(ii) any breach of or failure to perform any covenant or agreement of any Seller contained in this Agreement;

(iii) any Excluded Liability or Excluded Asset; or

(iv) any Taxes with respect to the Business or Purchased Assets for any Pre-Closing Tax Period, including, with respect to any Straddle Period, any Other Taxes, or any Apportioned Obligations allocated to any Seller pursuant to Section 5.2(b), as well as any Transfer Taxes allocated to the Sellers pursuant to Section 5.2(a).

(b) No consent of any Seller will be required in order for Buyer to be indemnified under this Article VI.

(c) In the case of a Buyer Indemnified Party's rights to indemnification pursuant to this Section 6.1, any and all Losses payable by any Seller to the Buyer Indemnified Parties with respect to indemnifiable Losses will be paid directly by Sellers to the applicable Buyer Indemnified Parties (subject to the applicable limitations set forth in this Article VI).

Section VI.2. Indemnification of Seller Indemnified Parties . (a) From and after the Closing, Buyer shall indemnify Sellers and their Affiliates and each of their respective officers, directors, employees, equity holders, agents and Representatives (each a "Seller Indemnified Party") against and hold each Seller Indemnified Party harmless from any and all Losses suffered or incurred by any such Seller Indemnified Party arising from, relating to or otherwise in connection with:

(i) any breach of or inaccuracy in any representation or warranty of Buyer contained in this Agreement (without giving effect to any materiality threshold or qualifier contained therein);

(ii) any breach of or failure to perform any covenant or agreement of Buyer contained in this Agreement;

(iii) any Assumed Liability;

(iv) any Transfer Taxes or Apportioned Obligations allocated to Buyer pursuant to Section 5.2; or

(v) any Liabilities arising out of Buyer's or its Affiliates' operation of the Purchased Assets after the Closing, excluding, for the avoidance of doubt, any Excluded Liabilities.

(b) The consent of Buyer shall not be required in order for Seller to be indemnified under this Article VI.

Section VI.3. Limitations .

(a) Notwithstanding anything to the contrary contained herein, no Buyer Indemnified Party or Seller Indemnified Party, as applicable, shall be entitled to be indemnified pursuant to Section 6.1(a)(i) and Section 6.2(a)(i):

(i) unless and until the aggregate of all Losses for which the Buyer Indemnified Parties or the Seller Indemnified Parties, as applicable, would, but for this paragraph (i), be entitled to indemnification hereunder exceeds on a cumulative basis $[*] (the "Indemnity Threshold"), at which point each Buyer Indemnified Party or Seller Indemnified Party, as applicable, shall be entitled to be indemnified for the aggregate of all Losses in excess of the Indemnity Threshold; and

(ii) unless the amount of an individual claim for Losses under Section 6.1(a)(i) or Section 6.2(a)(i) (aggregating all claims and Losses arising from substantially the same or similar facts as applicable to each of Section 6.1(a)(i) or Section 6.2(a)(i), as applicable) exceeds $[*], and no such claim shall be applied toward the Indemnity Threshold;

(b) provided, however, that the foregoing provisions of Section 6.3(a) shall not apply with respect to any act of fraud or any breach of or inaccuracy in the representations and warranties set forth in Sections 3.1, 3.2(a), or 3.13 (the "Specified Representations").

(c) Other than in the case of any act of fraud (in which case the Buyer Indemnified Parties' and the Seller Indemnified Parties' rights shall not be limited by anything set forth in this Article VI to the contrary), in no event shall the aggregate amount for which Buyer Indemnified Parties or Seller Indemnified Parties shall be indemnified and held harmless under Article VI exceed $[*] (the "Cap").

(d) The amount of any Losses payable pursuant to this Article VI shall be reduced to reflect any amount actually recovered by the Indemnified Party from a Third Party, including any insurance provider (less the cost to collect or recover such amount). If the Indemnified Party realizes any such amount after the date on which a payment pursuant to this Article VI has been made to the Indemnified Party, the Indemnified Party shall promptly make payment to the Indemnifying Party equal to such amount; provided that such payment shall not exceed the amount of the payment made to the Indemnified Party pursuant to this Article VI. For the avoidance of doubt, this Section 6.3(b) shall not be construed to apply to any amounts recovered from any self insurance, captive insurance vehicle, or other similar arrangement.

(e) To the extent that a Tax Benefit due to any Loss actually is realized by an Indemnified Party due to Losses in the same taxable year in which such Indemnified Party received a payment pursuant to Section 6.1 or Section 6.2, as applicable, for such Loss, the Indemnified Party shall reimburse the Indemnifying Party the amount of such Tax Benefit within a reasonable time after the Tax Return reflecting such Tax Benefit is filed with the applicable taxing authority; provided that such calculation shall be a one-time determination by the Indemnified Party in connection with such Tax filing and shall not be subject to re-calculation or further claim for reimbursement by the Indemnifying Party thereafter. For purposes of this Section 6.3(e), a "Tax Benefit" means an amount by which the Tax liability of the Indemnified Party actually is reduced by a deduction, reduction of income, or a refund or credit, in other words the difference between (A) the aggregate amount of Taxes that the Indemnified Party would have been required to pay for the relevant Tax year if such Loss had not been incurred and

(B) the aggregate amount of Taxes that the Indemnified Party is actually required to pay for the relevant Tax year taking such Loss into account.

(f) Notwithstanding anything in this Agreement to the contrary, neither Buyer nor any Seller shall be liable for any special, indirect, punitive, exemplary or consequential damages, any lost profits, lost business opportunity, diminution in value or similar theory, except to the extent actually awarded in a Third Party Claim.

Section VI.4. Indemnification Claims . (a) In order for a Buyer Indemnified Party or a Seller Indemnified Party (an "Indemnified Party") to be entitled to any indemnification provided for under Section 6.1 or 6.2 in respect of, arising out of or involving an Action initiated or commenced by or on behalf of a Third Party (a "Third Party Claim"), such Indemnified Party must notify, with respect to a claim for indemnification pursuant to Section 6.1, US Holdings, or, with respect to a claim for indemnification pursuant to Section 6.2, Buyer (each, an "Indemnifying Party") in writing of the Third Party Claim (including in such notice a brief description of the applicable claim(s), including damages sought or estimated, to the extent actually known by such Indemnified Party) within 20 Business Days after receipt by such Indemnified Party of actual notice of the Third Party Claim (or such earlier deadline as may be required to timely respond to the Third Party Claim); provided, however, that failure to give such notification shall not affect the indemnification provided under Section 6.1 or 6.2 except to the extent the Indemnifying Party has been actually prejudiced as a result of such failure. The Indemnifying Party shall have the right to undertake the defense or opposition to such Third Party Claim (at the Indemnifying Party's expense) with counsel selected by it and reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within 20 Business Days after it has been notified of the Third Party Claim that it will defend the Indemnified Party against such Third Party Claim, (ii) the Third Party Claim does not seek an injunction or other equitable relief against the Indemnified Party and does not relate to or arise in connection with any criminal proceeding, action, indictment, allegation or investigation, (iii) the amount claimed in such Third Party Claim, taken together with the reasonably estimated costs of defense thereof and the claimed amount with respect to any unresolved claims for indemnification under this Article VI then pending, is (A) if applicable, greater than the remaining portion, if any, of the Indemnity Threshold and (B) if applicable, less than the Cap, (iv) the Indemnified Party has not been advised in writing by outside counsel that a substantive legal conflict exists between the Indemnified Party and the Indemnifying Party in connection with conducting the defense of the Third Party Claim, and (v) the Third Party Claim does not allege the infringement of the Intellectual Property Rights of any Person by the Indemnified Party. Neither the Indemnified Party nor the Indemnifying Party shall settle any Third Party Claim without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed); provided, that the Indemnifying Party may settle such Third Party Claim without the prior written consent of the Indemnified Party if (1) the claimant in such Third Party Claim provides to the Indemnified Party an unqualified release of such Indemnified Party from all liability in respect of such Third Party Claim, (2) such settlement does not involve any injunctive relief binding upon the Indemnified Party, (3) such settlement does not encumber any of the material assets of the Indemnified Party or impose any restriction or condition that would apply to or materially affect such Indemnified

Party or the conduct of such Indemnified Party's businesses, (4) such settlement does not give rise to any material adverse Tax consequences of the Indemnified Party and (5) such settlement does not involve any admission of liability or wrongdoing by the Indemnified Party.

(b) In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement other than in respect of, arising out of or involving a Third Party Claim, such Indemnified Party shall deliver written notice of such claim with reasonable promptness to the Indemnifying Party (including in such notice a brief description of the applicable claim(s), including damages in good faith sought or estimated, to the extent actually known by such Indemnified Party); provided, however, that failure to give such notification shall not affect the indemnification provided under Section 6.1 or 6.2 except to the extent the Indemnifying Party has been actually prejudiced as a result of such failure. If the Indemnifying Party does not notify the Indemnified Party within 20 Business Days following its receipt of such notice that the Indemnifying Party disputes the indemnity claimed by the Indemnified Party under Section 6.1 or 6.2 such indemnity claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability to be indemnified under Section 6.1 or 6.2 and the Indemnified Party shall be indemnified for the amount of the Losses stated in such notice to the Indemnified Party on demand or, in the case of any notice in which the Losses (or any portion thereof) are estimated, on such later date when the amount of such Losses (or such portion thereof) becomes finally determined, but in all cases subject to the Indemnity Threshold and the Cap, to the extent applicable, and the other limitations set forth herein.

Section VI.5. Termination of Indemnification . The obligations to indemnify and hold harmless an Indemnified Party hereto pursuant to Article VI with respect to the Specified Representations will survive for the applicable statute of limitations, and all other representations, warranties, covenants and obligations contained in this Agreement shall terminate on February 5, 2020. It is the express intent of the parties that each termination or expiration date contemplated by this Section 6.5 may be shorter than the statute of limitations that may otherwise apply, and by contract, the applicable statute of limitations is hereby reduced.

Section VI.6. Exclusive Remedies . Buyer and each Seller acknowledge and agree that after the Closing, the indemnification provisions of this Article VI shall be the sole and exclusive remedies of Buyer and each Seller for any breach of the representations or warranties or nonperformance of or default under any covenants or agreements of Buyer or any Seller contained in this Agreement or any Related Document, or otherwise in connection with the Contemplated Transactions (other than claims for equitable relief under Section 7.8 and fraud).

ARTICLE VII.

GENERAL PROVISIONS

Section VII.1. Rules of Construction . The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and have together drafted this Agreement and, therefore, waive the application of any Law, regulation, holding or

rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

Section VII.2. Notices . All notices, requests, claims, demands and other communications hereunder shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by transmission-mail (with confirmation of transmission other than by means of an automatically- generated reply) or by certified or registered mail (return receipt requested and first class postage prepaid), addressed as follows (or at such other address for a Party as shall be specified by like notice):

if to Buyer, to:

Cerecor Inc.
400 East Pratt Street, Suite 606
Baltimore, MD 21202
E-mail:
Attention: Mariam Morris, Chief Financial Officer

with a copy (which shall not constitute notice) to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail
Suite 300
Raleigh, North Carolina 27607
Fax: (919) 781-4865
E-mail:
Attention: Don Reynolds

and if to Sellers, to:

Avadel US Holdings, Inc.
Attn: General Counsel
16640 Chesterfield Grove Rd.
Suite 200
Chesterfield, MO 63005

with a copy (which shall not constitute notice) to:

Orrick, Herrington & Sutcliffe LLP
51 W. 52nd St.
New York, NY 10019
Attn: R. King Milling, Jr.; Tal Hacohen
e-mail:

provided that any notice received at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day.

Section VII.3. Consents and Approvals . For any matter under this Agreement requiring the consent or approval of a Party to be valid and binding on the Party, such consent or approval must be in writing.

Section VII.4. Counterparts . This Agreement may be executed in one or more counterparts (including by transmission-mail), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

Section VII.5. Entire Agreement; No Third Party Beneficiaries . This Agreement, the Confidentiality Agreement and the other Related Documents constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter of this Agreement, the Confidentiality Agreement and the other Related Documents. Except as provided in Article VI, this Agreement is for the sole benefit of the Parties hereto and is not intended to and does not confer upon any Person other than the Parties any legal or equitable rights or remedies.

Section VII.6. Assignment . Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise by any of the Parties without the prior written consent of the other Parties, and any assignment without such consent shall be null and void, except that Buyer may assign any or all of its rights and obligations under this Agreement to any of its Affiliates without the consent of any Seller. No assignment pursuant to this Section 7.6 will relieve the assigning Party of its responsibility for the performance of any of its obligations hereunder to the extent not performed by the assignee. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section VII.7. Governing Law . THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section VII.8. Enforcement .

(a) Each Party irrevocably submits to the exclusive jurisdiction of (i) the state courts of New York located in New York County, and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or the Contemplated Transactions. Each Party agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of New York or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the state courts of New York located in New York County. Each Party

further agrees that service of any process, summons, notice or document by the U.S. registered mail to such Party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Section 7.8. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the Contemplated Transactions in (x) the state courts of New York located in New York County, and (y) the United States District Court for the Southern District of New York, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) EACH PARTY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. Each Party (i) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that such Party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party has been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 7.8(b).

(c) The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the state courts of New York located in New York County, and the United States District Court for the Southern District of New York, this being in addition to any other remedy to which they are entitled at law (subject to Section 6.6) or in equity and as further set forth in this Section 7.8.

Section VII.9. Severability . If any term or other provision of this Agreement or any Related Document is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement or such Related Document shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement or such Related Document so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section VII.10. Amendment; Waiver . No modification, amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom enforcement of any such modification, amendment or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance by the other Parties with any representation, warranty, covenant, agreement or obligation contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or

subsequent breach. Neither the failure of any Party to enforce, nor the delay of any Party in enforcing, any condition or part of this Agreement at any time shall be construed as a waiver of that condition or part or forfeit any rights to future enforcement thereof.

ARTICLE VIII.

ARTICLE VIII.

CONDITIONS TO CLOSING

Section VIII.1. Conditions to Obligations of Buyer . The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Sellers contained in Article III, disregarding in each case any reference to "materiality", "Material Adverse Effect" or similar qualifications therein, shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct as of that specified date), except where the failure of such representations and warranties to be true and correct would not, in the aggregate, have a Material Adverse Effect.

(b) Sellers shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by them prior to or on the Closing Date.

(c) Sellers shall have delivered to Buyer the items set forth in Section 2.4(b).

Section VIII.2. Conditions to Obligations of Sellers . The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Article IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not, in the aggregate, have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Sellers the items set forth in Section 2.4(c).

ARTICLE IX.

TERMINATION.

Section IX.1. Termination . This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Sellers and Buyer;

(b) by Buyer or Sellers by written notice to the other Party if such is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the other Party pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VIII and such breach, inaccuracy or failure cannot be cured by the 10th Business Day after the date of this Agreement (the " Drop Dead Date");

(c) by Buyer or Sellers if the Closing has not occurred on or before the Drop Dead Date; or

(d) by Buyer or Sellers in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued an Order restraining or enjoining the transactions contemplated by this Agreement, and such Order shall have become final and non-appealable.

Section IX.2. Effect of Termination . In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this Article IX, Section 5.1 and Article VII hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers hereunto duly authorized, all as of the date first written above.

BUYER:

CERECOR, INC.

By: /s/ Robert Moscato
Name: Robert Moscato
Title: President, COO and Director

SELLERS:

AVADEL PHARMACEUTICALS (USA), INC.

By: /s/ Phillandas T. Thompson
Name: Phillandas T. Thompson
Title: Secretary

AVADEL PEDIATRICS, INC.

By: /s/ Phillandas T. Thompson
Name: Phillandas T. Thompson
Title: Secretar

FSC THERAPEUTICS, LLC

By: /s/ Phillandas T. Thompson
Name: Phillandas T. Thompson
Title: Secretary

AVADEL US HOLDINGS, INC.

By: /s/ Michael F. Kanan
Name: Michael F. Kanan
Title: Treasurer

AVADEL PHARMACEUTICALS PLC

By: /s/ Michael S. Anderson
Name: Michael S. Anderson
Title: Chief Executive Officer

Portions of this exhibit marked [*] are requested to be treated confidentially.

LICENSE AND DEVELOPMENT AGREEMENT

This **LICENSE AND DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of February 16, 2018 (the "Effective Date") by and between **Cerecor, Inc.**, a Delaware corporation having an address at 400 East Pratt Street, Suite 606, Baltimore, MD 21202 ("Cerecor"), and Flamel Ireland Limited, operating under the trade name of **Avadel Ireland**, an Irish limited company having an address at Block 10-1, Blanchardstown Corporate Park, Ballycoolin, Dublin 15 Ireland ("Avadel"). Avadel and Cerecor may be referred to herein individually as a "Party" or collectively, as the "Parties."

RECITALS

WHEREAS, Cerecor, Inc. ("Cerecor Buyer"), Avadel Pharmaceuticals plc ("Avadel Seller") and certain Affiliates of Avadel Seller have, as of the Effective Date, entered into that certain Asset Purchase Agreement pursuant to which Cerecor Buyer is purchasing Avadel Seller's and such Affiliates' pediatric pharmaceuticals business (such agreement, the "APA");

WHEREAS, Avadel has developed and owns or controls certain technology and intellectual property rights with respect to the LiquiTime Technology (as defined below), and owns or controls certain know-how, technology, documentation, data, and other materials relating thereto;

WHEREAS in conjunction with, and as part of, the transaction contemplated by the APA, Avadel has agreed to develop three pharmaceutical products utilizing the LiquiTime Technology and a fourth pharmaceutical product consisting of an orally disintegrating tablet formulation and grant Cerecor rights to develop, manufacture, and commercialize such products, all as further set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms not defined below or elsewhere in this Agreement shall have the meanings established therefor in the APA.

1.1 "API" means active pharmaceutical ingredient.

1.2 "Applicable Law" means all applicable laws, rules, regulations and guidelines that may apply to the development, marketing, manufacturing or sale of Products or the performance of either Party's obligations, or the exercise of either Party's rights, under this Agreement, including but not limited to all laws, regulations and guidelines governing the import, export, development, marketing, distribution and sale of a Product in the Territory and, to the extent relevant, all GCP, GLP or GMP standards or guidelines promulgated by any Regulatory Authorities or the ICH.

1.3 "Avadel Know-How" means all Know-How owned, licensed, or controlled by Avadel or its Affiliates as of the Effective Date, or becoming owned, controlled, or licensed by Avadel or any Affiliate thereof following the Effective Date, that is necessary for the discovery, research, Development, manufacture, or Commercialization of any Product.

1.4 "Avadel Patents" means (a) those Patents set forth on Exhibit A attached hereto (the "Initial Avadel Patents"); (b) any other Patents owned, controlled, or licensed by Avadel or any Affiliate thereof, or subject to an obligation of assignment to Avadel or any Affiliate thereof, as of the Effective Date, or becoming owned, controlled, or licensed by Avadel or any Affiliate thereof following the Effective Date, that (x) Cover any of the subject matter described in or Covered by the Initial Avadel Patents or any portion of the LiquiTime Technology or Tablet Technology or (y) is otherwise necessary to Develop, make, have made, use, offer for sale, sell, import, or otherwise Commercialize any Product; (c) any additions, divisionals, continuations, continuations-in-part, conversion, supplemental examinations, extensions, term restorations, registrations, reinstatements, amendments, reissuances, corrections, substitutions, re-examinations, registrations, revalidations, supplementary protection certificates, renewals, and foreign counterparts of the Initial Avadel Patents or the Patents described in (b) above, and any other Patents owned, controlled, or licensed by Avadel or any Affiliate thereof claiming priority to any of the foregoing or any of the Patents referenced in clause (a) or (b) above; and (d) all patents issuing from any of the Patents mentioned in clause (a), (b), or (c) above and any foreign counterparts of any such Patents, and which shall include, in any case, patents surviving post grant review and inter partes review.

1.5 "Avadel Technology" means the Avadel Know-How and the Avadel Patents.

1.6 "Calendar Day" means each of those seven (7) days in the week.

1.7 "Calendar Quarter" means each of those three (3) calendar month periods of each Calendar Year ending March 31, June 30, September 30 and December 31, provided, that (i) the initial Calendar Quarter shall begin on the Effective Date and end March 31, 2018 and (ii) the Calendar Quarter in which this Agreement expires or is terminated shall extend from the first Calendar Day of such Calendar Quarter until the effective date of such expiration or termination.

1.8 "Calendar Year" means (a) for the first Calendar Year, the period commencing on the Effective Date and ending on December 31 of the same year, (b) for the Calendar Year in which this Agreement expires or is terminated, the period beginning on January 1 of such Calendar Year and ending on the effective date of such expiration or termination, and (c) for all other years, each successive twelve (12) consecutive month period beginning on January 1 and ending December 31.

1.9 "Commercialization" means all activities that are undertaken after Regulatory Approval of a Product in a particular jurisdiction and that relate to the commercial marketing, sale, and/or distribution of such Product, including but not limited advertising and/or promotional activities. "Commercialize" shall have a corresponding meaning.

1.10 "Commercially Reasonable Efforts" means the carrying out of obligations or tasks in a manner consistent with the efforts a Party devotes to research, development or marketing of a pharmaceutical product or products of similar market potential, profit potential or strategic value resulting from its own research efforts or for its own benefit, taking into account technical, regulatory and intellectual property factors, target product profiles, product labeling, past performance, costs, economic return, the regulatory environment and competitive market conditions in the therapeutic or market niche, all based on conditions then prevailing.

1.11 "Confidential Information" means all information and know-how and any tangible embodiments thereof provided by or on behalf of one Party to the other Party either in connection with the discussions and negotiations pertaining to this Agreement or in the course of performing under this Agreement, which may include data, knowledge, practices, processes, ideas, research plans, formulation or manufacturing processes and techniques, scientific, manufacturing, marketing and business plans, and financial and personnel matters relating to the disclosing Party or to its present or future products, sales, suppliers, customers, employees, investors or business; provided, that (1) Development Documentation, Development Results, and information related thereto shall be the Confidential Information of Cerecor (and Cerecor shall be considered the disclosing party, and Avadel the receiving party, with respect thereto) and (2) information or know-how of a Party will not be deemed Confidential Information of such Party for purposes of this Agreement if such information or know-how: (a) was already known to the receiving Party, other than under an obligation of confidentiality or non-use, at the time of disclosure to such receiving Party, as can be shown by written records; (b) was generally available or known to parties reasonably skilled in the field to which such information or know-how pertains, or was otherwise part of the public domain, at the time of its disclosure to such receiving Party; (c) became generally available or known to parties reasonably skilled in the field to which such information or know-how pertains, or otherwise became part of the public domain, after its disclosure to such receiving Party through no fault of the receiving Party; (d) was disclosed to such receiving Party, other than under an obligation of confidentiality or non-use, by a Third Party who had no obligation to the disclosing Party not to disclose such information or know-how to others, as can be shown by written records; or (e) was independently discovered or developed by such receiving Party, as can be shown by its written records, without the use or benefit of, or reliance on, Confidential Information belonging to the disclosing Party.

1.12 "Cover" means that the use, manufacture, sale, offer for sale, development, commercialization or importation of the subject matter in question by an unlicensed entity would infringe a Valid Claim of a Patent.

1.13 "Develop" or "Development" means, with respect to a Product, engaging in preclinical, clinical, and other research or development activities, which may include but is not limited to research, pre-clinical, clinical and regulatory activities directed towards obtaining the initial Regulatory Approval of a Product in a particular jurisdiction.

1.14 "Direct Cost" means, to the extent incurred with respect to the performance of the Avadel Development program following the Effective Date, Avadel's cost that are documented, specifically identifiable and directly related to the Products. Such costs shall

include but not be limited to direct labor costs, including salary and benefits (which shall be the only labor costs included in Direct Costs) and API, other materials and third party contractor or supplier costs.

1.15 "DMF" means a drug master file, as provided for in 21 CFR § 314.420 or similar submission to or file maintained with the FDA or other Governmental Authority or Regulatory Authority that may be used to provide confidential detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more human drugs.

1.16 "Field" means any use, application, or purpose, including, without limitation, the treatment, palliation, diagnosis, or prevention of any human or animal disease, disorder or condition, provided that, with respect to the portion of the Territory constituting the United States, including its territories and possessions, the Field shall, for so long as Elan Pharma International Limited ("Elan"), any of its affiliates, or any sublicensees of any of the foregoing enjoy rights in over-the-counter, non-prescription pharmaceutical markets to certain LiquiTime-based products under that certain Exclusive License Agreement, dated September 30, 2015, exclude the over-the-counter, non-prescription pharmaceutical markets.

1.17 "GCP" means all applicable Good Clinical Practice standards for the design, conduct, performance, monitoring, auditing, recording, analyses and reporting of clinical trials, including, as applicable, (a) CFR Title 21, Parts 50 (Protection of Human Subjects), 56 (Institutional Review Boards), and 312 (Investigational New Drug Application), as may be amended from time to time, (b) as set forth in European Commission Directive 2001/20/EC relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use, and brought into law by European Commission Directive 2005/28/EC laying down the principles and detailed guidelines for good clinical practice for investigational medicinal products, (c) as set forth in the ICH Harmonised Tripartite Guideline for Good Clinical Practice (CPMP/ICH/135/95) and any other guidelines for good clinical practice for trials on medicinal products in the Territory, and (d) the equivalent Applicable Laws in any relevant country, each as may be amended and applicable from time to time and in each case, that provide for, among other things, assurance that the clinical data and reported results are credible and accurate and protect the rights, integrity, and confidentiality of trial subjects.

1.18 "Generic Entry" shall be deemed to exist in a particular country of the Territory for a particular Product as of the earlier of the first date upon which a Generic Product with respect to such Product has been sold in such country.

1.19 "Generic Product" means, with respect to a Product sold pursuant to the rights granted under this Agreement in any country of the Territory, any product, other than such Product, that is (A) with respect to products sold in the U.S., (i) approved through an ANDA, or an application under Section 505(b)(2) of the FD&C Act, that references any NDA for such Product (or future functional equivalent) listed in the FDA Publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (known as the Orange Book), submitted by a Third Party and (ii) rated as a therapeutic equivalent to the corresponding Product sold in and designated as substitutable for such Product at the pharmacy level under any applicable

administrative or formulary designation or by decision of the prescriber or the pharmacist, or (B) with respect to products sold in any jurisdiction in the Territory other than the U.S., a product that (X) (1) has obtained a regulatory Approval granted in reliance, in whole or in substantial part (e.g. on safety or efficacy data with respect to the Compound) on a prior Regulatory Approval granted for such Product and (2) is substitutable by a pharmacist or at the pharmacy level under Applicable Law in the country of sale, or (Y) has otherwise been approved and sold under any foreign equivalent of the processes and criteria described in clause (A).

1.20 "GLP" means all applicable Good Laboratory Practice standards, including, as applicable, (a) as set forth in the then-current good laboratory practice standards promulgated or endorsed by the FDA as defined in Title 21, Part 58 of the CFR, (b) as set forth in European Commission Directive 2004/10/EC relating to the application of the principles of good laboratory practices, as may be amended from time to time as well as any Rules Governing Medicinal Products in the European Community Vol. III, ISBN 92.825 9619-2 (ex—OECD principles of GLP), and (c) the Applicable Laws in any relevant country, each as may be amended and applicable from time to time.

1.21 "GMP" means all applicable Good Manufacturing Practices including, as applicable, (a) the principles detailed in the U.S. Current Good Manufacturing Practices, Title 21, Parts 210, 211, 601 and 610 of the CFR, (b) the applicable part of quality assurance to ensure that products are consistently produced and controlled in accordance with the quality standards appropriate for their intended use, as defined in European Commission Directive 2003/94/EC laying down the principals and guidelines of good manufacturing practice, (c) the principles detailed in the ICH Q7A guidelines, (d) the Rules Governing Medicinal Products in the European Community, Volume IV Good Manufacturing Practice for Medicinal Products, and (e) the equivalent Applicable Laws in any relevant country, each as may be amended and applicable from time to time.

1.22 "Governmental Authority" means any court, agency, department or other instrumentality of any foreign, federal, state, county, city or other political subdivision (including any supra-national agency such as in the European Union).

1.23 "ICH" means the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use.

1.24 "IND" means an Investigational New Drug Application filed with the FDA or the equivalent application or filing filed with any Regulatory Authority outside of the United States (including any supra-national agency such as in the European Union) necessary to commence human clinical trials in such jurisdiction, and including all regulations at 21 CFR § 312 et. seq., and equivalent foreign regulations.

1.25 "Initial LiquiTime Product" means:

a. the LiquiTime Product incorporating [*] as its API described on Exhibit B;

b. the LiquiTime Product incorporating [*] as its API described on Exhibit B; or

c. the LiquiTime Product incorporating the Selected Compound as its API described on Exhibit B, provided that such description shall be updated as reasonably necessary and agreed to by the Parties upon determination of the Selected Compound pursuant to Section 4.1.

1.26 "Initial Product" means an Initial LiquiTime Product or the Initial Tablet Product.

1.27 "Initial Tablet Product" means the Tablet Product described on Exhibit B.

1.28 "Know-How" means all technical, scientific and other know-how and information, trade secrets, knowledge, technology, inventions, means, methods, processes, practices, formulas, instructions, skills, techniques, procedures, experiences, ideas, technical assistance, designs, drawings, assembly procedures, computer programs, apparatuses, specifications, data, results and other material, and other drug discovery and development technology, pre-clinical and clinical trial results, manufacturing procedures, test procedures and purification and isolation techniques, (whether or not confidential, proprietary, patented or patentable) in written, electronic or any other form now known or hereafter developed, and all improvements, whether to the foregoing or otherwise, and other discoveries, developments inventions and other intellectual property (whether or not confidential, proprietary, patented or patentable), provided that Know-How shall not include Patents.

1.29 "LiquiTime Product" means a product incorporating the LiquiTime Technology and any Product Compound(s), including but not limited to the Initial LiquiTime Products.

1.30 "LiquiTime Technology" means Avadel's and its Affiliates' modified/controlled release liquid suspension formulation technologies for pharmaceuticals, including as further described in the Initial Avadel Patents set forth under the heading "LiquiTime Technology" on Exhibit A.

1.31 "NDA" means a new drug application (as defined in Title 21 of the United States Code of Federal Regulations, as amended from time to time) submitted to the FDA seeking regulatory approval to market and sell a Product for human therapeutic use in the United States (including a new drug application submitted under Section 505(b)(2) of the Act).

1.32 "Net Sales" means gross amounts invoiced or otherwise received for Cerecor's, its Affiliates', and Sublicensees' sales of Products, less the sum of the following, to the extent related to the sale of such Products: (1) discounts in amounts reasonable or customary in the trade, including but not limited to trade, cash, consumer, and quantity discounts, and credits, price adjustments or allowances for damaged Products, returns, defects, recalls or rejections of

Products or retroactive price reductions; (2) reasonable rebates, credits, and chargeback payments granted to federal, state/provincial, local and other governments, managed health care organizations, or private payors, including their agencies, purchasers, and/or reimbursers, under programs available under or required by Applicable Law, or reasonably entered into to sustain and/or increase market share for Products; (3) sales, value added, use, excise, and similar taxes, provided that value added taxes shall only be deducted to the extent not recovered by Cerecor from the applicable tax authority; (4) amounts allowed or credited on returns for defective, damaged, returned, expired, or otherwise unuseable or unsaleable Products; (5) freight, shipping, handling, and insurance charges; (6) import or export duties, tariffs, or similar charges; and (7) distribution commissions/fees (including fees related to services provided pursuant to distribution service agreements with wholesalers) payable to any Third Party providing distribution services with respect to Products. Such amounts shall be determined from the books and records of Cerecor, its Affiliates, and Sublicensees maintained in accordance with such reasonable accounting principles as may be consistently applied by Cerecor, its Affiliates, and Sublicensees.

Products are considered "sold" at the earlier of: (a) when such Product is shipped to the Third Party purchaser thereof or (b) when billed out or invoiced. Notwithstanding the foregoing, Net Sales shall not include, and shall be deemed zero with respect to, (i) Products used by Cerecor, its Affiliates, or Sublicensees for their internal use, (ii) the distribution of reasonable quantities of promotional samples of Products, (iii) Products provided for clinical trials or research, development, or evaluation purposes, or (iv) Products provided by or on behalf of Cerecor, an Affiliate thereof, or a Sublicensee to Cerecor, an Affiliate thereof, or a Sublicensee for purposes of resale, provided such resale is subject to or triggers payments due Avadel under Section 3.1 of this Agreement.

In the event Cerecor, an Affiliate thereof, or a Sublicensee sell the Product together with other products to Third Parties in a particular country in the Territory and the price attributable to the Product is less than the average price of "arm's length" sales of the Product alone in the particular country for the reporting period in which such sales occur (such sales to be excluded from the calculation of the average price of "arm's length" sales of the Product alone), Net Sales for any such sales shall be calculated based on the average price of "arm's length" sales by Licensee, Affiliate or Sublicensee, as applicable, of the Product alone and in the country during the reporting period in which such sales occur. If the average price of "arm's length" sale of the Product cannot be determined in any given country, the Net Sales for any applicable sales under this paragraph will be calculated based on the value of the Product sold to similar customers in countries with similar pricing and reimbursement structures and for similar quantities.

1.33 "Paragraph IV Certification" means a certification pursuant to the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417), as amended, which shall include but not be limited to any such certification pursuant to 21 U.S.C. §355(b)(2)(A)(iv) or 21 U.S.C. §355(j)(2)(A)(vii)(IV), or any reasonably similar or equivalent certification or notice in the United States or any jurisdiction outside the United States, included in (or made with respect to or in connection with) a regulatory filing concerning a Product and challenging the validity, infringement, or enforceability of any Avadel Patent(s).

1.34 "Patent(s)" means any granted or issued patents and pending patent applications, together with all additions, divisionals, continuations, continuations-in-part, substitutions, reissues, re-examinations, supplemental examinations, patents reviewed under post grant review or inter partes review, extensions, registrations, patent term extensions, revalidations, supplementary protection certificates, and renewals of any of the foregoing, and all foreign applications and patents corresponding to or claiming priority from any of the foregoing.

1.35 "Pilot BE Studies" means the studies described on Exhibit C. The exact number of healthy volunteers and number of formulation arms to be studied in the Pilot PK study for each product will be agreed by the Parties prior to the initiation of each study.

1.36 "Product" means a Tablet Product or LiquiTime Product.

1.37 "Product Compound" means [*], [*], and the Selected Compound.

1.38 "Regulatory Approval" means any and all approvals (including supplements, amendments, and pre- and post-approvals, but excluding pricing or reimbursement approvals), licenses, registrations, clearances, or authorizations of any national, supra-national (e.g., the European Commission or the Council of the European Union), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary for the manufacture, distribution, use or, in Cerecor's reasonable judgment, sale of a Product for use as a human pharmaceutical or biologic in a particular jurisdiction.

1.39 "Regulatory Authority" means any Governmental Authority with responsibility for granting any licenses or approvals necessary for the marketing and sale of pharmaceutical or biological products in a particular jurisdiction, including the FDA with respect to the United States, and where applicable any ethics committee or any equivalent review board.

1.40 "Regulatory Filing" means, with respect to the United States, an NDA, BLA, or IND, any foreign counterparts or equivalents of any of the foregoing, any DMFs, and any other filings or submissions required by or provided to Regulatory Authorities relating to the manufacture, Development or Commercialization of any Product, including any supporting documentation, data, correspondence, meeting minutes, amendments, supplements, registrations, licenses, regulatory drug lists, advertising and promotion documents, adverse event files, complaint files, and manufacturing, shipping, or storage records with respect to any of the foregoing.

1.41 "Selected Compound" means the API selected for development in a LiquiTime Technology-based Product in accordance with Section 4.1.

1.42 "Sublicensee" means a Third Party granted a sublicense to any of the rights granted to Cerecor and, if and as applicable, its Affiliates under this Agreement.

1.43 "Tablet Product" means a product incorporating the Tablet Technology and [*] as an API, including but not limited to the Initial Tablet Product.

1.44 "Tablet Technology" means the composition and process for producing Orally Disintegrating Tablets (ODTs) containing the appropriate microparticles to produce the target dissolution profiles and PK profiles. Such ODT approaches are well known and widely available and at present Avadel does not have any proprietary technology in this field.

1.45 "Term" has the meaning assigned to it in Section 8.1.

1.46 "Territory" means the world.

1.47 "Third Party Fees" means any and all licensing fees and payments received by Cerecor from a Sublicensee as consideration for the grant of any rights thereto under any Avadel Know-How or Avadel Patents with respect to any Product, including, but not limited to, up-front, milestone and similar payments, but which shall exclude (i) royalties or similar payments calculated on the basis of Product sales, (ii) amounts received (in advance or as reimbursement) to cover costs incurred or to be incurred by Cerecor or its Affiliates with respect to the performance of research, development, manufacturing, regulatory, or Commercialization activities under the applicable sublicense agreement, (iii) amounts received as advances or reimbursement for costs incurred or to be incurred by Cerecor or its Affiliates with respect to the filing, prosecution, maintenance, defense, or enforcement of patent or other intellectual property rights or any regulatory activities or matters, and (iv) purchases of debt or equity securities by a Sublicensee to the extent the price paid therefor does not exceed the fair market value thereof, as reasonably determined in good faith by Cerecor's, board of directors. For the avoidance of doubt, payments in consideration of a sale of all or substantially all of the assets or business of Cerecor (or that portion thereof related to the subject matter of this Agreement) in a transaction, including but not limited to those which include an assignment of this Agreement, shall not be deemed Third Party Fees.

1.48 "United States" or "U.S." shall mean the United States of America and its territories and protectorates.

1.49 "Valid Claim" means a claim of any pending patent application or any issued, unexpired United States or granted foreign patent that has not been dedicated to the public, disclaimed, abandoned or held invalid or unenforceable by a court or other body of competent jurisdiction from which no further appeal can be taken, and that has not been explicitly disclaimed, or admitted in writing to be invalid or unenforceable or of a scope not Covering a particular product or service through reissue, disclaimer or otherwise, provided that if a particular claim has not issued within five (5) years of its initial filing, it shall not be considered a Valid Claim for purposes of this Agreement unless and until such claim is included in an issued Patent, notwithstanding the foregoing definition.

2. LICENSES; SUBLICENSING.

2.1 License to Cerecor. Avadel hereby grants to Cerecor and its Affiliates a royalty-bearing exclusive license, with the right to sublicense as set forth in Section 2.2 and transferable with this Agreement pursuant to Section 11.1, under the Avadel Technology to make, have made,

use, sell, offer for sale, import, export, Develop, and Commercialize the Products in the Field in the Territory.

2.2 Sublicensing. Cerecor and its Affiliates shall have the right to sublicense their rights under this Agreement (including but not limited to such rights granted under Section 2.1) to one or more Third Parties (and such Third Parties' rights may include the right to further sublicense the rights granted hereunder). Each such sublicense shall (i) be consistent with this Agreement and (ii) contain terms and conditions reasonably sufficient to enable Cerecor to comply with the terms of this Agreement.

2.3 Section 365(n). All licenses granted under this Agreement are deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of right to "intellectual property" as defined in Section 101 of such Code. The Parties agree that Cerecor may fully exercise all of its rights and elections under the U.S. Bankruptcy Code and any foreign equivalent thereto in any country having jurisdiction over a Party or its assets. The Parties further agree that, in the event Cerecor elects to retain its rights as a licensee under such Code, Cerecor shall be entitled to complete access to any technology or intellectual property licensed to it hereunder and all embodiments of such technology and intellectual property. Such embodiments of the technology and intellectual property shall be delivered to Cerecor not later than:

a. the commencement of bankruptcy proceedings against Avadel, upon written request, unless Avadel elects to perform its obligations under this Agreement, or

b. if not delivered above under this Section 2.3, upon the rejection of this Agreement by or on behalf of Avadel, upon Cerecor's written request.

3. FINANCIAL TERMS

3.1 Royalty Payments. Except as otherwise set forth in this Agreement, Cerecor shall pay to Avadel [*] percent ([*]%) of (i) Net Sales of all Products sold by Cerecor, its Affiliates, and Sublicensees and (ii) any Third Party Fees received by Cerecor and its Affiliates in respect to the Products.

3.2 Loss of Patent Coverage. Beginning with the first Calendar Quarter during which, at any time therein, there are no Valid Claims Covering a particular Product in a particular country, the royalty rate applicable under Section 3.1 for Net Sales of such Product in such country shall, if not already reduced pursuant to Section 3.4 below, be reduced by [*] percent ([*]%) for such Calendar Quarter and each Calendar Quarter thereafter.

3.3 Compulsory Licenses. Should a compulsory license be granted, or be the subject of a possible grant, to a Third Party under the Applicable Laws of any country in the Territory under the Avadel Patents, the Party receiving notice thereof or otherwise becoming aware thereof shall promptly notify the other Party thereof, including any material information concerning such compulsory license, and the total amount payable under this Section 3 with respect to sales of Products in such country will be adjusted to match any lower amount such Third Party may be allowed to pay with respect to the sales of such Products in such country, with such lower amount subject to further adjustments pursuant to Sections 3.2 and 3.4.

3.4 Royalty Term. Subject to any earlier termination of this Agreement, amounts due under Section 3.1 (as such royalties may be adjusted under this Agreement) shall only be payable, on a Product-by-Product and country-by-country basis, with respect to Net Sales of a particular Product in a particular country until the twentieth anniversary of the Effective Date (the period from the Effective Date until such anniversary, the "Royalty Term"). Notwithstanding anything to the contrary, on a Product-by-Product and country-by-country basis, upon the Generic Entry with respect to a Product in a country in the Territory, the royalty rate applicable under Section 3.1 for Net Sales of such Product in such country during the Royalty Term shall be reduced to [*] percent ([*]%) of the royalty rate set forth in Section 3.1 for such Calendar Quarter and each Calendar Quarter thereafter. For clarity, Cerecor shall not have any payment obligations under this Section 3 with respect to any Products sold following the Royalty Term.

3.5 Payments and Payment Reports. Except as otherwise provided in this Section 3, all royalties and payments due under this Section 3 shall be paid within ninety (90) Calendar Days of the end of the Calendar Quarter during which the applicable Net Sales occur. Each royalty payment shall be accompanied by a statement stating (as applicable) the number, description, and aggregate Net Sales, by country, of each Product sold during the relevant Calendar Quarter by Cerecor, its Affiliates, and Sublicensees and detailing the calculation of royalties and amounts due for such Calendar Quarter.

3.6 Payment Method. All payments due under this Agreement to Avadel shall be made by bank wire transfer in immediately available funds to an account designated by Avadel in writing. All payments hereunder shall be made in the legal currency of the United States.

[*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

3.7 Taxes. In the event any tax or similar amount is paid or required to be withheld by Cerecor or any Affiliate thereof for the benefit of Avadel on account of any royalties or other payments payable to Avadel under this Agreement, the corresponding amounts payable to Avadel shall be reduced by the amount of taxes or similar amounts deducted and withheld, and Cerecor shall pay the amounts of such taxes or similar amounts to the proper Governmental Authority in a timely manner and promptly transmit to Avadel an official tax certificate or other evidence of such tax or other obligations together with proof of payment from the relevant Governmental Authority of all amounts deducted and withheld sufficient to enable Avadel to claim such payment of taxes or similar amounts. Any such withholding taxes or similar amounts required under applicable law to be paid or withheld shall be an expense of, and borne solely by, Avadel. Cerecor will provide Avadel with, at Avadel's expense, reasonable assistance to enable Avadel to recover such taxes or amounts otherwise withheld as permitted by law.

3.8 Sublicenses. For avoidance of doubt, the Parties agree that in the event that Cerecor grants licenses or sublicenses to Third Parties any right under Avadel Technology to sell Products, Cerecor shall include in such licenses or sublicenses an obligation for such Sublicensee to account for and report its sales of Products on a basis reasonably sufficient to enable Cerecor to pay Avadel the royalties due under this Agreement and satisfy Cerecor's reporting obligations hereunder.

3.9 Foreign Exchange. With respect to Net Sales invoiced in a currency other than United States dollars, such Net Sales will be converted into the United States dollar equivalent using the average conversion rate existing in the United States (as reported in The Wall Street Journal, New York edition) during the applicable Calendar Quarter. If The Wall Street Journal ceases to be published, then the rate of exchange to be used shall be that reported in such other business publication of national circulation in the United States on which the Parties reasonably agree.

3.10 Interest. If Cerecor fails to make any payment when due to Avadel under this Agreement, then interest shall accrue on the balance due on a daily basis at a rate equal to LIBOR (as published in The Wall Street Journal, New York edition) plus one percent (1%), or at the maximum rate permitted by applicable law, whichever is the lower, until Cerecor meets the full financial obligation due.

3.11 Records; Audits. Cerecor shall keep or cause its Affiliates to keep such records as are reasonably required to determine, in a manner, with respect to any financial records, consistent with generally accepted accounting principles in the United States, the amounts due under this Agreement; such records must be kept for a minimum of three (3) years following the Calendar Year to which such records pertain. At the request (and expense) of Avadel, Cerecor shall permit Avadel to engage an independent certified public accounting firm reasonably acceptable to Cerecor, at reasonable times not more than once a year and upon reasonable notice, to examine only those records as may be necessary to determine, with respect to any Calendar Year ending not more than three (3) years prior to Avadel's request, the correctness or completeness of any royalty report or payment made under this Agreement. Avadel shall promptly provide a copy of the results of any such audit or examination to Cerecor. Avadel shall bear the full cost of the performance of any such audit or examination, unless such audit or examination discloses an underpayment exceeding [*] percent ([*]%) of the amount actually due hereunder with respect to any particular Calendar Year, in which case Cerecor shall bear the reasonable, documented cost of the performance of such audit or examination. Cerecor shall promptly pay to Avadel the amount of any underpayment of royalties revealed by such an examination and review. Any overpayment by Cerecor of royalties or any other amount paid to Avadel revealed by ans examination and review shall, in Cerecor's sole discretion, (i) be fully-creditable against future payments under this Agreement or (ii) refunded to Cerecor within thirty (30) Calendar Days of its request.

4. COMPOUND SELECTION; PRODUCT DEVELOPMENT; TECHNOLOGY TRANSFER

4.1 Compound Selection. The Parties shall use reasonable good faith efforts to, within ninety (90) Calendar Days of the Effective Date (such period, the "Selection Period"), agree in writing on the API to be incorporated into the third Initial LiquiTime Product (other than those incorporating [*] and [*]) to be developed pursuant to Section 4.2 and with respect to which API and corresponding Products rights are granted under Section 2.1, provided that, in the event the Parties do not agree on such API within the Selection Period, Cerecor shall be entitled, upon written notice to Avadel given at any time within fifteen (15) Calendar Days of the end of the Selection Period, to select stiripentol or any other API as the "Selected Compound" for purposes of this Agreement.

4.2 Product Development.

a. **Performance of Avadel Development Program** . Avadel shall use reasonable diligent efforts to research and develop the Initial Products in order to develop a stable formulation of each Initial Product satisfying the applicable criteria set forth therefor on Exhibit C and otherwise reasonably suitable for Development and Commercialization as a pediatric pharmaceutical, which obligations shall include (i) the prompt performance of the research, development, manufacturing, and related obligations and responsibilities specified in the development program set forth on Exhibit B with respect to each Initial Product (the "Avadel Development Program") according to the timelines set forth therein and (ii) the completion of Pilot BE Studies for each Initial

Product satisfying the criteria for success therefor set forth on Exhibit C (such completion, "Successful Completion" for an Initial Product). Avadel shall provide Cerecor a written quarterly update, within fifteen (15) days of the end of each month, summarizing the progress and results of Avadel's efforts to perform its obligations and responsibilities under this Section 4.2.a., and any ongoing plans with respect thereto. Avadel shall use reasonable diligent efforts to complete the Avadel Development Program for the Initial Products within eighteen (18) months from the Effective Date.

b. **Changes to Development Program**. The Parties shall reasonably cooperate in good faith to develop a more detailed and complete version of the Avadel Development Program and budget for the various components thereof as soon as reasonably possible, but in any event within thirty (30) days, following the Effective Date. Upon the Parties' written agreement with respect to such more detailed and complete version of the Avadel Development Program and budget therefore, such more detailed and complete version of the Avadel Development Program shall, subject to any further changes made thereto in accordance with this subsection b., be the Avadel Development Program for purposes of this Agreement. The Parties shall reasonably cooperate in good faith to adjust the Avadel Development Program in a manner useful or necessary to achieve its goal of developing the Initial LiquiTime Products and Initial Tablet Product for Development and Commercialization by Cerecor for pediatric human health applications, provided that any changes to the Avadel Development Program shall only be effective as agreed to in writing by the Parties.

c. **Development Documentation, Results, Reporting, and Inspection**.

1. Cerecor will own all documentation, including all notes, summaries, reports, and analyses related thereto, developed or generated by or on behalf of either Party or any Affiliate thereof solely in connection with the Avadel Development Program or performance of Avadel's obligations under Section 4 (collectively, all of the foregoing, the "Development Documentation"), and all data, results, information, and know-how resulting solely from the conduct of the Avadel Development Program or performance of Avadel's obligations under Section 4 (the "Development Results"). Avadel hereby assigns, and shall cause its Affiliates to assign, to Cerecor all right, title, and interest in all Development Documentation, Development Results, and any intellectual property rights solely associated with such Development Documentation or Development Results. Avadel shall take all actions, and shall cause its Affiliates and its and their contractors to take all actions, including but not limited to the execution of patent assignments or other documents, reasonably required, and reasonably requested by Cerecor, to effect the purposes of the foregoing. Notwithstanding the foregoing, Avadel shall have a royalty-free license and right to use any Development Documentation or Development Results as necessary for the filing, maintaining or prosecution of any Avadel Patent.

2. Avadel shall maintain, and shall cause its Affiliates to maintain, accurate and adequate books and records in connection with the performance of its obligations and responsibilities under the Avadel Development Program, Section 4, and this Agreement in accordance with Applicable Laws and in reasonably sufficient detail and a scientific and professional manner appropriate for regulatory and commercial purposes, including to support Regulatory Filings and support and obtain Regulatory Approvals. Avadel shall retain, and shall cause its Avadel to retain, all such books and records for not less than three (3) years following the expiration or termination of this Agreement or for such longer period as required by Applicable Law. Thereafter, Avadel shall not destroy such records without giving Cerecor prior written notice of such proposed destruction and the reasonable opportunity to store such records or to have such records shipped to Cerecor, at Cerecor's reasonable, documented expense. During the term of this Agreement, Avadel shall (i) promptly provide Cerecor all Development Results as they are generated, (ii) furnish detailed written reports regarding the progress and results of Avadel's obligations under the Avadel Development Program on a quarterly basis, and (iii) provide to Cerecor or any designee thereof any Development Documentation upon request.

3. At the request (and expense) of Cerecor, at reasonable times and upon reasonable notice, to examine only those records as may be necessary to determine, with respect to any Calendar Year ending not more than three (3) years prior to such request, the correctness or completeness of any report or invoice by Avadel under this Agreement or whether or not Avadel has complied with the terms of this Agreement. Cerecor shall bear the full cost of the performance of any such audit or examination, unless such audit or examination discloses a breach of this Agreement or error in invoicing by Avadel, in which case Avadel shall bear the reasonable, documented cost of the performance of such audit or examination and, if an overpayment was made by Cerecor, promptly refund to Cerecor the amount of such overpayment.

d. **Development Costs**. Except as otherwise set forth in this Section 4.2.d., Avadel shall bear the entire cost and expense of performing the Avadel Development Program and its other obligations under this Section 4. Avadel shall maintain reasonably complete and accurate records of all costs and expenses incurred with respect to the performance of the Avadel Development Program and Avadel's obligations under this Section 4. Avadel will use Commercially Reasonable Efforts to perform the Avadel Development Program and perform its obligations under Section 4.2.a. without incurring any Direct Costs in excess of $1,000,000. To the extent the reasonable, documented, Direct Cost of Avadel's performance of its obligations under Section 4.2.a. will exceed $1,000,000, Avadel will provide reasonable written advance notice thereof to Cerecor, including in such notice a written itemized detailed description of the reasonably expected costs, on an Initial Product-by-Initial Product and activity-by-activity basis, to complete the performance of such obligations. To the extent Cerecor elects in writing to support any such Direct Costs in excess of $1,000,000 for any such activity(ies) for any

Initial Product(s), (i) Avadel shall promptly perform such activity(ies) for such Initial Product(s) and (ii) Cerecor shall reimburse Avadel for such Direct Costs within thirty (30) days of its receipt of a written invoice with respect thereto. In the event Cerecor elects to not support any such Direct Costs in excess of $1,000,000 with respect to any particular activity(ies), Avadel shall not be obligated to perform such activity(ies) to the extent doing so would cause Direct Costs for the Avadel Development Program to exceed $1,000,000. Cerecor shall not be responsible for any costs under this Section 4.2.d. except to the extent it has made such a written election with respect thereto as set forth above.

4.1 Technology Transfer. Upon the Effective Date and, as applicable, (i) Successful Completion for an Initial Product or (ii) Cerecor's written election prior to Successful Completion, Avadel shall transfer to Cerecor, at no additional cost, all Avadel Know-How, which shall include but not be limited to all formulation, development, manufacturing, analytical testing, device testing, stability, pre-clinical, and clinical data, trade secrets, and other regulatory data related to any Product, including the formulation therefor. Avadel shall, at Avadel's cost, take any and all actions requested by Cerecor to effect the foregoing transfer as promptly as practicable following the Effective Date and, as applicable, (i) Successful Completion for an Initial Product or (ii) Cerecor's written election prior to Successful Completion, which shall include but not be limited to taking all reasonable actions necessary to enable Cerecor to undertake the manufacture, Development and Commercialization of Products under this Agreement. Such actions shall include providing Cerecor with:

i. DMFs and any study, drug, device, or other master files relating to any Product;

ii. copies of all data files, analyses, listings and tables of results, and copies of all case report forms from all research, development, or formulation work relating to any Product;

iii. access to all contractors relating to any Product and any contracts therewith;

iv. the data, files and results of any chemistry, manufacturing, or control-related activities regarding any Product; and

v. all other information generated as part of the Avadel Development Program or constituting Development Results, Development Documentation, or Avadel Know-How that Cerecor may reasonably request that may be necessary to Cerecor for the manufacturing of Products or conducting preclinical studies and clinical trials and other Development activities with respect to any Products, or manufacture or Commercialization of any Products.

4.2 Additional Assistance. In the event Cerecor desires assistance from Avadel in connection with any activities related to preclinical development of a Product, including further lead optimization, assay development and validation, production of toxicology/GMP material or

performance of toxicology studies, Cerecor shall provide written notice thereof to Avadel and the parties shall enter into good faith discussions concerning the financial and other terms upon which such assistance may be provided by Avadel, provided that Avadel shall not have any obligation to provide such assistance unless and until the Parties have executed a mutually agreeable definitive written agreement governing the provision of such assistance.

4.3 Regulatory Filings. Cerecor (or its Affiliates or Sublicensees) will own and be responsible for all Regulatory Filings and Regulatory Approvals in the Territory. Cerecor shall use Commercially Reasonable Efforts to maintain (or cause its Affiliates and Sublicensees to maintain) reasonably complete and accurate records of all material work performed by Cerecor in furtherance of the Development and Commercialization of Products and all material results, data and developments generated by Cerecor in conducting such activities. Such records shall be maintained in reasonably sufficient detail and in a manner reasonably appropriate for patent and regulatory purposes.

i. **Compliance**. Cerecor shall comply, and shall use Commercially Reasonable Efforts to ensure that its Affiliates and any Sublicensees comply, with all Applicable Laws in the exercise of the rights granted under this Agreement.

5. PATENT PROSECUTION, MAINTENANCE, AND DEFENSE.

5.1 Prosecution and Maintenance. Avadel shall have primary responsibility for, and use Commercially Reasonable Efforts to pursue, the filing, prosecution, maintenance, and, subject to Section 6.4, defense of the Avadel Patents and be responsible for all reasonable costs and expenses it incurs with respect thereto. Avadel will, to the extent reasonably practicable, provide Cerecor a reasonable opportunity to review and comment on any material patent filings or correspondence with patent authorities pertaining to the Avadel Patents, provided that all decisions with respect to the filing, prosecution, maintenance, and, subject to Section 6.4, defense of the Avadel Patents under this Section 5.1 shall be made by Avadel in its reasonable discretion. Exhibit A shall be updated periodically to reflect the further prosecution of Avadel Patents and the addition of any Avadel Patents coming under the ownership or control of Avadel or any Affiliate thereof after the Effective Date. Avadel shall not abandon prosecution, maintenance, or defense of any Avadel Patent without first notifying Cerecor in writing in a reasonably timely manner of Avadel's intention and reason therefor, and providing Cerecor with reasonable opportunity to assume the prosecution, maintenance, and defense of such Avadel Patent as set forth in Section 5.2.

5.2 Abandonment. Avadel shall not abandon the prosecution, maintenance, or defense of any Avadel Patent unless it first gives Cerecor prior written notice of such abandonment, which notice shall specify the specific Avadel Patent(s) subject to such abandonment and be given at least [*] ([*]) Calendar Days prior to any deadlines relating to such Avadel Patent(s). Cerecor shall have the right, upon written notice to Avadel given during such [*] ([*]) Calendar Day period, to assume control of prosecution, maintenance, and defense of such Avadel Patent(s) by having Avadel assign such Patent(s) to Cerecor. In the event of such a notice from Cerecor with respect to a particular Patent, (i) Avadel shall assign, and hereby assigns, all right, title, and interest therein to Cerecor, free and clear of all liens, claims, and encumbrances, and agrees to take any and all actions reasonably requested by Cerecor to effect and further the foregoing and (ii) such Patent(s) assigned to Cerecor shall no longer be considered an Avadel Patent for purposes of this Agreement.

5.3 Patent Term Extensions. Cerecor shall promptly notify Avadel of the issuance of each Regulatory Approval and, where reasonably and legally possible and reasonably useful or materially valuable in the Commercialization of Products, Avadel shall, if and as requested by Cerecor, (i) use Commercially Reasonable Efforts to, assist Cerecor, its Affiliates, and Sublicensees in obtaining all available Patent Term Extensions and (ii) take all actions necessary to obtain all Patent Term Extensions. The Parties shall cooperate with each other in obtaining Patent Term Extensions wherever and whenever applicable.

6. PATENT INFRINGEMENT.

6.1 Notice. If either Party becomes aware of any actual, potential, or alleged infringement of any of the rights to Avadel Patents granted to Cerecor under this Agreement with respect to Products, such Party shall give to the other Party prompt and reasonably detailed written notice of such actual, potential, or alleged infringement. Notwithstanding the foregoing, each Party shall notify the other Party within two (2) Business Days of its receipt of, or receipt of notice of, any Paragraph IV Certification.

6.2 Infringement of Avadel Patents. With respect to any actual, potential, or alleged infringement of the rights to Avadel Patents granted hereunder, which shall include, to the extent permitted under Applicable Law, any infringement or other claims resulting from, or legal actions or proceedings enabled or permitted by, any Paragraph IV Certification, Cerecor shall have the first and primary right, but not the obligation, to, at its expense, initiate, prosecute, and control any action or legal proceedings, and/or enter into a settlement, including any declaratory judgment action, with respect thereto. In any such litigation brought by Cerecor, Cerecor shall have the right to use and sue in Avadel's name and join Avadel as a party to such litigation, and Avadel shall cooperate reasonably with respect thereto, as requested by Cerecor, at Cerecor's expense. If, within one hundred eighty (180) Calendar Days of the notice in Section 6.1 (or, in the case of a Paragraph IV Certification, thirty-five (35) Calendar Days from the date of Cerecor's receipt of the Paragraph IV Certification or notice thereof from Avadel), Cerecor shall, (i) have been unsuccessful in persuading the actual, potential, or alleged infringer to desist, (ii) shall not have brought and shall not be diligently prosecuting an infringement or other action

with respect to such actual, potential, or alleged infringement or Paragraph IV Certification, or (iii) has not entered into settlement discussions with respect to such actual, potential, or alleged infringement or Paragraph IV Certification, or if Cerecor notifies Avadel that it has decided not to undertake any of the foregoing against any such alleged, potential, or actual infringer or Third Party making such Paragraph IV Certification, then Avadel shall have the right, at its expense, to bring suit to enforce such Avadel Patents against such actual, alleged, or potential infringer, or take action with respect to such Paragraph IV Certification, at its own expense, unless Cerecor has provided Avadel with a reasonable strategic rationale for not taking action to terminate such actual, potential, or alleged infringement or with respect to such Paragraph IV Certification. Notwithstanding the foregoing, neither Cerecor nor Avadel shall, and neither Cerecor nor Avadel shall permit any Affiliate thereof or Third Party to, proceed against an alleged infringer of the Avadel Patents in the Territory without first consulting with the other Party regarding the strategy for such proceeding and considering in good faith the other Party's comments regarding such proceeding.

6.3 Infringement of Third Party Rights. In the event that a claim of infringement of a Third Party's Patents is made or brought against either Party with respect to the manufacture, use, sale, or importation of a Product, the Party receiving such claim shall promptly inform the other Party in writing, and the Parties shall consult with each other in order to develop a strategy for addressing the alleged infringement. Each Party shall reasonably cooperate with the other Party, as reasonable requested thereby, in any investigations undertaken to determine any potential infringement. As between the Parties, Cerecor (and/or its Affiliates and Sublicensees) shall have the first and primary right, but not the obligation, at its own expense (subject to Section 6.6) to defend, control the defense of, and/or settle any such claim against Cerecor, its Affiliates, or Sublicensees, using counsel of its own choice.

6.4 Defense of Avadel Patents Against Third Party Challenge.

(a) **Notice.** If either Party becomes aware of any declaratory judgment or similar legal actions brought by any Third Party seeking to invalidate or hold any Avadel Patents unenforceable (such an action, a "**Challenge**"), such Party shall give to the other Party prompt and reasonably detailed written notice of such Challenge. This Section 6.4 sets forth the rights of the Parties to commence and/or undertake a defense of any Challenge (such defense, a "**Defensive Action**").

(b) **Right to Defend.** Cerecor shall have the first right but not the obligation to commence and undertake a Defensive Action or, subject to Section 6.5, negotiate or enter into any settlement or voluntary disposition thereof. If Cerecor has not exercised its first right to commence and/or undertake a Defensive Action within thirty (30) days of receipt of notice of the applicable Challenge, it shall promptly notify Avadel in writing and Avadel may, by written notice to Cerecor, commence and/or undertake such defense (either such Party who commences and/or undertakes such defense, the "**Defending Party**"). At the Defending Party's request, the non-Defending Party shall provide the Defending Party with all relevant documentation (as may be requested by the Defending Party) evidencing that the Defending Party is validly empowered by the non-Defending

Party to initiate and undertake such Defensive Action, as applicable. The non-Defending Party shall join the Defending Party in its Defensive Action if the Defending Party reasonably determines that this is necessary to demonstrate "standing to defend." The Defending Party shall have the sole and exclusive right to select counsel for any defense initiated by it pursuant to this Section 6.4(b) (but not the non-Defending Party's counsel). Cerecor's or Avadel's rights under this Section 6.4(b) may be exercised by their respective Affiliates or in Cerecor's case, Sublicensees.

(c) **Reasonable Assistance.** Each Party (if it is not the Defending Party) shall provide reasonable assistance to the other Party, including providing access to relevant documents and other evidence and making its employees and consultants available, subject to the other Party's reimbursement, pursuant to Sections 6.4(d) and 6.6, of any reasonable out-of-pocket expenses incurred on an on-going basis by the non-Defending Party in providing such assistance.

(d) **Costs and Expenses of a Defensive Action.** In the event Cerecor is the Defending Party, Cerecor shall bear one hundred percent (100%) of its reasonable, documented out of pocket expenses incurred in such Defensive Action, including, for such purposes, Avadel's reasonable, documented out of pocket cost of rendering any assistance provided at Cerecor's request pursuant to Section 6.4(c). In the event Avadel is the Defending Party, Avadel shall bear one hundred percent (100%) of the reasonable, documented out of pocket expenses incurred in such Defensive Action, including, for such purposes, Cerecor's reasonable, documented cost and expense of rendering any assistance provided at Avadel's request pursuant to Section 6.4(c),

6.5 Litigation Control. The Party pursuing or controlling any action or defense under Section 6.2, 6.3, or 6.4 (the "Controlling Party") shall be free to enter into a settlement, consent judgment, or other voluntary disposition of any such action or defense, provided, however, that (i) the Controlling Party shall consult with the other Party (the "Secondary Party") prior to entering into any settlement or voluntary disposition thereof, (ii) any settlement, consent judgment or other voluntary disposition of such actions which (1) subjects the Secondary Party to any non-indemnified liability or non-indemnified obligation or (2) admits fault or wrongdoing on the part of Secondary Party must, in each case, be approved in advance and in writing by the Secondary Party, (iii) any settlement, consent judgment or other voluntary disposition of such actions which limits the scope, validity, or enforceability of, or otherwise may adversely affect, any Avadel Patents shall not be entered into, consented to, approved, or agreed upon without the other Party's prior written approval, (iv) any settlement, consent judgment or other voluntary disposition of such actions which would reasonably be anticipated to materially, adversely, and directly affect Avadel's ability to make, use, or sell any products, other than the Products, incorporating the LiquiTime Technology shall not be entered into, consented to, approved, or agreed upon without Avadel's prior written consent, and (v) any settlement, consent judgment or other voluntary disposition of such actions that would reasonably be expected to materially adversely affect the ability of Cerecor, its Affiliates, or any Sublicensees to manufacture, Develop or Commercialize Products shall not be entered into, consented to, approved, or agreed upon without Cerecor's prior written consent. With respect to clause (ii) or (iii) above in this

Section 6.5, the Secondary Party shall provide the Controlling Party notice of its approval or denial of such approval within fifteen (15) Business Days of any request for such approval by the Controlling Party, provided that (X) in the event Secondary Party wishes to deny such approval, such notice shall include a written description summarizing the Secondary Party's reasonable objections to the proposed settlement, consent judgment, or other voluntary disposition and (Y) Secondary Party shall be deemed to have approved such proposed settlement, consent judgment, or other voluntary disposition in the event it fails to provide such notice within such fifteen (15) Business Day period. Any recovery or damages received by the Controlling Party with respect to the infringement of the rights to Avadel Patents granted under this Agreement, or in settlement of any matter subject to Section 6.2, 6.3, or 6.4, shall be used first to reimburse the Parties for unreimbursed reasonable, documented expenses (excluding, with respect to any costs or expenses incurred by Avadel, compensation of any employees or consultants of Avadel or any Affiliate thereof) incurred in connection with such action or settlement, and the remainder shall be split [*] percent ([*]%) to Controlling Party and [*] percent ([*]%) to Secondary Party. Notwithstanding the foregoing, the Secondary Party, at its expense, shall have the right to be represented by counsel of its choice in any proceeding governed by this Section 6.5.

6.6 Reimbursement. Each Party shall invoice the other Party for any reasonable, documented costs incurred that are to be borne by the other Party pursuant to this Section 6 (which reimburseable costs shall exclude any costs or expenses incurred by Avadel with respect to its compensation of any employees or consultants of Avadel or any Affiliate thereof). Each Party shall pay the other Party such amounts within thirty (30) Calendar Days of its receipt of any such invoice, except to the extent such amounts are the subject of a good faith dispute, in which the amounts subject to such dispute shall be due within thirty (30) Calendar Days of the resolution of such dispute.

6.7 Litigation Credit. To the extent there is no recovery of damages, or amounts received in settlement, by Cerecor or its Affiliates with respect to any matter contemplated by Section 6.2, 6.3, or 6.4 above, or all such amounts received with respect to a particular matter are insufficient to fully reimburse Cerecor or its Affiliates for any amounts incurred thereby with respect to such matter (including but not limited to attorneys' fees, out-of-pocket costs, and all amounts paid as judgments, damages, or in settlement) (such amounts, "Infringement Costs"), Cerecor shall be entitled to credit [*] percent ([*]%) of Infringement Costs (such [*] percent ([*]%), the "Infringement Cost Credit") against royalties or other fees thereafter payable to Avadel under this Agreement. If the total Infringement Cost Credit applicable for any particular Calendar Quarter exceeds more than [*] percent ([*]%) of amounts payable to Avadel under this Agreement with respect to such Calendar Quarter, then the amount of such Infringement Cost Credit in excess of [*] percent ([*]%) of the amounts payable to Avadel under this Agreement with respect to such Calendar Quarter shall be carried over and credited against payments due in future Calendar Quarters, subject to such [*] percent ([*]%) limitation (and continued rollover) in each case.

6.8 Covenant Not To Challenge . Cerecor and its Affiliates covenant not to directly or indirectly challenge the validity or enforceability of any of the Avadel Patents from the Effective Date of this Agreement through the last-to-expire Term of this Agreement, and Cerecor

shall obtain from, and use Commercially Reasonable Efforts to enforce against, each of its Sublicensees a corresponding covenant with respect to any Avadel Patents sublicensed to such Sublicensee. This covenant is personal to Avadel and its Affiliates and its successors and assigns.

6.9 Trademarks. Cerecor, its Affiliates, and Sublicensees may, in their sole discretion, select trademarks for the Products ("Product Marks") and shall own all such trademarks. To the extent Cerecor, its Affiliates, and Sublicensees pursue trademarks for Products, as between the parties, Cerecor, its Affiliates, and Sublicensees shall have the sole responsibility for the filing, prosecution and maintenance of registrations of trademarks for Products, at their sole expense.

7. CONFIDENTIALITY

7.1 Confidentiality Obligations. The Parties agree that, for the Royalty Term and for five (5) years thereafter, each Party will keep completely confidential and will not publish, submit for publication or otherwise disclose, and will not use for any purpose except for the purposes contemplated by this Agreement, any Confidential Information of the other Party.

7.2 Authorized Disclosure. Each Party may disclose Confidential Information of the other Party to the extent that such disclosure is:

(a) made in response to a valid order of a court of competent jurisdiction; provided, however, that in each case such disclosing Party will, to the extent reasonably practicable, (i) first have given written notice to the other Party and given such other Party a reasonable opportunity to take appropriate action and (ii) cooperate with such other Party as necessary to obtain an appropriate protective order or other protective remedy or treatment; provided, further, that in each case, the Confidential Information disclosed in response to such court or governmental order will be limited to that information which is legally required to be disclosed in response to such court or governmental order, as determined in good faith by counsel to the Party that is obligated to disclose Confidential Information pursuant to such order;

(b) otherwise required to be disclosed by any applicable law, rule, or regulation (including, without limitation, the U.S. federal securities laws and the rules and regulations promulgated thereunder) or the requirements of any stock exchange to which a Party is subject; provided, however, that the Party that is so required will provide such other Party with written notice of such disclosure reasonably in advance thereof to the extent reasonably practicable and reasonable measures will be taken to assure confidential treatment of such information, including such measures as may be reasonably requested by the disclosing Party with respect to such Confidential Information;

(c) made by such Party, in connection with the performance of this Agreement, to such Party's Affiliates, licensees or sublicensees, directors, officers, employees, consultants, representatives or agents, or to other Third Parties, in each case on a need to know basis and solely to use such information for business purposes relevant

to and permitted by this Agreement, and provided that (i) each individual and entity to whom such Confidential Information is disclosed is bound in writing to non-use and non-disclosure obligations no less than substantially as restrictive as those set forth in this Agreement and (ii) the Party making such disclosure shall be liable for such Third Parties' compliance with such obligations; or

(d) made by such Party to existing or potential acquirers, collaborators, licensees, licensors, sublicensees, investment bankers, accountants, attorneys, investors, merger or acquisition candidates, partners, venture capital firms or other financial institutions or investors for use of such information for business purposes relevant to this Agreement or for due diligence in connection with the financing, licensing or acquisition of such Party (or such Party's acquisition of, or merger with, a Third Party), and provided that (i) each individual and entity to whom such Confidential Information is disclosed is bound in writing to non-use and non-disclosure obligations (or in the case of attorneys or accountants, an equivalent professional duty of confidentiality) at least as restrictive as those set forth in this Agreement and (ii) the Party making such disclosure shall be liable for such Third Parties' compliance with such obligations.

7.3 Publicity. Press releases or other similar public communication by either Party not required by any applicable law, rule, or regulation or the requirements of any stock exchange to which a Party is subject and disclosing the existence or terms of this Agreement, or concerning either Party's performance or exercise of its rights under this Agreement, will require the advance written approval of the other Party, provided that, notwithstanding the forgoing, any such release or communication by Cerecor, any Affiliate thereof, or any Sublicensee related to the Development or Commercialization of any Product shall not require Avadel's prior written consent. The foregoing notwithstanding, communications required by any applicable law, rule, or regulation or the requirements of any stock exchange to which a Party is subject, and disclosures of information for which consent has previously been obtained, will not require advance approval, but will be provided to the other Party as soon as practicable after the release or communication thereof, provided that, with respect to any such communications required by any applicable law, rule, or regulation or the requirements of any stock exchange to which a Party is subject, the Party required to make such disclosure shall, to the extent reasonable practicable and such disclosure does not include information for which consent has previously been obtained, provide the other Party a reasonable opportunity to review and comment on such communications.

7.4 Publications. Subject to Sections 7.1, 7.2, and 7.3 and this Section 7.4, each Party shall have the right to publish, present or otherwise disclose, including in scientific journals or promotional literature, information pertaining to Avadel Technology or any Product; provided, however, that:

a. if Cerecor or any Affiliate thereof desires to publish or present any such information, then the following procedure shall apply: (i) Cerecor shall first provide a copy of the proposed publication or presentation to Avadel for review and comment thirty (30) Calendar Days in advance of any submission for publication or presentation (or, in

the case of any presentation, fifteen (15) Calendar Days in advance of such submission) (such thirty (30) or fifteen (15) Calendar Day period, the "Review Period"); (ii) if during the Review Period Cerecor receives written notice from Avadel identifying specific Confidential Information of Avadel in such a proposed publication or presentation, then, at the reasonable request of Avadel in such notice and at Avadel's option, Cerecor shall, and Cerecor shall use Commercially Reasonable Efforts to ensure that its Affiliates and Sublicensees, delete such Confidential Information from the proposed publication and/or delay such publication or presentation for up to an additional thirty (30) Calendar Days in order to permit Avadel to file a patent application covering such Confidential Information; and

b. if Avadel or any Affiliate thereof desires to publish or present any such information pertaining to any Product, then Avadel shall first provide a copy of the proposed publication or presentation to Cerecor for review and approval for a period not to exceed thirty (30) Calendar Days in advance of any submission for publication or presentation (or, in the case of any presentation, fifteen (15) Calendar Days in advance of such submission), and Avadel shall not submit, publish, or present such proposed publication or presentation without Cerecor's prior written consent.

8. Term and Termination

8.1 Term. This Agreement shall become effective on the Effective Date and shall continue, on a country-by-country and Product-by-Product basis, until the earlier of (i) the expiration of the Royalty Term for a particular Product in a particular country or (ii) the effective date of termination pursuant to Section 8.2, 8.3, 8.4, or 8.5 (the period from the Effective Date until such expiration or termination, the "Term"). Upon expiration of this Agreement pursuant to clause (i) above with respect to a particular Product and country, Cerecor and its Affiliates shall have the perpetual, unrestricted, irrevocable, fully-paid, royalty-free exclusive right, with rights of sublicense, under Avadel Technology to make, have made, use, sell, offer for sale, and import such Product in such country.

8.2 Termination for Material Breach. If either Party (the "non-breaching Party") believes the other Party (the "alleged breaching party") is in material breach of any of such alleged breaching Party's obligations under this Agreement, the non-breaching Party may give notice of such breach to the alleged breaching Party, and the alleged breaching Party shall have sixty (60) days in which to remedy such material breach or establish that it is not in material breach hereunder. If such alleged material breach is not remedied in the time period set forth above, the non-breaching Party shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, and in addition to any other remedies available to it by law or in equity, to terminate this Agreement upon written notice to the alleged breaching Party.

8.3 Termination upon Insolvency. To the extent permitted under Applicable Laws, either Party may terminate this Agreement with respect to the other Party if, at any time, such other Party shall file, in any court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of such other Party or of its assets, or if such other Party

shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if such other Party shall propose or be a party to any dissolution or liquidation, or if such other Party shall make an assignment for the benefit of its creditors.

8.4 Termination upon Force Majeure. Either Party may terminate this agreement due to a Force Majeure event pursuant to Section 11.10.

8.5 Termination by Cerecor. This Agreement may be terminated by Cerecor, in its sole discretion, in its entirety, with respect to one or more Products, with respect to one or more countries, or with respect to one or more Products in one or more countries, upon sixty (60) Calendar Days' written notice to Avadel.

8.6 Effects of Termination. Upon any termination of this Agreement (in whole or in part), other than the expiration of this Agreement or termination by Avadel pursuant to Section 8.2, Cerecor, its Affiliates, and Sublicensees shall have the privilege, subject to Cerecor's payment of royalties as required under Section 3.1, of selling, within twelve (12) months of such termination (the "Termination Date"), any finished Products, or Products in inventory or the process of manufacture as of the Termination Date, that are subject to such termination. Cerecor shall also be responsible for any payments owed to Avadel pursuant to Section 4.2.d that have not yet been paid for the performance of the Avadel Development Program in accordance with this Agreement prior to the date of such termination. Upon termination of the Agreement by Avadel pursuant to Section 8.2 or by Cerecor pursuant to Section 8.5, the license granted pursuant to Section 2 herein shall be terminated and Avadel shall have all rights under the Avadel Know-How and Avadel Patents to make, have made, use, sell, offer for sale, import, export, Develop, and Commercialize the Products.

8.7 Survival of Sublicenses. Notwithstanding any provision herein to the contrary, any sublicense granted in accordance with this Agreement under any Avadel Know-How or Avadel Patents shall remain in effect following termination of this Agreement by Avadel (except, with respect to any particular sublicense, if Avadel terminates this Agreement pursuant to Section 8.2 and the applicable Sublicensee's uncured material breach of such sublicense is the direct cause of the uncured material breach of this Agreement enabling such termination by Avadel) and will, to the extent directly concerning the rights to Avadel Know-How and Avadel Patents granted hereunder and not imposing any obligations on Avadel in excess of those set forth herein, immediately and automatically be assigned to Avadel and deemed to be a direct license from Avadel to the applicable Sublicensee with respect to the rights originally granted under this Agreement that are the subject of such sublicense, in order to provide for the applicable Sublicensee's continued enjoyment of its rights thereunder, with all payments thereunder due by such Sublicensee thereafter, to the extent solely and directly corresponding to, and due with respect to, the rights to Avadel Know-How and Avadel Patents granted under this Agreement, to be made directly to Avadel.

8.8 Survival. Termination or expiration of this Agreement for any reason will be without prejudice to any rights that will have accrued to the benefit of any Party prior to such termination or expiration, and any termination or expiration of this Agreement shall not relieve

either Party of any obligation which has accrued prior to the effective date of such termination or expiration, which obligations shall remain in full force and effect. The following provisions shall survive any expiration or termination of this Agreement: Sections 1, 2.2, 2.3, 3.7, 3.9, 3.10, 3.11 (to the extent set forth therein), 7, 6 (other than Sections 6.8 and 6.9 thereof and only with respect to infringements occurring prior to termination or expiration) 8.1, 8.6, 8.7, 8.8, 9.3, 10.1, 10.2, 10.3, 10.4, 10.5 (to the extent set forth therein), and 11, together with any Sections referenced in such surviving provisions or necessary to give them effect.

9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Avadel. Avadel represents and warrants to Cerecor as follows:

a. Avadel is a corporation, duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to operate its properties and to carry on its business as presently conducted.

b. Avadel has full power and authority to execute, deliver and perform this Agreement. There are no liens or other encumbrances on the Avadel Technology or any part of thereof which would interfere with the rights granted to Cerecor hereunder. This Agreement constitutes the legally binding and valid obligation of Avadel, enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, moratorium and other laws affecting creditors' rights generally.

c. The execution, delivery and performance by Avadel of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, conflict with, result in a breach of or constitute a default under any contract or agreement to which Avadel or any Affiliate thereof is a party.

d. There is no action, suit, proceeding or investigation pending or, to Avadel's and its Affiliates' knowledge, currently threatened orally or in writing against or affecting Avadel or any Affiliate thereof that questions the validity of this Agreement, the validity, enforceability, scope, or ownership of any Avadel Patent(s), or the right of Avadel to enter into this Agreement or consummate the transactions contemplated hereby and, to Avadel's and its Affiliates' knowledge, there is no basis for the foregoing.

e. To the best of Avadel's and its Affiliates' knowledge, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority, or any Third Party, on the part of Avadel or any Affiliate thereof is required in connection with the execution, delivery and performance of this Agreement.

f. Avadel has disclosed in writing to Cerecor all Patents owned, controlled, or licensed by Avadel or its Affiliates as of the Effective Date which Cover the Initial LiquiTime Products containing [*] and [*], the Initial Tablet Product, the LiquiTime Technology, or the Tablet Technology, or which are necessary or appropriate to Develop, manufacture and Commercialize Products, the LiquiTime Technology, or the Tablet Technology, and all such Patents are set forth on Exhibit A attached hereto.

g. There are no inventors of Avadel Patents other than those listed as inventors on the Initial Avadel Patents as they exist as of the Effective Date, and no Avadel Patents are subject to any assignment of obligation of assignment, in whole or in part, to any Third Party.

[*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

h. No research or Development of the Avadel Technology, manufacture of Products, or research leading to the inventions Covered by the Avadel Patents was supported in whole or part by funding or grants by any governmental agency or philanthropic or charitable organization.

i. The Avadel Technology is wholly-owned by Avadel, free and clear of all mortgages, pledges, charges, liens, equities, security interests, shop rights, or other encumbrances or similar agreements, or any other obligation.

j. No Third Party or Affiliate of Avadel has any rights or ownership interest in any Avadel Technology, and neither Avadel nor any Affiliate thereof obtained rights to any of the Avadel Technology by license or any similar contract or agreement with any Third Party or Affiliate of Avadel.

k. Neither Avadel nor any Affiliate thereof is aware of any Third Party intellectual property rights (including any Patent(s)) that were (prior to the Effective Date) or would be (following the Effective Date) infringed, misappropriated, or otherwise violated by the, or that are reasonably required for the anticipated, use, manufacture, sale, import, export, Development, or Commercialization of any Products.

l. No written or oral communication has been received by Avadel or any Affiliate thereof, and no investigation, regulatory enforcement action (including seizure, injunction, civil penalty or criminal action) or any related Governmental Authority or Regulatory Authority review is or, to the knowledge of the Avadel or any Affiliate thereof, was at any time pending or is threatened by any Governmental Authority or Regulatory Authority with respect to (i) any alleged or actual violation by the Avadel, any Affiliate thereof, or any contractor of either of the foregoing of any permit, Applicable Law or other requirement of any Governmental Authority or Regulatory Authority relating to the operations conducted by or on behalf of Avadel or any Affiliate thereof with respect to any Product, the LiquiTime Technology, the Tablet Technology, or any products incorporating, utilizing, or based on either of the foregoing or (ii) any alleged or actual failure to have or maintain in effect all permits required in connection with the operations conducted by or on behalf of Avadel or any Affiliate thereof with respect to any Product, the LiquiTime Technology, the Tablet Technology, or any products incorporating, utilizing, or based on either of the foregoing. Neither Avadel or any Affiliate thereof has received from the FDA, the U.S. Drug Enforcement Administration ("DEA"), or any similar state, local, federal, or foreign Governmental Authority or Regulatory Authority any written notice regarding the approvability or approval of any Products. With respect to any Products, the LiquiTime Technology, the Tablet Technology, or any products incorporating, utilizing, or based on either of the foregoing, no officer, employee or, to the knowledge of Avadel or any Affiliate thereof, agent of the Avadel has made any untrue statement of a material fact or a fraudulent statement to the FDA, DEA or any similar state, local, federal, or foreign Governmental Authority or Regulatory Authority, failed to disclose any material fact required to be disclosed to the FDA, the DEA or any similar state, local, federal, or foreign Governmental Authority or

Regulatory Authority, or committed an act, made a statement or failed to make a statement that, at the time such act, statement or omission was made, could reasonably be expected to provide a basis for the FDA, the DEA or any similar state, local, federal or foreign Governmental Authority or Regulatory Authority to invoke the FDA's policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy, nor has any director, officer, employee or, to the knowledge of Avadel or any Affiliate thereof, agent of Avadel or any Affiliate thereof been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. Article 335a(a) (or any similar law, rule, or regulation) or authorized by 21 U.S.C. Article 335a(b) (or any similar law, rule, or regulation inside the United States or in any jurisdiction outside the United States).

m. To the knowledge of Avadel and its Affiliates, Avadel and its Affiliates have taken all reasonable actions necessary or appropriate to preserve the confidentiality of all trade secrets, proprietary and other confidential information material to Products and Avadel Technology.

n. Neither Avadel nor any Affiliate thereof is aware of any Third Party activities which would constitute misappropriation or infringement of any Avadel Technology.

o. To the actual knowledge of Avadel and its Affiliates, based on reasonable inquiry and investigation, all information provided to Cerecor, its Affiliates, and their employees, officers, directors, agents, and other representatives by or on behalf of Avadel or any Affiliate thereof with respect to Products, the Avadel Technology, the LiquiTime Technology, the Tablet Technology, or any products incorporating, utilizing, or based on either of the foregoing, has been accurate in all material respects.

p. All Development of Product performed by or on behalf of Avadel or any Affiliate thereof prior to the Effective Date was performed in all material respects in accordance with all Applicable Laws and, if reasonably applicable based on the type of work performed, GLP.

q. As of the Effective Date, there are no Patents owned, controlled, or licensed by Avadel or any Affiliate thereof Covering any portion of the Tablet Technology or the Initial Tablet Product.

9.2 Representations and Warranties of Cerecor. Cerecor represents and warrants to Avadel as follows as of the Effective Date:

a. Cerecor is a corporation, duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to operate its properties and to carry on its business as presently conducted.

b. Cerecor has full power and authority to execute, deliver and perform this Agreement. This Agreement constitutes the legally binding and valid obligations of Cerecor, enforceable in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy, moratorium and other laws affecting creditors' rights generally.

c. The execution, delivery and performance by Cerecor of this Agreement and the consummation of the transactions contemplated thereby will not result in any violation of, conflict with, result in a breach of or constitute a default under any contract or agreement material to Cerecor, its business or its assets.

d. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority on the part of Cerecor is required in connection with the execution, delivery and performance of this Agreement.

e. There is no action, suit, proceeding or investigation pending or, to Cerecor's knowledge, currently threatened against or affecting Cerecor or that questions the validity of this Agreement, or the right of Cerecor to enter into this Agreement or consummate the transactions contemplated hereby and, to Cerecor's knowledge, there is no reasonable basis for the foregoing.

9.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT OR THE APA, INCLUDING SECTIONS 9.1 AND 9.2 HEREOF, AS APPLICABLE, THE PARTIES MAKE NO REPRESENTATIONS AND GRANT NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND THE PARTIES EACH SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR AS TO THE SUCCESS OR LIKELIHOOD OF SUCCESS OF THE RESEARCH, DEVELOPMENT OR COMMERCIALIZATION OF ANY PRODUCT UNDER THIS AGREEMENT.

10. INDEMNITIES; LIMITS ON LIABILITY

10.1 Indemnification by Avadel. Subject to Section 10.3, Avadel hereby agrees to defend, indemnify and hold harmless Cerecor, its Affiliates, Sublicensees, any contractors of any of the foregoing, and each of their directors, officers, employees, agents, and other representatives ("Cerecor Indemnitees") from and against all suits, claims, proceedings or causes of action brought by Third Parties ("Claims"), and all associated damages, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses"), to the extent arising out of Avadel's, its Affiliates', or Avadel's or its Affiliates' officers', directors', employees', contractors', agents', or other representatives' (i) gross negligence or willful misconduct, (ii) breach of this Agreement, (iii) failure to comply with any Applicable Law, or (iv) manufacture, use, Development, Commercialization, import, or export of any Product(s) other than, for purposes of this clause (iv), the performance of the Avadel Development Program in accordance with this Agreement, except to the extent, in each case, resulting from the gross

negligence or willful misconduct, breach of this Agreement, or failure to comply with Applicable Laws on the part of, in each case, any Cerecor Indemnitee.

10.2 Indemnification by Cerecor. Subject to Section 10.3, Cerecor hereby agrees to indemnify, defend and hold Avadel, its Affiliates, and Avadel's and its Affiliates' officers, directors, employees, agents, and other representatives (collectively, "Avadel Indemnitees") harmless from and against any Losses resulting from Claims brought against any Avadel Indemnitee(s) resulting from Cerecor's, its Affiliates', or any Sublicensees' (i) gross negligence or willful misconduct with respect to the subject matter of this Agreement, (ii) breach of this Agreement, (iii) failure to comply with Applicable Laws with respect to the subject matter of this Agreement, or (iv) manufacture, use, Development, Commercialization, import or export of any Product, except to the extent, in each case, resulting from the gross negligence or willful misconduct, breach of this Agreement, or failure to comply with Applicable Laws on the part of, in each case, any Avadel Indemnitee.

10.3 Indemnification Procedures. Each Party's agreement to indemnify, defend, and hold harmless under Section 10.1 or 10.2, as applicable, is conditioned upon the indemnified party (a) providing written notice to the indemnifying Party of any claim, demand or action arising out of the indemnified matter as soon as reasonably possible, and in any event no later than within thirty (30) Calendar Days after the indemnified Party has actual knowledge of such claim, demand or action, (b) permitting the indemnifying Party to assume control over the investigation of, preparation and defense against, and settlement or voluntary disposition of any such claim, demand or action, (c) assisting the indemnifying Party, at the indemnifying Party's reasonable expense, in the investigation, preparation, defense, and settlement or voluntary disposition of any such claim, demand or action, and (d) not compromising, settling, or entering into any voluntary disposition of any such claim, demand or action without the indemnifying Party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that, if the party entitled to indemnification fails to promptly notify the indemnifying Party pursuant to the foregoing clause (a), the indemnifying Party will only be relieved of its indemnification obligation to the extent materially prejudiced by such failure. In no event may the indemnifying Party compromise, settle, or enter into any voluntary disposition of any claim, demand or action in any manner that admits material fault or wrongdoing on the part of the indemnified party or incurs non-indemnified liability on the part of the indemnified party without the prior written consent of the indemnified party, and in no event may the indemnifying Party settle, compromise, or agree to any voluntary disposition of any matter subject to indemnification hereunder in any manner which may adversely affect any portion of the Avadel Technology, or Cerecor's ability to exploit Avadel Technology or Develop, manufacture, or Commercialize Products without Cerecor's prior written consent.

10.4 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, PROVIDED THAT, NOTWITHSTANDING ANYTHING TO THE

CONTRARY, THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE INDEMNITY OBLIGATIONS SET FORTH IN SECTIONS 10.1 AND 10.2 ABOVE OR EITHER PARTY'S LIABILITY FOR PATENT INFRINGEMENT OR BREACH OF SECTION 7.

10.5 Insurance. Each Party shall carry and maintain insurance of the types and in amounts which are reasonable and customary in the U.S. pharmaceutical industry for companies of comparable size and activities. Such insurance will insure against all liability, including but not limited to, bodily injury or property damage arising out of the manufacture, sale, distribution, marketing, Development or Commercialization of Products. Such insurance shall include commercial general liability insurance, including product liability insurance, which coverage shall have limits of liability which are commercially reasonable for the U.S. pharmaceutical industry. Such coverage shall be maintained by each party for not less than three (3) Calendar Years following expiration or termination of this Agreement or, if such coverage is of the "claims made" type, for five (5) Calendar Years following expiration or termination of this Agreement. Upon written request from a Party, the other Party shall promptly provide written evidence (e.g., certificates) of such insurance that is reasonably satisfactory to the requesting Party.

11. MISCELLANEOUS

11.1 Assignment. Neither Party may assign this Agreement, or any of its rights or obligations hereunder without the other Party's prior written consent, provided that (X) neither Party will unreasonably withhold, condition, or delay any such consent sought by the other Party and (Y) either Party shall, notwithstanding anything to the contrary, be entitled, without the other Party's prior written consent, to assign or transfer this Agreement: (i) in connection with the transfer or sale of all or substantially all of such Party's assets or business (or that portion thereof related to the subject matter of this Agreement), (ii) in the event of such Party's merger, consolidation, reorganization, change of control or similar transaction, or (iii) to an Affiliate of such Party. Any permitted assignee of either Party shall, as a condition to such assignment, assume all obligations of its assignor arising under this Agreement following such assignment and any assignment to an Affiliate of any Party pursuant to Section 11.1(iii) shall not relieve the assigning Party of its obligations under this Agreement for so long as the applicable assignee remains an Affiliate of such assigning Party. Any purported assignment by a Party of this Agreement, or any of such Party's rights or obligations hereunder, in violation of this Section 11.1 shall be void.

11.2 Severability. If one or more provisions of this Agreement is held to be invalid, illegal or unenforceable, the Parties shall substitute, by mutual consent, valid provisions for such invalid, illegal or unenforceable provisions which valid provisions are, in their economic effect, sufficiently similar to the invalid provisions that it can be reasonably assumed that the Parties would have entered into this Agreement with such provisions. In the event that such provisions cannot be agreed upon, the invalidity, illegality or unenforceability of one or more provisions of this Agreement shall not affect the validity of this Agreement as a whole.

11.3 Notices. Any notice, consent or report required or permitted to be given or made under this Agreement by one Party to the other Party shall be in English and in writing, delivered personally or by U.S. first class mail or express courier providing evidence of receipt, postage prepaid (where applicable), at the following address for a Party (or such other address for a Party as may be specified by like notice):

To Cerecor:

Cerecor Inc.
400 East Pratt Street, Suite 606
Baltimore, MD 21202
E-mail:
Attention: Mariam Morris, Chief Financial Officer

To Avadel:

Avadel Ireland
Block 10-1, Blanchardstown Corporate Park
Ballycoolin, Dublin 15 Ireland
Attention: General Counsel

With a copy (which shall not constitute notice) to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
Attn: Donald R. Reynolds

With a copy (which shall not constitute notice) to:

Avadel Pharmaceuticals plc
16640 Chesterfield Grove Road, Suite 200,
Chesterfield, MO 63005
Attention: Chief Executive Officer

All such notices, consents or reports shall be effective upon receipt.

11.4 Applicable Law; Jurisdiction; Waiver of Jury Trial.

a. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

b. Each Party irrevocably submits to the exclusive jurisdiction of (i) the state courts of New York located in New York County, and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement. Each Party agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of New York or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the state courts of New York located in New York County. Each Party further agrees that service of any process, summons, notice or document by the U.S. registered mail to such Party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Section 11.4.b. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the Contemplated Transactions in (x) the state courts of New York located in New York County, and (y) the

United States District Court for the Southern District of New York, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

c. EACH PARTY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. Each Party (i) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that such Party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party has been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 11.4.c.

11.5 Entire Agreement. This Agreement (including the Schedules or Exhibits attached hereto) contains the entire agreement by the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous express or implied agreements, understandings and representations, either oral or written, which may have related to the subject matter hereof in any way.

11.6 Interpretation. The captions to the several Sections of this Agreement are not a part of this Agreement, but are included for convenience of reference and shall not affect its meaning or interpretation. In this Agreement: (a) the word "including" shall be deemed to be followed by the phrase "without limitation", "including but not limited to", or like expression; (b) the singular shall include the plural and *vice versa*; and (c) masculine, feminine and neuter pronouns and expressions shall be interchangeable. The Parties expressly agree that any ambiguity in this Agreement shall not be construed against the Party who drafted this Agreement or the relevant provision hereof.

11.7 Independent Contractors. It is expressly agreed that Cerecor and Avadel shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency or other fiduciary relationship. Neither Cerecor nor Avadel 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 Party, without the prior written consent of the other Party to do so.

11.8 Waiver; Amendment. Except as otherwise expressly provided in this Agreement, any term of this Agreement may be waived only by a written instrument executed by a duly authorized representative of the Party waiving compliance. The delay or failure of any Party at any time to require performance of any provision of this Agreement shall in no manner affect such Party's rights at a later time to enforce the same. This Agreement may be amended, and any term of this Agreement may be modified, only by a written instrument executed by a duly authorized representative of each Party.

11.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

11.10 Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for delay or failure in the performance of any of its obligations hereunder to the extent, and for so long as, such delay or failure is due to causes beyond its reasonable control, which may include, without limitation, acts of nature, fires, earthquakes, strikes and labor disputes, acts of war, terrorism, or civil unrest (**"Force Majeure"**); provided that the affected Party promptly notifies the other Party and further provided that the affected Party shall use its commercially reasonable efforts to avoid or remove such causes of non-performance and to mitigate the effect of such occurrence, and shall continue performance with the utmost dispatch whenever such causes are removed. In the event any such Force Majeure event continues for three (3) months or more, the unaffected Party shall have the right to terminate this Agreement, effective as of the date of delivery of notice, which notice shall not be delivered prior to the end of such three (3) month period.

11.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and other electronically scanned signatures shall have the same effect as their originals.

11.12 United States Dollars. References in this Agreement to "Dollars", "dollars", or "$" shall mean the legal tender of the United States of America.

11.13 No Strict Construction. This Agreement has been prepared jointly and shall not be strictly construed against either Party.

11.14 Responsibility for Affiliates. The Parties recognize that each Party may perform some or all of its obligations, or exercise its rights, under this Agreement through such Party's Affiliates, provided, however, that each Party shall remain responsible for the payment and performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement. Any breach of any provision of this Agreement by any Affiliate of a Party shall be deemed a breach hereof by such Party, with such Party being liable hereunder with respect to such breach as if such Party itself had breached this Agreement.

11.15 Guarantee. Avadel Seller hereby fully and unconditionally guarantees Avadel's, and each of Avadel's Affiliates', compliance with, and performance of Avadel's obligations under, this Agreement. Avadel Seller expressly waives any requirement that Cerecor exhaust any right, power or remedy or proceed against Avadel or any Affiliate thereof for any obligation or performance hereunder.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their proper officers as of the date and year first above written.

Flamel Ireland Limited

BY: /s/ Phillandas T. Thompson

NAME: Phillandas T. Thompson

TITLE: Director

Cerecor, Inc.

BY: /s/ Robert Moscato

NAME: Robert Moscato

TITLE: President and Director

Solely for purposes of Section 11.15:

Avadel Pharmaceuticals plc

BY: /s/ Michael S. Anderson

NAME: Michael S. Anderson

TITLE: Chief Executive Officer

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Peter Greenleaf, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cerecor Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2018

/s/ Peter Greenleaf

Peter Greenleaf
Chief Executive Officer
(Registrant's Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Mariam E. Morris, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cerecor Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2018

/s/ Mariam E. Morris
Mariam E. Morris
Chief Financial Officer
(Registrant's Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Cerecor Inc. (the "Registrant") on Form 10-Q for the three months ended March 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Uli Hacksell, Chief Executive Officer of the Registrant, and I, Mariam E. Morris, Chief Financial Officer of the Registrant, each hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: May 11, 2018	By:	/s/ Peter Greenleaf
	Name:	**Peter Greenleaf**
	Title:	**Chief Executive Officer** **(Registrant's Principal Executive Officer)**
Date: May 11, 2018	By:	/s/ Mariam E. Morris
	Name:	**Mariam E. Morris**
	Title:	**Chief Financial Officer** **(Registrant's Principal Financial and Accounting Officer)**

The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of Cerecor Inc. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.