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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED: September 30, 2018

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

For the transition period from to

Commission File Number: 001-35268

SYNERGY PHARMACEUTICALS INC.

(Exact name of registrant as specified in its charter)

Delaware	**33-0505269**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

420 Lexington Avenue, Suite 2012, New York, New York 10170
(Address of principal executive offices) (Zip Code)

(212) 297-0020
(Registrant's telephone number)

(Former Name, Former Address and Former Fiscal Year, if changed since last report)

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 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 ☐	Smaller reporting company ☐
(Do not check if a 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 ☒

The number of the registrant's shares of common stock outstanding was 248,037,301 as of November 9, 2018.

SYNERGY PHARMACEUTICALS INC.

FORM 10-Q

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NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q for Synergy Pharmaceuticals Inc. may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements are characterized by future or conditional verbs such as “may,” “will,” “expect,” “plan,” “intend,” “anticipate,” “believe,” “estimate” and “continue” or similar words. You should read statements that contain these words carefully because they discuss future expectations and plans, which contain projections of future results of operations or financial condition or state other forward-looking information. Such statements are only predictions and our actual results may differ materially from those anticipated in these forward-looking statements. We do not assume any obligation to update forward-looking statements as circumstances change and thus you should not unduly rely on these statements, which speak only as of the date of this Quarterly Report on Form 10-Q.

We believe that it is important to communicate future expectations to readers. However, there may be events in the future that we are not able to accurately predict or control. Risk factors that may cause such differences between predicted and actual results include, but are not limited to, those discussed in our Form 10-K for the year ended December 31, 2017 filed on March 1, 2018 and other periodic reports filed with the Securities and Exchange Commission.

These risk factors include the uncertainties associated with product development, the risk that we will not obtain approval to market our products in development, fluctuations in our operating results and financial condition, the volatility of the market price of our common stock, our ability to successfully commercialize pharmaceutical products in a timely manner, the impact of competition, the effect of any manufacturing or quality control problems, our ability to manage our growth, the reduction or loss of business with any significant customer, substantial revenues derived from sale of one product, the restrictions imposed by our credit facility, our level of indebtedness and liabilities and the potential impact on cash flow available for operations, the availability of additional funds in the future, the possibility that we may need to seek bankruptcy protection or pursue strategic
alternatives that could result in leaving our current stockholders with little or no financial ownership of the Company, the uncertainty of patent litigation and other legal proceedings, the difficulty of predicting FDA filings and approvals, consumer acceptance and demand for our pharmaceutical products, the impact of market perceptions of us and the safety and quality of our products, changes to FDA approval requirements, our ability to successfully conduct clinical trials, our reliance on third parties to conduct clinical trials and testing, impact of illegal distribution and sale by third parties of counterfeits or stolen products, the availability of raw materials and impact of interruptions in our supply chain, our policies regarding returns, rebates, allowances and chargebacks, the effect of current economic conditions on our industry, business, results of operations and financial condition, our ability to comply with legal and regulatory requirements governing the healthcare industry, the regulatory environment, our ability to protect our intellectual property, exposure to product liability claims, changes in tax regulations, uncertainties involved in the preparation of our financial statements, our ability to maintain an effective system of internal control over financial reporting, the effect of terrorist attacks on our business, expansion of social media platforms, the risks associated with dependence upon key personnel and the need for additional financing.

PART I—FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

SYNERGY PHARMACEUTICALS INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands, except share amounts)

	September 30, 2018	December 31, 2017
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 45,647	$ 136,986
Accounts receivable	9,222	6,491
Inventories	21,530	17,214
Prepaid expenses and other current assets	5,259	4,469
Total Current Assets	81,658	165,160
Property and equipment, net	1,069	1,134
Security deposits	312	312
Total Assets	$ 83,039	$ 166,606
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current Liabilities:		
Accounts payable	$ 11,549	$ 23,256
Accrued expenses	21,225	14,658
Interest payable on senior convertible notes	581	233
Deferred revenue	5,000	—
Senior convertible notes, net	17,834	—
Term Loan, net	101,739	—
Total Current Liabilities	157,928	38,147
Senior convertible notes, net	—	17,302
Term Loan, net	—	98,660
Derivative financial instruments, at estimated fair value-warrants	9,767	17,582
Deferred revenue, net of current portion	11,236	—
Other long-term liabilities	352	433
Total Liabilities	179,283	172,124
Commitments and contingencies		
Stockholders’ Deficit		
Preferred stock, authorized 20,000,000 shares and none outstanding, at September 30, 2018 and December 31, 2017	—	—
Common stock, par value of $.0001, 400,000,000 shares authorized at September 30, 2018 and December 31, 2017. Issued and outstanding 248,037,301 shares and 246,660,367 shares at September 30, 2018 and December 31, 2017, respectively.	25	25
Additional paid-in capital	811,399	801,787
Accumulated deficit	(907,668)	(807,330)
Total Stockholders’ Deficit	(96,244)	(5,518)
Total Liabilities and Stockholders’ Deficit	$ 83,039	$ 166,606

The accompanying notes are an integral part of these condensed consolidated financial statements.

SYNERGY PHARMACEUTICALS INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except share and per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Net sales	$ 11,105	$ 5,008	$ 31,945	$ 7,420
Cost of goods sold	3,922	1,722	11,511	5,001
Gross profit	7,183	3,286	20,434	2,419
Costs and expenses:				
Research and development	2,904	5,876	9,140	46,346
Selling, general and administrative	33,887	45,110	108,647	140,083
Total operating expenses	36,791	50,986	117,787	186,429
Loss from operations	(29,608)	(47,700)	(97,353)	(184,010)
Other Income (Expense)				
Interest expense, net	(3,369)	(1,226)	(9,697)	(2,361)
Debt conversion expense	—	—	—	(1,209)
State R&D tax credits	—	—	30	—
Change in fair value of derivative financial instruments-warrants	(433)	55	7,815	216
Total other expense	(3,802)	(1,171)	(1,852)	(3,354)
Loss before taxes	(33,410)	(48,871)	(99,205)	(187,364)
Tax expense	(1,133)	—	(1,133)	—
Net loss	$ (34,543)	$ (48,871)	$ (100,338)	$ (187,364)
Weighted Average Common Shares Outstanding				
Basic and Diluted	247,994,922	224,954,941	247,221,231	221,854,099
Net Loss per Common Share, Basic and Diluted				
Net Loss per Common Share, Basic and Diluted	$ (0.14)	$ (0.22)	$ (0.41)	$ (0.84)

The accompanying notes are an integral part of these condensed consolidated financial statements.

SYNERGY PHARMACEUTICALS INC.
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' DEFICIT
(Unaudited)
(In thousands, except share amounts)

	Common Shares	Common Stock, Par Value	Additional Paid in Capital	Accumulated Deficit	Total Stockholders' Deficit
Balance, December 31, 2017	246,660,367	$ 25	$ 801,787	$ (807,330)	$ (5,518)
Common stock issued in connection with exercise of stock options	1,376,934	—	434	—	434
Stock based compensation expense	—	—	9,178	—	9,178
Net loss for the period	—	—	—	(100,338)	(100,338)
Balance, September 30, 2018	248,037,301	$ 25	$ 811,399	$ (907,668)	$ (96,244)

The accompanying notes are an integral part of these condensed consolidated financial statements.

SYNERGY PHARMACEUTICALS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Nine Months Ended September 30, 2018	Nine Months Ended September 30, 2017
Cash Flows From Operating Activities:		
Net loss	$ (100,338)	$ (187,364)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	179	121
Amortization of deferred debt costs and debt discount	1,222	1,014
Accretion of back-end facility fee	548	21
Loss on disposal of property and equipment	—	44
Stock-based compensation expense	9,178	20,082
Interest expense — Payment-in-kind (PIK)	4,339	765
Change in fair value of derivative financial instruments—warrants	(7,815)	(216)
Debt conversion expense	—	1,209
Changes in operating assets and liabilities:		
Accounts receivable	(2,731)	(5,036)
Inventories	(4,316)	(7,405)
Deferred revenue, net	16,236	1,927
Security deposits	—	25
Accounts payable and accrued expenses	(5,140)	2,145
Prepaid expenses and other current assets	(790)	(7,671)
Accrued interest expense on senior convertible notes	348	287
Total Adjustments	11,258	7,312
Net Cash used in Operating Activities	(89,080)	(180,052)
Cash Flows From Investing Activities:		
Additions to property and equipment	(193)	(48)
Net Cash used in Investing Activities	(193)	(48)
Cash Flows From Financing Activities:		
Proceeds of sale of common stock, net of issuance costs	—	121,604
Proceeds from borrowings, net of issuance costs	—	95,140
Payment for deferred financing costs	(2,500)	(1,591)
Proceeds from exercise of stock options	434	347
Net Cash (used in) provided by Financing Activities	(2,066)	215,500
Net decrease in cash and cash equivalents	(91,339)	35,400
Cash and cash equivalents at beginning of period	136,986	82,387
Cash and cash equivalents at end of period	$ 45,647	$ 117,787
Supplementary disclosure of cash flow information:		
Cash paid for interest on senior convertible notes	$ 698	$ 698
Cash paid for interest on Term Loan	$ 3,238	$ —
Cash paid for taxes	$ 1,133	$ 20
Supplementary disclosure of non-cash investing and financing activities:		
Conversion of senior convertible notes to Synergy Common Stock	$ —	$ 4,912
Non-cash tenant improvement allowance	$ —	$ 587

The accompanying notes are an integral part of these condensed consolidated financial statements.

SYNERGY PHARMACEUTICALS INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Business Overview

Synergy Pharmaceuticals Inc. ("the Company" or "Synergy") is a biopharmaceutical company focused on the development and commercialization of novel gastrointestinal (GI) therapies. Synergy has pioneered discovery, research and development efforts around analogs of uroguanylin, a naturally occurring and endogenous human GI peptide, for the treatment of GI diseases and disorders. Synergy's proprietary uroguanylin based GI platform includes one commercial product, plecanatide, and one development stage compound, dolcanatide.

The Company's first and only commercial product, plecanatide, is available and being marketed in the United States (U.S.), under the trademark name TRULANCE®, for the treatment of adults with chronic idiopathic constipation (CIC) and irritable bowel syndrome with constipation (IBS-C). On February 27, 2018 Synergy entered into a definitive licensing, development and commercialization agreement ("Cipher Agreement") with Cipher Pharmaceuticals (Cipher) under which the Company granted Cipher the exclusive right to develop, market, distribute and sell TRULANCE in Canada. Under the terms of the Cipher Agreement, Synergy received an upfront payment of $5.0 million and is eligible for an additional milestone payment upon regulatory approval in Canada, as well as royalties from product sales in Canada. Cipher expects to file a New Drug Submission with Health Canada in the second half of 2018. On August 6, 2018, Synergy entered into a definitive licensing, development and commercialization agreement ("Luoxin Agreement") with Luoxin Pharmaceutical Group Co., Shangdong (Luoxin) under which the Company granted Luoxin the exclusive right to develop, market, distribute and sell TRULANCE in Mainland China, Hong Kong and Macau. Under the terms of the Luoxin agreement, Synergy received an upfront payment of $10.1 million (net of China withholding tax and VAT) and is eligible for additional regulatory and commercial milestone payments, as well as royalties from product sales. Synergy is continuing to evaluate other potential U.S. and ex-U.S. partnership opportunities for TRULANCE.

Dolcanatide is the Company's development stage compound that has demonstrated proof-of-concept in treating patients with opioid induced constipation (OIC) and ulcerative colitis. Synergy is considering OIC as a potential life-cycle growth opportunity for TRULANCE and is currently exploring potential business development opportunities to further advance dolcanatide development in ulcerative colitis. In April 2018, the Company initiated a partnership with the National Cancer Institute (NCI) on a NCI-funded clinical biomarker study designed to evaluate the potential for dolcanatide to prevent colorectal cancer.

Net cash used in operating activities was approximately $89.1 million for the nine months ended September 30, 2018. As of September 30, 2018, Synergy had approximately $45.6 million of cash and cash equivalents. During the nine months ended September 30, 2018, Synergy incurred losses from operations of approximately $97.4 million. As of September 30, 2018, Synergy had negative working capital of approximately $76.3 million.

Recent Developments

On September 1, 2017, Synergy entered into a senior secured term loan (the "Term Loan") of up to $300 million with CRG Servicing LLC, as administrative and collateral agent, and the lenders and guarantors party thereto. The Term Loan is available for working capital and general corporate purposes. The Company borrowed $100 million at the time of closing.

The Term Loan has a maturity date of June 30, 2025, unless prepaid earlier. The Term Loan bears interest at a rate equal to 9.5% per annum, with quarterly, interest-only payments until June 30, 2022, subject to extension through the maturity date upon the Company's satisfaction of certain conditions. At the Company's option, until June 30, 2019, a portion of the interest payments may be paid in kind, and thereby added to the principal. Following, the interest-only period, the Term Loan will amortize in equal quarterly installments unless entirely payable at maturity.

On November 13, 2017, Synergy entered into an underwriting agreement with Jefferies LLC, as representative of the several underwriters, to issue and sell 21,705,426 shares of common stock of the Company together with accompanying warrants ("Warrants") to purchase an aggregate of 21,705,426 shares of Common Stock in an underwritten offering pursuant to a Registration Statement on Form S-3ASR and a related prospectus and prospectus supplement, in each case filed with the Securities and Exchange Commission (the "Offering"). The offering price was $2.58 per share of Common Stock and accompanying Warrant. The net proceeds from the Offering were approximately $52.2 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company.

In February 2018, Synergy amended the Term Loan agreement. The amended Term Loan provides for future borrowings of $25 million, $25 million and $50 million on or before June 30, 2018, September 30, 2018 and December 31, 2018, respectively. Additionally, the total amount of the commitment was reduced from $300 million to $200 million (excluding PIK loans) and the Minimum Market Capitalization covenant of $300 million was revised to be 200% of the outstanding principal amount of the Term Loan (excluding PIK loans).

In June 2018, Synergy further amended the Term Loan agreement to extend the draw down date of the second borrowing from June 30, 2018 to prior to August 29, 2018. In August 2018, Synergy subsequently amended the Term Loan agreement to extend the draw down date of the second borrowing from August 29, 2018 to prior to October 31, 2018. On October 30, 2018, Synergy entered into Amendment and Waiver No. 3 to the Term Loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the Term Loan agreement from October 25, 2018 to November 6, 2018. On November 6, 2018, Synergy entered into Waiver No. 4 to the Term Loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the Term Loan agreement through November 12, 2018.

On October 25, 2018, the Company disclosed that based on the Company's current updated forecasts, it is projecting TRULANCE total net sales for 2018 to be between $42.0 million to $47.0 million, which will be below the minimum revenue covenant of $61.0 million set forth in its term loan agreement with CRG. Under the terms of the agreement, the Company will be required to repay principal and pay prepayment penalties in an amount equal to $38.0 million to $51.0 million if total net sales fall within the expected range noted above. Such principal repayment and prepayment penalties would be due no later than March 31, 2019.

Synergy did not draw down on the second borrowing available on October 31, 2018, and as a result there are no additional principal borrowings available under the Term Loan agreement.

2. Basis of Presentation, Accounting Policies and Going Concern

These unaudited condensed consolidated financial statements include Synergy and its wholly-owned subsidiary Synergy Advanced Pharmaceuticals, Inc. These unaudited condensed consolidated financial statements have been prepared following the rules and regulations of the United States Securities and Exchange Commission ("SEC") and accounting principles generally accepted in the United States ("U.S. GAAP") for interim reporting, which permit reduced disclosures for interim reporting. In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments necessary to present fairly Synergy's interim financial information. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited financial statements as of and for the year ended December 31, 2017 contained in the Company's Annual Report on Form 10-K filed with the SEC on March 1, 2018. All intercompany balances and transactions have been eliminated.

Synergy's consolidated financial statements as of December 31, 2017 and its unaudited condensed consolidated financial statements as of September 30, 2018 have been prepared under the assumption that the Company will continue as a going concern for the next twelve months. The Company has incurred recurring losses from operations and expects to continue to have losses in the future. In addition, the Company's debt agreement is subject to covenants that could restrict the availability of additional loans and accelerate the repayment of that debt if breached. These factors individually and collectively raise substantial doubt about the Company's ability to continue as a going concern. Synergy's independent registered public accounting firm has issued a report related to the Company's December 31, 2017 financial statements that includes an explanatory paragraph referring to such conditions and expressing substantial doubt in the Company's ability to continue as a going concern.

Synergy's ability to continue as a going concern is dependent upon its plans to generate significant revenue, attain further operating efficiencies, reduce expenditures, and if deemed necessary obtain additional equity or debt financing, which may not be available on acceptable terms or at all. To the extent that Synergy may need to raise additional funds by issuing equity securities, Synergy's stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that impact Synergy's ability to conduct business. If Synergy is unable to raise additional capital when required or on acceptable terms, Synergy may have to (i) significantly scale back its commercialization efforts; (ii) seek commercial partners for its products on terms that are less favorable than might otherwise be available; (iii) relinquish or otherwise dispose of rights, on unfavorable terms, to technologies, product candidates or products that Synergy would otherwise seek to develop or commercialize itself; or (iv) seek bankruptcy protection to protect stakeholder value in the event other options are not reasonably executable. On October 25, 2018, the Company announced that it is seeking to renegotiate the term loan agreement with CRG Servicing LLC ("CRG") and has forgone drawing down on any additional amounts pursuant to the term loan agreement. To date the Company has been unable to further amend the agreement with respect to the financial and revenue covenants. The Company is continuing discussions with CRG and has received a temporary waiver on the minimum market cap covenant through November 12, 2018. The Company is currently pursuing alternatives that better align with its business, but

there is no assurance that Synergy can secure CRG's consent or otherwise achieve a transaction to refinance or otherwise repay CRG on commercially reasonable terms, in which case we could default under the term loan agreement. If CRG does not grant a further waiver beyond November 12, 2018 the Company will likely be in default of the minimum market cap covenant.

Synergy's consolidated financial statements as of December 31, 2017 and its unaudited condensed consolidated financial statements as of and for the period ended September 30, 2018 do not include any adjustments that might result from the unfavorable outcome of this uncertainty.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP and the rules and regulations of the SEC requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Changes in estimates and assumptions are reflected in reported results in the period in which they become known. Actual results could differ from those estimates.

Reclassifications

Certain prior period amounts were reclassified to conform to the current period presentation and additional information is disclosed in the notes, if material.

Accounts Receivable

The Company makes judgments as to its ability to collect outstanding receivables and provides an allowance for receivables when collection becomes doubtful. Provisions are made based upon a specific review of all significant outstanding invoices and the overall quality and age of those invoices not specifically reviewed. The Company's receivables primarily relate to amounts due from 3rd party customers for the sale of TRULANCE. The Company believes that credit risks associated with these customers are not significant. To date, the Company has not had any write-offs of bad debt, and the Company did not have an allowance for doubtful accounts as of September 30, 2018. The adoption of the new revenue standard did not change the Company's historical accounting methods for our accounts receivable.

Inventories

Inventories consist of finished goods, work in process and raw materials and are stated at the lower of cost or net realizable value with cost determined under the first-in, first-out basis. Synergy capitalizes inventories manufactured in preparation for initiating sales of a product candidate when the related product candidate is considered to have a high likelihood of regulatory approval and the related costs are expected to be recoverable through sales of the inventories. In determining whether or not to capitalize such inventories, Synergy evaluates, among other factors, information regarding the product candidate's safety and efficacy, the status of regulatory submissions and communications with regulatory authorities and the outlook for commercial sales. In addition, Synergy evaluates risks associated with manufacturing the product candidate and the remaining shelf life of the inventories.

Costs associated with developmental products prior to satisfying the inventory capitalization criteria are charged to research and development expense as incurred. There is a risk inherent in these judgments and any changes in these judgments may have a material impact on Synergy's financial results in future periods.

Revenue recognition

Adoption

The Company adopted Accounting Standard Codification ("ASC") 606 *Revenue From Contracts With Customers* using the modified retrospective method as applied to customer contracts that were not completed as of January 1, 2018. As a result, financial information for reporting periods beginning after January 1, 2018 are reported under the new standard, while comparative financial information has not been adjusted and continues to be reported in accordance with the previous standard. There was no cumulative impact to adopting the new standard on the Company's Condensed Consolidated financial statements.

Product Sales

Revenue from sale of TRULANCE is recognized upon transfer of control of promised goods to customers (typically upon delivery, which is also when transfer of title occurs) in an amount that reflects the consideration to which the Company expects to be entitled to in exchange for those goods. The terms of a contract or historical business practice can give rise to variable consideration, including but not limited to: customer loyalty programs, trade discounts, fee for service agreements, sales returns and allowances, commercial and government rebates, and chargebacks. The transaction price will include estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. Our estimates of variable consideration are probability weighted to derive an estimate of expected value and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of our anticipated performance and all information (historical, current and forecasted) that is reasonably available to us.

Arrangements with multiple-performance obligations

In February 2018, the Company entered into the Cipher Agreement to out-license the sale of TRULANCE in Canada. In August 2018, the Company entered into the Luoxin Agreement to out-license the sale of TRULANCE in Mainland China, Hong Kong and Macau. These agreements require the Company to deliver (i) intellectual property rights or licenses and (ii) product supply. The underlying terms of the agreements provide for consideration to Synergy in the form of non-refundable up-front license payments, milestone payments, and royalty payments. As of September 30, 2018, the Company had not satisfied any performance obligations under these agreements.

In arrangements involving more than one performance obligation, each required performance obligation is evaluated to determine whether it qualifies as a distinct performance obligation based on whether (i) the customer can benefit from the good or service either on its own or together with other resources that are readily available, and (ii) the good or service is separately identifiable from other promises in the contract. The consideration under the arrangement is then allocated to each separate distinct performance obligation based on their respective relative stand-alone selling price. The estimated selling price of each deliverable reflects our best estimate of what the selling price would be if the deliverable was regularly sold by the Company on a stand-alone basis. For future royalties due under the contract the Company will utilize the sales and usage based royalty exception.

The consideration allocated to each distinct performance obligation is recognized as revenue when control is transferred for the related goods or services. Consideration associated with at-risk substantive performance milestones is recognized as revenue when it is probable that a significant reversal of the cumulative revenue recognized will not occur.

Disaggregation of Revenue

As of September 30, 2018, all revenue recognized by the Company is from TRULANCE product sales in the United States. For the nine months ended September 30, 2018, our three major customers accounted for an aggregate of 95% of our gross revenue.

Financing and payment

The Company's payment terms vary by the type of customer and the product or service offered. Payment is generally required in a term from 30 to 60 days from date of shipment or satisfaction of the performance obligation. In certain cases, the Company may require payment before the satisfaction of the performance obligation.

Practical expedients

The Company does not disclose the value of unsatisfied performance obligations for contracts with original expected lengths of one year or less.

Cost of Goods Sold

Cost of goods sold (“COGS”) includes (i) direct cost of manufacturing and packaging drug product, and (ii) technical operations overhead costs which are generally more fixed in nature, including salaries, benefits, consulting, stability testing and other services. Technical operations are responsible for planning, coordinating, and executing the Company’s inventory production plan and ensuring that product quality satisfies FDA requirements. Costs incurred by the technical operations organization are recorded as expense in the period in which they are incurred. Certain direct costs associated with pre-commercial inventory, other than packaging, were expensed prior to receiving FDA approval. (See *Inventories* in Footnote 2 "Basis of Presentation, Accounting Policies and Going Concern").

3. Recent Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02 “Leases (Topic 842)” (“ASU 2016-02”). The FASB issued ASU 2016-02 to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. Under ASU 2016-02, a lessee will recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-to-use asset representing its right to use the underlying asset for the lease term. The amendments of this ASU are effective for reporting periods beginning after December 15, 2018, with early adoption permitted. An entity will be required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The adoption of ASU 2016-02 is not expected to have a material impact on our condensed consolidated financial statements and disclosures except at the time of adoption. At time of adoption, the Company will recognize right of use assets and lease liabilities on the condensed consolidated balance sheet.

In July 2017, the FASB issued ASU No. 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception (“ASU 2017-11”). ASU 2017-11 was issued to address the complexity associated with applying generally accepted accounting principles (GAAP) for certain financial instruments with characteristics of liabilities and equity. The ASU, among other things, eliminates the need to consider the effects of down round features when analyzing convertible debt, warrants and other financing instruments. As a result, a freestanding equity-linked financial instrument (or embedded conversion option) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. The amendments are effective for fiscal years beginning after December 15, 2018, and should be applied retrospectively. Early adoption is permitted, including adoption in an interim period. The Company does not expect the adoption of this standard to have an impact on its condensed consolidated financial statements.

In June 2018, the FASB issued ASU No. 2018-07, which simplifies the accounting for nonemployee share-based payment transactions. The ASU will be effective for the Company for fiscal years beginning after December 15, 2018, and early adoption is permitted. The Company does not expect that the adoption of this ASU will have a significant impact on its condensed consolidated financial statements.

On August 28, 2018, the FASB issued ASU No. 2018-13, Fair Value Measurement (Topic 820); Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement ("ASU 2018-13"). The amendments in ASU 2018-13 apply to all entities that are required GAAP, to make disclosures about recurring or nonrecurring fair value measurements. ASU 2018-13 removes, modifies, and adds certain disclosure requirements in ASC 820, Fair Value Measurement. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of ASU 2018-13. An entity is permitted to early adopt any removed or modified disclosures upon issuance of ASU 2018-13 and delay adoption of the additional disclosures until their effective date. ASU 2018-13 is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019 (calendar 2020). The Company does not expect it will have a significant impact on its condensed consolidated financial statements.

4. Cash and cash equivalents

All highly liquid investments with maturities of three months or less at the date of purchase are classified as cash equivalents. As of September 30, 2018 and December 31, 2017, the amount of cash and cash equivalents was $45.6 million and $137.0 million, respectively and consists of checking accounts and short-term U.S. Treasury money market mutual funds. Checking accounts are held at U.S. commercial banks, and balances were in excess of the FDIC insurance limit.

5. Inventories

Inventories as of September 30, 2018 and December 31, 2017 consisted of the following:

($ in thousands)	September 30, 2018	December 31, 2017
Raw materials	$ 14,972	$ 5,754
Work-in-process	3,015	7,732
Finished goods	3,543	3,728
Inventories	$ 21,530	$ 17,214

6. Debt

Senior Convertible Notes, net

On November 3, 2014, Synergy closed a private offering of $200.0 million aggregate principal amount of 7.50% Convertible Senior Notes due 2019, (the "Notes"), including the full exercise of the over-allotment option granted to the initial purchasers to purchase an additional $25.0 million aggregate principal amount of the Notes, interest payable semiannually in arrears on May 1 and November 1 of each year, beginning on May 1, 2015. The net proceeds from the offering were $187.3 million after deducting the initial purchasers' discounts and offering expenses. The Notes will mature on November 1, 2019, unless earlier purchased or converted. The Notes are convertible, at any time, into shares of Synergy's common stock at an initial conversion rate of 321.5434 shares per $1,000 principal amount of notes, which is equivalent to the original conversion price of $3.11 per share.

Initial purchaser's discounts and offering expenses associated with the sale of the Notes of $12.7 million have been deferred and are being recognized as expense over the expected term of the Notes, calculated using the effective interest rate method. The remaining deferred debt costs have been presented as a reduction of the Notes in accordance with the newly adopted ASU No. 2015-03 "*Simplifying the Presentation of Debt Issuance Costs"*.

On February 28, 2017, Synergy received consents from certain holders of its Notes to enter into a Supplemental Indenture which eliminates certain restrictive covenants from the Indenture related to the Notes. The restrictive covenants eliminated from the Indenture are Limitation on Indebtedness, Future Financing Rights for Certain Investors and Licensing Limitations. On February 28, 2017, Synergy entered into the Supplemental Indenture with Wells Fargo, N.A., as trustee and paid an aggregate of approximately $1.6 million to such holders for the consent. These fees associated with the debt modification were accounted for under ASC No. 470-50 and amortized using the effective interest method over the remaining term of the debt.

In March 2017, Synergy exchanged approximately $4.9 million aggregate principal amount of the Notes for approximately 1.8 million shares of its common stock, with approximately 1.6 million shares representing the conversion price of $3.11 pursuant to the existing terms of the Notes. The Company recognized a debt conversion expense of approximately $1.2 million representing 0.2 million shares for the quarter ended March 31, 2017. As of September 30, 2018, approximately $18.6 million of the Notes remain outstanding.

The Company believes it is probable that it may not be in compliance with certain provisions of the Senior Convertible Notes in the near term which would accelerate maturity, as such the Senior Convertible Notes are classified as a current liability.

A summary of quarterly activity and balances associated with the Notes and related deferred debt costs is presented below:

($ in thousands)	Notes Balance	Deferred Debt Costs	Notes, net of Deferred Debt Costs
Balance, December 31, 2017	$ 18,603	$ 1,301	$ 17,302
Less: amortization for the three months ended March 31, 2018		(178)	178
Balance, March 31, 2018	18,603	1,123	17,480
Less: amortization for the three months ended June 30, 2018		(177)	177
Balance, June 30, 2018	18,603	946	17,657
Less: amortization for the three months ended September 30, 2018		(177)	177
Balance, September 30, 2018	$ 18,603	$ 769	$ 17,834

Term Loan, net

On September 1, 2017, Synergy Pharmaceuticals Inc. entered into a senior secured term loan of up to $300 million with CRG Servicing LLC, as administrative and collateral agent, and the lenders and guarantors party thereto (the "Term Loan"). The Term Loan is available for working capital and general corporate purposes. The Company borrowed $100 million at time of closing. In February 2018, the Company amended the Term Loan agreement. The amended Term Loan provides for future borrowings of $25 million, $25 million and $50 million on or before June 30, 2018, September 30, 2018 and December 31, 2018, respectively. Additionally, the total amount of the commitment was reduced from $300 million to $200 million (excluding PIK loans) and the Minimum Market Capitalization covenant of $300 million was revised to be 200% of the outstanding principal amount of the Term Loan (excluding PIK loans).

The Term Loan has a maturity date of June 30, 2025, unless earlier prepaid. The Term Loan bears interest at a rate equal to 9.5% per annum, with quarterly, interest-only payments until June 30, 2022, subject to extension through the maturity date upon the Company's satisfaction of certain conditions. At the Company's option, until June 30, 2019, a portion of the interest payments may be paid in kind, and thereby added to the principal. Following, the interest-only period, the Term Loan will amortize in equal quarterly installments unless entirely payable at maturity.

The obligations under the Term Loan are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected security interest in (i) all tangible and intangible assets of the Company and the Subsidiary Guarantors, except for certain customary excluded property, and (ii) all of the capital stock owned by the Company and Subsidiary Guarantors (limited, in the case of the stock of certain non-U.S. subsidiaries of the Company and certain U.S. subsidiaries substantially all of whose assets consist of equity interests in non-U.S. subsidiaries, to 65% of the capital stock of such subsidiaries, subject to certain exception). The obligations under the Term Loan are guaranteed by Synergy Advanced Pharmaceuticals, Inc. and each of the Company's future direct and indirect subsidiaries (other than certain subsidiaries whose guarantee would result in material adverse tax consequences, subject to certain exceptions).

The Term Loan contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations. Further, the Term Loan contains customary negative covenants limiting the ability of the Company and its subsidiaries, among other things, to incur future debt, grant liens, make investments, make acquisitions, make certain restricted payments and sell assets, subject to certain exceptions. In addition, the Term Loan requires the Company to comply with a minimum market capitalization covenant, maintain its status as a national exchange listed company, a daily minimum liquidity covenant and an annual revenue requirement based on the sales of TRULANCE.

The Term Loan may be prepaid by the Company at any time, subject to a prepayment premium of up to 32.5% of the principal amount, depending on the date of prepayment. Upon the occurrence of certain events relating to asset sales above a specified threshold or in the event of a change of control transaction, the Company may also be required to prepay all or a part of the outstanding principal and interest under the Term Loan in addition to the prepayment premium described above on the principal amount prepaid. Upon payment of the Term Loan at maturity or prepayment on any earlier date, a back-end facility fee will apply to the amounts paid or prepaid.

In June 2018, Synergy further amended the Term Loan agreement to extend the draw down date of the second borrowing from June 30, 2018 to prior to August 29, 2018. In August 2018, Synergy subsequently amended the Term Loan agreement to extend the draw down date of the second borrowing from August 29, 2018 to prior to October 31, 2018. On October 30, 2018, Synergy

entered into Amendment and Waiver No. 3 to the Term Loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the Term Loan agreement from October 25, 2018 to November 6, 2018. On November 6, 2018, Synergy entered into Waiver No. 4 to the Term Loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the Term Loan agreement through November 12, 2018. If CRG does not grant a further waiver beyond November 12, 2018 the Company will likely be in default of Section 10.01.

Synergy did not draw down on the second borrowing available prior to October 31, 2018, and as a result there are no additional principal borrowings available under the Term Loan agreement.

As of September 30, 2018, the Company was in compliance with all applicable covenants, however the Company believes it is probable that it may not be in compliance with certain covenants in the near term, as such the Term Loan has been classified as a current liability.

As of September 30, 2018, principal and PIK payments under the Term Loan were as follows, provided no events of default have occurred:

Period Ending December 31,	Principal and PIK Loan Repayments ($ in thousands)
2018	$ —
2019	—
2020	—
2021	—
2022 and thereafter	100,000
	100,000
Add: Accretion of back-end facility fee	654
Add: PIK interest	7,551
	108,205
Less: Debt financing costs, net of amortization	(6,466)
Balance at September 30, 2018	$ 101,739

7. Accounting for Share-based Payments

Stock Options

ASC Topic 718 *"Compensation—Stock Compensation"* requires companies to measure the cost of employee services received in exchange for the award of equity instruments based on the estimated fair value of the award at the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award. Synergy accounts for shares of common stock, stock options and warrants issued to employees based on the fair value of the stock, stock option or warrant, if that value is more reliably measurable than the fair value of the consideration or services received.

The Company accounts for stock options issued and vesting to non-employees in accordance with ASC Topic 505-50 *"Equity -Based Payment to Non-Employees"* and accordingly the value of the stock compensation to non-employees is based upon the measurement date as determined at either; a) the date at which a performance commitment is reached, or b) at the date at which the necessary performance to earn the equity instruments is complete. Accordingly, the fair value of these options is being "marked to market" quarterly until the measurement date is determined.

Synergy adopted the 2008 Equity Compensation Incentive Plan (the "2008 Plan") during the quarter ended September 30, 2008. Stock options granted under the 2008 Plan typically vest after three years of continuous service from the grant date and have a contractual term of ten years. On June 8, 2015, Synergy amended its 2008 Plan and increased the number of shares of its common stock reserved for issuance under the Plan from 15,000,000 to 30,000,000.

Synergy adopted the 2017 Equity Incentive Plan (the "2017 Plan") during the quarter ended June 30, 2017. The number of shares of its common stock reserved for issuance under the 2017 Plan is 9,000,000.

In June 2017, the Company modified 2,159,500 stock options, which were previously granted as change of control options, to become immediately vested. The Company recorded a charge of $6.8 million during the three months ended June 30, 2017.

Stock-based compensation has been recognized in operating results as follows:

($ in thousands)	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017	Nine Months Ended September 30, 2018	Nine Months Ended September 30, 2017
Included in research and development	$ 459	$ 477	$ 1,634	$ 2,270
Included in selling, general and administrative	2,525	3,411	7,737	17,812
Total stock-based compensation expense[1]	$ 2,984	$ 3,888	$ 9,371	$ 20,082

(1) Stock based compensation expense for the nine months ended September 30, 2018 includes $193,000 recorded as a liability.

The unrecognized compensation cost related to non-vested stock options outstanding at September 30, 2018, net of expected forfeitures, was approximately $12.4 million to be recognized over a weighted-average remaining vesting period of approximately 0.97 years.

The estimated fair value of stock option awards was determined on the date of grant using the Black-Scholes option valuation model with the following weighted-average assumptions during the periods indicated.

	Nine Months Ended September 30, 2018	Nine Months Ended September 30, 2017
Risk-free interest rate	2.33-2.85%	1.85%-2.24%
Dividend yield	—	—
Expected volatility	63%-68%	62%-73%
Expected term	6 years	6 years

A summary of stock option activity and of changes in stock options outstanding under the Plans is presented below:

	Number of Options	Exercise Price Per Share	Weighted Average Exercise Price Per Share	Intrinsic Value (in thousands)	Weighted Average Remaining Contractual Term
Balance outstanding, December 31, 2017	29,868,291	$0.44-9.12	$ 3.83	$ 5,346	6.09 years
Granted	7,917,700	$1.56-2.40	$ 2.12	$ —	
Exercised [1]	(1,805,081)	$0.50-1.20	$ 0.56	$ 2,153	
Forfeited	(2,680,222)	$0.50-7.91	$ 2.78	$ —	
Balance outstanding, September 30, 2018	33,300,688	$0.44-9.12	$ 3.61	$ 714	6.60 years
Exercisable, at September 30, 2018	22,056,762	$0.44-9.12	$ 4.00	$ 692	5.41 years

(1) Options exercised includes 428,147 shares withheld for payment of exercise price and related taxes.

8. Commitments and Contingencies

In the normal course of business, Synergy is subject to loss contingencies, such as legal proceedings and claims arising out of its business, that cover a wide range of matters, including, among others, government investigations, shareholder lawsuits, product and environmental liability, and tax matters. In accordance with FASB ASC Topic 450, Accounting for Contingencies ("ASC Topic 450"), Synergy records accruals for such loss contingencies when it is probable that a liability will be incurred and the amount of loss can be reasonably estimated. Synergy, in accordance with this guidance, does not recognize gain contingencies until realized. We describe our legal proceedings and other matters that are significant or that we believe could become significant in this footnote and in Note 7, Commitments and contingencies, to the consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2017.

Certain recent developments concerning our legal proceedings are discussed below:

Litigation

On February 8, 2018, a federal securities action, captioned *David Lee v. Synergy Pharmaceuticals Inc. et al*., was filed in the U.S. District Court for the Eastern District of New York. Two similar, related lawsuits—*Eileen Countryman v. Synergy Pharmaceuticals Inc. et al.* and *Wendell Rose v. Synergy Pharmaceuticals Inc. et al*—were subsequently filed in the same court. On June 11, 2018, plaintiffs voluntarily dismissed the *Countryman* complaint. On June 22, 2018, the court consolidated the remaining *Lee* and *Rose* actions into a single action under the caption *In re Synergy Pharmaceuticals, Inc. Securities Litigation.* On August 31, 2018, plaintiffs in the consolidated action filed a consolidated amended complaint that seeks to recover on behalf of a putative class of purchasers of Synergy's common stock between November 10, 2016 and November 13, 2017. The consolidated amended complaint alleges that the Company and certain of its officers and directors made false and misleading statements, including in connection with the Company's Term Loan from CRG Servicing, LLC and in connection with Trulance's side-effect profile. The consolidated amended complaint asserts claims under the federal securities laws and seeks to recover unspecified damages, legal fees, interest, and costs.

On April 20, 2018, a shareholder derivative action captioned *Solak v. Jacob et al.* was filed in the Supreme Court of the State of New York for New York County. Three substantially identical shareholder derivative actions, captioned *Ecker & Klein v. Jacob et al.*, *Harding v. Jacob et al.*, and *Buker v. Jacob et al.*, were subsequently filed in the same court. On June 19, 2018, the court consolidated these four actions into a single action captioned *Solak v. Jacob et al.* On September 28, 2018, plaintiffs in the consolidated action filed a consolidated amended complaint that names Synergy's directors and certain of its officers as defendants, as well as the Company itself as nominal defendant, and seeks to recover on behalf of the Company. It asserts claims for breach of fiduciary duty, unjust enrichment and gross mismanagement, alleging that the individual defendants caused the Company to issue allegedly false and misleading statements in connection with the Term Loan and Trulance's side-effect profile. The consolidated amended complaint seeks to recover unspecified damages on behalf of the Company, as well as declaratory relief, equitable remedies, costs, and expenses.

On June 8, 2018, a shareholder derivative action captioned *Davydov v. Hamilton et al.* was filed in the U.S. District Court for the Eastern District of New York. The complaint names Synergy's directors and certain of its officers as defendants, as well as the Company itself as nominal defendant, and seeks to recover on behalf of the Company. The complaint alleges that the individual defendants violated the federal securities laws and breached their fiduciary duties to the Company by causing it to issue allegedly false and misleading statements in connection with the Term Loan, Trulance's side-effect profile, and the responsibilities of the Company's directors. The complaint also asserts claims for waste of corporate assets and unjust enrichment based on the same allegations. The complaint seeks to recover unspecified damages on behalf of the Company, as well as equitable remedies, costs, and expenses.

In the Company's opinion, a loss in connection with the matters described above is neither probable nor estimable.

9. Stockholders' Deficit

On January 31, 2017, Synergy entered into an underwriting agreement with Cantor Fitzgerald & Co., as representative of several underwriters, to issue and sell 20,325,204 shares of common stock of the Company in an underwritten public offering pursuant to a Registration Statement on Form S-3 (File No. 333-205484) and a related prospectus and prospectus supplement, in each case filed with the Securities and Exchange Commission (the "Offering"). The public offering price was $6.15 per share of Common Stock. The Offering closed on February 6, 2017, yielding net proceeds of approximately $121.6 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company.

On June 27, 2017, Synergy increased the number of shares of common stock authorized for issuance from 350,000,000 to 400,000,000.

On November 13, 2017, Synergy entered into an underwriting agreement with Jefferies LLC, as representative of the several underwriters, to issue and sell 21,705,426 shares of common stock of the Company together with accompanying warrants ("Warrants") to purchase an aggregate of 21,705,426 shares of Common Stock in an underwritten offering pursuant to a Registration Statement on Form S-3ASR and a related prospectus and prospectus supplement, in each case filed with the Securities and Exchange Commission (the "Offering"). The offering price was $2.58 per share of Common Stock and accompanying Warrant. Net proceeds from the Offering were approximately $52.2 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company.

10. Research and Development Expense

Research and development costs include expenditures in connection with the Company's research and development laboratory, salaries and staff costs, application and filing for regulatory approval of proposed products, regulatory and scientific consulting fees, as well as contract research, patient costs, drug formulation and tableting, data collection, monitoring, and clinical trial insurance.

In accordance with FASB ASC Topic 730-10-55, *Research and Development*, Synergy recorded $0.1 million in prepaid research and development costs as of both September 30, 2018 and December 31, 2017, for nonrefundable advances for production of drug substance and analytical testing services for its drug candidates. In accordance with this guidance, Synergy expenses these costs when drug compound is delivered and services are performed.

The Company recorded inventory, manufactured for sale of a product candidate, when the product candidate was considered to have a high likelihood of regulatory approval and the related costs are expected to be recoverable through sales. In determining whether or not to record such inventories, the Company evaluated, among other factors, information regarding the product candidate's safety and efficacy, the status of regulatory submissions and communications with regulatory authorities and the outlook for commercial sales. Prior to October 1, 2016, all costs associated with batches of inventory, manufactured for sale, were charged to research and development as incurred. Beginning in the fourth quarter of 2016, Synergy began capitalizing inventory costs for TRULANCE in preparation for its planned launch in the U.S. The Company will record inventory, manufactured for sale of a product candidate, when the product candidate is considered to have a high likelihood of regulatory approval and the related costs are expected to be recoverable through sales. In determining whether or not to record such inventories, the Company evaluates, among other factors, information regarding the product candidate's safety and efficacy, the status of regulatory submissions and communications with regulatory authorities and the outlook for commercial sales.

11. Derivative Financial Instruments

Synergy Derivative Financial Instruments

Based upon the Company's analysis of the criteria contained in ASC Topic 815-40, Synergy has determined that certain warrants issued in connection with sale of its common stock must be classified as derivative instruments. In accordance with ASC Topic 815-40, these warrants are also being re-measured at each balance sheet date based on estimated fair value, and any resultant changes in fair value are being recorded in the Company's condensed consolidated statement of operations. The Company estimates the fair value of certain warrants using the *Black-Scholes* option pricing model in order to determine the associated derivative instrument liability and change in fair value.

Synergy's warrants issued on November 13, 2017 (See Footnote 9 "Stockholders' Deficit") were recorded as derivative liabilities and the fair value determined using the Monte Carlo simulation. The assumptions to determine fair value at issuance were $2.44 fair value of stock, warrant term of 2.0 years, 1.62% risk free rate, 66% volatility, and 0% dividend yield.

The assumptions used to determine the fair value of the warrants at each period end was:

	September 30, 2018	September 30, 2017
Fair value of Synergy common stock	$ 1.70	$ 2.90
Expected warrant term	1.1 years	0.4 years
Risk-free interest rate	2.13 %	1.13 %
Expected volatility	65 %	40 %
Dividend yield	—	—

Fair value of stock is the closing market price of the Company's common stock at the end of each reporting period when the derivative instruments are marked to market. Expected volatility is a management estimate of future volatility, over the expected warrant term, based on historical volatility of Synergy's common stock. The warrants have a transferability provision and based on guidance provided in SAB 107 *Share-Based Payment* for instruments issued with such a provision, Synergy used the full contractual term as the expected term of the warrants. The risk free rate is based on the U.S. Treasury security rates for maturities consistent with the expected remaining term of the warrants at the date quarterly revaluation.

The following table sets forth the components of changes in the Synergy's outstanding warrants which were deemed derivative financial instruments and the associated liability balance for the periods indicated:

Date	Description	Warrants	Derivative Instrument Liability (in thousands)
12/31/2017	Balance of derivative financial instruments liability	21,915,426	$ 17,582
3/31/2018	Change in fair value of warrants during the three months ended March 31, 2018		(5,644)
3/31/2018	Expiration of warrants	(210,000)	—
6/30/2018	Change in fair value of warrants during the three months ended June 30, 2018		(2,604)
9/30/2018	Change in fair value of warrants during the three months ended September 30, 2018		433
09/30/2018	Balance of derivative financial instruments liability	21,705,426	$ 9,767

12. Fair Value Measurements

Financial instruments consist of cash and cash equivalents, accounts receivable, security deposits, accounts payable and derivative instruments. These financial instruments are stated at their respective historical carrying amounts, which approximate fair value due to their short term nature.

The value of Senior Convertible Notes and the Term Loan is stated at carrying value at September 30, 2018. The Company determined that it is probable that it may not be in compliance with certain debt covenants in the near term, and as a result classified debt as a current liability. Due to the short-term nature of the expected term of the Senior Convertible Notes and the Term Loan, the carrying value approximates fair value.

The following table presents the Company's liabilities that are measured and recognized at fair value on a recurring basis classified under the appropriate level of the fair value hierarchy as of December 31, 2017 and September 30, 2018:

($ in thousands)

Description	Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of December 31, 2017	Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of September 30, 2018
Derivative liabilities related to Warrants	$ —	$ —	$ 17,582	$ 17,582	$ —	$ —	$ 9,767	$ 9,767

The following table sets forth a summary of changes in the fair value of the Company's Level 3 liabilities for the nine months ended September 30, 2018:

($ in thousands)

Description	Balance as of December 31, 2017	(Gain) or loss recognized in earnings from Change in Fair Value	Expiration of warrants	Balance as of September 30, 2018
Derivative liabilities related to Warrants	$ 17,582	$ (7,815)	$ —	$ 9,767

The unrealized gains or losses on the derivative liabilities are recorded as a change in fair value of derivative liabilities in the Company's condensed consolidated statement of operations. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. At each reporting period, Synergy reviews the assets and liabilities that are subject to ASC Topic 815-40. At each reporting period, all assets and liabilities for which the fair value measurement is based on significant unobservable inputs or instruments which trade infrequently and therefore have little or no price transparency are classified as Level 3.

13. Loss per Share

Basic and diluted net loss per share is presented in conformity with ASC Topic 260, Earnings per Share, ("ASC Topic 260") for periods presented. In accordance with ASC Topic 260, basic and diluted net loss per common share was determined by dividing net loss applicable to common stockholders by the weighted-average common shares outstanding during the period. Diluted weighted-average shares are the same as basic weighted-average shares because shares issuable pursuant to the exercise of stock options and warrants would be antidilutive.

The following table sets forth potential common shares issuable upon the exercise of outstanding options, the exercise of warrants, and the conversion of the Senior Convertible Notes, all of which have been excluded from the computation of diluted weighted average shares outstanding as they would be antidilutive, including the impact on dilutive net loss per share of in-the-money warrants as per ASC 260-10-45-35 through ASC 260-10-45-37:

	Nine Months Ended September 30, 2018	Nine Months Ended September 30, 2017
Stock Options	33,300,688	28,810,791
Warrants	21,705,426	869,688
Senior Convertible Notes	5,981,672	5,981,672
Total shares issuable upon exercise or conversion	60,987,786	35,662,151

14. Subsequent Events

On October 25, 2018, the Company disclosed that based on the Company's current updated forecasts, it is projecting TRULANCE total net sales for 2018 to be between $42.0 million to $47.0 million, which would be below the minimum revenue covenant of $61.0 million set forth in its term loan agreement with CRG. Under the terms of the agreement, the Company will be required to repay principal and pay prepayment penalties in an amount equal to $38.0 million to $51.0 million if total net sales fall within the expected range noted above. Such principal repayment and prepayment penalties would be due

no later than March 31, 2019. The Company did not draw down on the second borrowing available prior to October 31, 2018, and as a result there are no additional principal borrowings available under the Term Loan agreement.

On October 30, 2018, the Company entered into Amendment and Waiver No. 3 to the term loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the term loan agreement from October 25, 2018 to November 6, 2018.

On November 6, 2018, the Company entered into Waiver No. 4 to the term loan agreement pursuant to which CRG further waived compliance with Section 10.01 and related provisions of the term loan agreement through November 12, 2018. If CRG does not grant a further waiver beyond November 12, 2018 the Company will likely be in default of Section 10.01.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our condensed consolidated financial statements and other financial information appearing elsewhere in this quarterly report. In addition to historical information, the following discussion and other parts of this quarterly report contain forward-looking statements. You can identify these statements by forward-looking words such as "plan," "may," "will," "expect," "intend," "anticipate," "believe," "estimate" and "continue" or similar words. Forward-looking statements include information concerning possible or assumed future business success or financial results. You should read statements that contain these words carefully because they discuss future expectations and plans, which contain projections of future results of operations or financial condition or state other forward-looking information. We believe that it is important to communicate future expectations to investors. However, there may be events in the future that we are not able to accurately predict or control. Accordingly, we do not undertake any obligation to update any forward-looking statements for any reason, even if new information becomes available or other events occur in the future and thus you should not unduly rely on these statements.

The forward-looking statements included herein are based on current expectations that involve a number of risks and uncertainties set forth under "Risk Factors" in our Annual Report on Form 10-K as of and for the year ended December 31, 2017 and other periodic reports filed with the United States Securities and Exchange Commission ("SEC"). Accordingly, to the extent that this Report contains forward-looking statements regarding the financial condition, operating results, business prospects or any other aspect of the Company, please be advised that the Company's actual financial condition, operating results and business performance may differ materially from that projected or estimated by the Company in forward-looking statements and thus you should not unduly rely on these statements.

Business Overview

We are a biopharmaceutical company focused on the development and commercialization of novel gastrointestinal (GI) therapies. We have pioneered discovery, research and development efforts around analogs of uroguanylin, a naturally occurring and endogenous human GI peptide, for the treatment of GI diseases and disorders. Our proprietary uroguanylin based GI platform includes one commercial product, plecanatide, and one development stage compound, dolcanatide.

Our first and only commercial product, plecanatide, is available and being marketed in the United States (U.S.), under the trademark name TRULANCE®, for the treatment of adults with chronic idiopathic constipation (CIC) and irritable bowel syndrome with constipation (IBS-C). On February 27, 2018 we entered into a definitive licensing, development and commercialization agreement ("Cipher Agreement") with Cipher Pharmaceuticals (Cipher) under which the Company granted Cipher the exclusive right to develop, market, distribute and sell TRULANCE in Canada. Under the terms of the Cipher Agreement, we received an upfront payment of $5.0 million and is eligible for an additional milestone payment upon regulatory approval in Canada, as well as royalties from product sales in Canada. Cipher expects to file a New Drug Submission with Health Canada in the second half of 2018. On August 6, 2018, we entered into a definitive licensing, development and commercialization agreement ("Luoxin Agreement") with Luoxin Pharmaceutical Group Co., Shangdong (Luoxin) under which we granted Luoxin the exclusive right to develop, market, distribute and sell TRULANCE in Mainland China, Hong Kong and Macau. Under the terms of the Luoxin agreement, we received an upfront payment of $10.1 million (net of China withholding tax and VAT) and is eligible for additional regulatory and commercial milestone payments, as well as royalties from product sales. We are continuing to evaluate other potential U.S. and ex-U.S. partnership opportunities for TRULANCE.

Dolcanatide is our development stage compound that has demonstrated proof-of-concept in treating patients with opioid induced constipation (OIC) and ulcerative colitis. We are considering OIC as a potential life-cycle growth opportunity for TRULANCE and are currently exploring potential business development opportunities to further advance dolcanatide development in ulcerative colitis. In April 2018, we initiated a partnership with the National Cancer Institute (NCI) on a NCI-funded clinical biomarker study designed to evaluate the potential for dolcanatide to prevent colorectal cancer.

TRULANCE (plecanatide)

With the exception of a single amino acid substitution for greater binding affinity, TRULANCE is structurally identical to human uroguanylin and is the only treatment thought to replicate the pH-sensitive activity of uroguanylin. Uroguanylin activates GC-C receptors in a pH-sensitive manner primarily in the small intestine, stimulating fluid secretion and maintaining stool consistency necessary for regular bowel function.

In January 2017, the FDA approved TRULANCE 3 mg tablets for the once-daily treatment of adults with CIC. We began commercializing TRULANCE in the U.S. in March 2017. In January 2018, the FDA approved TRULANCE for the treatment of adults with IBS-C. The efficacy and safety of TRULANCE for the treatment of CIC and IBS-C was established in four 12-week, double-blind, placebo-controlled, randomized, multicenter clinical studies involving over 3,100 patients. TRULANCE demonstrated improvement in the abdominal pain, constipation, stool consistency and straining with bowel movements associated with IBS-C, as well as in the constipation, stool consistency and straining with bowel movements associated with CIC. These patient-reported symptoms returned within one week following discontinuation of TRULANCE. The most common adverse event in both CIC and IBS-C studies was diarrhea (≤5.0% vs. 1.0% placebo). TRULANCE is the only prescription medication for adults with CIC and IBS-C that can be taken once-daily, with or without food, at any time of the day. TRULANCE is packaged in a unique, 30-day calendar blister pack.

Ongoing Post Marketing Commitments

Under the Pediatric Research Equity Act (PREA) (21 U.S.C. 355c), clinical studies are underway assessing the efficacy and safety of TRULANCE in pediatric patients with CIC and with IBS-C. In addition, development and validation of an anti-drug antibody assay is underway to assess patient clinical trial samples for the potential presence of anti-plecanatide antibodies. As agreed with the FDA following Trulance approval in the CIC indication, we continue with the execution of a milk-only lactation study and the assessment of GC-C receptor density in infants and children (age 0-6 years).

CIC and IBS-C

CIC and IBS-C are chronic, functional GI disorders that afflict millions of people worldwide. An estimated 33 million adults suffer from CIC and 12 million adults suffer from IBS-C in the U.S. alone.

People with CIC have persistent symptoms of difficult-to-pass and infrequent bowel movements. In addition to physical symptoms including abdominal bloating and discomfort, CIC can adversely affect an individual's quality of life, including increasing stress levels and anxiety. Many patients attempt to manage CIC symptoms with improved diet, fiber, and over-the-counter laxatives; however, these options can be ineffective or may not provide long-term relief. For those patients with persistent symptoms, prescription therapy is recommended. Many patients taking prescription medications fail to respond to therapy, or suffer from treatment-related adverse events, such as nausea and diarrhea.

Irritable bowel syndrome (IBS) is characterized by recurrent abdominal pain associated with 2 or more of the following criteria: related to defecation, associated with a change in the frequency of stool, or associated with a change in the form (appearance) of the stool. IBS can be subtyped by the predominant stool form as measured by the Bristol Stool Form Scale (BSFS): constipation (IBS-C), diarrhea (IBS-D), or mixed (IBS-M). Those within the IBS-C subtype experience Bristol types 1 or 2 (hard or lumpy) stools more than 25 percent of the time they have an abnormal bowel movement, and Bristol types 6 or 7 (loose or watery) stools less than 25 percent of the time they have an abnormal bowel movement. Some of the IBS treatment approaches recognized by the American College of Gastroenterology (ACG), including specialized diets, fiber, and psychological interventions, may not always effectively address abdominal pain and discomfort experienced by these patients. While there are prescription drug options, not all patients find complete relief, and many struggle with adverse events.

Dolcanatide (SP-333)

Dolcanatide, our second product candidate, is being evaluated for inflammatory bowel disease (IBD). Dolcanatide is designed to be an analog of uroguanylin with enhanced resistance to standard digestive breakdown by proteases in the intestine. We have demonstrated the potential anti-inflammatory role of uroguanylin and uroguanylin analogs in a number of preclinical colitis models. In these earlier animal studies, oral treatment with dolcanatide was shown to ameliorate DSS- and TNBS-induced acute colitis in murine models and ameliorate spontaneous colitis in T-cell receptor alpha knockout mice.

In January 2016, we announced positive proof-of-concept with dolcanatide in a phase 1b trial evaluating 28 patients with mild-to-moderate ulcerative colitis. We are exploring business development opportunities to further advance dolcanatide development in ulcerative colitis. In April 2018, we entered into a partnership with the National Cancer Institute (NCI) to initiate a NCI-funded and managed clinical biomarker study to evaluate dolcanatide's potential to prevent colorectal cancer. The study will assess the colorectal bioactivity of dolcanatide in healthy volunteers and will inform the feasibility and design of a larger study to evaluate the potential for dolcanatide to prevent colorectal cancer.

Third Quarter 2018 and Recent Developments

TRULANCE® (plecanatide)

- TRULANCE® (plecanatide) 63,085 TRULANCE 30-count packs were dispensed in the third quarter of 2018, a 104.7% increase versus 30,825 in the prior year quarter, per IQVIA.

- 23,560 TRULANCE new prescriptions were filled in the third quarter of 2018, a 46.4% increase versus 16,089 in the prior year quarter, per IQVIA.
- Since the launch on March 20, 2017, 250,684 TRULANCE 30-count packs have been dispensed and normalized prescription volume has increased 38.4% on average quarter-over-quarter, per IQVIA.

Collaborations & Partnerships

- In August 2018, we entered into a license agreement with Luoxin Pharmaceutical Group Co., Ltd., Shandong (Luoxin), providing Luoxin exclusive rights to develop and commercialize TRULANCE for the treatment of adults with chronic idiopathic constipation (CIC) and irritable bowel syndrome with constipation (IBS-C) in mainland China, Hong Kong and Macau. Under the terms of the agreement, we received an upfront payment of $10.1 million (net of China withholding tax and VAT). We are also eligible, in the event that certain regulatory and commercial milestones are met, to receive additional payments of up to $56 million in aggregate. In addition, we are eligible to receive tiered royalty payments on aggregate net sales. Pursuant to the license agreement, Luoxin will lead clinical development in China and be responsible for all activities and expenses relating to clinical development, regulatory approval, and commercialization in China. In addition, pursuant to the license agreement, we intend to enter into a supply agreement under which we will supply TRULANCE to Luoxin.
- Our Canadian partner, Cipher Pharmaceuticals, remains on-track to file a New Drug Submission for TRULANCE in IBS-C with Health Canada in the second half of 2018. The regulatory review period is approximately one-year from the submission date. Under the terms of the licensing agreement, we are eligible for a milestone payment upon regulatory approval in Canada, as well as royalties from product sales in Canada.
- In August 2018, the National Cancer Institute (NCI) initiated an NCI-funded and managed clinical biomarker study to evaluate the potential of dolcanatide, our second uroguanylin analog, to prevent colorectal cancer. The study is assessing the colorectal bioactivity of dolcanatide in healthy volunteers and will inform the feasibility and design of a potential larger study. This is the first clinical biomarker study evaluating the potential benefit of using a uroguanylin analog in colorectal cancer prevention.

Executive Leadership Updates

- In September 2018, we announced the departure of our Chief Strategy Officer, Marino Garcia. At this time, we do not see a need to fill this position.
- In October 2018, we announced that Melvin K. Spigelman, M.D., who has served as an Independent Director of Synergy since August 2008, assumed the role of Chairman of the Board. Synergy's outgoing Executive Chairman, Gary S. Jacob, Ph.D., left the Company to pursue other opportunities.

2018 Outlook

- On October 25, 2018, Synergy announced that it is seeking to renegotiate its term loan agreement with CRG Servicing LLC ("CRG") and has forgone drawing down on any additional amounts pursuant to its term loan agreement. To-date the Company has been unable to further amend the agreement with respect to the financial, revenue and minimum liquidity covenants. Synergy is continuing discussions with CRG and has twice received temporary waivers on the minimum market capitalization covenant, which is set to expire on November 12, 2018 absent further extension. The Company is currently pursuing alternatives that better align with its business, but there is no assurance that the Company can secure CRG's consent or otherwise achieve a transaction to refinance or otherwise repay CRG on commercially reasonable terms, in which case the Company could default under the term loan agreement and may have to pursue or otherwise accelerate strategic alternatives, including the possibility of seeking bankruptcy protection to protect stakeholder value in the event other options are not reasonably executable. Further updates on alternatives will be provided when available.
- As previously announced, TRULANCE uptake in 2018 has been slower than anticipated due to a highly competitive market access environment and slower than anticipated overall market growth. As a result, based on the Company's current updated forecasts, Synergy is projecting TRULANCE total net sales for 2018 to be between $42.0 million to $47.0 million, which would be below the minimum revenue covenant of $61.0 million set forth in its term loan agreement with CRG. The Company has continued to evaluate opportunities to reduce cash expenditures to better align with anticipated revenues and available capital. In addition, Synergy has remained committed to the continued evaluation of all strategic opportunities to enhance shareholder value and there is no set timetable for completing this process. Synergy has engaged financial and legal advisors to assist Synergy in evaluating these strategic alternatives. Additional information about the Company's strategic review and go-forward plan will be provided at the appropriate time.

RESULTS OF OPERATIONS

THREE MONTHS ENDED SEPTEMBER 30, 2018 AND SEPTEMBER 30, 2017

We had net sales of $11.1 million during the three months ended September 30, 2018 compared to $5.0 million in net sales during the three months ended September 30, 2017. The increase was due to higher TRULANCE sales volume in the current year period since the product was launched in mid-March 2017.

Cost of goods sold ("COGS") for the three months ended September 30, 2018 totaled $3.9 million compared to $1.7 million for the three months ended September 30, 2017, primarily due to an increase in production costs from higher net sales during the three months ended September 30, 2018. COGS includes the direct cost of manufacturing and packaging drug product and related technical operations overhead costs which are generally more fixed in nature. Technical Operations is responsible for planning, coordinating, and executing on our inventory production plan and ensuring that product quality satisfies FDA requirements. Costs incurred by our technical operations organization are recorded as expenses in the period in which they are incurred.

Research and development expenses for the three months ended September 30, 2018 decreased approximately $3.0 million or 51.0%, to approximately $2.9 million from approximately $5.9 million for the three months ended September 30, 2017. This decrease in research and development expenses was due primarily to reduced clinical trial spend associated with the TRULANCE IBS-C indication which was approved in early 2018.

Selling, general and administrative expenses decreased approximately $11.2 million or 24.8%, to $33.9 million for the three months ended September 30, 2018 from approximately $45.1 million for the three months ended September 30, 2017. This decrease in expenses primarily reflect higher marketing and promotional activities for the product launch of TRULANCE during the third quarter of 2017 and a decrease in salesforce expenses in the current quarter due to lower headcount and consulting fees.

Net loss for the three months ended September 30, 2018 was $34.5 million as compared to a net loss of a $48.9 million for the three months ended September 30, 2017. This decrease in our net loss of $14.4 million or 29.4% was a result of the operating items discussed above and tax expense incurred in the current quarter.

NINE MONTHS ENDED SEPTEMBER 30, 2018 AND SEPTEMBER 30, 2017

We had net sales of $31.9 million during the nine months ended September 30, 2018 compared to $7.4 million during the nine months ended September 30, 2017. The increase was due to higher TRULANCE sales volume in the current year period since the product was launched in mid-March 2017.

COGS for the nine months ended September 30, 2018 totaled $11.5 million compared to $5.0 million for the nine months ended September 30, 2017, primarily due to primarily due to higher production costs from the increase in net sales during the nine months ended September 30, 2018.

Research and development expenses for the nine months ended September 30, 2018 decreased approximately $37.2 million or 80.3% to approximately $9.1 million from approximately $46.3 million for the nine months ended September 30, 2017. This decrease in research and development expenses was due primarily to reduced clinical trial spend associated with the TRULANCE IBS-C indication which was approved in early 2018, and related reduction in clinical employees.

Selling, general and administrative expenses decreased approximately $31.5 million or 22.5%, to $108.6 million for the nine months ended September 30, 2018 from $140.1 million for the nine months ended September 30, 2017. This decrease in expenses primarily reflect higher marketing and promotional activities for the product launch of TRULANCE in the third quarter of 2017, as well as higher stock compensation expense related to modifications from severance agreements and immediate vesting of change-of-control options in the prior year period.

Net loss for the nine months ended September 30, 2018 was $100.3 million as compared to a net loss of $187.4 million for the nine months ended September 30, 2017. This decrease in our net loss of $87.1 million or 46.5% was a result of the operating items discussed above and tax expense incurred in the current quarter.

LIQUIDITY AND CAPITAL RESOURCES

Net cash used in operating activities was approximately $89.1 million and $180.1 million for the nine months ended September 30, 2018 and 2017, respectively. Net cash used in financing activities was approximately $2.1 million for the nine months ended September 30, 2018 and net cash provided by financing activities was approximately $215.5 million for the nine months ended September 30, 2017. As of September 30, 2018, we had approximately $45.6 million of cash and cash equivalents. During the nine months ended September 30, 2018 and 2017, we incurred losses from operations of approximately $97.4 million and $184.0 million, respectively. As of September 30, 2018, we had negative working capital of approximately $76.3 million, as compared to working capital of approximately $127.0 million at December 31, 2017.

On September 1, 2017, we entered into a senior secured term loan of up to $300 million with CRG Servicing LLC, as administrative and collateral agent, and the lenders and guarantors party thereto (the "Term Loan"). The Term Loan is available for working capital and general corporate purposes. We borrowed $100 million at time of closing. In February 2018 we amended the Term Loan agreement. The amended Term Loan provides for future borrowings of $25 million, $25 million and $50 million on or before June 30, 2018, September 30, 2018 and December 31, 2018, respectively. Additionally, the total amount of the commitment was reduced from $300 million to $200 million (excluding PIK loans) and the Minimum Market Capitalization covenant of $300 million was revised to be 200% of the outstanding principal amount of the Term Loan (excluding PIK loans). In June 2018, we further amended the Term Loan agreement to extend the draw down date of the second borrowing from June 30, 2018 to prior to August 29, 2018. In August 2018, we subsequently amended the Term Loan agreement to extend the draw down date of the second borrowing from August 29, 2018 to prior to October 31, 2018. We did not draw down on the second borrowing available prior to October 31, 2018, and as a result there are no additional principal borrowings available under the Term Loan agreement.

We have been seeking to renegotiate the terms of our term loan agreement with CRG. We have been unable to further amend the agreement with respect to the financial and revenue covenants, and we have decided to forego drawing down on any additional amounts pursuant to our term loan agreement. Moreover, our term loan agreement contains a minimum liquidity covenant that absent relief from CRG may not be satisfied. We are continuing discussions with CRG for covenant relief and in parallel we are currently pursuing alternatives that better align with our business, but there is no assurance that we can secure CRG’s consent or otherwise achieve a transaction to refinance or otherwise repay CRG on commercially reasonable terms, in which case we could default under the term loan agreement and may have to pursue or otherwise accelerate strategic alternatives, including alternatives that could result in leaving our current stockholders with little or no financial ownership of the Company and, the possibility of seeking bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code to protect stakeholder value in the event other options are not reasonably executable. On October 30, 2018, we entered into Amendment and Waiver No. 3 to the term loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the term loan agreement from October 25, 2018 to November 6, 2018. On November 6, 2018, we entered into Waiver No. 4 to the term loan agreement pursuant to which CRG further waived compliance with Section 10.01 and related provisions of the term loan agreement through November 12, 2018. If CRG does not grant a further waiver beyond November 12, 2018 the Company will likely be in default of the minimum market cap covenant.

TRULANCE uptake in 2018 has been slower than anticipated due to a highly competitive market access environment and slower than anticipated overall market growth. As a result, based on our current updated forecasts, we are projecting TRULANCE total net sales for 2018 to be between $42.0 million to $47.0 million, which would be below the minimum revenue covenant of $61.0 million set forth in our term loan agreement with CRG. Under the terms of the agreement, we will be required to repay principal and pay prepayment penalties in an amount equal to $38.0 million to $51.0 million if total net sales fall within the expected range noted above. Such principal repayment and prepayment penalties will be due no later than March 31, 2019.

On November 13, 2017, we entered into an underwriting agreement with Jefferies LLC, as representative of the several underwriters, to issue and sell 21,705,426 shares of our common stock together with accompanying warrants (“Warrants”) to purchase an aggregate of 21,705,426 shares of Common Stock in an underwritten offering pursuant to a Registration Statement on Form S-3ASR and a related prospectus and prospectus supplement, in each case filed with the Securities and Exchange Commission (the “Offering”). The offering price was $2.58 per share of Common Stock and accompanying Warrant. The net proceeds from the Offering were approximately $52.2 million, after deducting underwriting discounts and commissions and offering expenses payable by us.

Our consolidated financial statements as of December 31, 2017 and our unaudited condensed consolidated financial statements as of September 30, 2018 have been prepared under the assumption that we will continue as a going concern for the next twelve months. We have incurred recurring losses from operations and expect to continue to have losses in the future. In addition, our debt agreement is subject to covenants that could restrict the availability of additional loans and accelerate the

repayment of that debt if breached. These factors individually and collectively raise substantial doubt about our ability to continue as a going concern. Our independent registered public accounting firm has issued a report related to our December 31, 2017 financial statements that includes an explanatory paragraph referring to such conditions and expressing substantial doubt in our ability to continue as a going concern.

Our ability to continue as a going concern is dependent upon our plan to generate significant revenue, attain further operating efficiencies, reduce expenditures, and if deemed necessary obtain additional equity or debt financing, which may not be available on acceptable terms or at all. To the extent that we may need to raise additional funds by issuing equity securities, our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that impact our ability to conduct business. If we are unable to raise additional capital when required or on acceptable terms, we may have to (i) significantly scale back our commercialization efforts; (ii) seek commercial partners for our products on terms that are less favorable than might otherwise be available; (iii) relinquish or otherwise dispose of rights, on unfavorable terms, to technologies, product candidates or products that we would otherwise seek to develop or commercialize itself; or (iv) seek bankruptcy protection to protect stakeholder value in the event other options are not reasonably executable. Our consolidated financial statements as of December 31, 2017 and our unaudited condensed consolidated financial statements as of and for the period ended September 30, 2018 do not include any adjustments that might result from the unfavorable outcome of this uncertainty.

CRITICAL ACCOUNTING POLICIES

Financial Reporting Release No. 60 requires all companies to include a discussion of critical accounting policies or methods used in the preparation of financial statements. Our accounting policies are described in ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA of our Annual Report on Form 10-K as of and for year ended December 31, 2017, filed with the SEC on March 1, 2018. On January 1, 2018, we adopted a new accounting standard on revenue from contracts with customers, using the modified retrospective method applied to contracts that were not completed as of January 1, 2018. Results for reporting periods beginning after January 1, 2018 are presented under that standard, while prior period amounts are not adjusted and continue to be reported in accordance with the previous standard. See *Revenue recognition* below and Note 2 of Notes to Consolidated Financial Statements for further details. There have been no other changes to our critical accounting policies since December 31, 2017.

Revenue recognition

For product sales of TRULANCE, revenue is recognized upon transfer of control of promised goods to customers in an amount that reflects the consideration to which we expect to be entitled to in exchange for those goods. The terms of a contract or historical business practice can give rise to variable consideration, including but not limited to: customer loyalty programs, trade discounts, fee for service agreements, sales returns and allowances, commercial and government rebates, and chargebacks. The transaction price will include estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. Our estimates of variable consideration are probability weighted to derive an estimate of expected value and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of our anticipated performance and all information (historical, current and forecasted) that is reasonably available to us.

For customer contracts with multiple-performance obligations, each required performance obligation is evaluated to determine whether it qualifies as a distinct performance obligation based on whether (i) the customer can benefit from the good or service either on its own or together with other resources that are readily available and (ii) the good or service is separately identifiable from other promises in the contract. The consideration under the arrangement is then allocated to each separate distinct performance obligation based on their respective relative stand-alone selling price. The consideration allocated to each distinct performance obligation is recognized as revenue when control is transferred for the related goods or services.

OFF-BALANCE SHEET ARRANGEMENTS

We had no off-balance sheet arrangements as of September 30, 2018.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk on the fair values of certain assets is related to credit risk associated with bank checking accounts, securities held in money market mutual funds and accounts receivable. As of September 30, 2018, we held $45.6 million in checking and U.S. Treasury based mutual funds. Our cash and cash equivalents balances are in excess of the Federally insured limit. We believe our cash and cash equivalents do not contain excessive risk, however we cannot provide absolute assurance that in the future our investments will not be subject to adverse changes in market value. We limit our credit risk with respect to accounts receivable by performing credit evaluations when deemed necessary. We do not require collateral to secure amounts owed to us by our customers.

Our senior secured term loan (“Term Loan”) of $107.6 million (including PIK Loans), entered into September 2017, as amended, has a fixed annual interest rate of 9.5% and we, therefore, do not have economic interest rate exposure on the Term Loan. However, the Term Loan requires us to comply with a minimum market capitalization covenant, and our shares are subject to market risk. On October 30, 2018, we entered into Amendment and Waiver No. 3 to the term loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the term loan agreement from October 25, 2018 to November 6, 2018. On November 6, 2018, we entered into Waiver No. 4 to the term loan agreement pursuant to which CRG further waived compliance with Section 10.01 and related provisions of the term loan agreement through November 12, 2018. If CRG does not grant a further waiver beyond November 12, 2018 the Company will likely be in default of the minimum market cap covenant.

ITEM 4. CONTROLS AND PROCEDURES

Based on an evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended) required by paragraph (b) of Rule 13a-15 or Rule 15d-15, our Chief Executive Officer and Chief Financial Officer have concluded that as of September 30, 2018, our disclosure controls and procedures were effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms.

Disclosure controls and procedures include, without limitations, controls and procedures designed to ensure that information required to be disclosed by us in the reports we file under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

As required by Rule 13a-15(d) of the Exchange Act, our management, including our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the internal control over financial reporting to determine whether any changes occurred during the period covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded there were no material changes in our internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that could significantly affect internal controls over financial reporting during the quarter ended September 30, 2018.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

See Note 8, Commitments and contingencies, to the condensed consolidated financial statements included in our Quarterly Report on Form 10-Q for the period ended September 30, 2018, for discussions that are limited to certain recent developments concerning our legal proceedings. Those discussions should be read in conjunction with Note 7, Commitments and contingencies, to the consolidated financial statements in Part IV of our Annual Report on Form 10-K for the year ended December 31, 2017, filed on March 1, 2018.

ITEM 1a. RISK FACTORS

In addition to the other information in this Quarterly Report on Form 10-Q, any of the factors described below could significantly and negatively affect our business, financial condition, results of operations or prospects. The trading price of our common stock may decline due to these risks.

Risks related to Senior Secured Term Loan ("Term Loan")

Our term loan agreement with CRG Servicing LLC (or CRG) and other lenders party thereto contains restrictions that limit our flexibility in operating our business. We may be required to make a prepayment or repay the outstanding indebtedness earlier than we expect under our Term Loan Agreement if a prepayment event or an event of default occurs, including a material adverse change with respect to us, which could have a materially adverse effect on our business.

In September 2017, we entered into a term loan agreement with CRG. Pursuant to the loan agreement, we borrowed $100 million from the lenders as of the closing date. In February 2018 we amended the Term Loan agreement. The amended Term Loan provides for future borrowings of $25 million, $25 million and $50 million on or before June 30, 2018, September 30, 2018 and December 31, 2018, respectively. In June 2018, we further amended the Term Loan agreement to extend the draw down date of the second borrowing from June 30, 2018 to prior to August 29, 2018. In August 2018, we subsequently amended the Term Loan agreement to extend the draw down date of the second borrowing from August 29, 2018 to prior to October 31, 2018. We did not draw down on the second borrowing available on October 31, 2018, and as a result there are no additional principal borrowings available under the Term Loan agreement.

Our agreement with CRG contains various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

- Incur additional indebtedness
- enter into a merger, consolidation or certain changing of control events without complying with the terms of the loan agreement;
- change the nature of our business;
- amend, modify or waive any of our material agreements or organizational documents;
- grant certain types of liens on our assets;
- make certain investments;
- pay cash dividends; and
- enter into material transactions with affiliates.

The term loan agreement contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations. Further, the term loan agreement contains customary negative covenants limiting our ability, among other things, to incur future debt, grant liens, make investments, make acquisitions, make certain restricted payments and sell assets, subject to certain exceptions. In addition, the term loan agreement requires us to comply with a minimum market capitalization covenant, maintain its status as a national exchange listed company, a daily minimum liquidity covenant and an annual revenue requirement based on the sales of TRULANCE.

The restrictive covenants of the term loan agreement could cause us to be unable to pursue business opportunities that we or our stockholders may consider beneficial. A breach of any of these covenants could result in an event of default under the term loan agreement. An event of default will also occur if, among other things, a material adverse change in our business,

operations or condition occurs, or a material impairment of the prospect of our repayment of any portion of the amounts we owe under the term loan agreement occurs. In the case of a continuing event of default under the agreement, CRG could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit, proceed against the collateral in which we granted CRG a security interest under the term loan agreement and related agreements, or otherwise exercise the rights of a secured creditor. Amounts outstanding under the term loan agreement are secured by all of our existing and future assets (excluding certain intellectual property).

We may not have enough available cash or be able to raise additional funds on satisfactory terms, if at all, through equity or debt financings to (i) make any required prepayment or (ii) repay such indebtedness at the time any such prepayment event or event of default occurs. In such an event, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts or grant to others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. Our business, financial condition and results of operations could be materially adversely affected as a result.

TRULANCE sales growth in 2018 has been slower than anticipated due to a highly competitive market access environment and slower than anticipated overall market growth. As a result, based on our current updated forecasts, we are projecting TRULANCE total net sales for 2018 to be between $42.0 million to $47.0 million, which would be below the minimum revenue covenant of $61.0 million set forth in our term loan agreement with CRG. Under the terms of the agreement, we will be required to repay principal and pay prepayment penalties in an amount equal to $38.0 million to $51.0 million if total net sales fall within the expected range noted above. Such principal repayment and prepayment penalties will be due no later than March 31, 2019.

We have been seeking to renegotiate the terms of our term loan agreement with CRG. We have been unable to further amend the agreement with respect to the financial and revenue covenants, and we have decided to forego drawing down on any additional amounts pursuant to our term loan agreement. Moreover, our term loan agreement contains a minimum liquidity covenant that absent relief from CRG may not be satisfied. On October 30, 2018, we entered into Amendment and Waiver No. 3 to the term loan agreement pursuant to which CRG waived compliance with Section 10.01 and related provisions of the term loan agreement from October 25, 2018 to November 6, 2018. On November 6, 2018, we entered into Waiver No. 4 to the term loan agreement pursuant to which CRG further waived compliance with Section 10.01 and related provisions of the term loan agreement through November 12, 2018.

We are continuing discussions with CRG for covenant relief and in parallel we are currently pursuing alternatives that better align with our business, but there is no assurance that we can secure CRG's consent or otherwise achieve a transaction to refinance or otherwise repay CRG on commercially reasonable terms, in which case we could default under the term loan agreement and may have to pursue or otherwise accelerate strategic alternatives, including alternatives that could result in leaving our current stockholders with little or no financial ownership of the Company, and the possibility of seeking bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code to protect stakeholder value in the event other options are not reasonably executable. There can be no guarantee that any such alternative will provide value for our stockholders.

Risks related to our Business

We will need to raise additional capital to fund our operations, and our failure to obtain funding when needed may force us to delay, reduce or eliminate our development programs or commercialization efforts or even discontinue or curtail our operations.

Net cash used in operating activities was approximately $89.1 million and $180.1 million for the nine months ended September 30, 2018 and 2017, respectively. Net cash used in financing activities was approximately $2.1 million for the nine months ended September 30, 2018 and net cash provided by financing activities was approximately $215.5 million for the nine months ended September 30, 2017. As of September 30, 2018, we had approximately $45.6 million of cash and cash equivalents. During the nine months ended September 30, 2018 and 2017, we incurred losses from operations of approximately $97.4 million and $184.0 million, respectively. As of September 30, 2018, we had negative working capital of approximately $76.3 million, as compared to working capital of approximately $127.0 million at December 31, 2017.

During the nine months ended September 30, 2018 and the year ended December 31, 2017, our operating activities used net cash of approximately $89.1 million and $212.9 million, respectively. During the year ended December 31, 2016 and December 31, 2015, our operating activities used net cash of approximately $129.8 million and $101.0 million, respectively. In addition, as of September 30, 2018, December 31, 2017 and December 31, 2016 our cash and cash equivalents was $45.6 million, $137.0 million and $82.4 million, respectively, consisting of checking accounts and short-term money market mutual funds.

Purchasing commercial quantities of pharmaceutical products, developing product candidates, conducting clinical trials, and commercializing products are expensive and uncertain. Circumstances, our strategic imperatives, or opportunities to create or acquire new programs, as well as maturities, redemptions or repurchases of our outstanding Notes and amounts required to be paid under our term loan agreement, could require us to, or we may choose to, seek to raise additional funds.

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

- the level of underlying demand for TRULANCE by prescribers and patients in the U.S.;
- the level of acceptance for TRULANCE among physicians, patients and the medical community;
- the costs associated with commercializing TRULANCE in the U.S.;
- the costs of maintaining and/or expanding sales, marketing and distribution capabilities for TRULANCE;
- the rate of progress, the cost of our clinical trials and the other costs associated with our product development programs;
- the costs and timing of in-licensing additional products or product candidates or acquiring other complementary companies;
- the status, terms and timing of any collaboration, licensing, co-commercialization or other arrangements;
- the timing of any regulatory approvals of our product candidates;
- whether the holders of our outstanding Notes hold the notes to maturity without conversion into our common stock and whether we are required to repurchase our Notes prior to maturity upon a fundamental change, as defined in the indenture governing the Notes; and
- whether we seek to redeem or repurchase all or part of our outstanding Notes through cash purchases and/or exchanges, in open market purchases, privately negotiated transactions, by tender offer or otherwise.

We may need to raise additional capital to fund our future operations and we cannot be certain that funding will be available on acceptable terms on a timely basis, or at all. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that may impact our ability to conduct our business. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue the development and/or commercialization of our product candidates or our commercialization efforts. We also may be required to:

- seek collaborators for our product candidates at an earlier stage than otherwise would be desirable and on terms that are less favorable than might otherwise be available; and/or
- relinquish license or otherwise dispose of rights to technologies, product candidates or products that we would otherwise seek to develop or commercialize ourselves on unfavorable terms.

Our independent registered public accounting firm has expressed substantial doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing.

Our consolidated financial statements as of December 31, 2017 have been prepared under the assumption that we will continue as a going concern for the next twelve months. Our independent registered public accounting firm has issued a report that includes an explanatory paragraph referring to our recurring and continuing losses from operations, covenants associated with our Term Loan, and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional equity or debt financing, attain further operating efficiencies, reduce expenditures, and to generate significant revenue. Our consolidated financial statements as of December 31, 2017 did not include any adjustments that might result from the outcome of this uncertainty.

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

As of September 30, 2018 and December 31, 2017, we had an accumulated deficit of approximately $907.7 million and $807.3 million, respectively. We will incur significant and increasing operating losses for the next several years if we expand our research and development, continue our clinical trials of TRULANCE, acquire or license technologies, advance dolcanatide into clinical development, complete clinical trials, seek regulatory approval, continue to commercialize TRULANCE and, if we

receive FDA approval, commercialize our other product candidates. Because of the numerous risks and uncertainties associated with product development efforts, we are unable to predict the extent of any future losses or when we will become profitable, if at all. If we are unable to achieve and then maintain profitability, the market value of our common stock will likely experience significant decline.

We may need to decrease the size of our organization which may have an adverse effect on sales of TRULANCE.

We are a small company with 291 employees as of September 30, 2018. As a result of TRULANCE uptake in 2018 being slower than anticipated due to a highly competitive market access environment and slower than anticipated overall market growth, we may have to decrease the size of our organization. Our future financial performance and our ability to commercialize our products and product candidate and to compete effectively will depend, in part, on our ability to manage any such decrease effectively. In the event we are unable to maintain our own sales force at sufficient levels to sell our products and product candidates, we may not be able to commercialize our products and product candidates which would negatively impact our ability to generate revenue.

We are parties to securities complaints filed against us in U.S. federal court which if determined adversely to us may have a material adverse effect on our business and financial condition.

On February 8, 2018, a federal securities action, captioned *David Lee v. Synergy Pharmaceuticals Inc. et al*., was filed in the U.S. District Court for the Eastern District of New York. Two similar, related lawsuits—*Eileen Countryman v. Synergy Pharmaceuticals Inc. et al.* and *Wendell Rose v. Synergy Pharmaceuticals Inc. et al*—were subsequently filed in the same court. On June 11, 2018, plaintiffs voluntarily dismissed the *Countryman* complaint. On June 22, 2018, the court consolidated the remaining *Lee* and *Rose* actions into a single action under the caption *In re Synergy Pharmaceuticals, Inc. Securities Litigation.* On August 31, 2018, plaintiffs in the consolidated action filed a consolidated amended complaint that seeks to recover on behalf of a putative class of purchasers of Synergy's common stock between November 10, 2016 and November 13, 2017. The consolidated amended complaint alleges that the Company and certain of its officers and directors made false and misleading statements, including in connection with the Company's Term Loan from CRG Servicing, LLC and in connection with Trulance's side-effect profile. The consolidated amended complaint asserts claims under the federal securities laws and seeks to recover unspecified damages, legal fees, interest, and costs.

We are subject to uncertainty relating to pricing and reimbursement policies in the U.S. which, if not favorable for our products, could hinder or prevent our products' commercial success.

Our ability to commercialize our products successfully depend in part on the coverage and reimbursement levels set by governmental authorities, private health insurers and other third-party payers. In determining whether to approve reimbursement for our products and at what level, we expect that third-party payers will consider factors that include the efficacy, cost effectiveness and safety of our products, as well as the availability of other treatments including generic prescription drugs and over-the-counter alternatives. Further, in order to obtain and maintain acceptable reimbursement levels and access for patients at copay levels that are reasonable and customary, we may face increasing pressure to offer discounts or rebates from list prices or discounts to a greater number of third-party payers or other unfavorable pricing modifications. Obtaining and maintaining favorable reimbursement can be a time consuming and expensive process, and there is no guarantee that we will be able to negotiate or continue to negotiate pricing terms with third-party payers at levels that are profitable to us, or at all. Certain third-party payers also require prior authorization for, or even refuse to provide, reimbursement for our products, and others may do so in the future. Our business would be materially adversely affected if we are not able to receive approval for reimbursement of our products from third-party payers on a broad, timely or satisfactory basis; if reimbursement is subject to overly broad or restrictive prior authorization requirements; or if reimbursement is not maintained at satisfactory levels or becomes subject to prior authorization. In addition, our business could be adversely affected if private health insurers, including managed care organizations, the Medicare or Medicaid programs or other reimbursing bodies or payers limit or reduce the indications for or conditions under which our products may be reimbursed.

We expect to experience pricing pressures in connection with the sale of our current product and future products due to competition, the healthcare reforms discussed below, as well as the trend toward programs aimed at reducing healthcare costs, the increasing influence of managed care, the scrutiny of pharmaceutical pricing, the ongoing debates on reducing government spending and additional legislative proposals. These healthcare reform efforts or any future legislation or regulatory actions aimed at controlling and reducing healthcare costs, including through measures designed to limit reimbursement, restrict access or impose unfavorable pricing modifications on pharmaceutical products, could impact our and our partners' ability to obtain or maintain reimbursement for our products at satisfactory levels, or at all, which could materially harm our business and financial results.

We are dependent on the commercial success of TRULANCE in the U.S. for the foreseeable future. We cannot guarantee when, or if, we will attain profitability or positive cash flows.

We began selling TRULANCE in the U.S. in the first quarter of 2017 for CIC and in the first quarter of 2018 for IBS-C. The commercial success of TRULANCE depends on a number of factors, including:

- the effectiveness of TRULANCE as a treatment for adult patients with CIC or IBS-C;
- the size of the treatable patient population;
- the effectiveness of the sales, managed markets and marketing efforts by us;
- the adoption of TRULANCE by physicians, which depends on whether physicians view it as a safe and effective treatment for adult patients with CIC or IBS-C;
- our success in educating and activating adult CIC and IBS-C patients to enable them to more effectively communicate their symptoms and treatment history to their physicians;
- our ability to both secure and maintain adequate reimbursement for, and optimize patient access to, TRULANCE by providing third party payers with a strong value proposition based on the existing burden of illness associated with CIC and IBS-C and the benefits of TRULANCE;
- the effectiveness of our partners' distribution networks;
- the occurrence of any side effects, adverse reactions or misuse, or any unfavorable publicity in these areas, associated with TRULANCE; and
- the development or commercialization of competing products or therapies for the treatment of CIC and IBS-C, or their associated symptoms.

Our revenues from the commercialization of TRULANCE are subject to these factors, and therefore may be unpredictable from quarter-to-quarter. We may never generate sufficient revenues from TRULANCE to reach or maintain profitability for our company or to sustain our anticipated levels of operations.

A substantial portion of our total revenues is derived from sales to a limited number of customers.

We derive a substantial portion of our revenue from sales to a limited number of customers. In 2017, our three major customers, McKesson Corporation, Cardinal Health, AmerisourceBergen, accounted for 37%, 31%, and 29%, respectively, or an aggregate of 97%, of our gross revenue.

A reduction in, or loss of business with, any one of these customers, or any failure of a customer to pay us on a timely basis, would adversely affect our business.

TRULANCE may cause undesirable side effects or have other properties that could limit its commercial potential.

The most commonly reported adverse reaction in the Phase III placebo-controlled trials for TRULANCE in CIC and IBS-C was diarrhea. Severe diarrhea was reported in 2% or less of the TRULANCE-treated patients, and its incidence was similar between the IBS-C and CIC populations in these trials. If we or others identify previously unknown side effects, if known side effects are more frequent or severe than in the past, if we or others detect unexpected safety signals for TRULANCE or any products perceived to be similar to TRULANCE, or if any of the foregoing are perceived to have occurred, then in any of these circumstances:

- sales of TRULANCE may be impaired;
- regulatory approvals for TRULANCE may be denied, restricted or withdrawn;
- we may decide to, or be required to, send product warning letters or field alerts to physicians, pharmacists and hospitals;
- reformulation of the product, additional nonclinical or clinical studies, changes in labeling or changes to or reapprovals of manufacturing facilities may be required;

- we may be precluded from pursuing additional development opportunities to enhance the clinical profile of TRULANCE within its indicated populations, as well as be precluded from studying TRULANCE in additional indications, populations and formulations;

- our reputation in the marketplace may suffer; and

- government investigations or lawsuits, including class action suits, may be brought against us.

Any of the above occurrences would harm or prevent sales of TRULANCE, increase our expenses and impair our ability to successfully commercialize TRULANCE.

Furthermore, as we explore development opportunities to enhance the clinical profile of TRULANCE through additional clinical trials, the number of patients treated with TRULANCE within and outside of its current indications or patient populations may expand, which could result in the identification of previously unknown side effects, increased frequency or severity of known side effects, or detection of unexpected safety signals. As a result, regulatory authorities, healthcare practitioners, third party payers or patients may perceive or conclude that the use of TRULANCE is associated with serious adverse effects, undermining our commercialization efforts.

In addition, the FDA-approved label for TRULANCE contains a boxed warning about its use in pediatric patients. TRULANCE is contraindicated in pediatric patients less than 6 years of age based on nonclinical data from studies in neonatal mice approximately equivalent to human pediatric patients less than 2 years of age. There is also a warning advising physicians to avoid the use of TRULANCE in pediatric patients 6 to less than 18 years of age. This warning is based on data in young juvenile mice and the lack of clinical safety and efficacy data in pediatric patients of any age group.

Clinical trials involve a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.

Our product candidates may not prove to be safe and efficacious in clinical trials and may not meet all the applicable regulatory requirements needed to receive regulatory approval. In order to receive regulatory approval for the commercialization of our product candidates, we must conduct, at our own expense, extensive preclinical testing and clinical trials to demonstrate safety and efficacy of these product candidates for the intended indication of use. Clinical testing is expensive, can take many years to complete, if at all, and its outcome is uncertain. Failure can occur at any time during the clinical trial process.

The results of preclinical studies and early clinical trials of new drugs do not necessarily predict the results of later-stage clinical trials. The design of our clinical trials is based on many assumptions about the expected effects of our product candidates, and if those assumptions are incorrect may not produce statistically significant results. Preliminary results may not be confirmed on full analysis of the detailed results of an early clinical trial. Product candidates in later stages of clinical trials may fail to show safety and efficacy sufficient to support intended use claims despite having progressed through initial clinical testing. The data collected from clinical trials of our product candidates may not be sufficient to support the filing of an NDA or to obtain regulatory approval in the United States or elsewhere. Because of the uncertainties associated with drug development and regulatory approval, we cannot determine if or when we will have an approved product for commercialization or achieve sales or profits.

Delays in clinical testing could result in increased costs to us and slow down our product development.

We may experience delays in clinical testing of our product candidates. We do not know whether planned clinical trials will begin on time, will need to be redesigned or will be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a clinical trial, in securing clinical trial agreements with prospective sites with acceptable terms, in obtaining institutional review board approval to conduct a clinical trial at a prospective site, in recruiting patients to participate in a clinical trial or in obtaining sufficient supplies of clinical trial materials. Many factors affect patient enrollment, including the size of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the clinical trial, competing clinical trials and new drugs approved for the conditions we are investigating. Clinical investigators will need to decide whether to offer their patients enrollment in clinical trials of our product candidates versus treating these patients with commercially available drugs that have established safety and efficacy profiles. Any delays in completing our clinical trials will increase our costs and slow down our product development and timeliness and approval process.

We may be required to suspend or discontinue clinical trials due to unexpected side effects or other safety risks that could preclude approval of our product candidates.

Our clinical trials may be suspended at any time for a number of reasons. For example, we may voluntarily suspend or terminate our clinical trials if at any time we believe that they present an unacceptable risk to the clinical trial patients. In addition, the FDA or other regulatory agencies may order the temporary or permanent discontinuation of our clinical trials at any time if they believe that the clinical trials are not being conducted in accordance with applicable regulatory requirements or that they present an unacceptable safety risk to the clinical trial patients.

Administering any product candidate to humans may produce undesirable side effects. These side effects could interrupt, delay or halt clinical trials of our product candidates and could result in the FDA or other regulatory authorities denying further development or approval of our product candidates for any or all targeted indications. Ultimately, some or all of our product candidates may prove to be unsafe for human use. Moreover, we could be subject to significant liability if any volunteer or patient suffers, or appears to suffer, adverse health effects as a result of participating in our clinical trials. Any of these events could prevent us from achieving or maintaining market acceptance of TRULANCE and could substantially increase commercialization costs.

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

As a developer of pharmaceuticals, even though we do not intend to make referrals of healthcare services or bill directly to Medicare, Medicaid or other third-party payors, certain federal and state healthcare laws and regulations pertaining to fraud and abuse, false claims and patients' privacy rights are and will be applicable to our business. We could be subject to healthcare fraud and abuse laws and patient privacy laws of both the federal government and the states in which we conduct our business.

The laws include:

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

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

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

- the Federal Food, Drug, and Cosmetic Act, which among other things, strictly regulates drug manufacturing and product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

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

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

If TRULANCE is unable to compete effectively with marketed drugs targeting similar indications as TRULANCE, our commercial opportunity will be reduced or eliminated.

We face competition generally from established pharmaceutical and biotechnology companies, as well as from academic institutions, government agencies and private and public research institutions. Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Small or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Our commercial opportunity will be reduced or eliminated if our competitors develop and commercialize GI drugs that are safer, more effective, have fewer side effects or are less expensive than TRULANCE.

TRULANCE competes with at least two currently approved prescription therapies for the treatment of CIC and IBS-C, namely, Amitiza and Linzess. In addition, over-the-counter products are also used to treat certain symptoms of CIC and IBS-C. We know other companies are developing products that will compete with TRULANCE should they be approved by the FDA. If potential competitors are successful in completing drug development for their product candidates and obtain approval from the FDA, they could limit the demand for TRULANCE. We expect that our ability to compete effectively will depend upon our ability to:

- maintain a proprietary position for our products and manufacturing processes and other related product technology;
- attract and retain key personnel;
- ensure competitive patient access to our products in the U.S. based on any required discounts and rebates to payors;
- develop relationships with physicians prescribing these products; and
- build and maintain an adequate sales and marketing infrastructure for TRULANCE.

Because we will be competing against significantly larger companies with established track records, we will have to demonstrate that, based on clinical data, side-effect profiles and other factors, our products are competitive with other products. If we are unable to compete effectively in the GI drug market and differentiate our products from other marketed GI drugs, we may never generate meaningful revenue.

If we fail to attract and keep senior management and key scientific personnel, we may be unable to successfully develop our product candidates, conduct our clinical trials and commercialize our products and product candidates.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management, clinical and scientific personnel. We are highly dependent upon our senior management and scientific staff. The loss of one or more of our senior management could delay or prevent the successful completion of any planned or ongoing clinical trials, any ongoing regulatory activities with FDA or the commercialization of our products and product candidates.

The competition for qualified personnel in the biotechnology and pharmaceuticals field is intense. We will need to hire additional personnel as we expand our commercial and supply chain activities. We may not be able to attract and retain quality personnel on acceptable terms given the competition for such personnel among biotechnology, pharmaceutical and other companies.

We are in the early stages of operating our commercial organization. If we are unable to maintain a direct sales force in the U.S. to promote our products, the commercial opportunity for our products may be diminished.

We are in the early stages of operating our commercial organization. We will incur significant additional expenses and commit significant additional management resources to maintain our own sales force. We may not be able to maintain such capabilities despite these additional expenditures. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire and train sales and marketing personnel. If we elect to rely on third parties to sell our products and product candidates in the United States, we may receive less revenue than if we sold our products directly. In addition, although we would intend to use due diligence in monitoring their activities, we may have little or no control over the sales efforts of those third parties. In the event we are unable to maintain our own sales force or collaborate with a third party to sell our products and product candidates, we may not be able to commercialize our products and product candidates which would negatively impact our ability to generate revenue.

We may need to rely on third parties to market and commercialize TRULANCE and our product candidates in international markets.

Currently, we do not have any commercial infrastructure in international markets. In the future, if appropriate regulatory approvals are obtained, we may commercialize TRULANCE and our product candidates in international markets. On February 27, 2018, we entered into a definitive licensing, development and commercialization agreement with Cipher Pharmaceuticals for the Canadian market. Significant commercialization of TRULANCE in Canada is several years away, if at all. If Cipher Pharmaceuticals is not able to effectively register and commercialize TRULANCE in Canada, we may not be able to generate revenue from the license agreement as a result of sales of TRULANCE in Canada or China.

We have not decided how to commercialize TRULANCE and our product candidates in other international markets. We may decide to build our own sales force or sell our products through third parties. If we decide to sell TRULANCE and our product candidates in international markets through a third party, we may not be able to enter into any marketing arrangements on favorable terms or at all. In addition, these arrangements could result in lower levels of income to us than if we marketed TRULANCE and our product candidates entirely on our own. If we are unable to enter into a marketing arrangement for TRULANCE and our product candidates in international markets, we may not be able to develop an effective international sales force to successfully commercialize those products in international markets. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenue would be limited.

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

We do not currently possess internal manufacturing capacity. We currently utilize the services of contract manufacturers to manufacture our clinical supplies and commercial products. With respect to the manufacturing of TRULANCE, we have executed supply agreements with contract manufacturers sufficient to meet our foreseeable clinical trial and commercial requirements. If any of our suppliers were to limit or terminate production or otherwise fail to meet the quality or delivery requirements needed to satisfy the supply, the process of locating and qualifying alternate sources could require up to several months, during which time our production could be delayed. Pursuant to the license agreements with Cipher Pharmaceuticals and Luoxin, we have agreed to supply each Cipher Pharmaceuticals and Luoxin with TRULANCE for development and commercialization in Canada and China, respectively. Any curtailment in the availability of TRULANCE would have a material adverse effect on our business, financial position and results of operations and adversely affect our relationship with each of Cipher Pharmaceuticals and Luoxin. In addition, because regulatory authorities must generally approve raw material sources for pharmaceutical products, changes in raw material suppliers may result in production delays or higher raw material costs.

Since the commercial manufacturing process for TRULANCE is single sourced for Active Pharmaceutical Ingredient, or API, and Drug Product, we are currently at risk until we establish secondary suppliers. We continue to pursue additional API and drug product supply agreements with other contract manufacturers. We may be required to agree to minimum volume requirements, exclusivity arrangements or other restrictions with the contract manufacturers. We may not be able to enter into long-term agreements on commercially reasonable terms, or at all. If we change or add manufacturers, the FDA and comparable foreign regulators may require approval of the changes. Approval of these changes could require new testing by the manufacturer and compliance inspections to ensure the manufacturer is conforming to all applicable laws and regulations, including good manufacturing practices, or GMP. In addition, the new manufacturers would have to be educated in or independently develop the processes necessary for the production of our products and product candidates. Peptide manufacturing is a highly specialized manufacturing process. While we believe we will have long term arrangements with a sufficient number of contract manufacturers, if we lose a manufacturer, it would take us a substantial amount of time to identify and develop a relationship, and seek regulatory approval, where necessary, for an alternative manufacturer.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products may encounter difficulties in production, particularly in scaling up production. These problems include difficulties with production costs and yields, quality control, including stability of the product and quality assurance testing, shortages of qualified personnel, as well as compliance with federal, state and foreign regulations. In addition, any delay or interruption in the supply of clinical trial supplies could delay the completion of our clinical trials, increase the costs associated with conducting our clinical trials and, depending upon the period of delay, require us to commence new clinical trials at significant additional expense or to terminate a clinical trial.

We are responsible for ensuring that each of our contract manufacturers comply with the GMP requirements of the FDA and other regulatory authorities from which we seek to obtain product approval. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. The approval process for NDAs includes a review of the manufacturer's compliance with GMP requirements. We are responsible for regularly assessing a contract manufacturer's compliance with GMP requirements through record reviews and periodic audits and for ensuring that the contract manufacturer takes responsibility and corrective action for any identified deviations. Manufacturers of TRULANCE and other product candidates, including dolcanatide, may be unable to comply with these GMP requirements and

with other FDA and foreign regulatory requirements, if any. While we will oversee compliance by our contract manufacturers, ultimately we will not have control over our manufacturers' compliance with these regulations and standards. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of TRULANCE or other product candidates is compromised due to a manufacturers' failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for or successfully commercialize TRULANCE or other product candidates, and we may be held liable for any injuries sustained as a result. Any of these factors could cause a delay of clinical trials, regulatory submissions, approvals or commercialization of TRULANCE or other product candidates, entail higher costs or result in us being unable to effectively commercialize TRULANCE or other product candidates. Furthermore, if our manufacturers fail to deliver the required commercial quantities on a timely basis and at commercially reasonable prices, we may be unable to meet demand for any approved products and would lose potential revenues.

Materials necessary to manufacture TRULANCE and our product candidates may not be available on commercially reasonable terms, or at all, which could impair commercialization of TRULANCE and may delay the development of our product candidates.

We rely on third-party manufacturers of TRULANCE and our product candidates to purchase from third-party suppliers the materials necessary to produce the bulk APIs and product candidates for our clinical trials, and we rely on such manufacturers to purchase such materials to produce the APIs and finished products for any commercial distribution of TRULANCE. Suppliers may not sell these materials to our manufacturers at the time they need them in order to meet our required delivery schedule or on commercially reasonable terms, if at all. We do not have any control over the process or timing of the acquisition of these materials by our manufacturers. Moreover, we currently do not have any agreements for the production of these materials. If we, or our manufacturers, are unable to purchase these materials, the commercialization of TRULANCE would be impaired and there could be a shortage in supply of such product, which would harm our ability to generate revenues from such product and achieve or sustain profitability and adversely impact our relationship with Cipher Pharmaceuticals.

TRULANCE may not gain acceptance among physicians, patients and the medical community, thereby limiting our potential to generate revenues.

The degree of market acceptance of any approved product by physicians, healthcare professionals and third-party payors and our profitability and growth will depend on a number of factors, including:

- demonstration of safety and efficacy;
- changes in the practice guidelines and the standard of care for the targeted indication;
- relative convenience and ease of administration;
- the prevalence and severity of any adverse side effects;
- budget impact of adoption of our product on relevant drug formularies
- the availability, cost and potential advantages of alternative treatments, including less expensive generic drugs;
- pricing, reimbursement and cost effectiveness, which may be subject to regulatory control;
- effectiveness of our or any of our partners' sales and marketing strategies;
- the product labeling or product insert required by the FDA or regulatory authority in other countries; and
- the availability of adequate third-party insurance coverage or reimbursement.

If any product candidate that we develop does not provide a treatment regimen that is as beneficial as, or is perceived as being as beneficial as, the current standard of care or otherwise does not provide patient benefit, that product candidate, if approved for commercial sale by the FDA or other regulatory authorities, likely will not achieve market acceptance. Our ability to effectively promote and sell any approved products will also depend on pricing and cost-effectiveness, including our ability to produce a product at a competitive price and our ability to obtain sufficient third-party coverage or reimbursement. If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, patients and third-party payors, our ability to generate revenues from that product would be substantially reduced. In addition, our efforts to educate the

medical community and third-party payors on the benefits of our product candidates may require significant resources, may be constrained by FDA rules and policies on product promotion, and may never be successful.

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

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

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

The use of our product candidates in clinical trials and the sale of marketed products expose us to product liability claims. Currently, we are not aware of any anticipated product liability claims with respect to our products or product candidates. In the future, an individual may bring a liability claim against us if one of our products or product candidates causes, or merely appears to have caused, an injury. If we cannot successfully defend ourselves against the product liability claim, we may incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for our approved products;
- impairment of our business reputation;
- withdrawal of clinical trial participants;
- costs of related litigation;
- initiation of investigations by regulators;
- substantial monetary awards to patients or other claimants;
- distraction of management's attention from our primary business;
- product recalls;
- loss of revenue; and
- the inability to commercialize our product candidates.

We currently have product liability insurance coverage for the commercial sale of TRULANCE and for the clinical trials of our product candidates which is subject to industry-standard terms, conditions and exclusions. Our current insurance coverage may prove insufficient to cover any liability claims brought against us. In addition, because of the increasing costs of insurance coverage, we may not be able to maintain insurance coverage at a reasonable cost or obtain insurance coverage that will be adequate to satisfy liabilities that may arise. A successful product liability claim or series of claims could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Our failure to successfully discover, acquire, develop and market additional product candidates or approved products could impair our ability to grow.

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

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

- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- assumption of known and unknown liabilities;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

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

Even though TRULANCE is approved by the FDA for the treatment of adults with CIC and IBS-C, it faces post-approval development and regulatory requirements, which will present additional challenges.

In January 2017, the FDA approved TRULANCE as a once-daily treatment for adult men and women suffering from CIC and in January 2018 for IBS-C. TRULANCE will be subject to ongoing FDA requirements governing the labeling, packaging, storage, advertising, promotion, recordkeeping, post approval commitments and submission of safety and other post-market indications. Manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with GMP regulations. If we or a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with a facility where the product is manufactured, a regulatory agency may impose restrictions on that product or the manufacturer, including requiring implementation of a risk evaluation and mitigation strategy program, withdrawal of the product from the market or suspension of manufacturing. If we, our partners or the manufacturing facilities for TRULANCE fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements to applications submitted by us;
- impose restrictions on operations, including costly new manufacturing requirements; or

• seize or detain products or require us to initiate a product recall.

Even though TRULANCE is approved for marketing in the U.S., we or our partners may never receive approval to commercialize TRULANCE or our other product candidates outside of the United States.

In the future, we may seek to commercialize TRULANCE and/or dolcanatide, in foreign countries outside of the United States. In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other jurisdictions regarding safety and efficacy. Approvals procedures vary among jurisdictions and can involve product testing and administrative review periods different from, and greater than, those in the United States. The time required to obtain approval in other jurisdictions might differ from that required to obtain FDA approval. Pursuant to our license agreements with Cipher Pharmaceuticals and Luoxin, each of Cipher and Luoxin is responsible for all regulatory activities in Canada and China, respectively. If Cipher cannot obtain regulatory approval for TRULANCE in Canada or Luoxin cannot obtain regulatory approval for TRULANCE in China, our relationship with Cipher and Luoxin, as the case may be, will be adversely affected and we will not be able to generate any revenue from the license agreements with Cipher and Luoxin. In addition, even if we and Cipher or Luoxin obtains marketing approval for TRULANCE in Canada or China, respectively, Health Canada or the China Food and Drug Administration may impose restrictions on TRULANCE's conditions for use, distribution or marketing and in some cases may impose ongoing requirements for post-market surveillance, post-approval studies or clinical trials.

The approval process varies and the time needed to secure approval in any region such as the European Union or in a country with an independent review procedure may be longer or shorter than that required for FDA approval. We cannot assure you that clinical trials conducted in one country will be accepted by other countries or that an approval in one country or region will result in approval elsewhere. Regulatory approval in one jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory processes in others. Failure to obtain regulatory approvals in other jurisdictions or any delay or setback in obtaining such approvals could have an adverse effect on us. Such effects include the risks that TRULANCE or our other product candidates may not be approved for all indications for use included in proposed labeling or for any indications at all, which could limit the uses of TRULANCE or other product candidates and have an adverse effect on our products' commercial potential or require costly post-marketing studies.

We rely on third parties to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to seek or obtain regulatory approval for or commercialize our product candidates.

We have agreements with third-party contract research organizations, or CROs, under which we have delegated to the CROs the responsibility to coordinate and monitor the conduct of our clinical trials and to manage data for our clinical programs. We, our CROs and our clinical sites are required to comply with current Good Clinical Practices, or GCPs, regulations and guidelines issued by the FDA and by similar governmental authorities in other countries where we are conducting clinical trials. We have an ongoing obligation to monitor the activities conducted by our CROs and at our clinical sites to confirm compliance with these requirements. In the future, if we, our CROs or our clinical sites fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. In addition, our clinical trials must be conducted with product produced under cGMP regulations, and may require a large number of test subjects. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our financial results and the commercial prospects for our product candidates would be harmed, our costs could increase, and our ability to generate revenue could be delayed.

Reimbursement may not be available for TRULANCE or our other product candidates, which would impede sales.

Market acceptance and sales of TRULANCE and other potential product candidates may depend on coverage and reimbursement policies and health care reform measures. Decisions about formulary coverage as well as levels at which government authorities and third-party payers, such as private health insurers and health maintenance organizations, reimburse patients for the price they pay for our products as well as levels at which these payors pay directly for our products, where applicable, could affect whether we are able to commercialize these products. We cannot be sure that reimbursement will be available for any of these products. Also, we cannot be sure that coverage or reimbursement amounts will not reduce the

demand for, or the price of, our products. If coverage and reimbursement are not available, are available only at limited levels, or are available and then withdrawn, we may not be able to successfully commercialize our products.

In recent years, officials have made numerous proposals to change the health care system in the United States. These proposals include measures that would limit or prohibit payments for certain medical treatments or subject the pricing of drugs to government control and international reference pricing. In addition, in many foreign countries, particularly the countries of the European Union, the pricing of prescription drugs is subject to government control. If our products are or become subject to government regulation that limits or prohibits payment for our products, or that subjects the price of our products to governmental control, we may not be able to generate revenue, attain profitability or commercialize our products.

As a result of legislative proposals and the trend towards managed health care in the United States, third-party payors are increasingly attempting to contain health care costs by limiting both coverage and the level of reimbursement of new drugs. They may also impose strict prior authorization requirements and/or refuse to provide any coverage of uses of approved products for medical indications other than those for which the FDA has granted market approvals. As a result, significant uncertainty exists as to whether and how much third-party payors will reimburse patients for their use of newly-approved drugs, which in turn will put pressure on the pricing of drugs.

In addition, there is a degree of unpredictability with regard to the eventual pricing and reimbursement levels of medications in markets outside the United States. If the pricing and reimbursement levels of TRULANCE are lower than we anticipate, then affordability of, and market access to, TRULANCE may be adversely affected and thus market potential in these territories would suffer. Furthermore, with regard to any indications for which we may gain approval in territories outside the United States, the number of actual patients with the condition included in such approved indication may be smaller than we anticipate. If any such approved indication is narrower than we anticipate, the market potential in these countries for our product would suffer.

We will incur significant liability if it is determined that we are promoting any "off-label" use of TRULANCE.

Physicians are permitted to prescribe drug products and medical devices for uses that are not described in the product's labeling and that differ from those approved by the FDA or other applicable regulatory agencies. Such "off-label" uses are common across medical specialties. Although the FDA and other regulatory agencies do not regulate a physician's choice of treatments, the FDA and other regulatory agencies do restrict communications on the subject of off-label use. Companies are not permitted to promote drugs or medical devices for off-label uses. Accordingly, we do not permit promotion of TRULANCE in the U.S. for use in any indications other than CIC and IBS-C or in any patient populations other than adult men and women. Similarly, we do not permit promotion of any other approved product we develop, license, co-promote or otherwise partner for any indication, population or use not described in such product's label. The FDA and other regulatory and enforcement authorities actively enforce laws and regulations prohibiting promotion of off-label uses and the promotion of products for which marketing approval has not been obtained. A company that is found to have promoted off-label uses will be subject to significant liability, including civil and administrative remedies as well as criminal sanctions.

Notwithstanding the regulatory restrictions on off-label promotion, the FDA and other regulatory authorities allow companies to engage in truthful, non-misleading, and non-promotional scientific exchange concerning their products. We intend to engage in medical education activities and communicate with healthcare providers in compliance with all applicable laws, regulatory guidance and industry best practices. Although we believe we have put in place a robust compliance program, which is designed to ensure that all such activities are performed in a legal and compliant manner, we cannot be certain that our program will address all areas of potential exposure and the risks in this area cannot be entirely eliminated.

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

TRULANCE is marketed in the U.S. and is covered by federal healthcare programs; and, as a result, certain federal and state healthcare laws and regulations pertaining to product promotion and fraud and abuse are applicable to, and may affect, our business. These laws and regulations include:

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

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

that are false or fraudulent, and which may apply to us for reasons including providing coding and billing advice to customers;

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

- the Federal Food, Drug, and Cosmetic Act, which among other things, strictly regulates drug product and medical device marketing, prohibits manufacturers from marketing such products for off-label use and regulates the distribution of samples;

- federal laws that require pharmaceutical manufacturers to report certain calculated product prices to the government or provide certain discounts or rebates to government authorities or private entities, often as a condition of reimbursement under government healthcare programs;

- the so-called "federal sunshine" law, which requires pharmaceutical and medical device companies to monitor and report certain financial interactions with physicians and other healthcare professionals and healthcare organizations to the federal government for re-disclosure to the public; and

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

Our global activities are subject to the U.S. Foreign Corrupt Practices Act which prohibits corporations and individuals from paying, offering to pay, or authorizing the payment of anything of value to any foreign government official, government staff member, political party, or political candidate in an attempt to obtain or retain business or to otherwise influence a person working in an official capacity. We are also subject to similar anti-bribery laws in the other countries in which we do business.

If our operations are found to be in violation of any of the laws described above or any other laws, rules or regulations that apply to us, we will be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, rules or regulations, we cannot be certain that our program will address all areas of potential exposure and the risks in this area cannot be entirely eliminated, particularly because the requirements and government interpretations of the requirements in this space are constantly evolving. Any action against us for violation of these laws, rules or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business, as well as damage our business or reputation. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security, fraud and reporting laws may prove costly.

Healthcare reform and other governmental and private payer initiatives could hinder or prevent our products' or product candidates' commercial success.

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

New laws, regulations and judicial decisions, or new interpretations of existing laws, regulations and decisions, that relate to healthcare availability, methods of delivery or payment for products and services, or sales, marketing or pricing, may limit our potential revenue, and we may need to revise our research and development programs. The pricing and reimbursement environment may change in the future and become more challenging due to several reasons, including policies advanced by the current executive administration in the United States, new healthcare legislation or fiscal challenges faced by government health administration authorities. Specifically, in both the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the health care system in ways that could affect our ability to sell our products profitably.

For example, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or the PPACA has substantially changed the way healthcare is financed by both government health plans and private insurers, and significantly impacts the pharmaceutical industry. The PPACA contains a number of provisions that are expected to impact our business and operations in ways that may negatively affect our potential revenues in the future. For example, the PPACA imposes a non-deductible excise tax on pharmaceutical manufacturers or importers that sell branded prescription drugs to U.S. government programs which we believe will increase the cost of our products. In addition, as part of the PPACA's provisions closing a funding gap that currently exists in the Medicare Part D prescription drug program (commonly known as the "donut hole"), we will be required to provide a discount on branded prescription drugs equal to 50% of the government-negotiated price, for drugs provided to certain beneficiaries who fall within the donut hole. Similarly, PPACA increases the minimum level of Medicaid rebates payable by manufacturers of brand-name drugs from 15.1% to 23.1% and requires collection of rebates for drugs paid by Medicaid managed care organizations. The PPACA also includes significant changes to the 340B drug discount program including expansion of the list of eligible covered entities that may purchase drugs under the program. At the same time, the expansion in eligibility for health insurance benefits created under PPACA is expected to increase the number of patients with insurance coverage who may receive our products. While it is too early to predict all the specific effects the PPACA or any future healthcare reform legislation will have on our business, they could have a material adverse effect on our business and financial condition.

Some of the provisions of the PPACA have yet to be implemented, and there have been legal and political challenges to certain aspects of the PPACA. Since January 2017, President Trump has signed two executive orders and other directives designed to delay, circumvent, or loosen certain requirements mandated by the PPACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the PPACA. While Congress has not passed repeal legislation, the Tax Cuts and Jobs Act of 2017 includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the PPACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate”. Congress may consider other legislation to repeal or replace elements of the PPACA.

Congress periodically adopts legislation like the PPACA and the Medicare Prescription Drug, Improvement and Modernization Act of 2003, that modifies Medicare reimbursement and coverage policies pertaining to prescription drugs. Implementation of these laws is subject to ongoing revision through regulatory and sub regulatory policies. Congress also may consider additional changes to Medicare policies, potentially including Medicare prescription drug policies, as part of ongoing budget negotiations. While the scope of any such legislation is uncertain at this time, there can be no assurances that future legislation or regulations will not decrease the coverage and price that we may receive for our proposed products. Other third-party payors are increasingly challenging the prices charged for medical products and services. It will be time consuming and expensive for us to go through the process of seeking coverage and reimbursement from Medicare and private payors. Our proposed products may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our proposed products on a profitable basis. Further federal and state proposals and health care reforms are likely which could limit the prices that can be charged for our products and product candidates that we develop and may further limit our commercial opportunities. Our results of operations could be materially adversely affected by proposed healthcare reforms, by the Medicare prescription drug coverage legislation, by the possible effect of such current or future legislation on amounts that private insurers will pay and by other health care reforms that may be enacted or adopted in the future.

Individual states have become increasingly aggressive in passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access, and marketing cost disclosure and transparency measures, and to encourage importation from other countries and bulk purchasing. Legally mandated price controls on payment amounts by third-party payors or other restrictions could harm our business, results of operations, financial condition and prospects. In addition, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine what pharmaceutical products and which suppliers will be included in their prescription drug and other healthcare programs. This could reduce ultimate demand for our products or put pressure on our product pricing, which could negatively affect our business, results of operations, financial condition and prospects.

In addition, given recent federal and state government initiatives directed at lowering the total cost of healthcare, Congress and state legislatures will likely continue to focus on healthcare reform, the cost of prescription drugs and the reform of the Medicare and Medicaid programs. While we cannot predict the full outcome of any such legislation, it may result in decreased reimbursement for drugs, which may further exacerbate industry-wide pressure to reduce prescription drug prices. This could harm our ability to generate revenues. Increases in importation or re-importation of pharmaceutical products from foreign countries into the United States could put competitive pressure on our ability to profitably price our products, which, in turn, could adversely affect our business, results of operations, financial condition and prospects. We might elect not to seek approval for or market our products in foreign jurisdictions in order to minimize the risk of re-importation, which could also reduce the

revenue we generate from our product sales. It is also possible that other legislative proposals having similar effects will be adopted.

In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA's exercise of this authority could result in delays or increased costs following the commercial launch of TRULANCE for the treatment of adult men and women suffering from CIC and IBS-C and could result in potential restrictions on the sale and/or distribution of TRULANCE, even in its approved indication and patient populations.

Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.

In the ordinary course of our business, we collect and store sensitive data, including intellectual property, our proprietary business information and that of our suppliers and business partners, as well as personally identifiable information of clinical trial participants and employees. Similarly, our business partners and third party providers possess certain of our sensitive data. The secure maintenance of this information is critical to our operations and business strategy. Despite our security measures, our information technology and infrastructure may be vulnerable to attacks by hackers or breached due to employee error, malfeasance or other disruptions. Any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information, including our data being breached at our business partners or third-party providers, could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, disrupt our operations, and damage our reputation which could adversely affect our business.

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates, and the methods used to manufacture them, as well as successfully defending these patents against third-party challenges. We will only be able to protect our product candidates from unauthorized making, using, selling and offering to sell or importation by third parties to the extent that we have rights under valid and enforceable patents or trade secrets that cover these activities.

For example:

- others may be able to make compounds that are competitive with our products but that are not covered by the claims of our patents;
- we may not have been the first to make the inventions covered by our pending patent applications;
- we may not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies;
- it is possible that our pending patent applications will not result in issued patents
- it is possible that our issued patents could be narrowed in scope, invalidated, held to be unenforceable, or circumvented;
- we may not develop additional proprietary technologies that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. While we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or use, our technology.

If we choose to go to court to stop someone else from using the inventions claimed in our patents, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that such other party's activities do not infringe our rights to these patents.

Furthermore, a third party may claim that we are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we are infringing the third party's patents and would order us to stop the activities covered by the patents. In addition, there is a risk that a court will order us to pay the other party damages for having violated the other party's patents. The biotechnology industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods of use either do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid, and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after filing, and publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our issued patents or our pending applications or that we were the first to invent the technology. Our competitors have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications and could further require us to obtain rights to issued patents covering such technologies. If another party has filed a United States patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the PTO, to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful, resulting in a loss of our United States patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

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

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

We have not yet registered trademarks for the company name "Synergy Pharmaceuticals," TRULANCE or other potential drug names for plecanatide in all our potential markets, and failure to secure those registrations could adversely affect our ability to market TRULANCE, other product candidates and our business.

We have applied to register trademarks for our company name and for TRULANCE in the United States and other jurisdictions, but may not have covered all potential markets. Our trademark applications have received registrations in some jurisdictions. Our remaining trademark applications may not be allowed for registration, and our registered trademarks may not be maintained or enforced. During trademark registration proceedings, we may receive rejections. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the United States and in foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Oppositions or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. In jurisdictions where we have not yet filed trademark applications, we may be conflicted from obtaining registration if/when we do file trademark applications due to third party conflicts. Failure to secure trademark

registrations in the United States and in foreign jurisdictions could adversely affect our ability to market TRULANCE, our other product candidates and our business.

We received a demand letter from a large pharmaceutical company, or PharmCo, demanding that we withdraw our applications for TRULANCE in the United States and elsewhere, claiming that the mark is too similar to a mark used in connection with products and services related to diabetes. On November 2, 2016, we entered into a Trademark Consent Agreement pursuant to which PharmCo agreed to our use and registration of the TRULANCE mark in connection with products for the treatment of constipation and irritable bowel syndrome and related conditions in oral tablet form. We agreed not to use such TRULANCE or any mark including the term TRULANCE or commencing with the letters TRUL on or in connection with products and services related to diabetes or any product involving subcutaneous injection and, where possible, to amend our trademark filings to include the limitation "all of the aforesaid excluding pharmaceutical preparations for the treatment of diabetes." PharmCo has reserved its right to object and take legal action in the event we use a mark with the prefix TRU in connection with drugs in the diabetes field.

In addition, an opposition has been filed in the European Union to our application to register SYNERGY PHARMACEUTICALS.

Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.

Because we operate in the highly technical field of research and development of small molecule drugs, we rely in part on trade secret protection in order to protect our proprietary trade secrets and unpatented know-how. However, trade secrets are difficult to protect, and we cannot be certain that others will not develop the same or similar technologies on their own. We have taken steps, including entering into confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers, manufacturers and other advisors, to protect our trade secrets and unpatented know-how. These agreements generally require that the other party keep confidential and not disclose to third parties all confidential information developed by the party or made known to the party by us during the course of the party's relationship with us. We also typically obtain agreements from these parties that provide that inventions conceived by the party in the course of rendering services to us will be our exclusive property. However, these agreements may not be honored and may not effectively assign intellectual property rights to us. Enforcing a claim that a party illegally obtained and is using our trade secrets or know-how is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States may be less willing to protect trade secrets or know-how. The failure to obtain or maintain trade secret protection could adversely affect our competitive position.

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

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to the Convertible Senior Notes

The indenture for our senior convertible notes, or the Notes, contains covenants limiting our financial and operating flexibility.

The indenture for the Notes contains covenants that will restrict our ability and the ability of certain of our subsidiaries to:

- declare or pay any dividends on our or our subsidiaries' capital stock;
- redeem or repurchase capital stock, or prepay or repurchase subordinated debt.

These restrictive covenants could limit our ability to pursue our growth plans, restrict our flexibility in planning for, or reacting to, changes in our business and industry and increase our vulnerability to general adverse economic and industry conditions. We may enter into additional financing arrangements in the future, which could further restrict our flexibility.

Any defaults of covenants contained in the Notes may lead to an event of default under the Notes and the indenture. We may not be able to pay any amounts due to holders of the Notes in the event of such default, and such default may significantly impair our ability to satisfy our obligations under the Notes.

We will not make any adjustment to the conversion rate for Notes converted in connection with a fundamental change, and noteholders will not be compensated for any lost value of their Notes as a result of such transaction.

We will not increase or make any other adjustment to the conversion rate upon a conversion of Notes in connection with a fundamental change or similar event. Therefore, noteholders will not be compensated for any lost value of their Notes as a result of such transaction.

The Notes are effectively subordinated to any of our future secured debt and any liabilities of our subsidiaries.

The Notes will rank senior in right of payment to our future indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to our trade payables and other future unsecured indebtedness that is not so subordinated; effectively junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all future indebtedness (including trade payables) incurred by our subsidiaries. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt ranking senior or equal in right of payment to the Notes will be available to pay obligations on the Notes only after the secured debt has been repaid in full. There may not be sufficient assets remaining to pay amounts due on any or all of the Notes then outstanding.

Servicing our debt will require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our debt.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Recent regulatory actions may adversely affect the trading price and liquidity of the Notes.

We expect that investors in, and potential purchasers of, the Notes may employ, or seek to employ, an arbitrage strategy with respect to the Notes. Investors that employ an arbitrage strategy with respect to the Notes typically implement that strategy by selling short the common stock underlying the Notes and dynamically adjusting their short position while they hold the Notes. Investors may also implement this hedging strategy by entering into swaps on our common stock in lieu of or in addition to short selling the common stock.

The Securities and Exchange Commission, or SEC, and other regulatory and self-regulatory authorities have implemented various rules and may adopt additional rules in the future that may impact those engaging in short selling activity involving equity securities (including our common stock), including Rule 201 of SEC regulation SHO, the Financial Industry Regulatory Authority, Inc.'s "Limit Up-Limit Down" program, market-wide circuit breaker systems that halt trading of stock for certain periods following specific market declines, and rules stemming from the enactment and implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Past regulatory actions, including emergency actions or regulations, have had a significant impact on the trading prices and liquidity of equity-linked instruments. Any governmental action that similarly restricts the ability of investors in, or potential purchasers of, the Notes to effect short sales of our common stock could similarly adversely affect the trading price and the liquidity of the Notes.

Volatility in the market price and trading volume of our common stock could adversely impact the trading price of the Notes.

The stock market in recent years has experienced significant price and volume fluctuations that have often been unrelated to the operating performance of companies. The market price of our common stock could fluctuate significantly for many reasons, including in response to the risks described in this section and elsewhere in this Form 10-K or for reasons unrelated to our operations, such as reports by industry analysts, investor perceptions or negative announcements by our customers, competitors or suppliers regarding their own performance, as well as industry conditions and general financial, economic and political instability. A decrease in the market price of our common stock would likely adversely impact the trading price of the Notes. The market price of our common stock could also be affected by possible sales of our common stock by investors who view the Notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we

expect to develop involving our common stock. This trading activity could, in turn, affect the trading prices of the Notes. This may result in greater volatility in the trading price of the Notes than would be expected for non-convertible debt securities.

Subject to certain limitations, we continue to have the ability to incur debt; if we incur substantial additional debt, these higher levels of debt may affect our ability to pay the principal of and interest on the Notes.

Subject to certain limitations, we and our subsidiaries may be able to incur substantial additional debt in the future, some of which may be secured debt. The indenture governing the Notes does not restrict our ability to incur additional subordinated indebtedness or require us to maintain financial ratios or specified levels of net worth or liquidity. If we incur substantial additional indebtedness in the future, these higher levels of indebtedness may affect our ability to pay the principal of and interest on the Notes, or any fundamental change purchase price, and our creditworthiness generally.

We may not have the ability to raise the funds necessary to purchase the Notes as required upon a fundamental change, and our future debt may contain limitations on our ability to purchase the Notes.

Following a fundamental change as defined, holders of Notes will have the right to require us to purchase their Notes for cash. A fundamental change may also constitute an event of default or prepayment under, and result in the acceleration of the maturity of, our then-existing indebtedness. We cannot assure noteholders that we will have sufficient financial resources, or will be able to arrange financing, to pay the fundamental change purchase price in cash with respect to any Notes surrendered by holders for purchase upon a fundamental change. In addition, restrictions in our then existing credit facilities or other indebtedness, if any, may not allow us to purchase the Notes upon a fundamental change. Our failure to purchase the Notes upon a fundamental change when required would result in an event of default with respect to the Notes which could, in turn, constitute a default under the terms of our other indebtedness, if any. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and purchase the Notes.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to purchase the Notes.

Upon the occurrence of a fundamental change as defined, noteholders have the right to require us to purchase their Notes. However, the fundamental change provisions will not afford protection to holders of Notes in the event of certain transactions that could adversely affect the Notes. For example, transactions such as leveraged recapitalizations, refinancings, restructurings or acquisitions initiated by us would not constitute a fundamental change requiring us to repurchase the Notes. In addition, holders will not be entitled to require us to purchase their Notes upon a significant change in the composition of our board. In the event of any such transaction, holders of the Notes would not have the right to require us to purchase their Notes, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting holders of the Notes.

Future sales of our common stock in the public market could lower the market price for our common stock and adversely impact the trading price of the Notes.

In the future, we may sell additional shares of our common stock to raise capital. In addition, a substantial number of shares of our common stock are reserved for issuance upon the exercise of stock options and warrants and upon conversion of the Notes. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our common stock. The issuance and sale of substantial amounts of common stock, or the perception that such issuances and sales may occur, could adversely affect the trading price of the Notes and the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

The Notes may not have an active market, and the price may be volatile, so noteholders may be unable to sell their Notes at the price they desire or at all.

The Notes are a new issue of securities for which there is currently no active trading market. We cannot be certain that a liquid market will develop for the Notes, that noteholders will be able to sell any of the Notes at a particular time (if at all) or that the prices they receive if or when noteholders sell the Notes will be above their initial offering price. In addition, we do not intend to apply to list the Notes on any securities exchange or for inclusion of the Notes on any automated dealer quotation system. The initial purchasers have advised us that they intend to make a market in the Notes, but they are not obligated to do so and may discontinue any market-making in the Notes at any time in their sole discretion and without notice. Future trading prices of the Notes on any market that may develop will depend on many factors, including our operating performance and financial condition, prevailing interest rates, the market for similar securities and general economic conditions.

Moreover, even if noteholders are able to sell their Notes, they may not receive a favorable price for their Notes. Future trading prices of the Notes will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common stock and the market for similar securities. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for the Notes will be subject to disruptions that may have a negative effect on the holders of the Notes, regardless of our prospects or financial performance.

Any adverse rating of the Notes may negatively affect the trading price and liquidity of the Notes and the price of our common stock.

We do not intend to seek a rating on the Notes. However, if a rating service were to rate the Notes and if such rating service were to assign the Notes a rating lower than the rating expected by investors or were to lower its rating on the Notes below the rating initially assigned to the Notes or otherwise announce its intention to put the Notes on credit watch, the trading price or liquidity of the Notes and the price of our common stock could decline.

The conversion rate of the Notes may not be adjusted for all dilutive events.

The conversion rate of the Notes is subject to adjustment for certain events, including, but not limited to, the issuance to all or substantially all holders of our common stock of stock dividends, certain rights, options or warrants, capital stock, indebtedness, assets or cash, and subdivisions and combinations of our common stock, and certain issuer tender or exchange offers as defined. However, the conversion rate will not be adjusted for other events, such as a third-party tender or exchange offer or an issuance of common stock for cash, that may adversely affect the trading price of the Notes or the common stock. An event that adversely affects the value of the Notes may occur, and that event may not result in an adjustment to the conversion rate.

The Notes are protected by restrictive covenants only to a limited extent.

The indenture governing the Notes does not contain any financial or operating covenants or restrictions on the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. The indenture does not contain covenants or other provisions to afford protection to holders of the Notes in the event of a fundamental change except as defined. We could engage in many types of transactions, such as acquisitions, refinancings or recapitalizations that could substantially affect our capital structure and the value of the Notes and shares of our common stock but may not constitute a fundamental change that permits holders to require us to purchase their Notes. For these reasons, noteholders should not consider the covenants in the indenture or the fundamental change purchase feature of the Notes as significant factors in evaluating whether to invest in the Notes.

The issuance of shares of common stock upon conversions of the Notes will dilute the ownership interest of our existing stockholders, including holders who had previously converted their Notes.

The issuance of shares of common stock upon the conversion of some or all of the Notes will dilute the ownership interests of our existing stockholders. Any sales in the public market of such shares of our common stock could adversely affect prevailing market prices of our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could depress the price of our common stock.

Noteholders are not entitled to any rights with respect to our common stock, but are subject to all changes made with respect to our common stock to the extent noteholders convert their Notes and receive shares of our common stock.

Holders who convert their Notes will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock) until the conversion date relating to such Notes, but holders of Notes will be subject to all changes affecting our common stock. For example, if an amendment is proposed to our second amended and restated certificate of incorporation, as amended or our amended and restated by-laws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the conversion date with respect to any Notes surrendered for conversion, then the holder surrendering such Notes will not be entitled to vote on the amendment, although such holder will nevertheless be subject to any changes affecting our common stock.

Upon conversion of the Notes, holders may receive less valuable consideration than expected because the value of our common stock may decline after they exercise their conversion right but before we settle our conversion obligation.

Under the Notes, a converting holder will be exposed to fluctuations in the value of our common stock during the period from the date such holder surrenders Notes for conversion until the date we settle our conversion obligation.

Upon conversion of the Notes, we will be required to deliver the shares of our common stock, together with cash for any fractional share, on the third business day following the relevant conversion date. Accordingly, if the price of our common stock decreases during this period, the value of the shares that noteholders receive will be adversely affected and would be less than the conversion value of the Notes on the conversion date.

The fundamental change purchase feature of the Notes may delay or prevent an otherwise beneficial attempt to take over our company.

The terms of the Notes require us to offer to purchase the Notes for cash in the event of a fundamental change, as defined. A non-stock takeover of our company may trigger the requirement that we purchase the Notes. This feature may have the effect of delaying or preventing a takeover of our company that would otherwise be beneficial to investors.

The market price of our common stock may be volatile and adversely affected by several factors.

The market price of our common stock could fluctuate significantly in response to various factors and events, including:

- the commercial performance of TRULANCE in the U.S.;
- any third-party coverage and reimbursement policies for TRULANCE;
- market conditions in the pharmaceutical and biotechnology sectors;
- our ability to execute our business plan;
- announcements regarding regulatory developments with respect to our product candidates;
- announcements concerning product development results, including clinical trial results, or intellectual property rights of others;
- developments, litigation or public concern about the safety of TRULANCE or our potential products;
- our issuance of additional securities, including debt or equity or a combination thereof, necessary to fund our operating expenses;
- announcements of technological innovations or new products by us or our competitors;
- loss of any strategic relationship;
- industry developments, including, without limitation, changes in healthcare policies or practices or third-party reimbursement policies;
- deviations in our operating results from any guidance we may provide or the estimates of securities analysts;
- economic and other external factors effecting U.S. or global equity markets;
- period-to-period fluctuations in our financial result;
- discussion of us or our stock price in the financial or scientific press or in online investor communities; and
- Our compliance with the terms of our term loan agreement.

In addition, the securities markets have from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. These market fluctuations may also materially and adversely affect the market price of our common stock.

We have not paid cash dividends in the past and do not expect to pay cash dividends in the foreseeable future. Any return on investment in shares of common stock may be limited to the value of our common stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our capital stock will depend on our earnings, financial condition

and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on any investment in shares of our common stock will only occur if the common stock price appreciates.

A sale of a substantial number of shares of the common stock may cause the price of our common stock to decline.

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, substantial amounts of our common stock in the public market it may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of biotechnology and biopharmaceutical companies. These broad market fluctuations may cause the market price of our common stock to decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of our securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

Our quarterly and annual operating results may fluctuate significantly.

We expect our operating results to be subject to frequent fluctuations. Our net profit or loss and other operating results will be affected by numerous factors, including:

- the level of underlying demand for TRULANCE in the U.S. and wholesalers' buying patterns;
- the costs associated with commercializing TRULANCE in the U.S.;
- competitive activity in the market and overall market growth rates;
- the cost of manufacturing and distributing TRULANCE;
- variations in the level of expenses related to our development programs;
- any excess or obsolete inventory or asset impairments and associated write-downs;
- initiation or completion of clinical trials;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our product candidates;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments under these arrangements;
- any material lawsuit in which we may become involved; and
- interest payments on our Term Loan and outstanding Notes.

If our operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly or annual fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially.

Our ability to use our net operating loss carry forwards may be subject to limitation.

Generally, a change of more than 50% in the ownership of a company's stock, by value, over a three-year period constitutes an ownership change for U.S. federal income tax purposes. An ownership change may limit our ability to use our net operating loss carryforwards attributable to the period prior to the change. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carryforwards to offset U.S. federal taxable income may become subject to limitations, which could potentially result in increased future tax liability for us. At December 31, 2017, we had net operating loss carryforwards aggregating approximately $733.6 million. We have determined that an ownership change occurred as of April 30, 2003

pursuant to Section 382 of the Internal Revenue Code of 1986, as amended, or the Code. In addition, the shares of our common stock that we issued from July 14, 2008 through July 8, 2010 have resulted in an additional ownership change. As a result of these events and other prospective dilutive events our ability to utilize our operating loss carry forwards is and may be further limited.

U.S. federal income tax reform could adversely affect us.

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, allows for the expensing of capital expenditures, and puts into effect the migration from a "worldwide" system of taxation to a territorial system. We do not expect tax reform to have a material impact to our projection of minimal cash taxes or to our net operating losses. Our net deferred tax assets and liabilities will be revalued at the newly enacted U.S. corporate rate, and the impact will be recognized in our tax expense in the year of enactment. We continue to examine the impact this tax reform legislation may have on our business. The impact of this tax reform on holders of our common stock is uncertain and could be adverse. This Annual Report on Form 10-K does not discuss any such tax legislation or the manner in which it might affect purchasers of our common stock. We urge our stockholders to consult with their legal and tax advisors with respect to such legislation and the potential tax consequences of investing in our common stock.

If we fail to comply with the rules under the Sarbanes-Oxley Act of 2002 related to accounting controls and procedures, or if we discover material weaknesses and deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult.

If we fail to comply with the rules under the Sarbanes-Oxley Act of 2002 related to disclosure controls and procedures, or, if we discover material weaknesses and other deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult. Section 404 of the Sarbanes-Oxley Act requires annual management assessments of the effectiveness of our internal control over financial reporting and a report by our independent auditors addressing these assessments. If material weaknesses or significant deficiencies are discovered or if we otherwise fail to achieve and maintain the adequacy of our internal control, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. Moreover, effective internal controls are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed, investors could lose confidence in our reported financial information, and the trading price of our common stock could drop significantly.

Our certificate of incorporation and bylaws and Delaware law may have anti-takeover effects that could discourage, delay or prevent a change in control, which may cause our stock price, and the value of the Notes, to decline.

Our second amended and restated certificate of incorporation, as amended and our amended and restated bylaws and Delaware law could make it more difficult for a third party to acquire us, even if closing such a transaction would be beneficial to our stockholders or holders of the Notes. We are authorized to issue up to 20,000,000 shares of preferred stock. This preferred stock may be issued in one or more series, the terms of which may be determined at the time of issuance by our board of directors without further action by stockholders. The terms of any series of preferred stock may include voting rights (including the right to vote as a series on particular matters), preferences as to dividend, liquidation, conversion and redemption rights and sinking fund provisions. No preferred stock is currently outstanding. The issuance of any preferred stock could materially adversely affect the rights of the holders of our common stock, and therefore, reduce the value of our common stock and the Notes. In particular, specific rights granted to future holders of preferred stock could be used to restrict our ability to merge with, or sell our assets to, a third party and thereby preserve control by the present management.

Provisions of our second amended and restated certificate of incorporation, as amended and our amended and restated bylaws and Delaware law also could have the effect of discouraging potential acquisition proposals or making a tender offer or delaying or preventing a change in control, including changes a stockholder or holder of the Notes might consider favorable. Such provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. In particular, our second amended and restated certificate of incorporation, as amended and amended and restated bylaws and Delaware law, as applicable, among other things:

- provide the board of directors with the ability to alter the bylaws without stockholder approval;
- place limitations on the removal of directors; and

• provide that vacancies on the board of directors may be filled by a majority of directors in office, although less than a quorum.

We are subject to Section 203 of the Delaware General Corporation Law which, subject to certain exceptions, prohibits "business combinations" between a publicly-held Delaware corporation and an "interested stockholder," which is generally defined as a stockholder who becomes a beneficial owner of 15% or more of a Delaware corporation's voting stock for a three-year period following the date that such stockholder became an interested stockholder. These provisions are expected to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with our board. These provisions may delay or prevent someone from acquiring or merging with us, which may cause the market price of our common stock and the value of the Notes to decline.

ITEM 2. PROPERTIES

There have been no material changes in our properties since the filing on March 1, 2018 of our Form 10-K for the year ended December 31, 2017.

ITEM 5. OTHER INFORMATION

On November 6, 2018, we entered into an amended and restated executive employment agreement with Troy Hamilton , our CEO, pursuant to which, among other things, upon a termination without cause or for good reason (as defined in the agreement), Mr. Hamilton (i) would be paid his severance payment in a lump sum amount within ten (10) business days after executing a release, (ii) would be provided D&O coverage under our D&O policy (with coverage no less favorable than the coverage provided for our then existing officers and directors) for a period of six (6) years following the date of termination and (iii) would be entitled to receive a pro-rata bonus for the fiscal year in which he was terminated in the same amount as if he remained employed by us through the date of payment.

The foregoing description of the amended and restated executive employment agreement with Mr. Hamilton is a summary, is not complete, and is qualified in its entirety by the terms and conditions of the amended and restated executive employment agreement, a form of which will be filed as an exhibit to our Annual Report on Form 10-K for the year ending December 31, 2018.

ITEM 6. EXHIBITS

(a) Exhibits

10.1	Separation Agreement dated September 17, 2018 by and between Marino Garcia and Synergy Pharmaceuticals Inc.
10.2	Separation Agreement dated October 30, 2018 by and between Gary S. Jacob and Synergy Pharmaceuticals Inc.
10.3*	License, Development and Commercialization Agreement dated as of August 3, 2018 by and between Synergy Pharmaceuticals Inc. and Shandong Luoxin Pharmaceutical Group Stock Co., Ltd.*
31.1	Certification of Chief Executive Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act.
31.2	Certification of Chief Financial Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101	Financial statements from the quarterly report on Form 10-Q of the Company for the quarter ended September 30, 2018, filed on November 8, 2018, formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Statements of Operations, (ii) the Condensed Consolidated Balance Sheets, (iii) the Condensed Consolidated Statement of Stockholders' Deficit (iv) the Condensed Consolidated Statements of Cash Flows and (v) the Notes to Condensed Consolidated Financial Statements tagged as blocks of text.

*Portions of this exhibit were omitted and filed separately with the U.S. Securities and Exchange Commission pursuant to a request for confidential treatment.

SEPARATION AGREEMENT

This Separation Agreement (the " Agreement") is by and between Marino Garcia (" Employee") and Synergy Pharmaceuticals, Inc., a Delaware corporation (the "Company").

WHEREAS, Employee's status as an employee of the Company will end effective on September 14, 2018 (the "Termination Date"); and

WHEREAS, Employee and the Company desire to assure a smooth and effective transition of Employee's duties and to wind-up their employment relationship amicably; and

WHEREAS, the payments and benefits being made available to Employee pursuant to this Agreement are in excess of any payments or benefits Employee is otherwise eligible to receive.

WHEREAS, Reference is made to the Amended and Restated Executive Employment Agreement between Employee and the Company, dated as of January 7, 2015 (the "Employment Agreement").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Employee and the Company agree as follows:

1 . Termination Date. Employee acknowledges that the Employee's status as an employee of the Company shall end on the Termination Date. Employee understands that as a condition to receiving the Severance Benefits (as defined below), he must execute the General Release attached hereto as Exhibit A (the "General Release") within forty-five (45) days after the Termination Date and not revoke the General Release during the seven (7) day period after Employee signs the General Release. The General Release will become effective on the eighth (8th) day after Employee signs the General Release, so long as it has not been revoked by Employee before that date (the "Effective Date").

2. Separation Payments and Benefits. Without admission of any liability, fact or claim, the Company hereby agrees, subject to Employee's timely execution and non-revocation of the General Release and Employee's continuing performance of Employee's obligations pursuant to this Agreement, to provide Employee the severance payments and benefits set forth below:

(a) *Severance Payment*. The Company shall pay Employee an aggregate cash (lump-sum) amount equal to $400,600, payable within ten (10) business days after Employee executes the General Release, properly delivers it to the Company and the General Release becomes irrevocable.

(b) *Equity Awards* . Any unvested stock options granted to Employee by the Company will accelerate and become fully vested and exercisable as of the Termination Date and each stock option granted to Employee by the Company (including, without limitation, such stock options that receive accelerated vesting under this Section

2(c)) shall remain exercisable for the remainder of its term (assuming no termination of employment occurred).

(c) *2018 Bonus*. Employee shall receive a cash bonus for the 2018 fiscal year in the same manner and in the same amount as if he remained employed by the Company through the date of payment, but which shall be pro-rated based on the number of days he was employed by the Company during the 2018 fiscal year in relation to the number of days in the 2018 fiscal year. Any such bonus shall be paid to Executive in a lump sum cash payment on the first payroll date in April 2019.

(d) *Taxes; Tax Payments*.

(i) Employee understands and agrees that all payments under this Agreement will be subject to appropriate tax withholding and other deductions, as and to the extent required by law.

If the payment of the Total Payments (as defined below) will be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code, the Company shall pay the Employee on or before the tenth (10th) day following the date of the payment giving rise to the Excise Tax, an additional amount (the "Gross-Up Payment") such that the net amount retained by the Employee of the Gross-Up Payment, after deduction of any federal, state and local income and employment taxes (including, without limitation, the Excise Tax) on the Gross-Up Payment equals the total Excise Tax imposed on the Total Payments. For purposes of determining whether any of the payments will be subject to the Excise Tax and the amount of such Excise Tax, (A) any payments or benefits received or to be received by the Employee in connection with a Change in Control (as defined in the Employment Agreement) or the Employee's termination of employment, whether payable pursuant to this Agreement or any other plan, arrangement or agreement with the Company, its successors, any person whose actions result in a Change in Control or any corporation affiliated (or which, as a result of the completion of the transaction causing such a Change in Control, will become affiliated) with the Company within the meaning of Section 1504 of the Code (such severance and Change in Control payments and benefits, the "Total Payments") shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Code Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless and then only to the extent, in the opinion of tax counsel selected by the Company's independent auditors and acceptable to the Employee (the "Calculation Firm"), the Total Payments (in whole or in part) do not constitute parachute payments, or such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code either in their entirety or in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax and (B) the amount of the Total Payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (I) the total amount of the Total Payments or (II) the amount of excess parachute payments and benefits that shall be determined by the

Calculation Firm in accordance with the principles of Section 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-Up Payment, the Employee shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Employee's residence at the time the Gross-Up Payment is made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes (based on Employee's circumstances). In the event the Excise Tax is subsequently determined to be less than the amount taken into account hereunder, the Employee shall repay to the Company within 30 days after the time the amount of such reduction in Excise Tax is finally determined the portion of the Gross-Up Payment that can be repaid such that the Employee remains whole on an after-tax basis from the Excise Tax following such repayment (taking into account any reduction in income or excise taxes to the Employee from such repayment) plus interest on the amount of such repayment at the Federal short-term rate provided in Section 1274(d)(1)(C)(i) of the Code. In the event the Excise Tax is determined to exceed the amount taken into account hereunder (including by reason of any payment the existence or amount of which cannot be determined at the time of the Gross-Up Payment), the Company shall make an additional gross-up payment (consistent with how the Gross-Up Payment is determined) in respect of such excess (plus any interest payable with respect to such excess) within 30 days after the time that the amount of such excess is finally determined. For the avoidance of doubt, the Gross-Up Payment shall be paid in addition to the Total Payments, and in no event shall the Total Payments be reduced. In all events, any gross-up payment (including the Gross-Up Payment) shall be paid by no later than the last day of the calendar year immediately following the calendar year in which Employee pays the relevant tax.

(e) *Realization Bonus*. Employee retains his rights under Section 1.5(b) of the Employment Agreement to such period of time as provided in Section 1.5(b) of the Employment Agreement.

(f) *Sole Separation Benefit*. Employee agrees that the payments and benefits provided by this Agreement are not required under the Company's normal policies and procedures and are provided solely in connection with this Agreement. Employee further acknowledges and agrees that the payments and benefits referenced in this Agreement constitute adequate and valuable consideration, in and of themselves, for the promises contained in this Agreement and the General Release.

(g) *Continued Obligations*. Employee acknowledges and agrees that Employee shall continue to be subject to, and abide by, the terms of the Nondisclosure and Assignment of Inventions Agreement executed by Employee and attached hereto as Exhibit A (the "Surviving Provisions"), which shall continue to apply and remain in full force and effect. [NTD: We asked the client to provide.]

3. Full Payment. Other than as set forth in Section 2 above and Section 8 below, Employee shall not be entitled to any other payments from the Company including but not limited to bonuses, commissions, or other cash or non-cash awards, penalties, interest or attorneys' fees and Employee expressly represents that Employee has been compensated for all monies owed to Employee from the Company; provided, however, that (i) to the extent unpaid as of the Termination Date, the Company shall pay the Compensation Payment (as defined in the Employment Agreement) to Employee as provided in Section 4.1 of the Employment Agreement and (ii) Employee shall continue to be eligible for indemnification under the Company's bylaws and other documents, as well as under any insurance policy.

4. Transition; Non-Disparagement; Cooperation; Transfer of Company Property. Employee further agrees that:

(a) *Transition*. Employee shall help facilitate a smooth transition of Employee's duties to other employees of the Company.

(b) *Mutual Non-Disparagement*. From and after the date of this Agreement, the Employee shall not make any public or private statement (whether orally, in writing, via electronic transmission, or otherwise) that disparage, denigrate or malign the Company, in any case, in a manner that would be reasonably expected to be materially harmful to the Company. From and after the date of this Agreement, the Company shall cause each of the members of the Board and each of the Company's and its subsidiaries' officers not to, and shall not direct or authorize any other employee of the Company or any of its subsidiaries to, make any public or private statement (whether orally, in writing, via electronic transmission, or otherwise) that disparage, denigrate or malign the Employee, in any case, in a manner that would be reasonably expected to be materially harmful to the Employee. The foregoing limitations in this Section 4(b) shall not be violated by truthful statements made (i) to any governmental authority or (ii) which are in response to legal process, required governmental testimony or filings, or administrative or arbitral proceedings (including, without limitation, depositions in connection with such proceedings).

(c) *Cooperation*. For a period of four years following the Termination Date, Employee agrees to cooperate fully and promptly with the Company in its efforts to prosecute or defend itself against any claim, suit, demand or cause of action relating to Employee's work for the Company or otherwise relating to the Company and about which Employee has knowledge (in any case, not including any claim, suit, demand or cause of action brought by the Company against Employee or by Employee against the Company). Notwithstanding the immediately preceding sentence, following the Termination Date, (a) the Company shall provide Employee with advance written notice of such required cooperation within a reasonable period of time prior to the date on which such cooperation will be required, (b) such cooperation shall not create a conflict with any of Employee's obligations or duties to his then current employer, (c) such cooperation shall be provided at reasonable times and locations, (d) the Employee shall report to, and take direction from, only the Company's Chief Executive Officer in

providing the cooperation described herein, (e) the Company shall reimburse Employee (in compliance with Code Section 409A) for all reasonable expenses incurred by him in complying with this Section 4(c), subject to appropriate itemization and substantiation of such expenses and (f) to the extent such cooperation takes a material amount of Employee's time, Employee shall be compensated by the Company at a mutually agreeable rate of compensation.

(d) *Return of Company Property* . On or before Monday, September 17, 2018, Employee agrees to return to the Company any and all property, tangible or intangible, relating to its business, which Employee possessed or had control over at any time (including, but not limited to, Company-provided credit cards, building or office access cards, keys, computer or other business equipment, manuals, files, documents, records, software, employee database and other data), and that Employee shall not retain any copies, compilations, extracts, excerpts, summaries or other notes of any such manuals, files, documents, records, software, customer or employee database or other data files, memoranda, records, and other documents, and any other physical or personal property which are the property of the Company and which Employee had in Employee's possession, custody or control, including any computers, cellular phones, tablets, PDAs or similar business equipment.

5. Confidentiality. Employee agrees to keep the fact, terms and amount of this Agreement completely confidential, and not to disclose such information to anyone other than Employee's current and/or former spouse, attorneys and licensed tax and/or professional investment advisors (hereafter referred to as "Employee's Confidants"), all of whom will be informed of and be bound by this confidentiality provision. Employee understands and agrees that any disclosure of information in violation of this confidentiality provision by Employee or by any of Employee's Confidants might cause the Company injury and damage, the actual amount of which would be impractical or extremely difficult to determine, and therefore the Company may seek equitable relief. Nothing herein shall be construed to prohibit any person from: (i) disclosing information that is already in the public domain, or (ii) making truthful statements to any governmental agency or in any legal or administrative proceeding. Pursuant to 18 U.S.C. 1833(b), Employee shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, if Employee files a lawsuit for retaliation by the Company or its affiliates for reporting a suspected violation of law, he may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if Employee (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

6. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of New York, without regard to any principles of conflicts of laws.

7. Section 409A. Termination of Employee's employment is intended to constitute a "separation from service" and will be determined consistent with the rules relating to a "separation from service" as such term is defined in Treasury Regulation Section 1.409A-1. It is intended that each installment of the payments provided hereunder constitute separate "payments" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Code Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a "short-term deferral"). To the extent that any provision of this Agreement is ambiguous as to its compliance with Code Section 409A, the provision will be read in such a manner so that all payments hereunder comply with Code Section 409A. Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Code Section 409A, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement in any other calendar year (except for any lifetime or other aggregate limitation applicable to medical expenses), in no event shall any expenses be reimbursed after the last day of the calendar year immediately following the calendar year in which Employee incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit. Except as otherwise provided in Section 2(e)(iii), in no event whatsoever will the Company be liable for any additional tax, interest or penalties that may be imposed on Employee under Code Section 409A or any damages for failing to comply with Code Section 409A.

8. Miscellaneous. This Agreement, together with the Surviving Provisions, is the entire agreement between the parties with regard to the subject matter hereof. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting the remainder of such provision or any of the remaining provisions of this Agreement. Employee acknowledges that there are no other agreements, written, oral or implied, and that Employee may not rely on any prior negotiations, discussions, representations or agreements. This Agreement may be modified only in writing, and such writing must be signed by both Employee and the Company and recited that it is intended to modify this Agreement. Within 10 days after the Company's receipt of substantiation of expenses, the Company shall pay to Employee's legal counsel up to $5,000 of legal fees incurred by Employee in connection with the negotiation and execution of this Agreement and the General Release.

(signature page follows)

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered as of the dates indicated below.

EMPLOYEE

/s/ Marino Garcia
Marino Garcia
Date: September 17, 2018

COMPANY

/s/ Troy Hamilton
Troy Hamilton
Chief Executive Officer
Date: _September 17, 2018

EXHIBIT A

GENERAL RELEASE

1. As a material inducement for Synergy Pharmaceuticals, Inc. (the " Company") to enter into the Separation Agreement between the Company and Marino Garcia ("Executive"), dated as of [____], 2018 (the "Separation Agreement") and provide Executive with the payments and benefits set forth in Section 2 of the Separation Agreement (the "Severance Benefits"), Executive knowingly and voluntarily waives and releases all rights and claims, known and unknown, which Executive may have against the Company or any of its respective subsidiaries, affiliates or successors, or any of their current or former officers, directors, managers, employees, agents, insurance carriers, auditors, accountants, attorneys or representatives (collectively, the "Releasees"), including any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses of any kind. This includes, but is not limited to, any claim to any equity-based or similar type of award or incentive with respect to the Releasees, including any claim for benefits under any stock option or other equity-based incentive plan of the Releasees (or any related agreement, arrangement or understanding with any Releasee); any claim to accelerated vesting or post-termination or severance benefits or payments that are or may become payable under any plan, arrangement, policy and agreement between Executive and the Company, including, without limitation, the Employment Agreement (as defined in the Separation Agreement), each stock option agreement entered into between Executive and the Company and any agreement or policy with the Company under which Executive benefits, and any claims for employment discrimination, harassment, wrongful termination, constructive termination, violation of public policy, breach of any express or implied contract, breach of any implied covenant, fraud, intentional or negligent misrepresentation, emotional distress, defamation, or any other claims, actual or potential, which in any way arise from or are related to Executive's relationship with the Company, including, without limitation, relating to Executive's compensation, the termination of the employment relationship, or any other conduct of the Company occurring prior to the execution of this General Release. This also includes a release of any claims under any federal, state or local laws or regulations, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq.; Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.; Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621, et seq.; Civil Rights Act of 1866, and Civil Rights Act of 1991; 42 U.S.C. § 1981, et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); regulations of the Office of Federal Contract Compliance, 41 C.F.R. Section 60, et seq.; The Family and Medical Leave Act, as amended, 29 U.S.C. § 2601 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq.; the Executive Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act, as amended, 29 U.S.C. § 2101 et seq.; the Federal False Claims Act, as amended, 31 U.S.C. §§ 3729 et seq.; the Dodd-Frank Wall Street Reform and Consumer Protection Act; the Sarbanes-Oxley Act of 2002, the New York State Human Rights Law, the New York City Human Rights Law, the New York Labor Law, the New York Wage Theft Prevention Act, the Pennsylvania Human Relations Act,

Pennsylvania Minimum Wage Act of 1968, Pennsylvania Wage Payment and Collection Law, Pennsylvania Whistleblower Law; and any other federal, state or local laws of similar effect. Notwithstanding the generality of the foregoing, Executive does not release any claims which Executive may have to the following (collectively, the "Unreleased Claims"): (i) claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law, (ii) Executive's right to continued participation in the Company's group benefit plans pursuant to the terms and conditions of COBRA, (iii) Executive's right to any payments and benefits under the Separation Agreement (including, without limitation, the Severance Benefits), (iv) Executive's right to vested benefits under the benefit plans of any Releasee, (v) Executive's right to indemnification as provided in the Separation Agreement, or (vi) Executive's right to bring to the attention of the Equal Employment Opportunity Commission claims of discrimination; provided, however, that Executive does release Executive's right to secure any damages for alleged discriminatory treatment. The matters that are the subject of the releases referred to above (and, for the avoidance of doubt, excluding any Unreleased Claims) shall be referred to collectively as the "Released Matters."

2. Executive warrants and represents that (a) Executive has not filed or authorized the filing of any complaints, charges or lawsuits against the Company with any governmental agency or court regarding any claims released in this General Release, and that if, unbeknownst to Executive, such a complaint, charge or lawsuit has been filed on Executive's behalf, Executive will promptly cause it to be withdrawn and dismissed upon obtaining knowledge thereof, (b) Executive has reported all hours worked as of the date of this General Release and has been paid all compensation, wages, bonuses, commissions, and/or benefits to which Executive may be entitled and no other compensation, wages, bonuses, commissions and/or benefits are due to Executive, except as provided in this General Release (including any Unreleased Claim) or the Separation Agreement, (c) Executive has no known workplace injuries or occupational diseases and has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act or any state law counterpart, (d) the execution, delivery and performance of this General Release by Executive does not and will not conflict with, breach, violate or cause a default under any agreement, contract or instrument to which Executive is a party or any judgment, order or decree to which Executive is subject, (e) Executive is executing this General Release voluntarily and without any duress or undue influence on the part or behalf of the Company, with full understanding of the terms and consequences, and (f) upon the execution and delivery of this General Release by the Executive, this General Release will be a valid and binding obligation of Executive, enforceable in accordance with its terms.

3. Executive understands and acknowledges that:

(a) This General Release constitutes a voluntary waiver of any and all rights and claims Executive has against the Releases, or any of them, as of the date Executive executes this General Release, for claims arising under the Age Discrimination in Employment Act, 29 U.S.C. 621, et seq.

(b) Executive has waived rights or claims pursuant to this General Release and in exchange for consideration, the value of which exceeds payment or remuneration to which Executive was already entitled.

(c) Executive is hereby advised to consult with an attorney of Executive's choosing concerning this General Release prior to executing it.

(d) Executive has been afforded a period of forty-five (45) days to consider the terms of this General Release and in the event Executive should decide to execute this General Release in fewer than forty-five (45) days, Executive has done so with the express understanding that Executive has been given and declined the opportunity to consider this General Release for a full forty-five (45) days, and waives the balance of the forty-five (45) day period.

(e) Executive may revoke this General Release at any time during the seven (7) days following the date of execution of this General Release, and this General Release shall not become effective or enforceable until such revocation period has expired. Executive understands that if Executive does not sign this General Release or Executive signs and subsequently revokes this General Release before it becomes effective, Executive shall not be entitled to any of the Severance Benefits.

* * * * *

EXECUTIVE

_
Marino Garcia
Date: **[INSERT DATE]**

SEPARATION AGREEMENT

This Separation Agreement (the "Agreement"), dated October 30, 2018, is by and between Gary Jacob ("Executive") and Synergy Pharmaceuticals Inc., a Delaware corporation (the "Company").

WHEREAS, Executive's status as an employee of the Company will end effective on October 31, 2018 (the "Termination Date"); and

WHEREAS, Executive and the Company desire to assure a smooth and effective transition of Executive's duties and to wind-up their employment relationship amicably; and

WHEREAS, the payments and benefits being made available to Executive pursuant to this Agreement are intended to satisfy all outstanding obligations under that certain Executive Employment Agreement, dated May 11, 2009, between Executive and the Company, as amended on February 10, 2010, May 2, 2011, December 28, 2012, January 7, 2015, December 29, 2016, November 7, 2017 and December 18, 2017, (the "Employment Agreement") and to settle any and all other obligations owed by the Company to the Executive.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Executive and the Company, intending to be legally bound, hereby agree as follows:

1. Termination Date. Executive acknowledges that his status as an employee, officer and director (and as a member of each committee of the Board of Directors) of the Company and each of its subsidiaries will end on the Termination Date. From the date hereof until the Termination Date, Executive shall remain employed by the Company pursuant to the terms of the Employment Agreement. Executive understands that as a condition to receiving the Severance Benefits (as defined below), he must execute the General Release attached hereto as Exhibit A (the "General Release") within twenty-one (21) days after the Termination Date and not revoke the General Release during the seven (7) day period after Executive signs the General Release. The General Release will become effective on the eighth (8th) day after Executive signs the General Release, so long as it has not been revoked by Executive before that date (the "Effective Date"). Executive and the Company agree that Executive shall resign as a member of the Company's Board of Directors (the "Board") and each committee thereof effective as of the Termination Date.

2. Separation Payments and Benefits. Without admission of any liability, fact or claim, the Company hereby agrees, subject to Executive's timely execution and non-revocation of the General Release and Executive's compliance with Executive's obligations pursuant to this Agreement, the General Release and the Surviving Restrictive Covenants (as defined below), to provide Executive the severance payments and benefits set forth below in this Section 2 (collectively, the "Severance Benefits"):

(a) *Severance Payment*. The Company shall pay Executive a lump sum cash payment of $648,900 (the "Severance Payment"). The Severance Payment

shall be paid in a lump sum within ten (10) business days after Executive executes the General Release, properly delivers it to the Company and the General Release becomes irrevocable.

(b) *Benefits Coverage; Indemnification*. If Executive is enrolled in the Company's group medical, vision and/or dental plans on the Termination Date, Executive may elect to continue Executive's participation and that of Executive's eligible dependents in those plans for a period of time under COBRA. Executive may make such an election whether or not Executive accepts this Agreement. However, if Executive accepts this Agreement and Executive timely elects to continue Executive's participation and/or that of Executive's eligible dependents in such plans, the Company will pay the full premium cost of Executive's and his dependents' COBRA continuation coverage until December 31, 2019. If the Company's contributions end before Executive's entitlement to coverage under COBRA concludes, Executive may continue such coverage by paying the full premium cost himself. Notwithstanding the foregoing, in the event that the Company's payment of the COBRA premium contributions as described under this Section 2(b), would subject the Company to any tax or penalty under the Patient Protection and Affordable Care Act (as amended from time to time, the "ACA") or Section 105(h) of the Internal Revenue Code of 1986, as amended (the "Code"), or applicable regulations or guidance issued under the ACA or Code Section 105(h), Executive and the Company agree to work together in good faith to restructure such benefit in a manner that complies with or is exempt from Code Section 409A. The Company agrees to provide D&O coverage for the Executive under the Company's D&O policy (with coverage no less favorable than the coverage provided for the Company's then existing directors and officers) for a period of six (6) years following the Termination Date

(c) *Equity Awards*. Any unvested stock options granted to Executive by the Company will accelerate and become fully vested and exercisable as of the Termination Date and each stock option granted to Executive by the Company (including, without limitation, such stock options that receive accelerated vesting under this Section 2(c)) shall remain exercisable for the remainder of its term (assuming no termination of employment occurred).

(d) *2018 Bonus*. Executive shall receive a bonus for the 2018 fiscal year in the same manner and in the same amount as if he remained employed by the Company through the date of payment, but pro-rated based on the number of days he was employed by the Company during the 2018 fiscal year in relation to the number of days in the 2018 fiscal year. Any such bonus shall be paid to Executive in a lump sum cash payment on the first payroll date in April 2019.

(e) *Taxes; Tax Payments*. Executive understands and agrees that all payments under this Agreement will be subject to appropriate tax withholding and other deductions, as and to the extent required by law.

(f) *Sole Separation Benefit*. Executive agrees that the payments and benefits provided in Section 2 of this Agreement are not required under the Company's normal policies and procedures and are provided solely in connection with this Agreement. Executive further acknowledges and agrees that the payments and benefits referenced in Section 2 of this Agreement constitute adequate and valuable consideration, in and of themselves, for the promises contained in this Agreement and the General Release.

(g) *Continued Obligations*. Executive acknowledges and agrees that Executive shall continue to be subject to, and abide by, Section 2 (Confidential Information) and Section 3 (Non-Competition; Non-Solicitation) of the Employment Agreement and the terms of the Nondisclosure and Assignment of Inventions Agreement executed by Executive on _____ and attached hereto as Exhibit B. (such provisions are collectively referred to herein as the "Surviving Restrictive Covenants"), which shall continue to apply and remain in full force and effect. If the Company believes that Executive has breached any provision of this Agreement, the General Release or the Surviving Restrictive Covenants, then it shall provide Executive with written notice of such alleged breach within 30 days after it has knowledge of the occurrence thereof and shall provide Executive with 30 days to cure such alleged breach (any breach so cured shall not be deemed a breach of this Agreement, the General Release or any of the Surviving Restrictive Covenants). If the Executive so breaches this Agreement or any of the Surviving Restrictive Covenants, and fails to cure said breach as provided in the immediately preceding sentence after the required notice by the Company, the Company shall have no further obligation to provide any Severance Benefits. The Company acknowledges and agrees that it is not aware of any breach by Executive of any of the Surviving Restrictive Covenants or any provision of this Agreement. Notwithstanding the foregoing, pursuant to 18 U.S.C. 1833(b), Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, if Executive files a lawsuit for retaliation by the Company or its affiliates for reporting a suspected violation of law, he may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if Executive (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

3. Certain Additional Surviving Rights. Notwithstanding anything contained in this Agreement or the General Release to the contrary, (i) Executive's rights under Section 1.5(e) of the Employment Agreement remain in full force and effect to the extent they become applicable and (ii) Executive shall remain eligible to receive a Realization Bonus (as defined in the Employment Agreement) pursuant to Section 1.5(b) of the Employment Agreement in accordance with the terms thereof following the parties' execution of this Agreement (provided that, Executive's termination of employment shall be treated as a termination of employment by

the Company without Cause (as defined in the Employment Agreement), and accordingly, Section 1.5(b)(vi) of the Employment Agreement shall not be applicable).

4. Full Payment; Termination of Employment Agreement . Other than as set forth in Sections 2 and 3 above, Section 8 below or in the General Release, Executive shall not be entitled to any other payments including but not limited to bonuses, commissions, or other cash or non-cash awards, penalties, interest or attorneys' fees from the Company or any of its subsidiaries; provided, however, that to the extent unpaid as of the Termination Date, the Company shall pay the Compensation Payment (as defined in the Employment Agreement) to Executive as provided in Section 4.1 of the Employment Agreement. On the Termination Date all provisions of the Employment Agreement, other than as specifically provided for herein, the Surviving Provisions and Section 7 of the Employment Agreement, shall terminate and Executive shall have no further rights thereunder.

5. Transition; Cooperation; Transfer of Company Property; Non-Disparagement . Executive further agrees that:

(a) *Transition*. Executive acknowledges and agrees that Executive shall collaborate with the Company in the development and issuance of any internal or external communications made by the Company addressing Executive's separation pursuant to this Agreement.

(b) *Cooperation*. Commencing on the date hereof and continuing during the forty eight (48) month period immediately after the Termination Date (the "Cooperation Period"), Executive agrees to reasonably cooperate with the Company in its efforts to prosecute or defend itself against any claim, suit, demand or cause of action (not brought by the Company against Executive or by Executive against the Company) about which Executive has knowledge. Notwithstanding the immediately preceding sentence, following the Termination Date, (a) the Company shall provide Executive with advance written notice of such required cooperation within a reasonable period of time prior to the date on which such cooperation will be required, (b) such cooperation shall not create a conflict with any of Executive's obligations or duties to his then current employer, (c) such cooperation shall be provided at reasonable times and locations, (d) the Executive shall report to, and take direction from, only the Company's Chief Executive Officer in providing the cooperation described herein, (e) the Company shall reimburse Executive (in compliance with Code Section 409A) for all reasonable expenses incurred by him in complying with this Section 5(b), subject to appropriate itemization and substantiation of such expenses.

(c) *Return of Company Property* . Executive shall on or before the date that is ten (10) days following the Termination Date, return to the Company all written Confidential Information (as defined in the Employment Agreement) in Executive's possession (including, but not limited to, Company-provided credit cards, building or office access cards, keys, computer or other business equipment, manuals, files, documents, records, software, employee database and other data), and that Executive will not retain any copies, compilations, extracts, excerpts, abstracts, summaries or other notes

of any such manuals, files, documents, records, software, customer or employee database or other data files, memoranda, records, and other documents, and any other physical or personal property which are the property of the Company and which Executive had in Executive's possession, custody or control, including any computers, cellular phones, tablets, PDAs or similar business equipment; provided, however, that if Executive has inadvertently retained non-material Confidential Information or property of the Company ("Covered Information"), it shall not be a breach of this Agreement or any of the Surviving Provisions if (i) promptly after becoming aware of his possession of such Covered Information Executive returns it to the Company, (ii) Executive has not disclosed such Covered Information in violation of the Surviving Provisions, and (iii) no loss or damage that is more than de minimis has been caused to the Company as a result of Executive's retention of such Covered Information. Notwithstanding this Section 5(c), the Company may provide Executive with Confidential Information and Company property in connection with his obligations under Section 5(b) hereof and Executive acknowledges and agrees that he shall return all such Confidential Information and Company property (including his laptop) within ten (10) days after the end of Executive's obligations under Section 5(b) hereof or such earlier date as is requested reasonably in advance in writing by the Company (with the same procedures to apply regarding the inadvertent retention of Covered Information as set forth in the immediately preceding sentence)

(d) Mutual Non-Disparagement. From and after the date of this Agreement, the Executive shall not make any public or private statement (whether orally, in writing, via electronic transmission, or otherwise) that disparage, denigrate or malign the Company, in any case, in a manner that would be reasonably expected to be materially harmful to the Company. From and after the date of this Agreement, the Company shall cause each of the members of the Board and each of the Company's senior executive officers not to, and shall not make any official press releases that disparage, denigrate or malign the Executive, in any case, in a manner that would be reasonably expected to be materially harmful to the Executive. The foregoing limitations in this Section 5(d) shall not be violated by truthful statements made (i) to any governmental authority or (ii) which are in response to legal process, required governmental testimony or filings, or administrative or arbitral proceedings (including, without limitation, depositions in connection with such proceedings).

6. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties hereunder shall be governed by, the laws of New York, without regard to any principles of conflicts of laws.

7. Section 409A. It is intended that each installment of the payments provided hereunder constitute separate "payments" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). To the extent that any provision of this Agreement is ambiguous as to its compliance with Code Section 409A, the provision will be read in such a manner so that all payments hereunder comply with Code Section 409A. To the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Code

Section 409A, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement, or the amount of in-kind benefits to be provided, in any other calendar year (except for any lifetime or other aggregate limitation applicable to medical expenses), in no event shall any expenses be reimbursed after the last day of the calendar year immediately following the calendar year in which Executive incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit. For purposes of Code Section 409A, Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company.

8. Miscellaneous. This Agreement, together with the General Release, the Surviving Provisions and Section 7 of the Employment Agreement, is the entire agreement between the parties with regard to the subject matter hereof. Executive and the Company acknowledge that there are no other agreements, written, oral or implied regarding such subject matter, and that neither the Company nor Executive may rely on any prior negotiations, discussions, representations or agreements regarding the subject matter hereof. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting the remainder of such provision or any of the remaining provisions of this Agreement. The Company represents that the Board of Directors of the Company has duly and validly authorized this Agreement. This Agreement may be modified only in writing, and such writing must be signed by both Executive and the Company and recited that it is intended to modify this Agreement. Within 10 days after the Company's receipt of substantiation of expenses, the Company shall pay to Dechert LLP up to $10,000 of legal fees incurred by Executive to Dechert LLP in connection with the negotiation and execution of this Agreement and the General Release.

(signature page follows)

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered as of the dates indicated below.

EXECUTIVE

/s/ Gary Jacob
Gary Jacob
Date: October 30, 2018

COMPANY

/s/ Troy Hamilton
Name: Troy Hamilton
Title: CEO
Date: October 30, 2018

EXHIBIT A

GENERAL RELEASE

1. As a material inducement for Synergy Pharmaceuticals, Inc. (the " Company") to enter into the Separation Agreement between the Company and Gary Jacob ("Executive"), dated as of October 30, 2018 (the "Separation Agreement") and provide Executive with the Severance Benefits, Executive knowingly and voluntarily waives and releases all rights and claims, known and unknown, which Executive may have against the Company or any of its respective subsidiaries, affiliates or successors, or any of their current or former officers, directors, managers, employees, agents, insurance carriers, auditors, accountants, attorneys or representatives (collectively, the "Releasees"), including any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses of any kind. This includes, but is not limited to, any claim to any equity-based or similar type of award or incentive with respect to the Releasees, including any claim for benefits under any stock option or other equity-based incentive plan of the Releasees (or any related agreement, arrangement or understanding with any Releasee); any claim to accelerated vesting or post-termination or severance benefits or payments that are or may become payable under any plan, arrangement, policy and agreement between Executive and the Company, including, without limitation, the Employment Agreement (as defined in the Separation Agreement), each stock option agreement entered into between Executive and the Company and any agreement or policy with the Company under which Executive benefits, and any claims for employment discrimination, harassment, wrongful termination, constructive termination, violation of public policy, breach of any express or implied contract, breach of any implied covenant, fraud, intentional or negligent misrepresentation, emotional distress, defamation, or any other claims, actual or potential, which in any way arise from or are related to Executive's relationship with the Company, including, without limitation, relating to Executive's compensation, the termination of the employment relationship, or any other conduct of the Company occurring prior to the execution of this General Release. This also includes a release of any claims under any federal, state or local laws or regulations, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq.; Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.; Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621, et seq.; Civil Rights Act of 1866, and Civil Rights Act of 1991; 42 U.S.C. § 1981, et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); regulations of the Office of Federal Contract Compliance, 41 C.F.R. Section 60, et seq.; The Family and Medical Leave Act, as amended, 29 U.S.C. § 2601 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq.; the Executive Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act, as amended, 29 U.S.C. § 2101 et seq.; the Federal False Claims Act, as amended, 31 U.S.C. §§ 3729 et seq.; the Dodd-Frank Wall Street Reform and Consumer Protection Act; the Sarbanes-Oxley Act of 2002, the New York State Human Rights Law, the New York City Human Rights Law, the New York Labor Law, the New York Wage Theft Prevention Act, the Pennsylvania Human Relations Act, Pennsylvania Minimum Wage Act of

1968, Pennsylvania Wage Payment and Collection Law, Pennsylvania Whistleblower Law; and any other federal, state or local laws of similar effect. Notwithstanding the generality of the foregoing, Executive does not release any claims which Executive may have to the following (collectively, the "Unreleased Claims"): (i) claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law, (ii) Executive's right to continued participation in the Company's group benefit plans pursuant to the terms and conditions of COBRA, (iii) Executive's right to any payments and benefits under the Separation Agreement (including, without limitation, any of the payments and benefits set forth in Sections 2 and 3 thereof), (iv) Executive's right to vested benefits under the benefit plans of any Releasee, (v) Executive's right to indemnification under the Separation Agreement or pursuant to Section 7 of the Employment Agreement, or (vi) Executive's right to bring to the attention of the Equal Employment Opportunity Commission claims of discrimination; provided, however, that Executive does release Executive's right to secure any damages for alleged discriminatory treatment. The matters that are the subject of the releases referred to above (and, for the avoidance of doubt, excluding any Unreleased Claims) shall be referred to collectively as the "Released Matters."

2. Executive warrants and represents that (a) Executive has not filed or authorized the filing of any complaints, charges or lawsuits against the Company with any governmental agency or court regarding any claims released in this General Release, and that if, unbeknownst to Executive, such a complaint, charge or lawsuit has been filed on Executive's behalf, Executive will immediately cause it to be withdrawn and dismissed, (b) Executive has reported all hours worked as of the date of this General Release and has been paid all compensation, wages, bonuses, commissions, and/or benefits to which Executive may be entitled and no other compensation, wages, bonuses, commissions and/or benefits are due to Executive, except as provided in this General Release (including any Unreleased Claim) or the Separation Agreement, (c) Executive has no known workplace injuries or occupational diseases and has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act or any state law counterpart, (d) the execution, delivery and performance of this General Release by Executive does not and will not conflict with, breach, violate or cause a default under any agreement, contract or instrument to which Executive is a party or any judgment, order or decree to which Executive is subject, (e) Executive is executing this General Release voluntarily and without any duress or undue influence on the part or behalf of the Company, with full understanding of the terms and consequences, and (f) upon the execution and delivery of this General Release by the Executive, this General Release will be a valid and binding obligation of Executive, enforceable in accordance with its terms.

3. Executive understands and acknowledges that:

(a) This General Release constitutes a voluntary waiver of any and all rights and claims Executive has against the Releases, or any of them, as of the date Executive executes this General Release, for claims arising under the Age Discrimination in Employment Act, 29 U.S.C. 621, et seq.

(b) Executive has waived rights or claims pursuant to this General Release and in exchange for consideration, the value of which exceeds payment or remuneration to which Executive was already entitled.

(c) Executive is hereby advised to consult with an attorney of Executive's choosing concerning this General Release prior to executing it.

(d) Executive has been afforded a period of twenty-one (21) days to consider the terms of this General Release and in the event Executive should decide to execute this General Release in fewer than twenty-one (21) days, Executive has done so with the express understanding that Executive has been given and declined the opportunity to consider this General Release for a full twenty-one (21) days, and waives the balance of the twenty-one (21) day period.

(e) Executive may revoke this General Release at any time during the seven (7) days following the date of execution of this General Release, and this General Release shall not become effective or enforceable until such revocation period has expired. Executive understands that if Executive does not sign this General Release or Executive signs and subsequently revokes this General Release before it becomes effective, Executive shall not be entitled to any of the Severance Benefits.

* * * * *

EXECUTIVE

_
Gary Jacob
Date: November 1, 2018

EXHIBIT B

NONDISCLOSURE AND ASSIGNMENT OF INVENTIONS AGREEMENT

CERTAIN PORTIONS OF THIS EXHIBIT, INDICATED BY THE MARK [*], HAVE BEEN OMITTED BASED UPON A REQUEST FOR CONFIDENTIAL TREATMENT AND THE NON-PUBLIC INFORMATION WILL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This **LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT** (the "**Agreement**") is entered into as of August 3, 2018 (the "**Effective Date**") by and between **SYNERGY PHARMACEUTICALS INC.,** a corporation organized and existing under the laws of Delaware and having a place of business at 420 Lexington Avenue # 2012, New York, NY 10170, USA (" **Synergy**") and **SHANDONG LUOXIN PHARMACEUTICAL GROUP STOCK CO., LTD.**, a corporation organized and existing under the laws of the People's Republic of China and having a place of business at Luoqi Road, Linyi High and New Technology Industries Development Zone, Shandong Province ("**Luoxin**"). Synergy and Luoxin are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Synergy has developed the Product (as defined below) for the treatment of chronic idiopathic constipation and irritable bowel syndrome with constipation, and has obtained regulatory approval of the Product in the U.S. for such Indications; and

WHEREAS, Luoxin desires to obtain from Synergy an exclusive license to Develop and Commercialize the Licensed Products in the Luoxin Territory (with each capitalized term as respectively defined below), and Synergy is willing to grant such license to Luoxin, all under the terms and conditions hereof.

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

1.

1. DEFINITIONS

1.1 "**Accounting Standards**" means U.S. generally accepted accounting principles (" **GAAP**") or, to the extent that Luoxin adopts International Financial Reporting Standards ("**IFRS**"), then "Accounting Standards" means IFRS, in either case consistently applied.

1.2 "**Act**" shall mean, as applicable, the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq., and/or the Public Health Service Act, 42 U.S.C. §§262 et seq., as such may be amended from time to time.

1.3 "**Adverse Impact**" means (a) a delay of more than six (6) months in the Development and/or Commercialization of the Licensed Products in the Synergy Territory; (b) a change, deletion or addition of the Indications for which the Licensed Products are Developed or

Commercialized in the Synergy Territory; or (c) a more than thirty percent (30%) decrease in the potential market size of the Licensed Products in the Synergy Territory.

1.4 "**Affiliate**" means, with respect to a particular Party, a Person that controls, is controlled by or is under common control with such Party. For the purposes of this definition, the word "control" (including, with correlative meaning, the terms "controlled by" or "under common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise. For clarity, once a Person ceases to be an Affiliate of a Party, then, without any further action, such Person shall cease to have any rights, including license and sublicense rights, under this Agreement by reason of being an Affiliate of such Party.

1.5 "**Anti-Corruption Laws**" means laws, regulations, or orders prohibiting the provision of a financial or other advantage for a corrupt purpose or otherwise in connection with the improper performance of a relevant function, including without limitation, the *Corruption of Foreign Public Officials Act (CFPOA)* , the *US Foreign Corrupt Practices Act (FCPA)* , the *UK Bribery Act 2010* , and similar laws governing corruption and bribery, whether public, commercial or both, to the extent applicable.

1.6 "**Business Day**" means a day other than Saturday, Sunday or any day that banks in New York, U.S. or Beijing, China are required or permitted to be closed.

1.7 "**CFDA**" means the China Food and Drug Administration, or any successor agency or authority thereto.

1.8 "**Change of Control**" means with respect to either Party: (a) the sale of all or substantially all of such Party's assets or business relating to this Agreement (other than to an Affiliate of such Party); (b) a merger, reorganization or consolidation involving such Party in which the voting securities of such Party outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (c) a Person, or group of Persons, acting in concert acquire more than fifty percent (50%) of the voting equity securities or management control of such Party.

1.9 "**CMC Information**" means Information related to the chemistry, manufacturing and controls of the Licensed Products, as specified by the FDA, CFDA and other applicable Regulatory Authorities.

1.10 "**Commercialization**," with a correlative meaning for " **Commercialize**" and "**Commercializing**," means all activities undertaken before and after obtaining Regulatory Approvals relating specifically to the pre-launch, launch, promotion, detailing, medical education and medical liaison activities, marketing, pricing, reimbursement, sale, and distribution of Licensed Products, including strategic marketing, sales force detailing, advertising, market Licensed Product support, all customer support, Licensed Product distribution and invoicing and

sales activities; *provided, however*, "Commercialization" shall exclude any activities relating to the manufacture of Licensed Product.

1.11 "**Commercially Reasonable Efforts**" means, with respect to either Party's obligations under this Agreement, the carrying out of such obligations with a level of efforts and resources consistent with the commercially reasonable practices of a similarly situated company in the pharmaceutical industry for the active and diligent commercialization of a similarly situated branded pharmaceutical product as the Licensed Product at a similar stage of commercialization, taking into account efficacy, safety, patent and regulatory exclusivity, anticipated or approved labeling, present and future market potential, competitive market conditions, the profitability of the product in light of pricing and reimbursement issues, and all other relevant factors (but not taking into account any payment owed to Synergy under this Agreement or any other pharmaceutical product that Luoxin is then researching, developing or commercializing, alone or with one or more collaborators).

1.12 "**Common Technical Document**" or "**CTD**" means a set of specifications for application dossier adopted by the ICH for organizing applications of pharmaceuticals for human use to regulatory authorities.

1.13 "**Competitive Product**" means any pharmaceutical composition or preparation containing any peptide listed in **Exhibit B**, excepting plecanatide, dolcanatide and linaclotide.

1.14 "**Confidential Information**" of a Party means any and all Information of such Party or its Affiliates that is disclosed to the other Party or its Affiliates under this Agreement, whether in oral, written, graphic, or electronic form. In addition, all Information disclosed by a Party or its Affiliates pursuant to the confidentiality agreement between the Parties dated April 2, 2018 (the "**Confidentiality Agreement**") shall be deemed to be Confidential Information of such Party disclosed hereunder; *provided, however,* that any use or disclosure of any such Information that is authorized under Article 12 shall not be restricted by, or be deemed a violation of, the Confidentiality Agreement. For clarity, Synergy Licensed Know-How shall be deemed Confidential Information of Synergy.

1.15 "**Control**" means, with respect to any material, Information, or intellectual property right, that a Party (a) owns or (b) has a license (other than a license granted to such Party under this Agreement) to such material, Information, or intellectual property right and, in each case, has the ability to grant to the other Party access, a license, or a sublicense (as applicable) to the foregoing on the terms and conditions set forth in this Agreement without violating the terms of any existing agreement or other arrangement with any Third Party or, with respect to any material, Information or intellectual property right obtained by Synergy after the Effective Date from a Third Party without being obligated to pay any royalties or other consideration therefor unless Luoxin agrees in advance of any grant of rights thereto to pay such royalties or other consideration.

1.16 "**Cover**," "**Covering**" or "**Covered**" means, with respect to any Licensed Product, that the manufacture, use, offer for sale, sale or import of such Licensed Product in the

Luoxin Territory by an unlicensed Third Party would infringe a Valid Claim of a Synergy Licensed Patent.

1.17 "**Data**" means all data, including CMC data, non-clinical data, preclinical data and clinical data, generated by or on behalf of a Party or its Affiliates or their respective sublicensees pursuant to activities conducted under this Agreement. For clarity, Data does not include any patentable inventions.

1.18 "**Derivative**" means a compound that (a) is structurally similar to an active pharmaceutical ingredient in the Licensed Product and (b) has substantially similar biological activity to such active pharmaceutical ingredient.

1.19 "**Development**," with a correlative meaning for "**Develop**" and "**Developing**," means all activities conducted after the Effective Date relating to preclinical and clinical trials, toxicology testing, statistical analysis, publication and presentation of study results with respect to Licensed Products, and the reporting, preparation and submission of applications (including any CMC Information) for obtaining, registering and maintaining Regulatory Approval of Licensed Products.

1.20 "**FDA**" means the U.S. Food and Drug Administration or any successor entity.

1.21 "**Field**" means the treatment of any and all human diseases and conditions that are included in the Synergy Indications; *provided, that*, "Field" shall specifically exclude any Indication that is the subject of a Global Study of which Luoxin has elected not to participate.

1.22 "**First Commercial Sale**" means the first sale of a Licensed Product in the Luoxin Territory to a Third Party after Regulatory Approval has been obtained in the Luoxin Territory.

1.23 "**Fiscal Year**" means Luoxin's fiscal year that starts on January 1 and ends on December 31.

1.24 "**GCP**" or "**Good Clinical Practices**" means the then-current standards, practices and procedures promulgated or endorsed by the FDA as set forth in the guidelines entitled "Guidance for Industry E6 Good Clinical Practice: Consolidated Guidance," including related regulatory requirements imposed by the FDA and comparable regulatory standards, practices and procedures promulgated by the CFDA or other Regulatory Authority applicable to the Luoxin Territory, as they may be updated from time to time, including applicable quality guidelines promulgated under the ICH.

1.25 "**Generic Product**" means, with respect to a Licensed Product sold in the Field in the Luoxin Territory, any pharmaceutical product that (a) (i) contains the same active pharmaceutical ingredients as such Licensed Product and is approved by the Regulatory Authority in the Luoxin Territory; or (ii) is A Rated (defined below) with respect to such Licensed Product or otherwise approved by the Regulatory Authority in the Luoxin Territory as a substitutable generic for such Licensed Product; and (b) is sold in the Luoxin Territory by a Third

Party that is not a sublicensee of Luoxin or any of its Affiliates and did not purchase such product or its active pharmaceutical ingredients from Luoxin, its Affiliates or their respective sublicensees. For purposes of this definition, "**A Rated**" means "therapeutically equivalent" as determined by the applicable Regulatory Authority in the Luoxin Territory.

1.26 "**GLP**" or "**Good Laboratory Practices**" means the then-current good laboratory practice standards promulgated or endorsed by the FDA as defined in 21 C.F.R. Part 58, and comparable regulatory standards promulgated by CFDA or other Regulatory Authority applicable to the Luoxin Territory, as they may be updated from time to time, including applicable quality guidelines promulgated under the ICH.

1.27 "**Governmental Authority**" means any multi-national, national, federal, state, local, municipal, provincial or other governmental authority of any nature (including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal).

1.28 "**Government Official**" means (a) any official or employee of any Governmental Authority, or any department, agency, or instrumentality thereof (including without limitation commercial entities owned or controlled, directly or indirectly, by a Governmental Authority), (b) any political party or official thereof, or any candidate for political office, in the Luoxin Territory or any other country, or (c) any official or employee of any public international organization.

1.29 "**ICH**" means International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use.

1.30 "**IND**" means an Investigational New Drug application filed with the FDA, or an equivalent filing outside of the U.S.

1.31 "**Indication**" means a separately defined, well-categorized class of human disease or condition for which a separate MAA (including any extensions or supplements) may be filed with a Regulatory Authority. For clarity, if an MAA is approved for a Licensed Product in a particular Indication and patient population, a label expansion for such Licensed Product to include such Indication in a different patient population shall not be considered a separate Indication.

1.32 "**Information**" means any data, results, technology, business or financial information or information of any type whatsoever, in any tangible or intangible form, including know-how, copyrights, trade secrets, practices, techniques, methods, processes, inventions, developments, specifications, formulae, software, algorithms, marketing reports, expertise, technology, test data (including pharmacological, biological, chemical, biochemical, clinical test data and data resulting from non-clinical studies), CMC Information, stability data and other study data and procedures.

1.33 "**Inventions**" means any inventions and/or discoveries, including Information, processes, methods, assays, designs, protocols, and formulas, and improvements or modifications

thereof, patentable or otherwise, that are generated, developed, conceived or reduced to practice by or on behalf of a Party or its Affiliates or their respective sublicensees pursuant to activities conducted under this Agreement, in each case including all rights, title and interest in and to the intellectual property rights therein and thereto; *provided, however,* that Inventions shall exclude Data.

1.34 "**Laws**" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision, domestic or foreign.

1.35 "**Licensed Compound**" means Synergy's plecanatide product for the treatment of Synergy Indications.

1.36 "**Licensed Product**" shall mean (a) the Licensed Compound, or (b) any pharmaceutical composition or preparation containing or comprising the Licensed Compound as an active pharmaceutical ingredient ("**API**"), including all formulations or dosage forms thereof.

1.37 "**Luoxin Development Inventions**" means any Inventions generated by or on behalf of Luoxin, its Affiliates and their respective sublicensees, including their employees, agents and contractors.

1.38 "**Luoxin Development Patents**" means any Patents that claim Luoxin Development Inventions.

1.39 "**Luoxin Territory**" means collectively, mainland China, Hong Kong and Macau (each a " **Region**").

1.40 "**Marketing Authorization Application** " or "**MAA**" means a New Drug Application (" **NDA**") or any other application to the appropriate Regulatory Authority for approval to market a Licensed Product, but excluding pricing approvals.

1.41 "**Net Sales**" means the gross amounts billed or invoiced by Luoxin, its Affiliates and their respective sublicensees for sales of Licensed Products to Third Parties and to Luoxin's Affiliated distributors, less the following deductions to the extent reasonable and customary, provided to unaffiliated entities and actually allowed and taken with respect to such sales:

(a) trade, cash or quantity discounts not already reflected in the amount invoiced, to the extent related to the gross amount billed or invoiced;

(b) price reductions, rebates and administrative fees (including those paid or credited to pharmacy benefit managers, governmental authorities or otherwise);

(c) shipping costs, including freight, insurance and other transportation charges or costs incurred in shipping of Licensed Products to Third Parties (provided that, such shipping costs shall not be in excess of * percent (*%) of Net Sales with respect to any given calendar quarter);

(d) sales, use, excise, value-added or similar taxes, customs duties and other governmental fees, charges and surcharges imposed on the sale of Licensed Products;

(e) amounts repaid or credited by reason of rejections, defects, recalls or returns;

(f) amounts paid or credited for wholesaler chargebacks; and

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

(g) any receivables that have been included in gross sales and are deemed to be uncollectible according to Accounting Standards (any such bad debt deductions shall be applied to Net Sales in the period in which such receivables are written off) (provided that, the amount of such receivables shall not be in excess of * percent (*%) of Net Sales with respect to any given calendar quarter).

Notwithstanding the foregoing and only for the purpose of calculating Net Sales, in the event the weighted average sales price billed or invoiced to Luoxin's Affiliated distributors is less than * percent (*%) of the weighted average sales price billed or invoiced to Third Parties, then * percent (*%) of the weighted average sales price billed or invoiced to Third Parties shall be used as the sales price for calculating the Net Sales to Luoxin's Affiliated distributors. Notwithstanding the foregoing, amounts received or invoiced by Luoxin, its Affiliates, or their respective sublicensees for the sale of Licensed Product among Luoxin, its Affiliates or their respective sublicensees shall not be included in the computation of Net Sales hereunder unless the purchasing entity is the end-user. For purposes of determining Net Sales, the Licensed Product shall be deemed to be sold when billed or invoiced. Net Sales shall be accounted for in accordance with standard Luoxin practices for operation by Luoxin, its Affiliates or their respective sublicensees, as practiced in the Luoxin Territory, but in any event in accordance with Accounting Standards, consistently applied in the Luoxin Territory. For clarity, a particular item may only be deducted once in the calculation of Net Sales. Notwithstanding anything to the contrary in the foregoing, to the extent any amounts deducted pursuant to subsections (d) or (g) above are subsequently recovered by Luoxin, its Affiliates, or their respective sublicensees during the Term, such recovered amounts shall be deemed "Net Sales" for the subsequent calendar quarter; provided that, if no royalties are owed by Luoxin for such subsequent calendar quarter pursuant to Section 8.5, Luoxin shall promptly refund such amount to Synergy.

With respect to any transfer of any Licensed Product in the Luoxin Territory for any substantive consideration other than monetary consideration on arm's length terms, for the purposes of calculating the Net Sales under this Agreement, such Licensed Product shall be deemed to be sold exclusively for money at the average Net Sales price charged to Third Parties for cash sales in the Luoxin Territory during the applicable reporting period (or if there were only de minimus

cash sales in the Luoxin Territory, at the fair market value as determined by comparable markets).

Luoxin, its Affiliates, and their respective sublicensees shall sell the Licensed Product as a standalone product and will not sell the Licensed Product as a part of a bundle with other products or offer packaged arrangements to customers that include the Licensed Product, except with Synergy's prior written consent.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

1.42 "**Patents**" means (a) pending patent applications, issued patents, utility models and designs; (b) reissues, substitutions, confirmations, registrations, validations, re-examinations, additions, continuations, continued prosecution applications, continuations-in-part, or divisions of or to any of the foregoing; and (c) extensions, renewals or restorations of any of the foregoing by existing or future extension, renewal or restoration mechanisms, including supplementary protection certificate or the equivalent thereof.

1.43 "**Person**" means an individual, corporation, partnership, limited liability company, limited partnership, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity not specifically listed herein.

1.44 "**Proper Conduct Practices**" means, Luoxin and each of its Representatives not, directly or indirectly, (a) making, offering, authorizing, providing or paying anything of value in any form, whether in money, property, services or otherwise to any Government Official, or other Person charged with similar public or quasi-public duties, or to any customer, supplier, or any other Person, or to any employee thereof, or failing to disclose fully any such payments in violation of the laws of any relevant jurisdiction to (i) obtain favorable treatment in obtaining or retaining business for it or any of its Affiliates, (ii) pay for favorable treatment for business secured, (iii) obtain special concessions or for special concessions already obtained, for or in respect of it or any of its Affiliates, in each case which would have been in violation of any applicable Law, (iv) influence an act or decision of the recipient (including a decision not to act) in connection with the Person's or its Affiliate's business, (v) induce the recipient to use his or her influence to affect any government act or decision in connection with the Person's or its Affiliate's business or (vi) induce the recipient to violate his or her duty of loyalty to his or her organization, or as a reward for having done so; (b) engaging in any transactions, establishing or maintaining any fund or assets in which it or any of its Affiliates shall have proprietary rights that have not been recorded in the books and records of it or any of its Affiliates; (c) making any unlawful payment to any agent, employee, officer or director of any Person with which it or any

of its Affiliates does business for the purpose of influencing such agent, employee, officer or director to do business with it or any of its Affiliates; (d) violating any provision of applicable Anti-Corruption Laws; (e) making any payment in the nature of bribery, fraud, or any other unlawful payment under the applicable Laws of any jurisdiction where it or any of its Affiliates conducts business or is registered; or, (f) if such Person or any of its Representatives is a Government Official, improperly using his or her position as a Government Official to influence the award of business or regulatory approvals to or for the benefit of such Person, its Representatives or any of their business operations, or failing to recuse himself or herself from any participation as a Government Official in decisions relating to such Person, its Representatives or any of their business operations.

1.45 "**Regulatory Approval**" means all approvals necessary for the Commercialization of a Licensed Product in the Field in a given country or regulatory jurisdiction.

1.46 "**Regulatory Authority**" means, in a particular country or jurisdiction, any applicable Governmental Authority involved in granting Regulatory Approval in such country or jurisdiction.

1.47 "**Regulatory Materials**" means regulatory applications, submissions, notifications, communications, correspondence, registrations, Regulatory Approvals and/or other filings made to, received from or otherwise conducted with a Regulatory Authority in order to develop, manufacture, market, sell or otherwise commercialize Licensed Products in a particular country or jurisdiction.

1.48 "**Renminbi**" means Chinese yuan, and "¥" shall be interpreted accordingly.

1.49 "**Representatives**" means, as to any Person, such Person's Affiliates and its and their successors, controlling Persons, directors, officers and employees.

1.50 "**Synergy Indications**" means (a) any separately defined, well-categorized class of human disease or condition for which Synergy has filed either a separate IND to an appropriate Regulatory Authority or MMA for approval to market Licensed Products outside the Luoxin Territory, or for which Synergy is otherwise developing or commercializing Licensed Products in the Synergy Territory (whether before or after the Effective Date) (which, for clarity, includes CIC and IBS-C) or (b) any other separately defined, well-categorized class of human gastrointestinal disease or condition pre-approved in writing by Synergy.

1.51 "**Synergy IP**" means the Synergy Licensed Know-How and Synergy Licensed Patents.

1.52 "**Synergy Licensed Know-How**" means all Information (including Data and Regulatory Materials) that (a) (i) is Controlled by Synergy or its Affiliates as of the Effective Date or (ii) becomes Controlled by Synergy or its Affiliates during the Term, and (b) is necessary for the Development or Commercialization of Licensed Products in the Field in the Luoxin Territory.

1.53 "**Synergy Licensed Patents**" means all Synergy Patents that (a)(i) are pending as of the Effective Date or (ii) are filed during the Term, or (b)(i) are issued as of the Effective Date or (ii) issue during the Term, in each case in the Luoxin Territory. Synergy Licensed Patents existing as of the Effective Date are set forth in **Exhibit A**.

1.54 "**Synergy Patents**" means all Patents that (a)(i) are Controlled by Synergy or its Affiliates as of the Effective Date or (ii) become Controlled by Synergy or its Affiliates during the Term, and (b) are necessary for the Development or Commercialization of Licensed Products in the Field in the Luoxin Territory.

1.55 "**Synergy Territory**" means the world except for the Luoxin Territory.

1.56 "**Third Party**" means any entity other than Synergy or Luoxin or an Affiliate of either of them.

1.57 "**Transaction Agreements**" means, collectively, (a) this Agreement, (b) the Supply Agreement, (c) the Quality Agreement and (d) any other agreement executed between the Parties in connection with any of the foregoing.

1.58 "**U.S. Dollar**" means a U.S. dollar, and "**US$**" shall be interpreted accordingly.

1.59 "**U.S.**" or "**USA**" means the United States of America, including all possessions and territories thereof.

1.60 "**Valid Claim**" means a claim (including a process, use, or composition of matter claim) of (a) an issued and unexpired patent that has not (i) irretrievably lapsed or been abandoned, revoked, dedicated to the public or disclaimed or (ii) been held invalid, unenforceable or not patentable by a court, governmental agency, national or regional patent office or other appropriate body that has competent jurisdiction, which holding, finding or decision is final and unappealable or unappealed within the time allowed for appeal or (b) a pending patent application, which claim has not been abandoned or finally disallowed without the possibility of appeal.

1.61 Additional Definitions: The following table identifies the location of definitions set forth in various Sections of the Agreement:

Defined Terms	**Section**
Agreement	Preamble
Alliance Manager	3.1
API	1.36
A Rated	1.25
Claims	11.1
Committee	3.2(b)
Commercialization Plan	6.2(a)
Competitive Product Entry	8.5(c)(ii)
Confidentiality Agreement	1.14

Defined Terms	Section
Development Plan	4.2
Effective Date	Preamble
Enforcing Party	9.3(c)
Executive Officers	14.1
Expert Arbitration	14.2
GAAP	1.1
Generic Entry	8.5(c)(i)
Global Study	4.1
IFRS	1.1
Indemnified Party	11.3
Indemnifying Party	11.3
Infringement	9.3(a)
Infringement Actions	9.4
Joint Steering Committee or JSC	3.2(a)
Losses	11.1
Luoxin	Preamble
Luoxin Housemarks	9.6(b)
Luoxin Indemnitees	11.1
Luoxin Product Mark	9.6(a)
Luoxin Sublicense Agreement	2.1(c)
NDA	1.40
Party	Preamble
Pharmacovigilance Agreement	5.8
Product Materials	4.7
Quality Agreement	7.4
Quality Agreement Terms	7.4
Region	1.39
Remedial Action	5.9
Royalty Term	8.5(b)
SIPO	9.2(a)
SIPO ESE Notice	9.2(a)
Subcommittee	3.2(b)
Supply Agreement	7.3
Supply Agreement Terms	7.3
Synergy	Preamble
Synergy Indemnitees	11.2
Synergy Partner	2.2
Tax Withholding	8.12(b)
Term	13.1
VAT	8.12(d)

ARTICLE 2

LICENSE

2.1 License to Luoxin.

(a) License Grant. Subject to the terms and conditions of this Agreement, Synergy hereby grants Luoxin an exclusive (even as to Synergy except as provided in Section 2.1(b) below) license, with the right to sublicense solely as provided in Section 2.1(c), under the Synergy IP, to manufacture and have manufactured (solely to the extent set forth in Section 7.5), Develop, distribute, market, promote, sell, have sold, offer for sale, import, label, package and otherwise Commercialize Licensed Products in the Field in the Luoxin Territory. As consideration for the foregoing license and access to and transfers of know-how under this Agreement, Luoxin will make certain payments to Synergy as set out in, and subject to the terms and conditions of, Article 8.

(b) Synergy Retained Rights. Notwithstanding the exclusive rights granted to Luoxin in Section 2.1(a), Synergy and its Affiliates retain the following: (i) the right to practice the Synergy IP within the scope of the license granted to Luoxin under Section 2.1(a) in order to perform, or have performed by a Third Party contractor, Synergy's obligations under this Agreement or any other Transaction Agreement; (ii) the right to manufacture or have manufactured Licensed Products anywhere in the world, for sale and use in the Synergy Territory or for sale to Luoxin pursuant to the Supply Agreement; and (iii) the right to practice and license the Synergy IP outside the scope of the license granted to Luoxin in Section 2.1(a).

(c) Sublicense Rights. Luoxin shall have the right to grant sublicenses of the license granted in Section 2.1(a) to its Affiliates without Synergy's prior consent or to Third Parties with Synergy's express prior written consent, not to be unreasonably denied or delayed. Luoxin shall, within thirty (30) days after granting any sublicense under Section 2.1(a), notify Synergy of the grant of such sublicense and provide Synergy with a true and complete copy of the sublicense agreement (each, a "**Luoxin Sublicense Agreement**"). Each Luoxin Sublicense Agreement shall be consistent with the terms and conditions of this Agreement, and Luoxin shall be solely responsible for all of its sublicensees' activities and any and all failures by its sublicensees to comply with the terms of this Agreement. Without limiting the foregoing, each Luoxin Sublicense Agreement shall include the following additional terms and conditions:

(i) the sublicensee shall be bound by non-use and non-disclosure obligations no less stringent than those set forth in this Agreement;

(ii) the sublicensee shall not have any right to grant further sublicenses to the Synergy IP or to engage subcontractors to perform its obligations to Luoxin;

(iii) the sublicensee shall not have any right to prosecute or maintain or enforce any Synergy Licensed Patents;

(iv) the sublicensee shall assign to Luoxin all Data and Inventions generated by such sublicensee;

(v) the sublicensee shall not have the right to submit, own or control any Regulatory Materials for Licensed Products; and

(vi) if this Agreement terminates, Synergy shall have the option, at its sole discretion, to (A) assume Luoxin's rights and obligations under the Luoxin Sublicense Agreement if practicable, or (B) terminate the Luoxin Sublicense Agreement in its entirety without any penalty or other obligation to the sublicensee.

2.2 Synergy Partner. Without prejudice to Luoxin's right under this Agreement, Synergy has the right, in its sole discretion, to enter into one or more agreements with Third Parties and grant such Third Parties the right to Develop, manufacture and/or Commercialize Licensed Products in one or more countries in the Synergy Territory (each such Third Party, a "**Synergy Partner**"), and Synergy shall have the right (but not the obligation) to exercise any and/or all of its rights and/or fulfill any and/or all of its obligations under this Agreement through Synergy Partner(s), including granting Synergy Partner(s) the right to participate in any Committee meetings as one or more of Synergy's representatives, *provided that*, Synergy shall be solely responsible for all activities of Synergy Partner(s) and any and all failures by Synergy Partner(s) to comply with the terms of this Agreement. Luoxin shall cooperate fully with Synergy Partner(s) to the extent that Luoxin has the obligation under this Agreement to cooperate with Synergy. Synergy shall have the right to disclose to Synergy Partner(s) all information regarding Licensed Products, including all Regulatory Materials, disclosed by Luoxin to Synergy under this Agreement, for use by Synergy Partner(s) in their development, manufacture and commercialization of Licensed Products in the Synergy Territory, *provided, however,* that all such information disclosed to Synergy Partner(s) by Synergy shall be deemed the Confidential Information of Luoxin and Synergy and Synergy Partner(s) that receive any such information shall be obligated to abide by restrictions on disclosure and use substantially similar to the provisions set forth in Section 12.1.

2.3 Negative Covenant. Luoxin covenants that it will not, and will not permit any of its Affiliates or sublicensees to, use or practice any Synergy IP outside the scope of the license granted to it under Section 2.1(a).

2.4 No Implied Licenses. Except as explicitly set forth in this Agreement, neither Party shall be deemed by estoppel or implication to have granted the other Party any license or other right to any intellectual property of such Party.

2.5 Restrictions. During the Term, Synergy, Luoxin, and their respective Affiliates shall not Develop, manufacture or Commercialize, or authorize (by license or otherwise) any Third Party to Develop, manufacture or Commercialize, any Derivative in the Field in the

Luoxin Territory. Notwithstanding the foregoing, with respect to Synergy and its Affiliates, Derivative does not include dolcanatide.

ARTICLE 3

GOVERNANCE

3.1 Alliance Managers. Within thirty (30) days after the Effective Date, each Party shall appoint and notify the other Party of the identity of a representative having the appropriate qualifications, including a general understanding of pharmaceutical development and commercialization issues, to act as its alliance manager under this Agreement (the "**Alliance Manager**"). The Alliance Managers shall serve as the primary contact points between the Parties for the purpose of providing each Party with information on the progress and results of Luoxin's Development and Commercialization of Licensed Products. The Alliance Managers shall also be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration between the Parties with respect to Licensed Products. Each Party may replace its Alliance Manager at any time upon written notice to the other Party.

3.2 Joint Committees.

(a) JSC Formation and Role. Within thirty (30) days after the Effective Date, the Parties shall establish a joint steering committee (the "**Joint Steering Committee**" or "**JSC**") for the overall coordination and oversight of the Parties' activities under this Agreement. The role of the JSC shall be:

(i) to facilitate the exchange of Data, Information, materials and results between the Parties relating to Development, Commercialization and manufacturing of the Licensed Product;

(ii) to review, discuss and coordinate the overall strategy for the Development and Commercialization of Licensed Products in the Luoxin Territory, including related regulatory activities;

(iii) to review, discuss and approve the initial Development Plan and any proposed amendments or revisions to the Development Plan;

(iv) to review and discuss the Commercialization Plan and any proposed amendments or revisions to such plan, and review and discuss the Commercialization of Licensed Products in the Luoxin Territory;

(v) to coordinate the Commercialization of Licensed Products in the Luoxin Territory and Synergy Territory to ensure consistent global marketing of Licensed Products;

(vi) to oversee the activities of the Subcommittees and attempt to resolve issues presented to it by and disputes within the Subcommittees; and

(vii) to perform such other functions as appropriate to further the purposes of this Agreement, as expressly set forth in this Agreement or as determined by the Parties in writing.

(b) Subcommittee(s). From time to time, the JSC may establish joint subcommittees to oversee particular projects or activities (such as Licensed Product supply, Development and Commercialization), as it deems necessary or advisable (each, a "**Subcommittee**", and together with the JSC, the " **Committees**").

(c) Members. Each Committee shall be comprised of an equal number of representatives from each Party. Each Party's representatives shall be an officer or employee of such Party or its Affiliate having sufficient seniority within the applicable Party to make decisions arising within the scope of the applicable Committee's responsibilities. Each Party shall initially appoint three (3) representatives to the JSC. Each Committee may change its size from time to time by mutual consent of its representatives, and each Party may replace its representatives at any time upon written notice to the other Party. Each Party shall appoint one (1) of its representatives on each Committee to act as the co-chairperson of such Committee. The role of the co-chairpersons shall be to convene and preside at the Committee meetings and to ensure the circulation of meeting agendas at least five (5) days in advance of Committee meetings and the preparation of meeting minutes in accordance with Section 3.2(d), but the co-chairpersons shall have no additional powers or rights beyond those held by other Committee representatives.

(d) Meetings. The JSC shall meet at least twice per calendar year during the Term, unless the Parties mutually agree in writing to a different frequency for such meetings. Either Party may also call a special meeting of any Committee (by videoconference or teleconference) by at least ten (10) Business Days prior written notice to the other Party in the event such Party reasonably believes that a significant matter must be addressed prior to the next regularly scheduled meeting, and such Party shall provide the applicable Committee no later than ten (10) Business Days prior to the special meeting with materials reasonably adequate to enable an informed decision. Each Committee may meet in person, by videoconference or by teleconference (*provided, however,* that, unless the Parties otherwise mutually agree, at least one such JSC meeting per calendar year shall be in person (alternating between the headquarters of Synergy (or one of its Affiliates) and Luoxin). All Committee meetings shall be conducted in English and all communications under this Agreement shall be in English. The co-chairpersons shall be responsible for preparing reasonably detailed written minutes of the Committee meetings that reflect, without limitation, all material decisions made at such meetings. The co-chairpersons shall send draft meeting minutes to each representative of the applicable Committee for review and approval within ten (10) Business Days after the Committee meeting. Such minutes shall be deemed approved unless one or more Committee representatives object to the accuracy of such minutes within ten (10) Business Days of receipt.

3.3 Decision Making. Each Committee shall strive to seek consensus in its actions and decision making process and all decisions by the Committees shall be made by consensus, with each Party having collectively one (1) vote in all decisions. If after reasonable discussion

and good faith consideration of each Party's view on a particular matter before any Subcommittee, the representatives of the Parties cannot reach an agreement as to such matter within ten (10) Business Days after such matter was brought to such Subcommittee for resolution (to the extent such matter requires the agreement of the Parties hereunder), such disagreement shall be referred to the JSC for resolution. If after reasonable discussion and good faith consideration of each Party's view on a particular matter before the JSC, the representatives of the Parties cannot reach an agreement as to such matter (to the extent that such matter requires the agreement of the Parties hereunder) within ten (10) Business Days after such matter was brought to the JSC for resolution or after such matter has been referred to the JSC, such disagreement shall be referred to the Executive Officers for resolution. If the Executive Officers cannot resolve such matter within thirty (30) days after such matter has been referred to them, then: (i) Synergy's Executive Officer shall have the final decision making authority with respect to matters related to the manufacture of the Licensed Compound or Licensed Product at all times during the Term prior to Luoxin's exercise of its right to manufacture the Licensed Compound or Licensed Product, pursuant to Section 7.5; and (ii) Luoxin's Executive Officer shall have the final decision making authority with respect to matters (x) related to the Development or Commercialization of the Licensed Compound or Licensed Product in the Field in the Luoxin Territory and (y) related to the manufacture of the Licensed Compound and/or Licensed Product in the Luoxin Territory after Luoxin's exercise of its right to manufacture the Licensed Compound and/or Licensed Product pursuant to Section 7.5, in each case if such matter is within the JSC's authority, *provided, however,* that Synergy's Executive Officer shall have the right to veto any decision by Luoxin relating to any of the following matters (any such determination by Synergy's Executive Officer shall be in writing detailing the rationale for such determination and provided to Luoxin within twenty (20) Business Days following the submission of such matters to the Committee):

(a) the initial Development Plan, any amendments or updates to the Development Plan or any Development work that, in Synergy's reasonable judgment, could be reasonably proved to have an Adverse Impact; and

(b) global key product messages in promotional materials, key product messages and content of scientific communications at conferences and events, and communication to advisory boards that, in Synergy's reasonable judgment, could be reasonably proved to have an Adverse Impact.

3.4 Limitation of Committee Authority . Each Committee shall only have the powers expressly assigned to it in this Article 3 and elsewhere in this Agreement and shall not have the authority to: (a) modify or amend the terms and conditions of this Agreement; (b) waive or determine either Party's compliance with the terms and conditions of under this Agreement; or (c) decide any issue in a manner that would conflict with the express terms and conditions of this Agreement.

3.5 Discontinuation of Committees. The activities to be performed by each Committee shall solely relate to governance under this Agreement, and are not intended to be or involve the delivery of services. Each Committee shall continue to exist until receipt of MAA

approval for the first Licensed Product in mainland China, at which time all Committees shall automatically terminate. Thereafter, each Committee shall have no further obligations under this Agreement and, thereafter, each Party shall designate a contact person for the exchange of information relevant to such Committee under this Agreement and decisions of such Committee shall be decisions as between the Parties, subject to the other terms and conditions of this Agreement.

ARTICLE 4

DEVELOPMENT

4.1 Overview. Subject to the terms and conditions of this Agreement (including the diligence obligations set forth below), Luoxin will be responsible for the Development of Licensed Products in the Field in the Luoxin Territory, at its own cost and expense (except as otherwise expressly set forth herein), including all non-clinical and clinical studies and all collection of CMC Information necessary to obtain Regulatory Approval for Licensed Products in the Luoxin Territory. Notwithstanding anything contained in the foregoing to the contrary, in the event that Synergy intends to conduct a global clinical trial (including in the Luoxin Territory) (a "**Global Study**"), Synergy will provide a summary of the proposed Global Study to Luoxin for review. If Luoxin agrees to participate in the Global Study, then Synergy (or its designee) will be responsible for conducting the Global Study, including in the Luoxin Territory, and Luoxin shall reimburse Synergy for all external costs directly associated with the Global Study in the Luoxin Territory and a pro rata allocation of all other external costs associated with the Global Study (such allocation based on the number of expected patients in the Luoxin Territory versus the Synergy Territory) agreed by Luoxin in advance. In the event that Synergy engages a Third Party service provider to conduct activities under a Global Study in the Luoxin Territory, then Synergy shall permit Luoxin to have direct communication with any such Third Party service provider regarding the conduct and design of the Global Study. Synergy shall use reasonable efforts to include in any agreement with such Third Party service provider obligations of confidentiality and non-use no less restrictive than those specified in this Agreement and Synergy shall be solely responsible for any and all activities of such Third Party service provider.

4.2 Development Plan. Other than with respect to the Global Study, all Development of Licensed Products under this Agreement shall be conducted pursuant to a comprehensive written development plan which sets forth the timeline and details of all non-clinical and clinical studies, CMC Information collection activities and regulatory activities to be conducted by or on behalf of Luoxin or its Affiliates or their respective sublicensees to obtain Regulatory Approval of Licensed Products in the Luoxin Territory (the "**Development Plan**").

Within * (*) months after the Effective Date, the Parties will, through the JSC, agree on the initial Development Plan. From time to time during the Term (at least on an annual basis), Luoxin shall prepare amendments and updates, as appropriate, to the then-current Development Plan, and shall submit such amendments and updates to the JSC for review and approval.

4.3 Additional Research Work. If Luoxin wishes to conduct research to collect and obtain data that is useful for optimization of the commercial value of any Licensed Product in the Luoxin Territory, including new uses, new formulations or combination products, Luoxin may propose an amendment to the Development Plan to include such research work and submit such amendment to Synergy for review and approval. If Synergy approves (in its sole discretion) such amendment, such research work shall be included in the amended Development Plan and Luoxin may conduct such research work at its own cost. For clarity, the license granted by Synergy to Luoxin under this Agreement is limited to Licensed Products in the Field in the Luoxin Territory and does not include the right to conduct research, or to Develop or Commercialize Licensed Products outside of the Field or outside the Luoxin Territory or in any new formulation of Licensed Products or as part of any combination that includes Licensed Products. As such, to the extent Synergy approves (in its sole discretion) of any amendment to the Development Plan that requires the conduct by Luoxin of any of the activities in the immediately preceding sentence, the Parties shall execute an amendment to this Agreement that, among other things, amends the license grant under Section 2.1 and the definition of "Licensed Product", as applicable.

4.4 Development Diligence.

(a) Luoxin shall use Commercially Reasonable Efforts to Develop and obtain Regulatory Approval of Licensed Products in the Field in the Luoxin Territory (as well as support the portion of any Global Study to be conducted in the Luoxin Territory in which Luoxin agrees to participate).

(b) Synergy shall provide such technical assistance and cooperation to Luoxin as Luoxin may reasonably request (subject to Luoxin's reimbursement of Synergy's direct and reasonable external costs and expenses related thereto (including travel and accommodation costs)), as necessary or reasonably useful for Luoxin to Develop or Commercialize Licensed Products in the Field in the Luoxin Territory. Prior to providing such assistance or cooperation, Synergy shall provide Luoxin an estimate of any external costs and expenses related thereto and shall not incur any such external costs and expenses without Luoxin's prior written consent.

4.5 Development Records. Luoxin shall maintain complete, current and accurate records of all activities conducted pursuant to the Development Plan by Luoxin, its Affiliates and their respective sublicensees, and all Data and other Information resulting from such activities. Such records shall fully and properly reflect all work done and results achieved in the performance of the Development activities in good scientific manner appropriate for regulatory and patent purposes.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Luoxin shall document all non-clinical studies and clinical trials in formal written study records according to applicable Laws, including applicable national and international guidelines such as ICH, GCP and GLP. Synergy shall have the right to review and copy such records at reasonable times and to obtain access to the original to the extent necessary or useful for regulatory or patent purposes.

4.6 Development Reports. Luoxin shall keep Synergy reasonably informed as to the progress and results of its and its Affiliates' and their respective sublicensees' work under the Development Plan. Without limiting the foregoing, at each regularly scheduled JSC meeting, Luoxin shall provide Synergy with a written report summarizing the Development activities performed since the last JSC meeting and the results thereof, and comparing such activities with the Development Plan for such time period. Such reports shall be at a level of detail reasonably requested by Synergy and reasonably sufficient to enable Synergy to determine Luoxin's compliance with its diligence obligations under Section 4.4. At such JSC meeting, the Parties shall discuss the status, progress and results of Luoxin's Development activities. Luoxin shall promptly respond to Synergy's reasonable questions or requests for additional information relating to such Development activities. In addition, within thirty (30) days after the end of each Fiscal Year, Luoxin shall provide Synergy with a detailed written annual report regarding the progress under the Development Plan and results thereof.

4.7 Data Exchange. In addition to its adverse event and safety data reporting obligations pursuant to Section 5.8 and Synergy's obligation regarding the initial technology transfer set forth under Section 4.8, but subject to the remainder of this Section 4.7, each Party shall, at its sole cost and expense, promptly provide the other Party with copies of all Data and Regulatory Materials related to the Licensed Compound or Licensed Products generated by or on behalf of such Party or its Affiliates or sublicensees during the Development of the Licensed Compound or Licensed Products in the Luoxin Territory or Synergy Territory, as applicable (the "**Product Materials**"). The JSC may establish reasonable policies to effectuate such exchange of Data and Regulatory Materials between the Parties. For clarity, Synergy shall be obligated to share with Luoxin or provide Luoxin access to CMC Information or any other Information related to the manufacture of Licensed Products, if required or reasonably useful for Luoxin to exercise its right and obligations hereunder.

4.8 Transfer of Synergy Licensed Know-How . Within * (*) days after the Effective Date, Synergy shall provide Luoxin with complete and accurate copies of the Synergy Licensed Know-How in existence, and that is Controlled by Synergy or its Affiliates, as of the Effective Date. Within * (*) day after any additional Synergy Licensed Know-How subsequently comes into existence, or becomes Controlled by Synergy or its Affiliates during the Term, Synergy shall provide Luoxin with complete and accurate copies of such additional Synergy Know-How. Notwithstanding the foregoing, with respect to such additional Synergy Licensed Know-How, Synergy shall reasonably cooperate with Luoxin in providing Luoxin with copies of such Synergy Licensed Know-How in accordance with the process and schedule agreed upon through the JSC, if any.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

4.9 Subcontractors. Except with respect to any activities conducted under or in connection with any Global Study (for which Synergy shall have the right to engage subcontractors subject to Luoxin's review and consent to the activities to be conducted in the Luoxin Territory), Luoxin shall have the right to engage subcontractors to conduct any activities necessary for Development of Licensed Products, including but not limited to non-clinical

studies, clinical studies, CMC activities, and regulatory services for Licensed Products, under this Agreement, provided that such subcontractors are bound by written obligations of confidentiality and non-use consistent with this Agreement and have agreed in writing to assign to Luoxin all data, Information, inventions or other intellectual property generated by such subcontractor in the course of performing such subcontracted work. Luoxin shall remain responsible for any obligations that have been delegated or subcontracted to any subcontractor, and shall be responsible for the performance of its subcontractors.

ARTICLE 5

REGULATORY MATTERS

5.1 Regulatory Responsibilities.

(a) Subject to the terms and conditions of this Agreement, Luoxin will be responsible, at its sole cost and expense, for the conduct of all regulatory activities required to obtain and maintain Regulatory Approval of Licensed Products in the Field in the Luoxin Territory, including the preparation of all Regulatory Materials and all communications and interactions with Regulatory Authorities in the Luoxin Territory with respect to Licensed Products. Luoxin shall be responsible for filing each MAA in the Luoxin Territory for each Licensed Product and will be the holder of the Regulatory Approval for each Licensed Product in the Luoxin Territory. The Development Plan shall include the regulatory strategy for obtaining Regulatory Approval of Licensed Products in the Luoxin Territory. Luoxin shall use Commercially Reasonable Efforts to carry out its regulatory obligations for Licensed Products pursuant to such strategy. Notwithstanding the foregoing, if it is required by applicable Laws for Synergy to file the MAA for any Licensed Product in the Luoxin Territory, upon request of and in cooperation with Luoxin, Synergy shall file such MAA and maintain the Regulatory Approval of such Licensed Product for the benefit of Luoxin (provided that Luoxin shall be solely responsible for the preparation of such MAA). As between the Parties, Luoxin shall be the legal and beneficial owner of all Regulatory Approvals of the Licensed Product in the Luoxin Territory. The original copies of the Regulatory Approvals shall be held by Luoxin. Upon request by Luoxin, Synergy shall transfer such Regulatory Approvals to Luoxin and/or any other entity designated by Luoxin or deregister such Regulatory Approvals as soon as practicable. Synergy shall not transfer, dispose of, withdraw, revoke or otherwise conduct any activities affecting the validity and scope of such Regulatory Approvals without Luoxin's prior written consent. Synergy shall provide the information regarding any communication between the Regulatory Authorities and Synergy to Luoxin as soon as possible, and shall obtain Luoxin's agreement before responding to the Regulatory Authorities to the extent legally permitted and practicable.

(b) Synergy shall use Commercially Reasonable Efforts to provide such assistance and cooperation to Luoxin as Luoxin may reasonably request (subject to Luoxin's reimbursement of Synergy's direct and reasonable external costs and expenses related thereto (including travel and accommodation costs)), with respect to the satisfaction of its obligations under Section 5.1(a), including in connection with the preparation of Regulatory Materials. Prior to providing such assistance or cooperation, Synergy shall provide Luoxin an estimate of any

external costs and expenses related thereto and shall not incur any such external costs and expenses without Luoxin's prior written consent. Without limiting the foregoing, Synergy shall provide Luoxin with each module of the Common Technical Document in a manner sufficient for filing in the U.S. as soon as reasonably practicable after completion thereof. Additionally, Synergy shall provide Luoxin with information sufficient for filing each module of the CTD in the Luoxin Territory. Luoxin shall be responsible for publishing and submitting the CTD (including each module included therein) to the Regulatory Authority in the Luoxin Territory. In order to address questions Luoxin may receive from a Regulatory Authority in the Luoxin Territory related to any module of the CTD, Synergy will assist in the preparation of responses based on information that would be found in: various technical reports, notebooks, executed batch records, master batch records, SOPs, validation protocols and reports, vendor certificates, and third party study reports and other CMC related documents not otherwise included in a module of the CTD or otherwise already provided to Luoxin. Any such transfer of CMC Information as set forth in this Section 5.1 is conditioned on Luoxin establishing appropriate firewalls or equivalent means to ensure that any such CMC Information is protected from unauthorized disclosure and is used only for legal and regulatory compliance purposes and not for any other purpose. In furtherance of the foregoing, Luoxin shall ensure that any CMC Information provided by or on behalf of Synergy pursuant to this Section 5.1 shall only be disclosed to those identified personnel of Luoxin (or a designated agreed Third Party) who (a) have a need to know the same to comply with the above obligations, and (b) have been fully informed of and acknowledge the highly sensitive and proprietary nature of such information and the need to maintain its secrecy and avoid inappropriate usage or disclosure, by using the firewall or equivalent means. Notwithstanding anything to the contrary herein, Synergy will not have the obligations to provide Luoxin with modules of the Common Technical Document under this Section 5.1(b) after Luoxin exercises its right to manufacture the Licensed Compound and Licensed Product in the Luoxin Territory in accordance with Section 7.5.

5.2 Regulatory Information Sharing. Luoxin shall (a) provide Synergy with the English summary of major information, along with the original documents (in the electronic format in which it has been prepared by Luoxin) of the draft Chinese package insert and Common Technical Document (CTD), for Synergy's review and comment, in connection with obtaining or maintaining any MAA approval for Licensed Products in the Field in the Luoxin Territory, at least forty-five (45) days prior to the submission of such documents to the Regulatory Authority in the Luoxin Territory; and (b) keep Synergy informed of any material verbal or written communication or question relating to Licensed Products received by Luoxin from the Regulatory Authority in the Luoxin Territory. Notwithstanding the foregoing, Luoxin shall only be required to provide Synergy with the draft Chinese package insert and CTD via an electronic data room (without the ability to download or print), unless a Regulatory Authority in the Synergy Territory requires a copy of the CTD that was filed in the Luoxin Territory. Except as required by applicable Law, Luoxin, its Affiliates and sublicensees shall not submit any Regulatory Materials to, or communicate with, any Regulatory Authority in the Synergy Territory regarding any Licensed Products. If such submission or communication is required by applicable Law, Luoxin shall immediately notify Synergy in writing of such requirement and the content of such submission or communication.

5.3 Meetings with Regulatory Authorities. Luoxin shall lead all interactions with Regulatory Authorities in the Luoxin Territory with respect to Licensed Products. Luoxin shall keep Synergy reasonably informed of any material regulatory developments related to Licensed Products in the Field in the Luoxin Territory. At each regularly scheduled JSC meeting, Luoxin shall provide Synergy with a list and schedule of any in-person meeting or teleconference with the applicable Regulatory Authorities (or related advisory committees) in the Luoxin Territory planned for the next calendar quarter that relates to any Licensed Product in the Field. In addition, Luoxin shall notify Synergy as soon as reasonably possible (but in no event later than two (2) Business Days) after Luoxin becomes aware of any additional such meetings or teleconferences that become scheduled for such calendar quarter. Synergy shall provide all reasonable assistance requested by Luoxin to prepare for any such meeting or teleconference. To the extent permitted by applicable Laws, Synergy shall have the right to participate (whether directly or through a representative) in all such meetings and teleconferences, at Synergy's cost.

5.4 Regulatory Costs. Unless otherwise provided in this Agreement, Luoxin shall be responsible for the costs and expenses incurred in connection with the preparation and filing of any and all Regulatory Materials and the maintenance of any and all Regulatory Approvals (including MAA approvals) for Licensed Products in the Field in the Luoxin Territory.

5.5 Right of Reference to Regulatory Materials. Each Party hereby grants to the other Party the right of reference to all Regulatory Materials pertaining to Licensed Products submitted by or on behalf of such Party. The receiving Party may use such right of reference solely for the purpose of seeking, obtaining and maintaining Regulatory Approval of Licensed Products in its respective territory. Each Party shall support the other Party, as reasonably requested by such other Party and at such other Party's expense, in obtaining Regulatory Approvals in such other Party's territory, including providing necessary documents or other materials required by applicable Laws to obtain Regulatory Approval in such territory, all in accordance with the terms and conditions of this Agreement.

5.6 No Harmful Actions. If Synergy believes that Luoxin is taking or intends to take any action with respect to any Licensed Product that could reasonably be proved to have an Adverse Impact, Synergy may bring the matter to the attention of the JSC and the Parties shall discuss in good faith to promptly resolve such concern.

5.7 Notification of Threatened Action. Each Party shall immediately notify the other Party of any information it receives regarding any threatened or pending action, inspection or communication by or from any Third Party, including without limitation a Regulatory Authority, which may affect the development, manufacture, commercialization or regulatory status of any Licensed Product. Upon receipt of such information, the Parties shall consult with each other in an effort to arrive at a mutually acceptable procedure for taking appropriate action.

5.8 Adverse Event Reporting and Safety Data Exchange . No later than * (*) days before the commencement of an additional clinical study with respect to Development of any Licensed Product by Luoxin in the Luoxin Territory, the Parties shall define and finalize the actions that the Parties shall employ with respect to such Licensed Product to protect patients and promote their well-being in a written pharmacovigilance agreement (the "**Pharmacovigilance Agreement**") for the Development of the Licensed Product. Further, no later than * (*) days before the anticipated launch date of any Licensed Product in the Luoxin Territory, the Parties shall enter into a separate Pharmacovigilance Agreement for the Commercialization of the Licensed Product. These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of adverse event reports, pregnancy reports, and any other information concerning the safety of the Licensed Product. Such guidelines and procedures shall be in accordance with, and enable the Parties to fulfill, local and national regulatory reporting obligations under applicable Laws. Furthermore, such agreed procedure shall be consistent with relevant ICH guidelines, except where said guidelines may conflict with existing local regulatory reporting safety reporting requirement, in which case local reporting requirement shall prevail. The Pharmacovigilance Agreement shall provide for an adverse event database for the Licensed Products in the Luoxin Territory to be maintained by Luoxin at Luoxin's expense, and a global safety database for the Licensed Products, to be maintained by Synergy at Synergy's expense. As between the Parties, each Party shall be responsible for preparing all adverse event reports and responses to safety issues and requests of Regulatory Authorities relating to Licensed Products in their respective territories, and shall be responsible for filing such reports and responses with Regulatory Authorities in their respective territories. As between the Parties, Luoxin shall also be responsible for reporting any quality complaints, adverse events and safety data related to Licensed Products to Synergy for inclusion in the global safety database. Each Party hereby agrees to comply with its respective obligations under such Pharmacovigilance Agreement and to cause its Affiliates and permitted sublicensees to comply with such obligations.

5.9 Remedial Actions. Each Party will notify the other Party immediately, and promptly confirm such notice in writing, if it obtains information indicating that any Licensed Product may be subject to any recall, corrective action or other regulatory action taken by virtue of applicable Laws (a "**Remedial Action**"). The Parties will assist each other in gathering and evaluating such information as is necessary to determine the necessity of conducting a Remedial Action. Luoxin shall, and shall ensure that its Affiliates and sublicensees will, maintain adequate records to permit the Parties to trace the packaging, labeling, distribution, sale and use (to the extent possible) of the Licensed Product in the Luoxin Territory.

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Luoxin shall have sole discretion with respect to any matters relating to any Remedial Action in the Luoxin Territory, including the decision to commence such Remedial Action and the control over such Remedial Action in its territory, at its cost and expense; *provided, however,* that if Synergy believes that any Remedial Action with respect to any Licensed Product in the Luoxin Territory should be commenced or is required by applicable Laws or Regulatory Authority, Synergy shall discuss such Remedial Action with Luoxin and Luoxin shall reasonably take Synergy's advice into consideration; *provided, further, however,* that if Luoxin elects not to follow Synergy's advice, then Synergy will have no obligation to indemnify Luoxin under Section 11.1 for any Losses in that portion attributable to Luoxin's election not to follow Synergy's advice. Each Party shall provide the other Party, at the other Party's expense, with such assistance in connection with a Remedial Action as may be reasonably requested by such other Party. Notwithstanding the foregoing, any Remedial Action that relates to the manufacture and supply of Licensed Products by Synergy to Luoxin shall be governed by the terms and conditions of the Supply Agreement.

5.10 Manufacturing Changes. In the event that Synergy elects to make changes to the manufacturing site or process for the manufacture of Licensed Compounds or Licensed Products to the extent that such changes would result in any modification, change or reacquisition of any regulatory approval, permit or certificate in the Synergy Territory, Synergy shall provide a written notice to Luoxin within ten (10) Business Days upon engaging a contract manufacturer in relation to the implementation of such changes, and both Parties shall discuss in good faith any required adjustment to the Development Plan and/or Commercialization Plan accordingly, as applicable. Synergy shall at its earliest convenience provide all information, documents and materials in relation to such changes as necessary and reasonably useful for Luoxin to exercise its rights and satisfy its obligations under this Agreement and shall provide assistance and cooperation as necessary and reasonably useful for Luoxin to submit such changes for review and approval by Regulatory Authorities in the Luoxin Territory (as more detailed in the Quality Agreement).

ARTICLE 6

COMMERCIALIZATION

6.1 Overview. Subject to the terms and conditions of this Agreement (including the diligence obligations set forth below), Luoxin will be responsible for and have operational control over all aspects of the Commercialization of Licensed Products in the Field in the Luoxin Territory, including: (a) developing and executing a commercial launch and pre-launch plan, (b) negotiating with applicable Governmental Authorities regarding the price and reimbursement status of Licensed Products; (c) marketing, advertising and promotion; (d) booking sales and distribution and performance of related services; (e) handling all aspects of order processing, invoicing and collection, inventory and receivables; (f) providing customer support, including handling medical queries, and performing other related functions; and (g) conforming its practices and procedures to applicable Laws relating to the marketing, detailing and promotion of

Licensed Products in the Field in the Luoxin Territory. Luoxin shall bear all of the costs and expenses incurred in connection with such Commercialization activities. Synergy shall provide and/or disclose to Luoxin, upon Luoxin's request, and no more than once each calendar quarter, at Synergy's cost, copies of any Licensed Product-related materials that are necessary or useful in connection with Luoxin's Commercialization of Licensed Products in the Field in the Luoxin Territory and prepared by or on behalf of Synergy (including relevant training materials, global brand and global market research, in each case, with respect to Licensed Products).

6.2 Commercialization Plan.

(a) General. Luoxin shall Commercialize Licensed Products in the Field in the Luoxin Territory pursuant to a commercialization plan (the "**Commercialization Plan**"). The Commercialization Plan shall include (i) a detailed description of all key strategic decisions (including messaging, branding, marketing, advertising, sales force positioning, number of representatives and details, pricing strategy, etc.), implementation tactics and pre-launch and post-launch activities; (ii) a reasonably detailed description and timeline of Luoxin's, its Affiliates' and their respective sublicensees' Commercialization activities for Licensed Products in the Luoxin Territory for the next Fiscal Year, including medical marketing activities, sales forecasts and projections, pricing, reimbursement, market research, sales training, distribution channels, customer service and sales force matters related to the launch and sale of Licensed Products in the Luoxin Territory, and (iii) a strategic plan for Commercialization of Licensed Products in the Luoxin Territory for the following two (2) Fiscal Years. In the event that Luoxin's Commercialization Plan requires the use of Synergy internal resources to conduct additional activities, the extent of such need shall be clearly specified in the Commercialization Plan and will require the prior written approval of Synergy.

(b) Initial Plan and Amendments. Within a reasonable time (but no later than six (6) months) prior to the anticipated Regulatory Approval of each Licensed Product in the Luoxin Territory, Luoxin shall prepare and present to the JSC (or a Subcommittee established by JSC to oversee Commercialization of Licensed Products in the Luoxin Territory) the initial Commercialization Plan for review and discussion by the JSC. From time to time during the Term (at least on an annual basis), Luoxin shall prepare updates and amendments, as appropriate, to the then-current Commercialization Plan, and shall submit all updates and amendments to the Commercialization Plan to the JSC for review and discussion. Once approved by the JSC, the Commercialization Plan shall become effective and supersede the previous Commercialization Plan as of the date of such approval.

6.3 Pricing. Subject to any determination by applicable Regulatory Authorities, Luoxin shall have the sole right to determine the pricing of the Licensed Products in the Luoxin Territory. Synergy shall not have any right to direct, control, or approve Luoxin's pricing of the Licensed Products in the Luoxin Territory.

6.4 Commercialization Diligence. Luoxin shall use Commercially Reasonable Efforts to Commercialize the Licensed Products in the Luoxin Territory. Luoxin shall keep Synergy reasonably informed of Luoxin's, its Affiliates' and their respective sublicensees'

Commercialization activities with respect to the Licensed Products in the Field in the Luoxin Territory.

6.5 Cross-Territorial Restrictions. Luoxin hereby covenants and agrees that it shall not, and shall ensure that its Affiliates and sublicensees will not, intentionally or knowingly, either directly or indirectly, promote, market, distribute, import, sell or have sold the Licensed Products, including via internet or mail order, into countries outside the Luoxin Territory. As to such countries outside the Luoxin Territory (which are exclusively reserved for Synergy), Luoxin shall not, and shall ensure that its Affiliates and their respective sublicensees will not: (a) establish or maintain any branch, warehouse or distribution facility for Licensed Products in such countries, (b) engage in any advertising or promotional activities relating to Licensed Products that are directed primarily to customers or other purchaser or users of Licensed Products located in such countries, (c) solicit orders for Licensed Products from any prospective purchaser located in such countries, or (d) sell or distribute Licensed Products to any person in the Luoxin Territory who intends to sell or has in the past sold Licensed Products in such countries. If Luoxin receives any order for any Licensed Product from a prospective purchaser reasonably believed to be located in a country outside the Luoxin Territory, Luoxin shall immediately refer that order to Synergy and Luoxin shall not accept any such orders. Luoxin shall not, intentionally or knowingly, deliver or tender (or cause to be delivered or tendered) Licensed Products into a country outside of the Luoxin Territory. Luoxin shall not, and shall ensure that its Affiliates and their respective sublicensees will not, knowingly restrict or impede in any manner Synergy's exercise of its retained exclusive rights outside of the Luoxin Territory.

6.6 Field Restrictions. Subject to Section 4.3, Luoxin hereby covenants that it shall not, nor shall it permit any Affiliate or sublicensee to, intentionally or knowingly, directly or indirectly, market, promote, detail, sell or offer for sale Licensed Products in the Luoxin Territory for any use outside the Field. Synergy acknowledges and understands that Luoxin cannot control the ultimate use of Licensed Products it sells and that the purpose of the foregoing covenant is to prevent Luoxin and its Affiliates and sublicensees from facilitating or encouraging uses outside the Field.

ARTICLE 7

MANUFACTURE AND SUPPLY

7.1 Manufacture and Supply. Subject to Section 7.5, Luoxin shall exclusively purchase from Synergy, and Synergy will manufacture and supply (either by itself or through a Third Party contract manufacturer) to Luoxin, all of Luoxin's and its Affiliates' and sublicensee's requirements of the Licensed Products for Development and Commercialization use in the Field in the Luoxin Territory under this Agreement, in accordance with the terms and conditions of the Supply Agreement (as defined below). Under the Supply Agreement, Synergy shall supply the Licensed Products in 3mg tablet form, and Luoxin shall be responsible for the transportation, import, finished packaging and labeling and storage of the Licensed Products at Luoxin's own cost and expense. All Licensed Products shall be delivered by Synergy to Luoxin EXW Synergy's facility (INCOTERMS 2010 ICC).

7.2 Supply Price. The transfer price for each unit of Licensed Product supplied by Synergy to Luoxin for Development in the Field in the Luoxin Territory will be US$* per tablet. The transfer price for each unit of Licensed Product supplied by Synergy to Luoxin for Commercial use in the Field in the Luoxin Territory (a) prior to the * (*) anniversary of First Commercial Sale in the Luoxin Territory will be the lower of (i) Synergy's manufacturing actual cost as determined in accordance with its Accounting Standards; or (ii) US$* per tablet and (b) on or after the * (*) anniversary of First Commercial Sale in the Luoxin Territory will be at Synergy's manufacturing actual cost as determined in accordance with its Accounting Standards. Notwithstanding the foregoing, Synergy shall have the right to initiate a manufacturing technology transfer of both API and drug product as set forth in Section 7.5. Additionally, if Synergy elects to initiate to such transfer of API manufacturing to Luoxin, Synergy may elect to negotiate in good faith with Luoxin for Luoxin to be its commercial supplier of API.

7.3 Supply Agreement. No later than * (*) months after the Effective Date, the Parties shall enter into a certain supply agreement (the "**Supply Agreement**") pursuant to which Luoxin will purchase from Synergy, and Synergy will supply to Luoxin, Licensed Products for Development and Commercial use in the Field in the Luoxin Territory. The Supply Agreement shall contain the material terms set forth in **Exhibit C** (the "**Supply Agreement Terms** "), in addition to such other customary and reasonable terms agreed upon by the Parties, and the first draft shall be prepared by Synergy and provided to Luoxin no later than * (*) days from the Effective Date of the Agreement.

7.4 Quality Agreement. No later than * (*) months after the Effective Date, the Parties shall enter into a certain quality agreement (the "**Quality Agreement**") which shall contain the material terms set forth in **Exhibit C** (the "**Quality Agreement Terms** "), in addition to such other customary and reasonable terms agreed upon by the Parties, relating to the supply of Licensed Products by Synergy to Luoxin for Development and Commercialization of Licensed Products in the Field in the Luoxin Territory.

7.5 Manufacturing Assistance. Luoxin may, during the Term, at its own discretion, exercise the right to manufacture the Licensed Compound and/or Licensed Products in the Luoxin Territory. In order to facilitate Luoxin's exercise of such right, Synergy shall, following its receipt of a written request by Luoxin during such time, provide such documents, Information, technical assistance and support necessary or reasonably useful for Luoxin to manufacture or have manufactured by a third party contractor engaged by Luoxin, Licensed Compound or Licensed Product, to the extent Controlled by Synergy as of such date in a timely manner to be

reasonably requested by Luoxin. Luoxin shall pay Synergy's direct and reasonable external costs and expenses (including travel and accommodation costs) incurred in connection with providing such Information or assistance pursuant to this Section 7.5.

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Prior to providing such Information or assistance, Synergy shall provide Luoxin an estimate of any external costs and expenses related thereto and shall not incur any such external costs and expenses without Luoxin's prior written consent. Notwithstanding the foregoing, Luoxin's right to manufacture API for the Licensed Compound or Licensed Product in the Luoxin Territory shall be exercisable only after receipt of MAA approval for the first Licensed Product by the applicable Regulatory Authority in mainland China.

7.6 Distribution. Luoxin will be solely responsible for the distribution of Licensed Products in the Field in the Luoxin Territory.

7.7 Brand Security and Anti-Counterfeiting. The Parties will establish contacts for communication regarding brand security issues and will each reasonably cooperate with the other with respect thereto. Practices around these incidents will comply with Synergy's then-current standards to be provided to Luoxin following the Effective Date of this Agreement, where they define product security features, warehouse/cargo protection requirements, and response and communication process for such incidents.

ARTICLE 8

COMPENSATION

8.1 Upfront Payment. As part of the consideration Luoxin will be paying for the license of Synergy IP under this Agreement, within * (*) Business Days after the Effective Date, Luoxin shall pay to Synergy a one-time, non-refundable, non-creditable upfront payment of twelve million U.S. Dollars (US$12,000,000).

8.2 Development and Commercialization Costs.

(a) Luoxin shall bear all costs and expenses incurred in the Development of Licensed Products in the Field in the Luoxin Territory in accordance with Article 4.

(b) Luoxin shall reimburse Synergy for all amounts paid by Synergy to Third Parties (if any), without markup, in each case as incurred by Synergy to conduct its activities to support the Development and Commercialization of Licensed Products in the Field in the Luoxin Territory (to the extent as expressly provided for in this Agreement), which Luoxin has agreed to in accordance with Section 4.1, Section 4.4(b) and Section 5.1(b).

(c) Within thirty (30) days after the end of each calendar quarter, Synergy shall provide Luoxin with an invoice for Luoxin's portion and reasonable supporting documentation for all amounts paid to Third Parties in such calendar quarter, without markup, to conduct such activities set forth in Section 8.2(b). Luoxin shall pay each such invoice within * (*) days after receipt thereof, except to the extent disputed by Luoxin in good faith. Luoxin shall notify Synergy in writing if it disputes any portion of any such invoice prior to the due date for payment. Such notice shall contain a detailed rationale for why Luoxin disputes any portion of any such invoice.

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If the Parties are unable to resolve any dispute regarding amounts payable under this Section 8.2 within thirty (30) days of receipt by Synergy of written notice of such dispute by from Luoxin, then such matter shall be resolved in accordance with Article 14.

8.3 Development Milestone Payments. Luoxin shall promptly notify Synergy upon the achievement of the milestone event set forth below and, as a further part of the consideration Luoxin will be paying for the license of Synergy IP under this Agreement, Luoxin shall pay to Synergy the corresponding one-time, non-refundable and non-creditable development milestone payment set forth below within * (*) days after the achievement of such milestone event. The Development milestone payment is payable only upon achievement of such event in the first Indication and not for any subsequent Indications.

Development Milestone Event	Milestone Payment
Receipt of the first MAA approval in mainland China for the Licensed Product for the first Indication	* U.S. Dollars (US$*)

8.4 Commercial Milestone Payments. Luoxin shall promptly notify Synergy upon the achievement of the milestone events set forth below and, as a further part of the consideration Luoxin will be paying for the license of Synergy IP under this Agreement, Luoxin shall pay to Synergy the corresponding one-time, non-refundable and non-creditable commercial milestone payments set forth below, in each case within * (*) days after the end of the first Fiscal Year during which the aggregate Net Sales of the Licensed Products in a Fiscal Year in the Luoxin Territory first reaches the values indicated below. For clarity, the milestone payments in this Section 8.4 shall be additive such that if multiple milestone events specified below are achieved

in the same Fiscal Year, then the milestone payments for all such milestone events shall be payable within * (*) days after the end of such Fiscal Year.

Commercial Milestone Event	Milestone Payment
The aggregate Net Sales of the Licensed Product in the Luoxin Territory in a Fiscal Year first reaches US$*	* Million U.S. Dollars (US$*,000,000)
The aggregate Net Sales of the Licensed Product in the Luoxin Territory in a Fiscal Year first reaches US$*	* U.S. Dollars (US$*)

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8.5 Royalties on Net Sales.

(a) Royalty Rate. As further consideration for the license of Synergy IP under this Agreement, Luoxin shall pay royalties to Synergy on aggregate annual Net Sales of Licensed Products in the Field in the Luoxin Territory by Luoxin, its Affiliates and their respective sublicensees at the applicable rate(s) set forth below, during the respective Royalty Terms applicable to such Licensed Products.

Annual Net Sales of Licensed Product	Royalty Rate
For that portion of aggregate Net Sales of Licensed Products in each calendar year less than or equal to US$*	*%
For that portion of aggregate Net Sales of Licensed Products in each calendar year greater than US$* but less than or equal to US$*	*%
For that portion of aggregate Net Sales of Licensed Products in each calendar year greater than US$*	*%

(b) Royalty Term. Royalties payable under Section 8.5(a) shall be paid by Luoxin (on a Licensed Product-by-Licensed Product and Region-by-Region basis) from the period beginning on the date of the First Commercial Sale of each Licensed Product in a Region in the Luoxin Territory and ending * (*) years from the date of First Commercial Sale of such Licensed Product in such Region (the "**Royalty Term**").

(c) Royalty Reductions.

(i) Subject to subsection (iii) below, if, in any Region in the Luoxin Territory during the Royalty Term for a Licensed Product, a Generic Product to such Licensed Product is approved for Commercialization by the Regulatory Authority in such Region ("**Generic Entry**"), then the royalty rate for such Licensed Product sold in such Region will be reduced to *percent (*%).

(ii) Subject to subsection (iii) below, if, in any Region in the Luoxin Territory during the Royalty Term for a Licensed Product, a Competitive Product to such Licensed Product is approved for Commercialization by the Regulatory Authority in such Region by any Person other than Luoxin and any of its sublicensees or Affiliates ("**Competitive Product Entry**"), then the royalty rate for such Licensed Product sold in such Region will be reduced to * percent (*%).

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(iii) For clarity, if Generic Entry or Competitive Product Entry with respect to a Licensed Product in a Region in the Luoxin Territory occurs within the middle of a calendar year, the royalty rate set forth in Section 8.5(a) shall apply to the aggregate Net Sales generated from the commencement of such calendar year until the occurrence of Generic Entry or Competitive Product Entry, as applicable, with respect to such Licensed Product in such Region, and Luoxin shall not pay any royalties for Net Sales of such Licensed Product generated in such Region for the remainder of such calendar year.

8.6 Product Supply Payments. Luoxin shall pay Synergy for Licensed Products supplied by Synergy as set forth in Sections 7.2, as described in greater detail in the Supply Agreement.

8.7 Royalty Payments; Reports. Royalties under Section 8.5 shall be calculated and reported for each calendar quarter during the Royalty Term, however, royalties shall be paid within * (*) days after the end of the applicable calendar year, commencing with the calendar year in which the First Commercial Sale of a Licensed Product occurs. Luoxin shall provide Synergy with a report of Net Sales within * (*) days after the end of the applicable calendar quarter of Licensed Products by Luoxin, its Affiliates and their respective sublicensees in sufficient detail to permit confirmation of the accuracy of the royalty payment made (or to be made), including: (a) the amount of gross sales and Net Sales of Licensed Products in the Luoxin Territory on a Licensed Product-by-Licensed Product and Region-by-Region basis, (b) an itemized calculation showing the deductions from gross sales (by major category as set forth in the definition of Net Sales) to determine Net Sales and (c) a calculation of the amount of royalties due to Synergy in U.S. Dollars, including the application of any exchange rate used.

8.8 Payment Method; Foreign Exchange. All payments owed by Luoxin under this Agreement shall be made by wire transfer in immediately available funds to a bank and account designated in writing by Synergy. For clarity, all payments by Luoxin to Synergy pursuant to Sections 8.1, 8.2, 8.3, 8.4 and 8.5 shall be in U.S. Dollars. The rate of exchange to be used in computing the amount of currency equivalent in U.S. Dollars of any amounts payable in U.S. Dollars by Luoxin to Synergy under this Agreement shall be determined and calculated using the average rate of exchange based on OANDA rates for the calendar quarter in which the applicable payment is due. Synergy shall invoice Luoxin for all amounts payable under Section 8.2 in U.S. Dollars. Notwithstanding the foregoing to the contrary, upon the written notice by Synergy to Luoxin and acceptance by Luoxin, all payments that are payable by Luoxin under this Agreement in U.S. Dollars will thereafter be payable in Renminbi.

8.9 Interest on Late Payments. If Synergy does not receive payment of any sum due to it on or before the due date, simple interest shall thereafter accrue on the sum due to Synergy until the date of payment at the per annum rate of * percent (*%) over the then-current prime rate reported in The Wall Street Journal or the maximum rate allowable by applicable Laws, whichever is lower.

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8.10 Blocked Remittance. If the remittance of payments (other than the payment required under Section 8.1) to be made by Luoxin to Synergy under this Agreement is blocked due to applicable Laws or other reasons of Governmental Authorities or banks in mainland China, Luoxin will have the right and option to make such payments by depositing the amount thereof in local currency to Synergy's account in a bank or depository in mainland China.

8.11 Records; Audits.

(a) Luoxin shall, and shall ensure that its Affiliates and its and their respective sublicensees, maintain complete and accurate records in sufficient detail to permit Synergy to confirm the accuracy of the calculation of royalty payments and the achievement of the milestone events. All payments and other amounts under this Agreement and the Supply Agreement shall be accounted for in accordance with Accounting Standards. Upon reasonable prior notice, such records shall be available for examination during regular business hours for a period of three (3) years from the end of the Fiscal Year to which they pertain, and not more often than once each Fiscal Year, by an independent certified public accountant selected by Synergy and reasonably acceptable to Luoxin, for the sole purpose of verifying the accuracy of the financial reports furnished by Luoxin pursuant to this Agreement and any payments with respect thereto. Any such auditor shall not disclose Luoxin's Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of the financial reports furnished by Luoxin or the amount of payments due under this Agreement. Any amounts shown to be owed but unpaid shall be paid within * (*) days from the accountant's report, plus interest (as set forth in Section 8.9) from the original due date. Synergy shall bear the full cost of such audit unless such audit discloses an underpayment by Luoxin of more than five percent (5%) of the amount due for the audited period, in which case Luoxin shall bear the full cost of such audit.

(b) Synergy shall, and shall ensure that its Affiliates and its and their respective employees, agents and contractors, maintain complete and accurate records with respect to Synergy's pharmacovigilance-related obligations set forth in Section 5.8. Upon reasonable prior notice, such records shall be available for examination during regular business hours for a period of three (3) years from the end of the Fiscal Year to which they pertain, and not more often than once each Fiscal Year, by Luoxin or its designee that is reasonably acceptable to Synergy, for the sole purpose of ensuring compliance with CFDA regulations. Any such records shall be deemed Confidential Information of Synergy.

8.12 Taxes.

(a) Taxes on Income. Each Party shall be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the efforts of the Parties under this Agreement.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

(b) Withholding Taxes. If Luoxin is required by applicable Laws to make any tax deduction, tax withholding or similar payment from any amount paid or payable by Luoxin to Synergy (a "**Tax Withholding**") under this Agreement, then in the case of any payments to be made by Luoxin to Synergy under this Agreement (including pursuant to Sections 8.1, 8.2, 8.3 and 8.4 and 8.5) Luoxin may deduct such Tax Withholding from the payments and shall pay any such Tax Withholding directly to the proper Governmental Authority.)

(c) Tax Cooperation. The Parties agree to cooperate with one another and use reasonable efforts to reduce or eliminate Tax Withholding or similar obligations in respect of payments made by Luoxin to Synergy under this Agreement (including pursuant to Sections 8.1, 8.2, 8.3, 8.4 and 8.5). To the extent Luoxin is required to deduct and withhold taxes from any payment to Synergy, Luoxin shall pay the amounts of such taxes to the proper Governmental Authority in a timely manner and promptly transmit to Synergy an official tax certificate or other evidence of such withholding sufficient to enable the other Party to claim such payment of taxes from any applicable Government Authority. Synergy shall provide Luoxin any tax forms that may be reasonably necessary in order for Luoxin not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by applicable Laws, of withholding taxes, VAT or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax or VAT.

(d) VAT. All payments due to Synergy from Luoxin pursuant to this Agreement shall be paid inclusive of any value-added tax (including, for greater certainty, any

goods and services tax, harmonized sales tax and any similar provincial sales tax) ("**VAT**") (which, if applicable, shall be payable by Luoxin upon receipt of a valid VAT invoice). If Synergy determines that it is required to report any such tax, Luoxin shall promptly provide Synergy with applicable receipts and other documentation necessary or appropriate for such report. For clarity, this Section 8.12(d) is not intended to limit Luoxin's right to deduct VAT in determining Net Sales.

ARTICLE 9

INTELLECTUAL PROPERTY MATTERS

9.1 Ownership of Data and Inventions .

(a) Data. Synergy shall solely own all Data generated by Synergy. The Data Controlled by Synergy are included in the Synergy Licensed Know-How and licensed to Luoxin under Section 2.1(a). Luoxin shall solely own all Data generated by Luoxin in the Development of Licensed Products in the Field in the Luoxin Territory. Luoxin hereby grants Synergy a royalty-free, fully paid-up, exclusive license with the right to grant sublicenses to use such Data generated and owned by Luoxin in the Synergy Territory for the Development, manufacture and Commercialization of the Licensed Compound and Licensed Product. The term of such license granted to Synergy shall be perpetual unless this Agreement is terminated by Luoxin pursuant to Section 13.4 or 13.5, in which case such license shall be terminated along with the termination of this Agreement. Luoxin hereby grants Synergy an irrevocable, perpetual, royalty-free, fully paid-up, non-exclusive license to use such Data generated and owned by Luoxin in the Luoxin Territory for the Development, manufacture and Commercialization of the Licensed Compound and Licensed Product upon expiration or termination of the Agreement (other than termination of the Agreement by Luoxin pursuant to Sections 13.4 or 13.5).

(b) Product Materials. Subject to the terms and conditions of this Agreement, each Party hereby grants to the other Party a fully-paid up, royalty-free license, with the right to grant sublicenses under multiple tiers, to use Product Materials generated and owned by such Party, for the Development, manufacture (with respect to Luoxin, solely to the extent applicable under Section 7.5) and Commercialization of the Licensed Compound and Licensed Product in the other Party's respective territory during the Term of this Agreement.

(c) Inventions. Inventorship of any Inventions will be determined in accordance with the standards of inventorship and conception under U.S. patent laws. For clarity, all Inventions made by Synergy are included in the Synergy IP and licensed to Luoxin under Section 2.1(a). Luoxin shall promptly disclose in writing to Synergy all Luoxin Development Inventions. Luoxin hereby grants Synergy an irrevocable, perpetual, royalty-free, fully paid-up, non-exclusive license with the right to grant sublicenses in such Luoxin Development Inventions in the Synergy Territory for the Development, manufacture or Commercialization of the Licensed Compound or Licensed Product in the Synergy Territory. Luoxin shall have the sole right to file for patent protection for such Luoxin Development Inventions.

(d) Luoxin's Affiliates, Sublicensees and Subcontractors . Luoxin shall ensure that each of its Affiliates, sublicensees and subcontractors under this Agreement has a contractual obligation to disclose to Luoxin all Data, Product Materials and Inventions generated, invented, discovered, developed, made or otherwise created by them or their employees, agents or independent contractors, and to provide sufficient rights with respect thereto, so that Luoxin can comply with its obligations under Sections 9.1(a), 9.1(b) and 9.1(c).

9.2 Patent Prosecution.

(a) Prosecution by Synergy. As between the Parties, Synergy shall have the sole right to prepare, file, prosecute and maintain or abandon the Synergy Licensed Patents during the term of this Agreement. Notwithstanding the foregoing, Synergy shall not abandon any Synergy Licensed Patent in the Luoxin Territory without first notifying Luoxin in writing that it intends to abandon a Synergy Licensed Patent in the Luoxin Territory stating the reason for such abandonment in detail for Luoxin's review and approval. If Luoxin disagrees with such abandonment within twenty (20) Business Days of receipt of notice from Synergy, then the Parties shall bring such matter to the JSC for discussion. In the event Luoxin still disagrees with such abandonment after discussion through the JSC, then Synergy will proceed with or maintain (as the case may be) such Synergy Licensed Patent in the Luoxin Territory at Luoxin's cost and expense. Synergy will use Commercially Reasonable Efforts to prepare, file, prosecute, defend and maintain all Synergy Licensed Patents in the Luoxin Territory; *provided, however*, that Synergy does not represent or warrant that any patent will issue or be granted based on patent applications contained in the Synergy Licensed Patents. Synergy shall provide Luoxin reasonable opportunity to review and comment on such prosecution efforts regarding the Synergy Licensed Patents as follows: Synergy shall promptly provide Luoxin with copies of all material communications from any patent authority in the Luoxin Territory regarding the Synergy Licensed Patents, and shall provide Luoxin, for its review and comment, with drafts of any material filings or responses to be made to such patent authorities in a reasonable amount of time in advance of submitting such filings or responses. Synergy shall consider in good faith comments thereto provided by Luoxin in connection with the prosecution of the Synergy Licensed Patents. For the purpose of this Article 9, "prosecution" shall include any post-grant proceeding in the Luoxin Territory, including opposition proceedings. Synergy shall use Commercially Reasonable Efforts to (i) for any peptide listed **Exhibit A1**, file a divisional application of * in mainland China with the State Intellectual Property Office of the PRC ("**SIPO**") and upon acceptance of such filing, request substantive examination by SIPO (" **SIPO ESE Request**") of such divisional application within ninety (90) days after the Effective Date; and (ii) for any peptide listed in **Exhibit B** and claimed in any patent application subsequently filed by or on behalf of Synergy in the USA after the Effective Date and during the term of * file a divisional application of * in mainland China with SIPO and upon acceptance of such filing, request the SIPO ESE Request of such divisional application within ninety (90) days after the filing date of such subsequent patent application in the USA.

(b) Synergy Territory. For clarity, Luoxin does not have any rights pursuant to this Agreement with respect to any Synergy Patents in the Synergy Territory and, as between

the Parties, Synergy shall have the sole right in its sole discretion to prepare, file, prosecute and maintain the Synergy Patents in the Synergy Territory.

(c) Collaboration. Luoxin shall provide Synergy with all reasonable assistance and cooperation in the patent prosecution efforts by Synergy provided in this Section 9.2, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution.

9.3 Patent Enforcement.

(a) Notification. If either Party becomes aware of any existing or threatened infringement of any Synergy Licensed Patent ("**Infringement**"), it shall promptly notify the other Party in writing to that effect and the Parties will consult with each other regarding any actions to be taken with respect to such Infringement.

(b) Enforcement Rights. Each Party shall share with the other Party all Information available to it regarding such alleged Infringement, pursuant to a mutually agreeable "common interest agreement" executed by the Parties under which the Parties agree to their shared, mutual interest in the outcome of any suit to enforce the Synergy Licensed Patents against such Infringement. Synergy shall have the first right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in such Infringement, at Synergy's cost and expense. If Synergy elects to commence a suit to enforce the applicable Synergy Licensed Patents against such Infringement, then Luoxin shall have the right to join such enforcement action upon notice to Synergy, and in this case the Parties shall share the cost and expense of such enforcement action equally.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

If Synergy notifies Luoxin that it does not intend to commence a suit to enforce the applicable Synergy Licensed Patents against such Infringement or to take other action to secure the abatement of such Infringement or if Synergy does not take any actions within three (3) months upon knowledge of such Infringement, then, to the extent that such Infringement is resulting from a Third Party's use or sale of a product that competes with a Licensed Product in the Field and in the Luoxin Territory, Luoxin shall have the right, but not the obligation, to commence such a suit or take such action, at Luoxin's cost and expense (provided that, if Synergy believes in good faith that the commencement of any such suit or action by Luoxin would reasonably be likely to have a negative impact on any similar action that Synergy is pursing against such person or entity, then Luoxin shall not have the right to commence such suit or action without the consent of Synergy). In such case, Synergy shall take appropriate actions in order to enable Luoxin to commence a suit or take the actions set forth in the preceding sentence. Neither

Party shall settle any such suit or action in any manner that would negatively impact the Synergy Licensed Patents or that would limit or restrict the ability of Luoxin to sell the Licensed Products in the Luoxin Territory without the prior written consent of the other Party.

(c) Collaboration. Each Party shall provide to the Party bringing a claim, suit or action under Section 9.3(b) (the "**Enforcing Party**") with reasonable assistance in such enforcement, at such Enforcing Party's request and expense (unless Luoxin elects to join an enforcement action when Synergy is the Enforcing Party, in which case the expenses will be shared equally by the Parties), including joining such action as a party plaintiff if required by applicable Laws to pursue such action. The Enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts, and shall reasonably consider the other Party's comments on any such efforts. The non-enforcing Party shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party shall at all times cooperate fully with the Enforcing Party.

(d) Expenses and Recoveries. The Enforcing Party shall be solely responsible for any expenses it incurs as a result of such enforcement action, except that the Parties shall share equally the cost and expense of the enforcement action when Synergy is the Enforcing Party and Luoxin elects to join the enforcement action. If the Enforcing Party recovers monetary damages in such claim, suit or action brought under Section 9.3(b), such recovery shall be allocated first to the reimbursement of any documented expenses incurred by the Parties in such enforcement action, and any remaining amounts shall be shared by the Parties as follows:

(i) if Synergy is the Enforcing Party and Luoxin does not elect to join the enforcement action and share the cost and expense of the enforcement action: * percent (*%) of the remaining amounts shall be retained by Synergy, and * percent (*%) of the remaining amounts shall be paid to Luoxin;

(ii) if Synergy is the Enforcing Party and Luoxin elects to join the enforcement action and share the cost and expense of the enforcement action: * percent (*%) of the remaining amounts shall be retained by Synergy, and *percent (*%) of the remaining amounts shall be paid to Luoxin;

(iii) If Luoxin is the Enforcing Party: * percent (*%) of the remaining amounts shall be retained by Luoxin, and * percent (*%) of the remaining amounts shall be paid to Synergy.

(e) Other Infringements. Synergy shall have the sole right to enforce Synergy Patents in the Synergy Territory, and Synergy shall be entitled to retain all recoveries resulting from all such enforcements.

9.4 Third Party Infringement Claims. If the manufacture, sale or use of the Licensed Products in the Field in the Luoxin Territory pursuant to this Agreement results in a claim, suit or proceeding alleging patent infringement against Synergy or Luoxin (or their respective Affiliates, licensees or sublicensees) (collectively, "**Infringement Actions**"), such Party shall promptly notify the other Party hereto in writing. Synergy shall have the right and the obligation to direct and control the defense of such Infringement Action, at its own expense with counsel of its choice; *provided, however,* that Luoxin may participate in the defense and/or settlement thereof, at its own expense with counsel of its choice. In any event, Synergy agrees to keep Luoxin reasonably informed of all material developments in connection with any such Infringement Action for which Synergy exercises its right to direct and control the defense. Synergy agrees not to settle such Infringement Action, or make any admissions or assert any position in such Infringement Action, in a manner that would materially adversely affect the rights or interests of Luoxin, without the prior written consent of Luoxin, which shall not be unreasonably withheld or delayed. If Synergy does not direct and control the defense of an Infringement Action that is brought against Luoxin in a timely manner, then Luoxin shall have such right and it shall agree to keep Synergy reasonably informed of all material developments in connection with such Infringement Action and it shall not settle such Infringement Action, or make any admissions or assert any position in such Infringement Action, in a manner that would materially adversely affect the rights or interests of Synergy, without the prior written consent of Synergy, which shall not be unreasonably withheld or delayed.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

9.5 Patent Term Extensions. Synergy will cooperate with Luoxin, at Synergy's cost and expense in seeking and obtaining patent term extensions (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in the Luoxin Territory with respect to any Synergy Licensed Patents or Licensed Product. If elections with respect to obtaining such patent term extensions are to be made, Synergy shall have the sole right to make such elections.

9.6 Trademarks.

(a) Subject to subsection (c) below, Luoxin shall Commercialize the Licensed Products in the Field in the Luoxin Territory under any trademark owned or Controlled by Luoxin (the "**Luoxin Product Mark**"); provided that, prior to finalizing any Luoxin Product

Mark, Luoxin shall provide Synergy with such proposed trademark and related trade dress and shall reasonably consider in good faith Synergy's comments with respect thereto. Luoxin shall, and shall ensure that its Affiliates and sublicensees will, use the Luoxin Product Mark solely in connection with the Development and Commercialization of the Licensed Products in the Field in the Luoxin Territory. Luoxin shall own all rights in the Luoxin Product Mark, and all goodwill in the Luoxin Product Mark shall accrue to Luoxin. Luoxin shall register and maintain, at Luoxin's cost and expense, the Luoxin Product Marks in the Luoxin Territory.

(b) Subject to subsection (c) below, Luoxin shall have the right to brand the Licensed Products in the Field in the Luoxin Territory with those trademarks of Luoxin that are associated with Luoxin's name or identity ("**Luoxin Housemarks**"). Luoxin shall own all rights in the Luoxin Housemarks, and all goodwill in the Luoxin Housemarks shall accrue to Luoxin.

(c) In connection with Luoxin's use of any Luoxin Product Mark or Luoxin Housemark, Luoxin shall not, and shall ensure that its Affiliates and their respective sublicensees shall not: (A) make any use of trademarks that are confusingly similar to any trademarks or housemarks of Synergy or its Affiliates (including the corporate name of Synergy or any of its Affiliates) without Synergy's prior written consent; or (B) use any trademarks, other than the Luoxin Product Marks and the Luoxin Housemarks, in connection with the Commercialization of Licensed Products in the Field in the Luoxin Territory, without the prior written consent of Synergy.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as follows:

(a) Corporate Existence. As of the Effective Date, it is a company or corporation duly organized, validly existing, and in good standing under the Laws of the jurisdiction in which it is incorporated;

(b) Corporate Power, Authority and Binding Agreement . As of the Effective Date, (i) it has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; (ii) it has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and (iii) this Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally;

(c) No Conflict. The execution and delivery of this Agreement, the performance of such Party's obligations in the conduct of the Development Plan and the license to be granted pursuant to this Agreement (i) do not and will not conflict with or violate any

requirement of applicable Law existing as of the Effective Date; (ii) do not and will not conflict with or violate the certificate of incorporation or by-laws (or other constating documents) of such Party; and (iii) do not and will not conflict with, violate, breach or constitute a material default under any contractual obligations of such Party or any of its Affiliates existing as of the Effective Date;

(d) No Violation. Neither such Party nor any of its Affiliates is under any obligation to any Person, contractual or otherwise, that is in violation of the terms of this Agreement or that would impede the fulfillment of such Party's obligations hereunder;

(e) No Debarment. Neither such Party nor any of its Affiliates is debarred or disqualified under the Act or comparable applicable Laws outside the U.S.; and

(f) No Consents. No authorization, consent, approval of a Third Party, nor to such Party's knowledge, any license, permit, exemption of or filing or registration with or notification to any court or Governmental Authority is or will be necessary for the (i) valid execution and delivery of this Agreement by such Party; or (ii) the consummation by such Party of the transactions contemplated hereby.

10.2 Additional Representations and Warranties of Synergy . Synergy represents and warrants to Luoxin as follows, as of the Effective Date:

(a) Title; Encumbrances. It has (i) sufficient legal and/or beneficial title or ownership or license, free and clear from any mortgages, pledges, liens, security interests, conditional and installment sale agreement, encumbrances, charges or claim of any kind, of the Synergy IP to grant the licenses to Luoxin as purported to be granted pursuant to this Agreement, and (ii) to Synergy's knowledge, no Third Party has taken any action before the United States Patent and Trademark Office, or any counterpart thereof outside the U.S., claiming legal and/or beneficial title or ownership or license of any Synergy IP;

(b) Intellectual Property Rights. The Synergy IP includes all intellectual property rights Controlled by Synergy which are reasonably necessary for the Development, manufacture (to the extent set forth in Section 7.5) and Commercialization of the Licensed Product by Luoxin in accordance with the terms of this Agreement;

(c) Notice of Infringement or Misappropriation. It has not received any written notice from any Third Party asserting or alleging that (i) any research or development of a Licensed Product by Synergy prior to the Effective Date infringed or misappropriated the intellectual property rights of such Third Party, or (ii) the Development or Commercialization of the Licensed Products in the Luoxin Territory would infringe or misappropriate the intellectual property rights of such Third Party;

(d) Non-Infringement of Rights by Third Parties. To Synergy's knowledge, no Third Party is infringing or has infringed the Synergy Licensed Patents as of the Effective Date;

(e) Non-Assertion by Third Parties. To Synergy's knowledge, no Third Party has asserted that the issued patents within the Synergy Licensed Patents set forth in **Exhibit A** are invalid or unenforceable;

(f) No Proceeding. There is no pending, and to Synergy's knowledge, no threatened, adverse action, suit or proceeding against Synergy involving any Synergy IP or a Licensed Product;

(g) Prosecution of Synergy Patents. To Synergy's knowledge, prior to the Effective Date, Synergy has not taken action or failed to undertake an action in connection with filing, prosecuting and maintaining the Synergy Licensed Patents set forth in **Exhibit A** in violation of any applicable Law;

(h) Compliance with Laws. To Synergy's knowledge, Synergy has complied with all applicable Laws in connection with the prosecution of the Synergy Licensed Patents, including the duty of candor owed to any patent office pursuant to such Laws;

(i) Synergy Patents and Patent Applications. Synergy does not have knowledge of any Information which leads it to believe that any issued patents included in the Synergy Licensed Patents set forth in **Exhibit A** are invalid or unenforceable; and

(j) No Conflicts. Synergy has not entered, and shall not enter, into any agreement with any Third Party that is in conflict with the rights granted to Luoxin under this Agreement, and has not taken and shall not take any action that would in any way prevent it from granting the rights granted to Luoxin under this Agreement, or that would otherwise materially conflict with or adversely affect Luoxin's rights under this Agreement.

10.3 Additional Representations and Warranties of Luoxin. Luoxin represents and warrants to Synergy that, to Luoxin's knowledge as of the Effective Date, Luoxin does not Control any Patent that is necessary to make, use, import, offer for sale or sell Licensed Products in the Field.

10.4 Compliance with Laws.

(a) Each Party shall, and shall ensure that its Affiliates and their respective sublicensees will, comply in all respects with Anti-Corruption Laws, Proper Conduct Practices and all applicable Laws in the Development and Commercialization of Licensed Products and performance of its obligations under this Agreement, including the ICH, GCP, GLP and any Regulatory Authority and Government Authority health care programs having jurisdiction in such Party's respective territory, each as may be amended from time to time.

(b) Each Party shall immediately notify the other Party if it has any information or suspicion that there may be a violation of any applicable Laws (including Anti-Corruption Laws) in connection with its performance under this Agreement or the Development or Commercialization of any Licensed Product hereunder. In the event that either Party has violated or been suspected of violating any of its obligations, representations, warranties or

covenants in Section 10.4(a), such Party will take reasonable actions to remedy such breach and to prevent further such breaches from occurring.

(c) Notwithstanding the foregoing, each Party will have the right, upon reasonable prior written notice and during the other Party's regular business hours, to audit the other Party's books and records in the event that a suspected violation of any Anti-Corruption Law needs to be investigated (in such Party's reasonable, good-faith discretion). Such audit shall be conducted by such Party's audit team comprised of qualified auditors who have received anticorruption training. For clarity, a credible finding, after a reasonable investigation, of any breach of Section 10.4(a) or 10.4(b) with respect to any Anti-Corruption Law, shall be deemed a material breach of this Agreement and allow the non-breaching Party to terminate this Agreement in accordance with Section 13.4.

10.5 Additional Luoxin Covenants. In addition to any covenants made by Luoxin elsewhere in this Agreement, Luoxin hereby covenants to Synergy as follows:

(a) neither Luoxin nor any of its Affiliates will employ or use the services of any Person who is debarred or disqualified under the Act, or comparable applicable Laws outside the U.S., in connection with activities relating to any Licensed Product; and in the event that Luoxin becomes aware of the debarment or disqualification or threatened debarment or disqualification of any Person providing services to Luoxin or any of its Affiliates with respect to any activities relating to any Licensed Product, Luoxin will immediately notify Synergy in writing and Luoxin will cease, or cause its Affiliate to cease (as applicable), employing, contracting with, or retaining any such Person to perform any services relating to any Licensed Product;

(b) neither it nor its Affiliates, or its or their sublicensees, shall exploit in any manner any Licensed Product outside of the scope of the licenses expressly granted to Luoxin under this Agreement; and

(c) neither Luoxin nor any of its Affiliates, nor any of their respective employees, agents or contractors shall use any confidential information obtained from any Third Party (including any prior employer), directly or indirectly, whether obtained prior to the Effective Date or during the Term, in connection with activities performed under this Agreement, and Luoxin shall be solely responsible and liable for, and shall indemnify Synergy pursuant to Section 11.2 in connection with, any breach of this covenant by Luoxin, any of its Affiliates, or their respective employees, agents or contractors.

10.6 No Other Representations or Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY OR ITS AFFILIATES, AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. For clarity and without

limiting the foregoing, Synergy makes no representation or warranty concerning the Licensed Products or Synergy IP except as expressly set forth in this Article 10.

ARTICLE 11

INDEMNIFICATION

11.1 Indemnification by Synergy. Synergy shall defend, indemnify, and hold Luoxin and its Affiliates and their respective officers, directors, employees, and agents (the "**Luoxin Indemnitees**") harmless from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys' fees ("**Losses**") as a result of any claim, demand, action or other proceeding by any Third Party (collectively, "**Claims**") arising out of, based on, or resulting from (a) the Development or Commercialization of Licensed Products in the Field in the Luoxin Territory by or on behalf of Synergy or its Affiliates prior to the Effective Date, (b) the Development or Commercialization of Licensed Products in the Field in the Synergy Territory, (c) the breach of any of Synergy's obligations under this Agreement, including Synergy's representations and warranties set forth herein, (d) the conduct of any pharmacovigilance-related activities set forth in Section 5.8 by or on behalf of Synergy (except to the extent that such Claim arises from Luoxin's provision of false, misleading, inaccurate or incomplete information to Synergy under Section 5.8 or Luoxin's breach of its obligations under the Pharmacovigilance Agreement) or (e) the willful misconduct or negligent acts of any Synergy Indemnitee. The foregoing indemnity obligation shall not apply to the extent that (i) the Luoxin Indemnitees fail to comply with the indemnification procedures set forth in Section 11.3 and Synergy's defense of the relevant Claim is prejudiced by such failure, or (ii) any Claim arises from, is based on, or results from any activity or occurrence for which Luoxin is obligated to indemnify the Synergy Indemnitees under Section 11.2.

11.2 Indemnification by Luoxin. Luoxin shall defend, indemnify, and hold Synergy and its Affiliates and their respective officers, directors, employees, and agents (the "**Synergy Indemnitees**") harmless from and against any and all Losses as a result of any Claims by any Third Party arising out of, based on, or resulting from (a) the Development or Commercialization of Licensed Products by or on behalf of Luoxin or its Affiliates or sublicensees on or after the Effective Date (except to the extent that any such activities are conducted by or on behalf of Synergy or its Affiliates) (including any Infringement Actions), (b) the breach of any of Luoxin's obligations under this Agreement, including Luoxin's representations and warranties set forth herein, or (c) the willful misconduct or negligent acts of any Luoxin Indemnitee. The foregoing indemnity obligation shall not apply to the extent that (i) the Synergy Indemnitees fail to comply with the indemnification procedures set forth in Section 11.3 and Luoxin's defense of the relevant Claim is prejudiced by such failure, or (ii) any Claim arises from, is based on, or results from any activity or occurrence for which Synergy is obligated to indemnify the Luoxin Indemnitees under Section 11.1.

11.3 Indemnification Procedures. The Party claiming indemnity under this Article 11 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the " **Indemnifying Party**") promptly after learning of such Claim and shall offer control of the defense of such Claim to the Indemnifying Party. The Indemnified Party shall provide the

Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, in connection with the defense of the Claim for which indemnity is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole expense; *provided, however,* the Indemnifying Party shall have the right to assume and conduct the defense of the Claim with counsel of its choice. The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party, not to be unreasonably withheld, unless the settlement involves only the payment of money. So long as the Indemnifying Party is actively defending the Claim in good faith, the Indemnified Party shall not settle or compromise any such Claim without the prior written consent of the Indemnifying Party. If the Indemnifying Party does not assume and conduct the defense of the Claim as provided above, (a) the Indemnified Party may defend against, consent to the entry of any judgment, or enter into any settlement with respect to such Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith), and (b) the Indemnifying Party shall remain responsible to indemnify the Indemnified Party as provided in this Article 11. Notwithstanding anything contained in the foregoing to the contrary, the provisions of Section 9.4 shall govern the defense of any Infringement Actions. Additionally, in the event that Synergy has elected to defend any such Infringement Action, then Luoxin shall not be obligated to indemnify Synergy for any Claims related to such Infringement Action; rather, the Parties shall share such Claims equally.

11.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 11.4 IS INTENDED TO OR SHALL LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 11.1 or 11.2, OR DAMAGES AVAILABLE FOR A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS IN ARTICLE 12 OR FOR A PARTY'S BREACH OF ITS OBLIGATIONS IN SECTION 2.5.

11.5 Insurance. Each Party shall procure and maintain insurance, including product liability insurance, adequate to cover its obligations hereunder and consistent with normal business practices of prudent companies similarly situated in their respective territories. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under this Article 11. Each Party shall provide the other Party with written evidence of such insurance upon request. Each Party shall provide the other Party with written notice at least thirty (30) days prior to the cancellation, non-renewal or material change in such insurance.

11.6 Supply Agreement. The rights and obligations set forth in this Article 11 shall be in addition to, and without prejudice to, indemnification, limitations of liability, insurance, representations and warranties and other rights and obligations of the Parties provided for under the Supply Agreement (or any other Transaction Agreement).

ARTICLE 12

CONFIDENTIALITY

12.1 Confidentiality. Each Party agrees that, during the Term and for a period of ten (10) years thereafter, it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement or any other Transaction Agreement (which includes the exercise of any rights or the performance of any obligations hereunder or thereunder) any Confidential Information of the other Party, except to the extent expressly authorized by any other Transaction Agreement or otherwise agreed in writing by the Parties. The foregoing confidentiality and non-use obligations shall not apply to any portion of the other Party's Confidential Information that the receiving Party can demonstrate by competent written proof:

(a) was already known to the receiving Party or its Affiliate, other than under an obligation of confidentiality, at the time of disclosure by the other Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party or its Affiliate in breach of this Agreement;

(d) was disclosed to the receiving Party or its Affiliate by a Third Party who, to the Party's knowledge, had a legal right to make such disclosure and who did not obtain such information directly or indirectly from the other Party; or

(e) was independently discovered or developed by the receiving Party or its Affiliate without access to or aid, application, use of the other Party's Confidential Information, as evidenced by a contemporaneous writing.

12.2 Authorized Disclosure. Notwithstanding the obligations set forth in Section 12.1, a Party may disclose the other Party's Confidential Information and the terms of this Agreement to the extent:

(a) such disclosure is reasonably necessary (i) for the filing or prosecuting of Patent rights as contemplated by any of the Transaction Agreements; (ii) to comply with the requirements of Regulatory Authorities with respect to obtaining and maintaining Regulatory Approval of Licensed Product; or (iii) for the prosecuting or defending litigation as contemplated by any of the Transaction Agreements;

(b) such disclosure is reasonably necessary to its or its Affiliate's employees, agents, consultants, contractors, licensees or sublicensees on a need-to-know basis for the sole purpose of performing its obligations or exercising its rights under any of the Transaction

Agreements; provided that in each case, the disclosees are bound by written obligations of confidentiality consistent with those contained in this Agreement;

(c) such disclosure is reasonably necessary to any bona fide potential or actual investor, acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating or carrying out an actual or potential investment, acquisition or other business relationship; provided that in connection with such disclosure, such Party shall inform each disclosee of the confidential nature of such Confidential Information and require each disclosee to treat such Confidential Information as confidential; or

(d) such disclosure is reasonably necessary to comply with applicable Laws, including regulations or rules promulgated by applicable securities commissions (or other securities regulatory authorities), security exchanges, court order, administrative subpoena or order.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to Section 12.2(a) or 12.2(d), such Party shall promptly notify the other Party of such required disclosure, to the extent that it is legally authorized or permitted to so, and shall use reasonable efforts to obtain, or to assist the other Party in obtaining, a protective order preventing or limiting the required disclosure.

12.3 Publicity; Terms of Agreement.

(a) The Parties agree that the terms of this Agreement are the Confidential Information of both Parties, subject to the special authorized disclosure provisions set forth in this Section 12.3.

(b) If either Party desires to make a public disclosure concerning the terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such disclosure to the other Party for its prior review and approval (except as otherwise provided herein), which approval shall not be unreasonably withheld or delayed. A Party commenting on such a proposed disclosure shall provide its comments, if any, within two (2) Business Days after receiving the proposed disclosure for review (or such shorter period of time as necessitated by regulatory requirements). In addition, where required by applicable Law, including regulations promulgated by applicable security exchanges, either Party shall have the right to make a press release or other public disclosure regarding the achievement of each milestone under this Agreement as it is achieved, the achievements of Regulatory Approval in the Luoxin Territory as they occur, or the occurrence of other events that affect either Party's rights or obligations under this Agreement, in each case subject only to the review procedure set forth in the preceding sentences. In relation to the other Party's review of such an announcement, such other Party may make specific, reasonable comments on such proposed press release within the prescribed time for commentary. Neither Party shall be required to seek the permission of the other Party to repeat any information regarding the terms of this Agreement that has already been publicly disclosed by such Party, or by the other Party, in accordance with this Section 12.3.

(c) The Parties acknowledge that either or both Parties or their Affiliates may be obligated to file under applicable Laws a copy of this Agreement with Governmental Authorities. Each Party and its Affiliates shall be entitled to make such a required filing, provided that it requests confidential treatment of the commercial terms and sensitive technical terms hereof and thereof to the extent such confidential treatment is reasonably available. In the event of any such filing, each Party will provide the other Party with a copy of this Agreement marked to show provisions for which such Party or its Affiliate intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's timely comments thereon to the extent consistent with the legal requirements, with respect to the filing Party or Affiliate, governing disclosure of material agreements and material information that must be publicly filed.

12.4 Technical Publication. Luoxin may not publish peer reviewed manuscripts, or provide other forms of public disclosure including abstracts and presentations, of results of studies carried out under the Development Plan, or otherwise pertaining to the Licensed Products or Synergy Licensed Know-How, without the prior written consent of Synergy.

12.5 Equitable Relief. Each Party acknowledges that its breach of this Article 12 will cause irreparable harm to the other Party, which cannot be reasonably or adequately compensated in damages in an action at law. By reasons thereof, each Party agrees that the other Party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of the obligations relating to Confidential Information set forth in this Article 12 by the other Party.

ARTICLE 13

TERM AND TERMINATION

13.1 Term. The term of this Agreement (the "**Term**") shall commence upon the Effective Date and, unless earlier terminated pursuant to this Article 13, shall be perpetual.

13.2 Termination by Luoxin.

(a) Luoxin may terminate this Agreement in its entirety for convenience upon * (*) days prior written notice given to Synergy at any time during the Term; *provided, however,* that Synergy may, upon prior written agreement with Luoxin accelerate the effectiveness of such termination to the extent permitted by Law in the Luoxin Territory.

(b) In the event that, despite Luoxin's use of Commercially Reasonable Efforts to obtain MAA approval, the Regulatory Authority in the Luoxin Territory refuses to grant MAA approval of a Licensed Product, Luoxin shall provide Synergy with information relating to such refusal by such Regulatory Authority, including the reasons alleged for such refusal, so that Synergy may assist Luoxin to obtain such MAA approval. In the event that such Regulatory Authority continues to refuse to grant MAA approval despite the use of

Commercially Reasonable Efforts by both Parties for at least * (*) months, Luoxin may terminate this Agreement upon * (*) days prior written notice to Synergy.

(c) Luoxin may terminate this Agreement upon * (*) days prior written notice to Synergy if a Regulatory Authority in the Luoxin Territory has ordered Luoxin to stop all sales of Licensed Products in the Luoxin Territory due to a safety concern; *provided, however,* that Luoxin has, for a period of * (*) days prior to the provision of such notice by Luoxin, used Commercially Reasonable Efforts to resolve such safety concern.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

13.3 Termination by Synergy.

(a) Synergy may terminate this Agreement upon written notice to Luoxin, if Luoxin stops Development (including Regulatory Activities) or Commercializing Licensed Products in the Luoxin Territory for a period of six (6) months or more (consecutively), unless (i) Development or Commercialization of Licensed Products was prevented throughout such period by a force majeure for which Luoxin provided notice pursuant to Section 15.2 prior to or at the start of such period and that persisted throughout such period despite Luoxin's reasonable efforts to remove or mitigate it; or (ii) Development or Commercialization of Licensed Products was stopped due to reasons directly attributable to Synergy, its Affiliates, sublicensees and/or its designated manufacturer. Such termination shall go into effect on the date specified in the applicable termination notice.

(b) Synergy may terminate this Agreement in its entirety upon written notice to Luoxin, if Luoxin or its Affiliates or their respective sublicensees (directly or indirectly, individually or in association with any other Person) challenges the validity, enforceability or scope of any Synergy Patent. Such termination shall go into effect on the date specified in the applicable termination notice.

13.4 Termination for Breach. Each Party shall have the right to terminate this Agreement in its entirety immediately upon written notice to the other Party if the other Party materially breaches its obligations under any Transaction Agreement and, after receiving written notice identifying such material breach in reasonable detail, fails to cure such material breach within thirty (30) days from the date of such notice. If the Parties are in dispute on whether a material breach exists, Article 14 shall apply.

13.5 Termination Due to Bankruptcy. Either Party may terminate this Agreement if, at any time, the other Party files in any court or agency pursuant to any statute or regulation of any state, country or jurisdiction, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of that Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party is served with an involuntary petition against it, filed in any insolvency proceeding, and such petition is not dismissed within sixty (60) days after the filing thereof, or if the other

Party proposes or becomes a Party to any dissolution or liquidation, or if the other Party makes an assignment for the benefit of its creditors.

13.6 Effect of Termination or Expiration . Upon the any termination or expiration of this Agreement, the following shall apply (in addition to any other rights and obligations under this Agreement with respect to such termination):

(a) Licenses. All licenses and other rights granted by Synergy to Luoxin under this Agreement shall terminate, including all sublicenses granted by Luoxin unless such sublicenses are assumed by Synergy as contemplated by Section 2.1(c)(vi), which shall survive expiration or termination. Synergy shall have a reversion of all rights previously licensed to Luoxin hereunder for which the relevant licenses have terminated on a fully paid-up and royalty-free basis, itself or with or through an Affiliate or Third Party, to Develop and Commercialize the Licensed Products in the Field in the Luoxin Territory at Synergy's discretion. Notwithstanding anything to the contrary, if Luoxin is entitled to terminate this Agreement in accordance with Section 13.4, it may choose (as its sole and exclusive remedy) to not terminate this Agreement under which circumstance and the Agreement shall remain in full force and effect, *provided, however,* that the milestone payments and royalties due to Synergy hereunder shall continue to be payable, but shall be reduced by *percent (*%).

(b) Wind-Down. Luoxin will responsibly wind-down, in accordance with accepted pharmaceutical industry norms and ethical practices, any on-going clinical studies for which it has responsibility hereunder in which patient dosing has commenced or, if reasonably practicable and not adverse to patient safety and requested by Synergy, Luoxin shall complete such trials and Synergy shall reimburse Luoxin its reasonable, out-of-pocket costs associated therewith. For the purpose of clarity, except as provided for above, Luoxin may wind-down any ongoing clinical trials prior to the date of termination in accordance with accepted pharmaceutical industry norms and ethical practices and Luoxin will be responsible for any costs associated with such wind-down. Notwithstanding the foregoing, if this Agreement is terminated by Luoxin pursuant to Sections 13.4 or 13.5, then Synergy will be responsible for any costs associated with such wind-down.

(c) Regulatory Materials; Data. Luoxin shall provide Synergy or its designee with all Regulatory Materials, including Regulatory Approvals, for the Licensed Products to the extent possible under applicable Law in the Luoxin Territory. Luoxin shall also promptly provide Synergy with all Data (to the extent not already provided to Synergy), including pharmacovigilance data, generated by or on behalf of Luoxin. In addition, Luoxin shall promptly return or destroy, at Synergy's election, all Confidential Information of Synergy. If this Agreement is terminated by Luoxin pursuant to Sections 13.4 or 13.5, Synergy shall bear the cost arising out of such assistance performed by Luoxin. If this Agreement is terminated by Luoxin pursuant to Sections 13.2(a) or if this Agreement is terminated by Synergy pursuant to Sections 13.3(a) or (b), 13.4, or 13.5, Luoxin shall bear such cost. If this Agreement is terminated by Luoxin pursuant to Sections 13.2(b) or (c), Luoxin and Synergy shall share such cost equally.

(d) Trademarks. Upon Synergy's written request, Luoxin shall grant to Synergy, effective as of the date of such request, an exclusive, transferable, sublicensable license on commercially reasonable terms and conditions to be agreed by the Parties to use Luoxin Product Marks in connection with the Commercialization of Licensed Products in the Luoxin Territory (and excluding, for clarity, any Luoxin Housemarks).

(e) Transition Assistance. Upon Synergy's request, Luoxin shall provide such assistance as may be reasonably necessary or useful for Synergy to continue the Development and Commercialization of Licensed Products in the Luoxin Territory, to the extent Luoxin or its Affiliate or sublicensee is then performing or having performed such activities, including upon request of Synergy, assigning or amending as appropriate any agreements or arrangements with any Third Party for the Development, distribution, sale or otherwise Commercialization of Licensed Products to the extent such agreements or arrangements can be assigned or amended under applicable Laws and terms and conditions therein.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

If this Agreement is terminated by Luoxin pursuant to Sections 13.2(b) or (c), 13.4 or 13.5, Synergy shall bear the cost arising out of such assistance performed by Luoxin. If this Agreement is terminated by Luoxin pursuant to Sections 13.2(a) or if this Agreement is terminated by Synergy pursuant to Sections 13.3(a) or (b), 13.4, or 13.5, Luoxin shall bear such cost. Additionally, Luoxin shall, at Synergy's cost, provide Synergy with copies of any promotional and marketing materials not containing Luoxin Product Mark or Luoxin Housemark generated by or on behalf of Luoxin with respect to Licensed Products prior to the effective date of expiration or termination.

(f) Inventory. In the event that this Agreement is terminated in its entirety, Synergy shall have the right, but not the obligation, to purchase any and all of the inventory of Licensed Products held by Luoxin or its Affiliates or sublicensees as of the date of termination, at a price equal to the transfer price paid by Luoxin to Synergy for such inventory under the Supply Agreement. Notwithstanding the above, if this Agreement is terminated by Luoxin pursuant to Sections 13.4 or 13.5, Luoxin shall have the right, at its sole discretion, to ask Synergy to re-purchase any and all of its inventory of the Licensed Products at a price equal to the transfer price paid by Luoxin to Synergy for such inventory under the Supply Agreement and/or to continue to be permitted to sell such inventory for up to at least twelve (12) months after the effective date of termination of this Agreement. Synergy shall bear the costs of shipment, insurance and taxes incurred in connection with the purchase of the inventory of the Licensed Product held by Luoxin in accordance with this Section.

13.7 Survival. Termination or expiration of this Agreement shall not affect rights or obligations of the Parties under this Agreement that have accrued prior to the date of termination or expiration. Notwithstanding anything to the contrary, the following provisions shall survive any expiration or termination of this Agreement: Articles 1 (as applicable), 11 (Indemnification),

12 (Confidentiality), 14 (Dispute Resolution), and 15 (Miscellaneous), and Sections 2.1(c)(vi), 2.2 (Synergy Partner), 2.4 (No Implied Licenses), 8.8 (Payment Method; Foreign Exchange), 8.9 (Interest on Late Payments), 8.11 (Records; Audits), 8.12 (Taxes), 9.1 (Ownership of Data and Inventions, as applicable), 10.6 (No Other Representations or Warranties), 13.6 (Effects of Termination or Expiration), 13.7 (Survival) and 13.8 (Termination Not Sole Remedy).

13.8 Termination Not Sole Remedy. Termination is not the sole remedy under this Agreement and, whether or not termination is effected and notwithstanding anything contained in this Agreement to the contrary, all other remedies shall remain available except as agreed to otherwise herein.

ARTICLE 14

DISPUTE RESOLUTION

14.1 Disputes; Internal Resolution. The Parties recognize that disputes as to certain matters may from time to time arise that relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation. To accomplish this objective, the Parties agree that, if a dispute arises under this Agreement, including, without limitation, any alleged breach under this Agreement or any issue relating to the interpretation or application of this Agreement, and the Parties are unable to resolve such dispute within thirty (30) days after such dispute is first identified by either Party in writing to the other, the Parties shall refer such dispute to a senior executive of each of Synergy (or one of its Affiliates) and Luoxin (the "**Executive Officers**") for attempted resolution by good faith negotiations within thirty (30) days after such notice is received, which shall include at least one (1) in person meeting of the Executive Officers within twenty (20) days after such notice is received. If the dispute is not resolved within such thirty (30) days, either Party may commence arbitration with respect to the subject matter of the dispute and with respect to any other claims it may have and thereafter neither Party shall have any further obligation under this Section 14.1. Notwithstanding the foregoing, and without waiting for the expiration of any such thirty (30)-day periods, Synergy and Luoxin shall each have the right to apply to any court of competent jurisdiction for appropriate interim or provisional relief, as necessary to protect the rights or property of that Party.

14.2 Arbitration; Governing Law.

(a) Arbitration. If the Parties are unable to resolve any disputes arising under or in connection with this Agreement through negotiations as described above in Section 14.1, then, all such disputes (other than a dispute with respect to matters governed by Section 3.3(a) or (b)) shall be finally settled by the Hong Kong International Arbitration Center in accordance with its arbitration rules then in effect. The Emergency Arbitrator Provisions shall not apply. The place of arbitration shall be Hong Kong. Any dispute with respect to matters governed by Section 3.3(a) or (b) shall be referred to a mutually agreed upon, Third Party expert to resolve by binding arbitration ("**Expert Arbitration**"). Either Party may initiate such arbitration on thirty (30) days' written notice to the other Party. Upon receipt of such notice, the

Parties shall mutually agree upon a Third Party expert with sufficient knowledge and expertise in the field of pharmaceutical product drug development to evaluate the applicable dispute. The Expert Arbitration proceedings will be conducted at the location selected by such Third Party expert. The fees for any Expert Arbitration shall be shared by the Parties. The language to be used in the arbitral proceedings will be English (including Expert Arbitration). Judgment upon the award rendered by such arbitrator(s) shall be binding on the Parties and may be entered by any court or forum having jurisdiction. All arbitration proceedings and decisions of the arbitrator(s) under this Section 14.2 shall be deemed Confidential Information of both Parties.

(b) Governing Law. Resolution of all disputes and any remedies relating thereto, shall be governed by and construed under the laws of Hong Kong, without giving effect to any choice of law rules or principles.

ARTICLE 15

MISCELLANEOUS

15.1 Entire Agreement; Amendment . This Agreement, including the Exhibits hereto, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof, including the Confidentiality Agreement. The foregoing shall not be interpreted as a waiver of any remedies available to either Party as a result of any breach, prior to the Effective Date, by the other Party of its obligations under the Confidentiality Agreement. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

15.2 Force Majeure. Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the reasonable control of the applicable Party, which may include but be not limited to an act of God, war, civil commotion, terrorist act, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and failure of plant or machinery. Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a force majeure affecting such Party. If a force majeure persists for more than ninety (90) days, then the Parties will discuss in good faith the modification of the Parties' obligations under this Agreement in order to mitigate the delays caused by such force majeure.

15.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be addressed to the appropriate Party at the address specified below or such other address as may be specified by such Party in writing in accordance with this Section 15.3, and shall be deemed to have been given for all purposes (a) when received, if hand-delivered or sent by a reputable courier service, or (b) five (5) Business Days after mailing, if mailed by first class certified or registered airmail, postage prepaid, return receipt requested.

If to Synergy: Synergy Pharmaceuticals, Inc.
620 Lee Road, Suite 200
Chesterbrook, PA 19087
USA
Attn: Troy Hamilton, CEO

with copies to (which shall not constitute notice):

Cooley LLP
500 Boylston Street
Boston, MA 02116-3737
USA
Attn: Geoffrey Spolyar

If to Luoxin: Shandong Luoxin Pharmaceutical Group Stock Co., Ltd.
Luoqi Road, Linyi High and New Technology Industries Development Zone, Shandong Province, P.R.C

Attn: Zhenteng Liu

with copies to (which shall not constitute notice):

Luoxin Biotechnology (Shanghai) Co., Ltd.
Building 1 and 1st-3rd Floors, Building 2, 85 Faladi Road, China (Shanghai) Pilot Free Trade Zone, Shanghai 201203, P.R.C
Attn: Zhenteng Liu

15.4 No Strict Construction; Headings. This Agreement has been prepared jointly by the Parties and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section. Except where the context otherwise requires, the use of any gender shall be applicable to all genders, and the word "or" is used in the inclusive sense (and/or). The term "including" as used herein means including, without limiting the generality of any description preceding such term.

15.5 Assignment; Change of Control .

(a) Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that either Party may make such an assignment without the other Party's consent to an Affiliate of such Party.

(b) Notwithstanding Section 15.5(a), either Party may without such consent but with prior written notice to the other Party, assign this Agreement and its rights and obligations hereunder in connection with a Change of Control, provided further that if the said assignee is engaged in a business that directly competes with the Licensed Product, the notified Party shall have the right to terminate this Agreement without any obligation to the other Party, by providing written notice thereof within three (3) months after the receipt of such notice from the assigning Party. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any assignment or attempted assignment by either Party in violation of the terms of this Section 15.5(a) and (b) shall be null, void and of no legal effect. If either Party experiences a Change of Control, it shall procure the acquirer to enter into a written commitment to perform this Agreement in accordance with the provisions hereunder prior to such Change of Control.

(c) Each Party hereby guarantees the performance by any assignee of such Party's obligations under this Agreement, and shall cause such assignee to comply with the provisions of this Agreement in connection with such performance, and shall provide a letter of commitment duly signed by such assignee to the other Party prior to such assignment.

15.6 Performance by Affiliates . Each Party may discharge any obligations and exercise any right hereunder through any of its Affiliates. Each Party hereby guarantees the performance by its Affiliates of such Party's obligations under this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

15.7 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.8 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

15.9 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights

to the future enforcement of its rights under this Agreement, except with respect to an express written and signed waiver relating to a particular matter for a particular period of time.

15.10 Independent Contractors. Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party in any way. Nothing herein shall be construed to create the relationship of partners, principal and agent, or joint-venture partners between the Parties.

15.11 English Language. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement.

15.12 Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties have executed this License, Development and Commercialization Agreement in duplicate originals by their duly authorized officers as of the Effective Date.

SYNERGY PHARMACEUTICALS, INC.	**SHANDONG LUOXIN PHARMACEUTICAL GROUP STOCK CO., LTD.**
By:_	By:_
Name:	Name:
Title:	Title:

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Exhibit A

Synergy Licensed Patents

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[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Exhibit A1
List of Peptides for Divisional Patent Applications in Mainland China

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Exhibit B

List of Peptides in Competitive Products

Table I. GCRA Peptides (SP-304 Derivatives)

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[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Table II. Linaclotide and Derivatives

Name			
*			

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*			

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Table III. GCRA Peptides

Name			
*			

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Table IV. SP-304 Analogs, Uroguanylin , and Uroguanylin Analogs

Name			
*			

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*			

*			

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Table V. Guanylin and Analogs

Name	Position of Disulfide bonds	Structure	SEQ ID NO
*			

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Table VI. Lymphoguanylin and Analogs

Name	Position of Disulfide bonds	Structure	SEQ ID NO
*			
*			

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[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Table VII. ST Peptide and Analogues

Name	Position of Disulfide bonds	Structure	SEQ ID NO
*			

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

Exhibit C

Supply Agreement Terms and Quality Agreement Terms

Terms and descriptions outlined below, together with any terms contained or described in the Agreement, will serve as the basis for a definitive Supply Agreement and Quality Agreement between the Parties.

Product Supplied	Licensed Product unlabeled and unpackaged form. Current form of Licensed Product is 3mg tablet. Synergy will not be required to supply Luoxin with Licensed Product in any form or presentation other than as set forth above.
Supply obligation	Clinical supply (if applicable) and commercial supply. Luoxin will have the right to assume manufacturing responsibilities in accordance with Section 7.5 of the Agreement.
Forecasting	On a monthly basis, Luoxin will provide a * month rolling forecast. The first * months of any such rolling forecast shall be binding.
Orders	Firm orders will be placed by Luoxin * months prior to the requested release date by way of a written purchase order. Firm orders will have mutually agreed upon minimum lot size requirements.
IncoTerm	Licensed Products will be supplied to Luoxin EXW Synergy's (or its Third Party contract manufacturer's) facility, which currently is the manufacturing plant of * (*). Title to the Licensed Product shall transfer at delivery. Luoxin understands that the delivery locations for Licensed Products may be subject to change. Synergy will assist Luoxin in obtaining custom clearance by providing Louxin with appropriate documentation at the time of delivery.
Shelf Life	Licensed Products will have a remaining shelf life of at least *% of the approved shelf life of such Licensed Products from the date of delivery.
Delivery	*
Documents	Synergy will provide Licensed Product-specific documents for the Licensed Product supplied (including a Certificate of Analysis for drug product and release documentation for finished packaged product).
Pricing	As set forth in Section 7.2 of the Agreement.
Specifications	Licensed Products will comply with specifications set forth in the quality agreement.
Testing	Synergy will provide and manage all testing and retention programs required by applicable Laws (and will conduct all retesting), including stability testing. Luoxin shall have the right to test the Licensed Product in accordance with CFDA requirements (provided that, any costs incurred by Synergy in conducting technology transfers to Luoxin in connection with such testing shall be borne by Luoxin).
Audit Right	Luoxin will have the right to accompany Synergy in any of its scheduled inspections of the manufacturing site(s) of Synergy's Third Party contract manufacturers utilized for manufacturing or filling of the Licensed Product. Luoxin will have the right, no more than once each calendar year, during normal business hours, to audit Synergy's books and records located in Synergy's offices, for quality compliance purposes.
Official Inspection	Synergy will permit, and cause its Third Party contract manufacturers to permit, officials of any Regulatory Authority in the Luoxin Territory to inspect the manufacturing facility utilized for manufacturing the Licensed Product, and will inform Luoxin promptly of any planned or anticipated inspection by a Regulatory Authority in the Luoxin Territory. Synergy will provide Luoxin with copies of reports and communications with the Regulatory Authority in connection therewith (which will be redacted to include information solely related to Licensed Products).
Representation, Warranties, and Covenants	The Supply Agreement will contain customary provisions with respect to mutual representation and warranties. Synergy will warrant that at the time of delivery, Licensed Product will conform to all Specifications, cGMP, and provisions set forth in the Quality Agreement.

EXHIBIT 31.1

CERTIFICATIONS

I, Troy Hamilton, certify that:

1) I have reviewed this report on Form 10-Q of Synergy Pharmaceuticals Inc.

2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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: November 9, 2018

/s/ TROY HAMILTON

Troy Hamilton
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATIONS

I, Gary G. Gemignani, certify that:

1) I have reviewed this report on Form 10-Q of Synergy Pharmaceuticals Inc.

2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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: November 9, 2018

/s/ GARY G. GEMIGNANI

Gary G. Gemignani
Executive Vice President, Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

SYNERGY PHARMACEUTICALS INC.

FORM 10-Q FOR THE QUARTER ENDED SEPTEMBER 30, 2018

PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED

PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I am the Chief Executive Officer of Synergy Pharmaceuticals Inc., a Delaware corporation (the "Company"). I am delivering this certificate in connection with the Form 10-Q of the Company for the quarter ended September 30, 2018 and filed with the Securities and Exchange Commission ("Form 10-Q").

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I hereby certify that, to the best of my knowledge, the Form 10-Q fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2018

/s/ TROY HAMILTON

Troy Hamilton
Chief Executive Officer

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

SYNERGY PHARMACEUTICALS INC.

FORM 10-Q FOR THE QUARTER ENDED SEPTEMBER 30, 2018

PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED

PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I am the Executive Vice President, Chief Financial Officer of Synergy Pharmaceuticals Inc., a Delaware corporation (the "Company"). I am delivering this certificate in connection with the Form 10-Q of the Company for the quarter ended September 30, 2018 and filed with the Securities and Exchange Commission ("Form 10-Q").

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I hereby certify that, to the best of my knowledge, the Form 10-Q fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2018

/s/ GARY G. GEMIGNANI

Gary G. Gemignani
Executive Vice President, Chief Financial Officer