SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

March 6, 2002
Date of Report (Date of earliest event reported)

Discovery Laboratories, Inc.
(Exact name of Registrant as specified in its charter)

Delaware	000-26422	94-3171943
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

350 Main Street, Suite 307
Doylestown, Pennsylvania 18901
(Address of principal executive offices)

(215) 340-4699
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Item 5. Other Events

On March 7, 2002, Discovery Laboratories, Inc., a Delaware corporation ("Discovery"), issued a press release to announce that it had entered into a collaboration arrangement (the "Collaboration") effective as of March 6, 2002, with Laboratorios Del Dr. Esteve, S.A. ("Esteve"). This collaboration arrangement supersedes the existing sublicense and supply agreements between Discovery and Esteve and expands the territory covered by those original agreements to all of Europe, including the Russian Federation, and Central America and South America. In connection with this transaction, Discovery raised $4.5 million in gross proceeds and issued 821,862 shares of its common stock, par value $.001 per share ("Common Stock"). After payment of fees and associated expenses, Discovery intends to use the net proceeds of approximately $4.455 million, for working capital and general corporate purposes, including further development of Discovery's platform technology, based on humanized lung surfactants, in an effort to develop potential novel respiratory therapies, such as an aerosol spray for the treatment of asthma, and pulmonary drug delivery products with the potential to deliver other pharmaceutical products to the lungs.

Transaction Overview

In connection with the Collaboration, Discovery entered into a series of agreements with Esteve, which include a sublicense and collaboration agreement (the "Collaboration Agreement"), a supply agreement (the "Supply Agreement") and a common stock purchase agreement (the "Purchase Agreement"). As further discussed below and subject to the terms and conditions set forth in these agreements, Esteve agreed to provide certain commercialization services throughout Europe, Central America and South America for Discovery's lead product candidate, Surfaxin(R), for the treatment of idiopathic respiratory distress syndrome in premature infants ("IRDS"), meconium aspiration syndrome in full-term infants ("MAS"), acute respiratory distress syndrome in adult patients ("ARDS") and acute lung injury in adult patients ("ALI", ARDS and ALI are sometimes referred to herein collectively as "ALI/ARDS"). Discovery and Esteve have agreed to an exclusive supply agreement which provides that Esteve will purchase all of its Surfaxin drug product requirements from Discovery at an established transfer price based on sales of Surfaxin by Esteve and/or its sublicensee(s). Esteve has also agreed to sponsor certain clinical trial costs related to obtaining European Agency for Medicinal Products (EMEA) approval for commercialization of Surfaxin in Europe for the ALI/ARDS indications. In addition to a $4.0 million equity investment in Discovery, Esteve also agreed to pay to Discovery an up-front license fee of $500,000 and to make certain milestone payments to Discovery upon the attainment of certain corporate milestones that are discussed in greater detail below.

Collaboration Arrangements

Pursuant to the Collaboration Agreement, Esteve will provide commercialization services for the promotion of Surfaxin for IRDS, MAS and ALI/ARDS throughout Europe, including the Russian Federation, Central America and South America and will pay for certain clinical trial costs. The commercialization services to be provided by Esteve will include customary pre-launch, launch and post-launch marketing activities including retaining marketing and sales personnel for commercialization of Surfaxin in the aforementioned territory. Under the Supply Agreement, Discovery will manufacture Surfaxin for distribution and sale by Esteve in the territory covered by the Collaboration. Subject to the approval of Discovery and certain limitations and requirements set forth in the Collaboration Agreement, Esteve may sublicense its commercialization rights to third parties. Esteve has agreed to pay certain clinical trial costs related to obtaining EMEA approval for commercialization of Surfaxin for the ALI/ARDS indications. In general, Discovery will be responsible for regulatory activities relating to Surfaxin, including with respect to EMEA filings, however, Esteve will be responsible for regulatory activities relating to specific countries in the territory covered by the Collaboration.

Moreover, subject to prior termination of this right as provided in the Collaboration Agreement, Esteve has been granted a right of first negotiation until March 6, 2009, regarding possible collaborative licenses or other suitable arrangements that would provide for the clinical development and marketing of other products that may be developed by Discovery, whether related to Surfaxin or otherwise, in the territory covered by the Collaboration. In addition, the Collaboration Agreement specifies that any such future collaborative agreements would provide for suitable up-front cash payments and cash milestones and shared responsibility for clinical development work and expenses related to the new technology. Further, Esteve would be responsible for customary commercialization activities and costs and Discovery would supply any such future products.

In addition to the monies received by Discovery in connection with Esteve's equity investment in Discovery and payment of the up-front license fee discussed in greater detail below, upon receipt of EMEA marketing regulatory approval of Surfaxin for sale in Europe for each of the IRDS and MAS indications and the first to be approved of the ARDS or ALI indications, Esteve has agreed to make certain cash milestone payments to Discovery.

The management of the overall strategic relationship between Esteve and Discovery and marketing and sales activities of Collaboration will be managed and governed by a joint steering committee (the "Joint Steering Committee") which will be comprised of representatives appointed by Esteve and Discovery. In addition, a separate joint development committee (the "Joint Development Committee") will be formed to oversee development of Surfaxin in the territory covered by the Collaboration. The Joint Development Committee will be comprised of four members consisting of two executives to be appointed by each of Discovery and Esteve. Each committee will be chaired alternately by a representative of Discovery and Esteve with each such chairperson serving for a one-year period.

Equity Investment and Licensing Fee

Pursuant to the Purchase Agreement, Esteve purchased 821,862 shares of Common Stock at a price of $4.867 per share, representing a total equity investment of $4 million. In

addition, Esteve paid to Discovery an up-front licensing fee of $500,000. Under the Purchase Agreement, Esteve has agreed to certain limitations on its trading of, and purchase of additional shares of, Common Stock, as well as certain prescriptions regarding the voting of its shares.

The shares of Common Stock purchased by Esteve have not been registered under the Securities Act of 1933 (the "1933 Act") and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the 1933 Act. In addition, all such shares of Common Stock are subject to certain restrictions on transfer as set forth in the Purchase Agreement. Esteve will have up to two "demand" registration rights that require Discovery to register shares of Common Stock held by Esteve for resale under the 1933 Act. In addition, subject to certain limitations, Esteve has customary "piggyback" rights to include such shares of Common Stock in other registrations of securities filed by Discovery for resale under the 1933 Act.

A copy of the press release announcing the execution of the agreements relating to the Collaboration is attached as an exhibit hereto. The descriptions of the Collaboration contained in the attached press release and in this Item 5 do not purport to be complete and are qualified in their entirety by reference to the agreements and instruments attached as exhibits hereto.

To the extent that statements in this report are not strictly historical, including statements as to Discovery's business strategy, outlook, objectives, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of Discovery's product development, or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Among the factors which could affect Discovery's actual results and could cause results to differ from those contained in the forward-looking statements contained herein are the risk that financial conditions may change, the risk that Discovery will not be able to raise additional capital or enter into additional collaboration agreements, risks that any collaborators may not perform their obligations under any such agreements, risks relating to the progress of Discovery's research and development and the development of competing therapies and/or technologies by other companies. Those associated risks and others are further described in Discovery's periodic filings with the Securities and Exchange Commission including its reports on Forms 10-KSB, 8-K and 10-QSB, and amendments thereto.

Item 7. Financial Statements, Pro Forma Financial Statements and Exhibits

(c) Exhibits:

*10.1	Sublicense and Collaboration Agreement
*10.2	Supply Agreement
10.3	Common Stock Purchase Agreement
99.1	Press Release dated March 7, 2002.

* Confidential treatment has been requested with respect to certain portions of these exhibits. Such portions have been separately filed with the Securities and Exchange Commission and redacted herein.

SIGNATURES

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

Discovery Laboratories, Inc.

By: /s/ Robert J. Capetola

Name: Robert J. Capetola, Ph.D.
Title: President and
Chief Executive Officer

Date: March 8, 2001

Portions of this Exhibit have been omitted pursuant to a request for confidential treatment. The omitted portions, marked by [***], have been separately filed with the Securities and Exchange Commission.

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SUBLICENSE AND COLLABORATION AGREEMENT

between

DISCOVERY LABORATORIES, INC.

and

LABORATORIOS DEL DR. ESTEVE, S.A.

Concerning Sinapultide (Lucinactant)

March 6, 2002

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SUBLICENSE AND COLLABORATION AGREEMENT

THIS SUBLICENSE AND COLLABORATION AGREEMENT (this "Agreement" or "Collaboration Agreement") is made as of March 6, 2002 (the "Effective Date"), between DISCOVERY LABORATORIES, INC. ("Licensor"), a Delaware corporation, and laboratorios del dr. esteve, s.a., a corporation organized and existing under the laws of Spain ("Licensee").

WHEREAS, Licensor has the exclusive worldwide right, under a license from Johnson & Johnson, Inc., to sublicense certain technology, including certain technology relating to synthetic pulmonary surfactant peptides and proteins, one of which is known as sinapultide;

WHEREAS, Licensor owns certain technology and patent rights relating to synthetic pulmonary surfactant formulations;

WHEREAS, Licensor and Licensee have entered into a Sublicense Agreement, as amended, and a Supply Agreement dated October 26, 1999, for the commercialization of Licensed Products (as such term is defined therein) in Spain, Andorra, Portugal, Greece, Central and South America, with an option for Italy;

WHEREAS, Licensor and Licensee desire to replace the aforementioned agreements by a new Sublicense and Collaboration Agreement and a new Supply Agreement, in order to extend the collaborative relationship between the parties and the territories where Licensee shall be entitled to commercialize the Licensed Products (as such term is hereinafter defined).

NOW, THEREFORE, in consideration of the promises and the performance of the covenants herein contained, the parties agree as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

"Affiliate(s)" of a Person shall mean any Person which directly or indirectly Controls, is Controlled by or is under common Control with such Person.

"Business Day" shall mean any day on which banking institutions are open or authorized to be open in the Commonwealth of Pennsylvania and in Barcelona, Spain.

"Control" shall mean direct or indirect beneficial ownership of at least fifty percent (50%) of the voting stock of a Person having outstanding voting securities, or a fifty

percent (50%) or greater interest in the income of a Person not having outstanding securities, or, in either case, the power to direct or cause the direction of the management or policies of such Person.

"Development" shall refer to all activities relating to formulation, process development, manufacturing scale-up, quality assurance/quality control, clinical studies and regulatory affairs in connection with a Licensed Product.

"EMEA" shall mean the European Medicines Evaluation Agency.

"FDA" shall mean the United States Food and Drug Administration.

"Field" shall mean the use of Licensed Products for the Indication; provided, however, that Field shall not include the use of a Licensed Product in any manner whatsoever where its significant purpose in such use is that of a respiratory drug delivery mechanism.

"Indication" shall solely mean any use of Licensed Products for the treatment or prophylaxis of patients suffering or potentially suffering from acute lung injury or acute respiratory distress syndrome ("ALI/ARDS"), meconium aspiration syndrome ("MAS") or idiopathic respiratory distress syndrome ("IRDS").

"Initial Period" shall mean, on a country by country basis, the period beginning on the Effective Date and ending on that date that is the latest of the following dates:

(i) the expiration of the last Patent Rights containing a Valid Claim covering a Licensed Product in such country;

(ii) the first commercial sale of the first to appear generic formulation of the subject Licensed Product in such country; or

(iii) the tenth (10th) anniversary of the first commercial sale of a Licensed Product in such country.

"Key Markets" shall mean France, Germany, Italy, Mexico, Spain and the United Kingdom and any other country of the Licensed Territory in which the market for Licensed Products shall develop to be comparable in size to any Key Market country.

"Licensed Know-how" shall mean all know-how, data, information or technology arising before or during the course of this Agreement which are proprietary to the Licensor and/or with respect to which Licensor has the power and right to grant the licenses provided for herein and which relate to the development or therapeutic use of Licensed Products.

"Licensed Methods" shall mean the methods for treating respiratory distress syndromes that are covered by one or more claims of issued and pending patents as set forth on Schedule I hereto.

"Licensee Proprietary Information" shall mean any scientific and technical information or data developed, possessed or acquired by Licensee relating to Licensed Products, Patent Rights or Licensed Know-how which Licensee is free to disclose other than such information that is generally available to the public.

"Licensed Products" shall mean any surfactant pharmaceutical compositions for use in the Field which are formulations of lipids and solely the polypeptide (lucinactant), whether in suspension for pulmonary instillation or in aerosol form that have been developed by Licensor or that may be developed by Licensor during the term of this Agreement (including, but not limited to, the product that is now known as "Surfaxin"(R)).

"Licensed Rights" shall mean collectively the Patent Rights, the Licensed Methods, the Trademarks and the Licensed Know-how.

"Licensed Territory" shall mean Albania, Andorra, Austria, Belarus, Benelux (Belgium, Luxembourg and The Netherlands), Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy (including the Republic of San Marino and the Vatican City), Latvia, Liechtenstein, Lithuania, Macedonia, Malta, Moldova, Monaco, Poland, Portugal, Romania, Scandinavia (Denmark, Finland, Iceland, Norway and Sweden), Slovak Republic, Slovenia, Spain, Switzerland, The Russian Federation, Turkey, Ukraine, United Kingdom, Yugoslavia and Latin America (defined as the countries in the continent of South America and the region generally known as Central America and including Mexico).

"Major Indication" shall mean the use of Licensed Products solely for the treatment of patients suffering from ALI/ARDSor IRDS

"Marketing Regulatory Approvals" shall mean all permissions and applications for such permissions from the regulatory and/or governmental health authorities in the Licensed Territory which are necessary for the importation of the Licensed Products and their marketing, use, distribution and sale in the Licensed Territory.

"NDA" shall mean a New Drug Application or Product License Application filed with the United States Food and Drug Administration under 21 USC 355(b) (FDCA Section 505(b)) or its equivalent filed with the EMEA or with any regulatory authority of any country within the Licensed Territory.

"Original License" shall mean the Sublicense Agreement dated as of October 28, 1996 between the Original Licensor and Licensor.

"Original Licensor" shall mean Johnson & Johnson, Inc.

"Patent Rights" shall mean (i) the patents and patent applications set forth on Schedule I hereto; (ii) any other patents or patent applications covering the surfactant pharmaceutical compositions referenced in the patents and patent applications in Schedule I or their use or administration owned by Licensor or under which Licensor has the right, at any time

while this Agreement is in effect, to license to Licensee; and (iii) with respect to the foregoing letters patent and patent applications, all corresponding national patents and patent applications, Patent Cooperation Treaty and European Patent Convention filings and applications and filings and applications under similar administrative international conventions, together with any divisional, continuation, continuation-in-part, substitution, reissue, extension, supplementary protection certificate or other application based thereon. Notwithstanding the foregoing, "Patent Rights" shall not include any patents or patent applications, filings, or applications under any treaty, or any divisional, continuation, continuation-in-part, substitution, reissue, extension, supplementary protection certificate or other application relating in whole or in part to the use or administration of any of the surfactant pharmaceutical compositions on Schedule I or any Licensed Product, alone or together with other active or inactive components, outside the Field.

"Person" shall mean any natural person, corporation, limited liability company, unincorporated association, partnership, joint venture or other entity.

"Pricing Approvals" shall mean approvals by the regulatory and/or governmental health authorities in the Licensed Territory granting the prices of the Licensed Products and reimbursement conditions for the sale thereof.

"Product Failure" shall mean, with respect to the Licensed Products or any Replacement Product, the earlier to occur of (i) a determination by the EMEA that the Licensed Product or such Replacement Product may not be commercialized for a Major Indication, or that further clinical trials of the Licensed Products or such Replacement Product should not be conducted for a Major Indication or (ii) a good faith determination by the Steering Committee (as defined in Section 5.5) that the continued development of the Licensed Products or such Replacement Product for a Major Indication is not economically justifiable or is unlikely to result in the receipt of Marketing Regulatory Approvals from the EMEA within time frames that will permit Licensor and Licensee to achieve the anticipated benefits of this Agreement.

"Replacement Product" shall mean a formulation of lipids with one of the surfactant peptides or proteins (other than sinapultide) for the Major Indication that is covered, in whole or in part, by one or more Valid Claim of the issued patents listed on Schedule I.

"Scripps Patent Rights" shall mean the Patent Rights identified in part (a) of Schedule I.

"Stock Purchase Agreement" shall mean the Common Stock Purchase Agreement dated as of the date hereof between Licensor, as the seller, and Licensee, as the purchaser.

"Trademark" shall mean Surfaxin(R) and such other trademarks owned by Licensor that are selected by the Development Committee (as defined in Section 5.6) for use within the Licensed Territory in connection with one or more Licensed Products.

"Valid Claim" shall mean a claim of an unexpired patent within the Patent Rights which has matured into an issued patent or a claim being prosecuted in a pending application

within the Patent Rights. In each case a claim shall be presumed to be valid unless and until it has been held to be invalid by a final, unappealable judgment of a court of competent jurisdiction.

ARTICLE 2
GRANT

Section 2.1. Grant of License. Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, upon the terms and conditions herein specified, an exclusive license under the Patent Rights, the Licensed Know-how and the Trademark, and the right to practice Licensed Methods, solely in connection with the importation, promotion, distribution, use and sale of Licensed Products under the Trademark in the Licensed Territory in the Field. Licensor hereby agrees that it shall not grant any other licenses to exploit the Licensed Rights or the Licensed Products in the Licensed Territory to any third party (including, without limitation, its Affiliates) during the term of this Agreement. The license granted hereunder does not include any right or license of Licensee to make or have made Licensed Products, all such right and license being hereby retained by Licensor. The license granted under this Article 2 shall be subject to the terms and conditions of this Agreement and the following terms:

(a) The rights of the Original Licensor of the Scripps Patent Rights to use the Scripps Patent Rights for educational and research purposes;

(b) To the extent applicable, the rights of the United States Government pursuant to 35 U.S.C. 202 et seq. and 37 C.F.R. 401.1 et seq. which may have arisen or resulted from federal funding of research relating to the Scripps Patent Rights, including the non-exclusive right of the United States Government to practice the inventions covered by the Scripps Patent Rights;

(c) The reserved right of Licensor, to use the Licensed Rights for research and development purposes and, to the extent permitted by Section 6.2, for publication purposes subject to approval by Licensee, which approval shall not be unreasonable withheld; and

(d) The Standard of Diligence (as such term is set forth in Section 5.9).

Licensee shall have no right to sublicense or otherwise share its rights hereunder with any other Person other than (i) Affiliates of Licensee (provided that Licensee shall not be relieved of any of its obligations under this Agreement), as provided for in Section 14.9, and (ii) third parties pursuant to a sublicense or distribution agreement complying with Section 2.3.

Section 2.2 No Active Sales Outside Licensed Territory. Licensee shall neither directly nor indirectly carry out any active sales of or actively seek customers for the Licensed Products outside the Licensed Territory and it shall not advertise the Licensed Products or maintain branches for the distribution of the Licensed Products outside the Licensed Territory.

Section 2.3. Sublicense Agreements. Licensee shall be entitled to sublicense its rights and obligations under this Agreement in any country of the Licensed Territory, provided that (i) any such sublicense agreement shall be under terms no less stringent than the ones contained in this Agreement including, without limitation, Licensee's performance requirements set forth in Section 5.9; (ii) the effect of such sublicense shall not be an assignment of all of Licensee's rights and a delegation of all of its obligations under this Agreement; and (iii) Licensee obtains Licensor's prior approval for such sublicense, which shall not be unreasonably withheld or delayed. Licensee hereby warrants and represents that any such sublicensee will comply with all applicable terms of this Agreement and, further, guarantees performance of this Agreement by any such sublicensee.

Section 2.4. Consideration for Licensed Products. Licensee shall not accept as consideration for the sale or transfer of Licensed Products any consideration other than cash except as consented to by Licensor following agreement between Licensor and Licensee on the methodology for valuing such non-cash consideration.

Section 2.5. Right of First Negotiation on New Products. For a period of seven (7) years from the Effective Date, subject, however, to prior termination as hereinafter provided in Article 7, Licensor shall grant to Licensee an exclusive right of first negotiation to all future products developed by Licensor (each a "New Product"), solely to the extent to which Licensor is not legally restricted or prevented from licensing any such rights within the Licensed Territory, in accordance with the following terms and conditions:

(a) Within sixty (60) days of completion of Licensor's written clinical study report(s) for all Phase 2 clinical trials with respect to any such product opportunity, Licensor shall present in writing, including a copy of the relevant Phase II clinical study final report(s), such product opportunity to Licensee together with any additional information which, at Licensor's judgment, is reasonably necessary for Licensee to evaluate its possible interest in the New Product in a manner that is reasonably intended to provide a basis for Licensee's decision as to whether to exercise its option hereunder (a "New Product Presentation"). At Licensee's request, Licensor shall provide Licensee with any additional information solely to the extent that such additional information is reasonably necessary for Licensee to evaluate its possible interest in the New Product.

(b) Within sixty (60) days from the date of any such New Product Presentation, Licensee shall notify Licensor in writing of Licensee's intention to enter into negotiations to license the rights to any such product. Licensee and Licensor hereby expressly agree that such license or any other similar grant of rights in respect thereto shall contain, among other customary terms and conditions, the following:

(i) up-front cash payment(s) to be paid by Licensee to Licensor in o amounts that are consistent with customary pharmaceutical industry practices and appropriate with reference to the technology value and potential product value of such New Product;

(ii) Licensor, Licensee and other sublicensees of the Licensor shall share all future clinical development work and or expenses with respect to any such New Product opportunity, in relation with Phase 3 clinical trials necessary to obtain and/or maintain the Marketing Regulatory Approvals in the Licensed Territory, on a proportional basis using the relevant IMS annual global pharmaceutical data relative to the aggregate pharmaceutical market size of the proposed licensed territory for all pharmaceutical products as the basis of determining the amount of such costs to be borne by each of the parties at the time. Licensee and its sublicensees shall be responsible for the work and costs associated with any and all clinical development activities that is conducted in the Licensed Territory for the New Product that are not necessary to obtain or maintain Marketing Regulatory Approval for any such New Product;

(iii) payment to Licensor of cash milestones in amounts that are consistent with customary pharmaceutical industry practices and are reflective of the value of such New Product created during the development process and which amounts take into account Licensee's contribution to development of any such value;

(iv) Licensee shall be responsible for customary commercialization costs associated with the New Product including, without limitation, sales, marketing, distribution, and safety and medical affairs expenses, in a manner similar to that set forth in this Agreement with respect to Licensed Products; and

(v) Licensor shall be responsible for the manufacture of any such New Product. The supply price for the New Product, which shall duly take into account the development expenses and cash milestones paid by Licensee for any such New Product, shall ensure a reasonable profit for Licensee in the light of the prevailing and expected market conditions at that time.

(c) Should Licensee fail to exercise its option to negotiate in accordance with this Section, or should the parties fail to enter into definitive agreements within hundred and twenty (120) days of the date of Licensee's notice, delivered to Licensor in accordance with Section 2.5(b), Licensor shall have the right to offer the New Product opportunity to any other third party offeree(s) at terms and conditions that are in substance no more favorable for such other third party offeree(s) than those last offered to Licensee in writing , provided, however, that Licensor shall not execute any agreement on the New Product with any such third party offeree(s) without previously offering Licensee the right to enter into an agreement on substantially similar terms than those contained in the final agreement with the relevant third party offeree.

(d) Should senior executive officers of Licensor become aware of the possible interest of any third party to enter into an agreement in relation with any New Product prior to completion of all Phase 2 clinical trials, then Licensor shall promptly notify

Licensee of such possible interest of a third party. In such event, and notwithstanding Section 2.5(a) hereinabove, Licensor and Licensee agree to initiate good faith negotiations with respect of such New Product with a view to enter into an agreement for the development and commercialization of such New Product prior to the completion of the Phase 2 development for that New Product; provided, however, that in any such event the parties agree that any negotiations hereunder shall be performed within timeframes similar to those as set forth in Section 2.5 and shall encompass terms and conditions similar to those set forth in Sections 2.5(b) and (c).

Section 2.6. Product Failure. In the case of a Product Failure, the Steering Committee shall seek to identify a single Replacement Product for development by Licensee and Licensor for such Product Failure. In the event a Replacement Product has not been identified for development in writing by the Steering Committee within six (6) months of such Product Failure, or within such other time-limit that may be agreed by the Chief Executive Officers (or equivalent position) of Licensor and Licensee, either party shall have, within thirty (30) days following expiration of such period by written notice to the other party, the right to terminate this Agreement with respect to such Major Indication in those countries where the Product Failure has occurred. The Steering Committee shall prepare a written development plan with respect to each Replacement Product that has been identified for development by the Steering Committee as promptly as practicable following its identification, which shall include provisions for the funding of development with respect to such Replacement Product by Licensor, Licensee and other Licensor's licensees in countries outside the Licensed Territory where Licensor or its licensees intend to commercialize such Replacement Product. In the event the Steering Committee has not reached agreement upon such development plan, including the funding of development in connection with the Replacement Product, within ninety (90) days after identification of a Replacement Product for development hereunder, then either party shall have the right to terminate this Agreement with respect to such Major Indication in those countries where a Marketing Regulatory Approval for such Major Indication has not been obtained, by written notice to the other within the thirty (30) days following expiration of such ninety (90) day period; provided, however, that in such event, Licensor shall not enter into any agreement relating to the development, distribution, marketing and sale of the same product in the Licensed Territory with a third party on terms which, taken as a whole, are more favorable to such third party than those last offered to Licensee in writing by Licensor for such product.

For the avoidance of doubt, this Section 2.6 shall not limit in any respect whatsoever Licensee's rights under Section 2.5 and under Section 7.3.

ARTICLE 3

GRANT BACK

In consideration for Licensor (i) making the Licensed Know-how (including any improvements thereto and solely to the extent provided for in Section 2.1) available to Licensee on a continuing basis for the duration of this Agreement and (ii) procuring, and making available to Licensee the benefit of, equivalent grants from Licensor's other licensees for the Licensed Products outside the Licensed Territory, Licensee hereby grants to Licensor and such other licensees as Licensor may designate a royalty-free, nonexclusive license outside the Licensed Territory and limited to the Field, with the right to grant sublicenses, under any and all inventions and Licensee Proprietary Information (whether patentable or not) hereafter during the term of this Agreement, developed, possessed or acquired by Licensee related to the Licensed Products, Patent Rights, Licensed Know-how or Licensed Methods; provided that Licensee is not legally restricted or prevented from granting such rights in connection with the relevant invention. Licensee shall provide Licensor with a written enabling disclosure of each invention (such as a patent application or internal docket reference) unambiguously identifying it as an invention governed by this Article 3 prior to filing a patent application or taking any other action disclosing or potentially disclosing the same to third parties.

Licensee shall promptly disclose all Licensee Proprietary Information to Licensor and, subject to the execution of confidentiality undertakings comparable to those set forth in Article 6, to Licensor's other licensees (and or Affiliates and permitted sublicensees) of Patent Rights outside the Licensed Territory on a continuing basis during the term of this Agreement. Licensee hereby grants to Licensor and such licensees a royalty-free nonexclusive license, with the right to grant sublicenses, to use the Licensee Proprietary Information outside the Licensed Territory and limited to the Field. Licensee shall not disclose any such invention and or Licensee Proprietary Information under circumstances that would reasonably be expected to result in the loss of the protectible status of any such invention and or Licensee Proprietary Information without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

ARTICLE 4

CONSIDERATION

Section 4.1. Common Stock Purchase. Within twenty-four (24) hours after the execution of this Agreement, Licensee shall purchase of a number of shares of common stock, of the Licensor, par value $.001 per share for an aggregate purchase price of $4,000,000 and otherwise in accordance with the terms and conditions as set forth in the Stock Purchase Agreement.

Section 4.2. License Fee. Upon the execution of this Agreement, Licensee shall pay to Licensor, as soon as practicable but in no event later than ten (10) Business Days after receipt of Licensor's invoice, a non-refundable license fee of $500,000.

Section 4.3 Supply Agreement. Concurrently with the execution of this Agreement, Licensor and Licensee shall enter into a supply agreement for Licensed Products (the "Supply Agreement").

Section 4.4 Additional Cash Payments Upon EMEA Approval. Licensee shall pay to Licensor the following cash amounts upon the receipt of the relevant EMEA Marketing Regulatory Approval, as soon as practicable but in no event later than ten (10) Business Days after receipt of Licensor's invoice , as indicated below:

Indication	Amount
MAS	[***]
IRDS	[***]
ARDS /ALI (first to occur)	[***]

Section 4.5 Manner of Payment. The amounts provided for in Sections 4.2 and 4.4 shall be paid to Licensor in United States Dollars. Any and all taxes that are levied on license fees accruing under this Agreement in a country in which provision is made in the law or by regulation for withholding may be deducted by the payor from such amounts and paid to the proper taxing authority and evidence of such payment shall be secured and sent to Licensor as promptly as possible. The parties shall do all such lawful acts and things and sign all such lawful deeds and documents as either party may reasonably request from the other party to enable Licensee or Licensor, or their respective Affiliates and/or sublicensees to take advantage of any applicable legal provision or any double taxation treaties with the object of paying the sums due to Licensor hereunder without withholding any tax or as promptly as practicable recovering any such withheld tax.

ARTICLE 5

SCOPE OF THE COLLABORATION

Section 5.1. Goals of the Collaboration. The parties hereto desire to collaborate in a strategic relationship with regard to a product Development and commercialization program with the following goals and in the following manner:

(a) the Development and clinical testing of Licensed Products;

(b) Marketing Regulatory Approval of Licensed Products in the Licensed Territory in the Field; and

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Information marked by [***] has been omitted pursuant to a request for confidential treatment. The omitted portion has been separately filed with the Securities and Exchange Commission.

(c) the manufacturing by Licensor and the marketing, sale, and distribution by Licensee of Licensed Products in the Licensed Territory in the Field.

In performance of the foregoing, Licensor and Licensee agree to collaborate diligently in the overall strategic relationship and in the Development and commercialization of Licensed Products in the Licensed Territory in the Field in accordance with the terms and conditions contained in this Agreement including, without limitation, the respective roles and responsibilities of the parties as set forth in this Article 5.

Section 5.2. Roles and Responsibilities. The principal mechanism by which the parties contemplate coordinating their respective clinical Development and sales and marketing activities will be through consensus-based decision-making through a joint Development Committee established and governed pursuant to Section 5.6 of this Agreement that shall be under the oversight of a joint Steering Committee established and governed pursuant to Section 5.5 of this Agreement, provided, that the parties expressly acknowledge and agree that the following shall apply:

(a) Conduct of Clinical Investigations. The Development Committee (as such term is defined in Section 5.6) shall be responsible for the Development of Licensed Products in the Licensed Territory; provided, however, that

(i) Licensor shall at its own cost and expense conduct the Phase 3 clinical trials and other Development activities necessary for obtaining and maintaining Marketing Regulatory Approvals for the IRDS and MAS indications,

(ii) Licensee shall be responsible for paying up to [***] of the costs related to the clinical Development activities necessary for obtaining Marketing Regulatory Approvals for the ARDS and or ALI indications regardless of whether such trials are conducted in or outside of the Licensed Territory in part or in whole, it being understood that any costs related to the clinical Development activities necessary for obtaining Marketing Regulatory Approvals for the ARDS and or ALI indications in excess of [***] as well as any cost not related to clinical Development activities shall be borne by Licensor, and

(iii) Licensor and Licensee shall co-sponsor all clinical trials conducted in the Territory and which are necessary for obtaining and maintaining Marketing Regulatory Approvals for the ARDS and or ALI indications.

In the event that Licensor should fail to receive EMEA Marketing Regulatory Approval for the IRDS indication by December 31, 2004, Licensee shall have the right on sixty (60) days advance written notice to Licensor to suspend Licensee's obligation to pay for clinical Development costs incurred subsequent to such suspension date related to obtaining Marketing Regulatory Approvals for the ARDS and/or ALI indications. Such

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Information marked by [***] has been omitted pursuant to a request for confidential treatment. The omitted portion has been separately filed with the Securities and Exchange Commission.

suspension of Licensee's obligation of payment shall not affect the full validity and enforceability of the remaining provisions of this Agreement; provided, however, that upon the receipt by Licensor of EMEA Marketing Regulatory Approval for the IRDS indication should Licensee choose to promptly pay to Licensor the cash amount set forth in Section 4.4 of this Agreement, Licensee's obligations under Section 5.2(a)(ii) hereinabove shall be reinstated without obligation to pay any costs that may have been incurred thereunder during such suspension period.

Licensee shall be responsible for the costs associated with any and all clinical activities that are conducted in the Licensed Territory for the Indications that are not necessary to obtain or maintain Marketing Regulatory Approval for any such Indication. Licensor and Licensee shall keep each other fully informed on the progress of all clinical trials of Licensed Products and shall promptly provide the other with copies of all submissions to regulatory authorities in connection therewith, all significant communications received from such regulatory authorities and reasonably detailed descriptions (in English) of all meetings with and verbal communications with such regulatory authorities which are of significance.

Each of Licensor and Licensee shall use its best efforts to complete all clinical trials for which it is responsible within the parameters established by the Development Committee (as such term is defined in Section 5.6).

(b) Commercialization Activities. Through the governance mechanism of the Steering Committee (as such term is defined in Section 5.6), Licensor and Licensee shall actively participate in the strategic marketing activities for Licensed Products in the Licensed Territory. Without prejudice to Section 2.1 and 2.3, Licensee shall be responsible for activities and associated costs and expenses involved in the marketing, sales, and distribution of Licensed Products in the Licensed Territory including, without limitation, (i) providing country-specific marketing resources including, but not limited to, personnel, marketing materials and other customary marketing tools and methods; (ii) furnishing sufficient sales personnel to adequately detail Licensed Products in the Licensed Territory and achieve insertion of Licensed Products into hospital formularies; (iii) managing and conducting order taking, storage and distribution of Licensed Product in the Licensed Territory; (iv) performing country-specific regulatory affairs activities and price and reimbursement negotiations during the Regulatory Marketing Approval process; and (v) managing local medical affairs and reporting of drug safety issues to Licensor and appropriate regulatory authorities. Licensee, shall develop a sales and marketing plan, which shall be subject to review and approval of the Steering Committee as provided hereunder, comprised of individual sales and marketing plans for Key Markets in the Licensed Territory (the "Marketing Plan").

Section 5.3 Submission for Regulatory Approvals. (a) Subject to the completion of requisite clinical investigations, Licensor shall prepare and submit to the regulatory authorities in the Licensed Territory applications for Marketing Regulatory Approvals as soon as practicable and shall use its diligent efforts to obtain and maintain all Marketing Regulatory Approvals that are obtained by Licensor for the term of this Agreement, all at the

cost and expense of Licensor, except as may otherwise be provided for in Section 5.2. When filing for Marketing Regulatory Approvals, Licensor shall designate Licensee or such Licensee's Affiliates or permitted sublicensees designated by Licensee as its distributors or local representatives for the Licensed Products in the Licensed Territory. Licensor shall, upon the granting of each Marketing Regulatory Approval obtained by Licensor, promptly supply Licensee with a copy of such approval.

Without prejudice to the foregoing, if in any jurisdiction of the Licensed Territory it is not legally permissible that Licensor submits a Marketing Regulatory Approval, Licensee (or, as the case may be, its Affiliates or sublicensees) shall submit, at Licensee's expense, the application to obtain the appropriate Marketing Regulatory Approvals in such jurisdiction, and Licensor and Licensee shall diligently cooperate to obtain the same as expeditiously as possible. Upon the granting of each such Marketing Regulatory Approval obtained by Licensee (or, as the case may be, its Affiliates or sublicensees), Licensee shall promptly supply, or shall cause its Affiliates and/or sublicensees to promptly supply, Licensor with a copy of such approval.

(b) Subject to receipt of the Marketing Regulatory Approvals, Licensee, where appropriate, shall prepare and submit to the regulatory authorities in the Licensed Territory applications for Pricing Approvals as soon as practicable and shall use its diligent efforts to obtain and maintain all Pricing Approvals that are obtained by Licensee for the term of this Agreement, all at the cost and expense of Licensee. Licensee shall, upon the granting of each Pricing Approval obtained by Licensee, promptly supply Licensor with a copy of such approval.

Section 5.4 Access of Licensee to Marketing Regulatory Approvals. Licensor shall, in connection with any Marketing Regulatory Approval obtained by it in the Licensed Territory, grant Licensee an irrevocable right of access and reference thereto and shall effect such notifications to regulatory authorities as shall be reasonably necessary to accomplish the foregoing. To the extent that the Marketing Regulatory Approval is obtained by Licensee (or as the case may be, by its Affiliates or sublicensees), Licensee shall maintain, or cause its Affiliates or sublicensees to maintain, such Marketing Regulatory Approvals at its cost and expense. Licensor shall assist Licensee in maintaining such Marketing Regulatory Approvals including supplying to Licensee any information in connection therewith.

Section 5.5 Joint Steering Committee. (a) Licensee and Licensor shall jointly form an oversight committee (the "Steering Committee") that shall (i) manage the overall strategic relationship and the strategic marketing and sales activities for Licensed Products in the Licensed Territory, (ii) to review and approve the pre- and post-launch Marketing Plan as well as any other matters required for the sales and promotion of Licensed Products in the Licensed Territory, except to the extent that certain matters are solely the responsibility of a single party under this Agreement; (iii) to advise, provide input and determine strategy for future clinical and/or marketing studies; (iv) have overall responsibility for the success of such matters as established by this Agreement, and (v) be charged with promptly resolving disputes of the parties, if any, subject to Section 14.4.

(b) The Steering Committee will be comprised of a number of Licensor and Licensee representatives, not exceeding three representatives of each party unless otherwise mutually agreed, that shall be senior executives of such party who shall functionally have responsibility for commercialization and/or business development activities within their respective organizations. The Steering Committee shall be chaired alternatively by a designee of Licensor and by a designee of Licensee, with any such designee serving as chairperson for a one year period. The initial members of the Steering Committee shall be designated by the parties hereto not later than thirty (30) days after the Effective Date and the first Chairperson shall be a designee of Licensor. The representatives of Licensor shall collectively be entitled to one (1) vote and the representatives of Licensee shall collectively be entitled to one (1) vote. The Steering Committee shall to the extent practicable seek to operate by consensus. In the event of any deadlock or other inability of the Steering Committee to reach a determination with respect to any matter within the authority of the Steering Committee, the issue shall be referred to the respective Chief Executive Officers (or equivalent position) of each party who shall use their best endeavors to agree in good faith to a resolution of the dispute within thirty (30) days of their receipt of notice as to such dispute. If they are unable to resolve the dispute within such thirty (30)-day period, it shall be referred to the decision of an external expert suitably qualified to resolve such dispute which is mutually acceptable to both parties, whose decision shall be final. In resolving the dispute, the appointed expert shall take into account development and marketing practices and procedures common in the pharmaceutical industry and appropriate with reference to the specific Indication.

Either party may appoint, substitute or replace members of the Steering Committee to serve as their representatives upon notice to the other party.

(c) The Steering Committee shall meet within sixty (60) days after the Effective Date and thereafter at least every twelve (12) months. The location of such meetings shall alternate between Doylestown, Pennsylvania, United States and Barcelona, Spain, unless otherwise agreed to by Licensor and Licensee. The Steering Committee may also meet by means of a telephone or video conference call with the consent of each of Licensor and Licensee. Licensee and Licensor shall use reasonable efforts to cause their representatives to attend the meetings of the Steering Committee. If a representative of either of the parties hereto is unable to attend a meeting, such party may designate an alternate to attend such meeting in place of the absent representative. In addition, each party may, with the consent of the other party, invite consultants or scientific advisors to attend meetings of the Steering Committee, subject to confidentiality obligations.

Section 5.6 Joint Development Committee. (a) Licensee and Licensor shall jointly form a development committee (the "Development Committee") to oversee the Development of Licensed Products within the Licensed Territory. The Development Committee shall have functional responsibility for the success of the matters related to the Development of the Licensed Products in the Licensed Territory as established by this Agreement, including

without limitation: (i) to determine and oversee the overall strategy for Development, of Licensed Products in the Licensed Territory, as well as in other countries; (ii) to plan and coordinate the parties' activities hereunder related to Development activities of Licensed Products in the Licensed Territory; and (iii) to facilitate the flow of information among the Parties, including coordinating Development activities with manufacturing schedules and distribution.

(b) The Development Committee shall be comprised of four members, two members to be executives appointed by, and to be representatives of, each of Licensee and Licensor. Either party from time to time may designate Ad Hoc members (subject to confidentiality obligations), as necessary, to address specific issues related to Development activities. The Development Committee shall be chaired alternatively by a designee of Licensor and a designee of Licensee, with any such designee serving as chairperson for a one (1) year period. The initial members of the Development Committee shall be designated by the parties hereto not later than (thirty) 30 days after the Effective Date. Upon resignation by or removal of any member of the Development Committee, Licensee or Licensor, as appropriate, shall have the sole right to appoint a successor. The representatives of Licensor shall collectively be entitled to one (1) vote and the representatives of Licensee shall collectively be entitled to one (1) vote. The Development Committee shall to the extent practicable seek to operate by consensus. In the event of any deadlock or other inability of the Development Committee to reach a determination with respect to any matter within the authority of the Development Committee, the issue shall be submitted to the Steering Committee. In the case the Steering Committee is unable to resolve the issue within thirty (30) days, the question shall be referred to the respective Chief Executive Officers (or equivalent position) of each party who shall use their best endeavours to agree in good faith on a resolution of the dispute within thirty (30) days of their receipt of notice as to such dispute. If they are unable to resolve the dispute within such thirty (30)-day period, it shall be referred to the decision of an external expert suitably qualified to resolve such dispute which is mutually acceptable to both parties, whose decision shall be final. In resolving the dispute, the appointed expert shall take into account clinical development practices and procedures common in the pharmaceutical industry and appropriate with reference to the specific Indication.

(c) The Development Committee shall meet within sixty (60) days after the Effective Date and thereafter at least every six months. The location of such meetings shall alternate between Doylestown, Pennsylvania, United States and Barcelona, Spain, unless otherwise agreed to by Licensor and Licensee. The Development Committee may also meet by means of a telephone or video conference call with the consent of each of Licensor and Licensee. Licensee and Licensor shall use reasonable efforts to cause their representatives to attend the meetings of the Development Committee. If a representative of either of the parties hereto is unable to attend a meeting, such party may designate an alternate to attend such meeting in place of the absent representative. In addition, each party may, with the consent of the other party, invite consultants or scientific advisors to attend meetings of the Development Committee, subject to confidentiality obligations.

(d) The Development Committee will report to the Steering Committee semi-annually in an appropriately detailed manner and shall provide the Steering Committee annually with a written comprehensive report on the execution of the clinical development programs contemplated hereunder.

Section 5.7 Commencement of Marketing. Licensee shall consummate its first commercial sale of each Licensed Product in each country of the Licensed Territory within ninety (90) days after official publication of the obtaining of Pricing Approval (or if Pricing Approval is not applicable, within ninety (90) days of Marketing Regulatory Approval in such country); provided, however, that if Licensee has failed to meet such deadlines in any country because of reasons beyond the control of Licensee, Licensor and Licensee shall discuss in good faith a new deadline for such country. In the event Licensee does not consummate a sale within such period, Licensor may notify Licensee of a default under this Section 5.7 and, in the event such default is not cured within thirty (30) days from such notice of default, Licensor shall have the right to terminate the license granted to Licensee hereunder with respect to such Licensed Product in such country.

Section 5.8. Post-Authorization Studies. Licensee shall be responsible for conducting, at its own cost and expense such post-authorization studies activities as may be useful or necessary for the better knowledge and use of the Licensed Products in the Licensed Territory provided that the protocol shall be approved in accordance with Section 5.2(a) in advance of its commencement. The Development Committee shall monitor and supervise the conduct thereof. Licensor shall provide Licensed Product for any such clinical trials at no expense to the Licensee.

Section 5.9. Standard of Diligence. (a) Licensee shall determine in good faith, after consultation with Licensor, the annual sales targets for the Licensed Products applicable in each Key Market. Licensee shall inform Licensor of the annual sales targets for each country of the Licensed Territory at least three (3) months prior to the commercial launch of the Licensed Products and shall update such sales targets on an annual basis.

Should Licensee fail to satisfy 75% of the annual sales targets with respect to the Licensed Products in a country of the Licensed Territory for two (2) consecutive years, Licensor shall have the right to terminate the exclusivity character of the rights granted hereunder with respect to the relevant country(ies) where such failure has occurred with a prior notice of ninety (90) days addressed to Licensee; provided, however, that such notice shall be sent, in order to be valid and enforceable, within sixty (60) days after Licensor becoming aware of Licensee's failure.

Should Licensee fail to satisfy 50% of the annual sales targets with respect to the Licensed Products in a country of the Licensed Territory for two (2) consecutive years, Licensor shall have the right to terminate this Agreement with respect to the relevant country(ies) where such failure has occurred with a prior notice of ninety (90) days addressed to Licensee; provided, however, that such notice shall be sent, in order to be valid and enforceable, within sixty (60) days after Licensor becoming aware of Licensee's failure.

For the avoidance of doubt, the annual sales targets referred to in this Section 5.9.(a) shall be, for each specific country, the aggregate of the sales for all the indications included in the Indication. (b) Licensee shall use commercially reasonable efforts to commercialize the Licensed Products in the Licensed Territory throughout the term of this Agreement in accordance with all applicable legal and regulatory requirements, including promoting the Licensed Products by accepted promotional practices consistent with those used (i) by Licensee in connection with the promotion of its other products and (ii) in the critical care pharmaceutical industry generally.

(c) From and after the date that an new drug application with respect to any Licensed Product is filed with the EMEA or the applicable regulatory authority in the Licensed Territory, Licensee shall provide Licensor regularly with summary reports on its plans for launch of Licensed Products in the countries within the Licensed Territory that are member countries of the European Union (in the case of the EMEA) and of the anticipated commercial potential therefor in such countries.

Section 5.10. Marketing Plan. Licensee, shall submit to the Steering Committee the Marketing Plan (as such term is defined in Section 5.2(b) hereinabove) for the Licensed Products within ninety (90) days prior to the planned launch date in each of the Key Markets, such Marketing Plan to be updated by Licensee before the end of each calendar year.

Section 5.11. Reports; Record-keeping. (a) Licensee shall, as promptly as practicable, submit written reports to Licensor as follows: (i) quarterly statements showing the amount of sales of Licensed Products in terms of units and currency of the Licensed Territory on a country-by-country basis; and (ii) annual statements by no later than February 28 of each year detailing the marketing activities carried out by Licensee during the previous calendar year in the Key Markets.

(b) Licensor shall maintain complete and accurate records for such periods as may be required by applicable law, but in no event less than three (3) years, of all Licensed Products sold by it, including distribution data.

Section 5.12. Promotional Material. Licensor shall supply free of charge Licensee with samples of all training aids and literature used by Licensor and its Affiliates and distributors and sublicensees thereof for training their sales representatives and samples of all promotional and sales material used by Licensor or its Affiliates and distributors and sublicensees thereof for the Licensed Products.

Section 5.13. Promotional Claims. All technical and scientific information and therapeutic claims referred to by Licensee in promotional advertisements, promotional literature, sales aids, training aids and literature and the like with respect to each Licensed Product shall be consistent with any Marketing Regulatory Approval and the information and claims made by Licensor with respect thereto insofar as the latter are consistent with Marketing Regulatory Approvals or permitted practices in the Licensed Territory. Licensee shall not employ any sales practice or display any advertisement which the Steering Committee determines is detrimental to

Licensor's interests and Licensor shall be entitled to require licensee to promptly cease any such practice or withdraw any such advertisement.

Section 5.14. Samples of Licensee's Promotional Material. Licensee shall supply free of charge Licensor with samples of product labeling, packages and/or cartons and the like and of all advertisements, promotional literature, sales aids, training material for salesmen, used by Licensee in connection with the promotion and sale of the Licensed Products.

Section 5.15. Adverse Event Reporting. The parties shall establish a procedure for the handling of adverse events as soon as is practicable after the Effective Date, which procedure shall be in conformance with all applicable laws, rules and regulations; provided, however, that Licensor shall be the central contact for adverse event reporting in the Licensed Territory and in connection therewith agrees to implement and maintain, at its sole cost and expense, a central adverse event reporting database for the Licensed Product in the Licensed Territory. Each party shall advise the other, by telephone or facsimile, within twenty-four (24) hours after it becomes aware of any serious adverse event arising in connection with the use of any Licensed Products and shall include the following information: a description of the patient (which shall be made in compliance with any applicable data protection regulations), the Licensed Product, the reporting source and a description of the event and/or such other information as may be required by the relevant regulatory authorities in the Licensed Territory at the time the serious adverse event occurs. No later than five (5) days after its initial report, the party informing of a serious adverse event shall provide the other with a written report delivered by confirmed facsimile of any reported serious adverse event stating the full facts known to it, including but not limited to such information as may be required by the relevant regulatory authorities in the Licensed Territory at the time the serious adverse event occurs. The Adverse Event Reporting to the EMEA and other regulatory agencies shall be made by Licensor, unless this responsibility may be assumed by Licensee (or as the case may be its Affiliates and/or sublicensees) pursuant to any applicable law. In any event, Licensor and Licensee shall promptly provide each other with a copy of any Adverse Event notice that they may address to any regulatory agency (including, without limitation, the FDA) in connection with the Licensed Products.

ARTICLE 6

TRANSFER OF LICENSED KNOW-HOW; CONFIDENTIALITY; PUBLICATION

Section 6.1. Transfer of Licensed Know-How. Promptly after the Effective Date and from time to time as it becomes available during the term of this Agreement, Licensor shall provide Licensee with the Licensed Know-How, subject, however, to the terms and conditions contained herein including, without limitation, those set forth in Article 2 of this Agreement.

Section 6.2. Confidentiality. Any information disclosed by either party, its Affiliates or permitted licensees to the other party hereunder shall be safeguarded by the recipient, shall not be disclosed to third parties and shall be made available only to recipient's

employees, Affiliates, licensees for the Licensed Products, independent contractors or external counsels who agree to or are bound by equivalent conditions and who have a need to know the information for the purposes specified under this Agreement. Subject to the license granted under Article 2, all confidential information shall remain the property of and shall be immediately returned to the disclosing party, upon request, after any termination of this Agreement. These mutual obligations of confidentiality shall apply during and for a period of ten (10) years after the term of this Agreement, but such obligations shall not apply to any information that can be established by competent evidence:

(a) is or hereafter becomes generally available to the public other than by reason of any default with respect to a confidentiality obligation under this Agreement; or

(b) was already known to the recipient as evidenced by prior written documents in its possession; or

(c) is disclosed to the recipient by a third party who is not in default of any confidentiality obligation to the disclosing party hereunder; or

(d) is developed by or on behalf of the receiving party, without reliance on confidential information received hereunder; or

(e) is provided to third parties under appropriate terms and conditions including confidentiality provisions equivalent to those in this Agreement for Development purposes including, without limitation, consulting, manufacturing Development, manufacturing, external testing and marketing trials with respect to the Licensed Products; or

(f) is used with the consent of the disclosing party (which consent shall not be unreasonably withheld) in applications for patents or copyrights under the terms of this Agreement; or

(g) has been approved in writing for publication by each of the parties; or

(h) is required to be disclosed in compliance with applicable laws or regulations in connection with the manufacture or sale of Licensed Products; or

(i) is otherwise required to be disclosed in compliance with applicable laws or regulations or order by a court or other regulatory body having competent jurisdiction; or

(j) is product-related information which is reasonably required to be disclosed in connection with marketing of Licensed Products.

Section 6.3. Procedures for Obtaining Permission for Disclosure. In the event that either party (the "Disclosing Party") desires to publish or disclose, by written, oral or other presentation, any confidential information or other information regarding the Licensed Rights,

the Disclosing Party shall notify the other party (the "Nondisclosing Party") in accordance with Section 14.2 at least sixty (60) days before any written or other publication or disclosure. The Disclosing Party shall include with such notice a description of any proposed oral presentation or, in any proposed written or other disclosure, a current draft of such proposed disclosure or abstract. The Nondisclosing Party may, no later than thirty (30) days following the receipt of such notice, notify the Disclosing Party that the Nondisclosing Party will not consent to such disclosure of confidential information. If the Disclosing Party does not receive any such objection to the proposed disclosure of confidential information or other information regarding the Licensed Rights within such 30-day period, the Disclosing Party shall be free to make such disclosure in substantially the manner and form proposed at the time notice was given to the Nondisclosing Party.

ARTICLE 7

TERMINATION

Section 7.1. Term. Unless otherwise terminated by operation of law or by acts of the parties in accordance with the provisions of this Agreement, this Agreement shall be in force from the Effective Date and shall remain in effect with respect to each Licensed Product in each country of the Licensed Territory for the duration of the Initial Period. Upon expiry of the Initial Period with respect to each country in the Licensed Territory, the license granted under Section 2.1 shall become fully paid up in such country.

In such case and in relation with each of such countries, the following shall apply:

(a) Licensee shall be entitled to continue to market the Licensed Products in the relevant country under the Trademark and the Marketing Regulatory Approval;

(b) Should Licensee decide not to purchase the Licensed Products from Licensor, Licensee shall pay a running royalty of [***] of the Base Integrated Price (as such term is defined in the Supply Agreement) per unit of Licensed Product so purchased and sold under the Trademark in consideration of the use of the Trademark;

(c) Should Licensee decide not to purchase the Licensed Products from Licensor, Licensor shall promptly transfer free of charge the Marketing Regulatory Approval of the relevant country to Licensee or to the third party that may be indicated by Licensee, the transfer expenses being borne by Licensee; provided, however, that the EMEA Marketing Regulatory Approval shall only be transferred to Licensee upon expiry of the Initial Period in all the countries of the European Union;

(d) Should Licensee decide not to purchase the Licensed Products from Licensor, Licensor shall transfer free of charge to Licensee all such know-how that is necessary to enable Licensee to manufacture and/or have manufactured the Licensed Products, and Licensee shall pay a running royalty of [***] of the Base Integrated Price (as such term is defined in the Supply Agreement) per unit of Licensed Product manufactured under such know-how, it being understood that Sections 6.2 and 6.3 hereof shall continue to apply with respect to the use of such know-how by Licensee or its subcontractors.

(e) Should Licensee decide to continue purchasing the Licensed Products from Licensor, Licensor shall maintain the Marketing Regulatory Approvals in force;

(f) Licensor shall take all appropriate steps and shall timely and diligently cooperate with Licensee so as to avoid any possible discontinuation in the commercialization of the Licensed Products in each country of the Licensed Territory upon the expiry of the Initial Period; and

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Information marked by [***] has been omitted pursuant to a request for confidential treatment. The omitted portion has been separately filed with the Securities and Exchange Commission.

(g) Should Licensee decide not to purchase the Licensed Products from Licensor, Licensee shall ensure that such purchased products conform with the Specifications (as such term is defined in the Supply Agreement) and all relevant regulatory authority requirements.

Section 7.2. Termination by Breach. Upon any material breach of or default under this Agreement (including, without limitation, as provided for in Section 7.2 of the Supply Agreement) by either party, the non-infringing party may terminate this Agreement upon ninety (90) days written notice to the infringing party. Said notice shall become effective at the end of said period, unless during said period the infringing party shall cure such breach or default.

In the event that this Agreement is terminated by Licensee pursuant to Section 7.2 of this Agreement, subsections (a) to (f) of Section 7.1 shall apply and, in addition, (i) Licensor shall transfer free of charge to Licensee all such know-how that is necessary to enable Licensee to manufacture and/or have manufactured the Licensed Products, and (ii) Licensor shall promptly return and cease to use any Licensee Proprietary Information and any other information provided by Licensee to Licensor under Article 3 hereinabove.

Section 7.3. Termination by Licensee. Licensee may terminate this Agreement hereunder as follows:

(a) Prior to the date of receipt of first Marketing Regulatory Approval, Licensee may terminate this Agreement on sixty (60) days advance written notice to Licensor for any reason, whereupon Licensee shall not be obligated to make any further payments to Licensor other than those payments accruing prior to such termination; and

(b) After and including the date of receipt of first Marketing Regulatory Approval, Licensee may terminate this Agreement upon written notice to Licensor of such intention to terminate, provided that (i) Licensee hereby agrees that in any such event, in order to minimize disruption of the availability of Licensed Product in the Licensed Territory, Licensee shall negotiate with Licensor and or Licensor's designee mutually agreeable terms and conditions providing for the transfer of Licensee's rights and obligations hereunder to Licensor and or appropriate third parties and a mutually determined date of termination in accordance therewith provided, however, that failing an agreement on the date of termination, this Agreement will terminate six (6) months after the date of Licensee's termination notice sent under this Section7.3.(b) and (ii) Licensee shall not be obligated to make any further payments to Licensor other than those payments accruing prior to such termination.

Section 7.4. Termination Upon Bankruptcy Event. If (i) Licensee files a petition in bankruptcy or for the appointment of a receiver or trustee, (ii) Licensee proposes a written agreement of composition or extension of its debts or makes an assignment for the benefit of its creditors, or (iii) an involuntary petition against Licensee is filed in any insolvency proceeding and such petition is not dismissed within sixty (60) days after filing, Licensor may immediately terminate this Agreement.

Section 7.5. No Automatic Termination upon Licensor's Bankruptcy. If (i) Licensor files a petition in bankruptcy or for the appointment of a receiver or trustee; (ii) Licensor proposes a written agreement of composition or extension of its debts or makes an assignment for the benefit of its creditors; or (iii) an involuntary petition against Licensor is filed in any insolvency proceeding and such petition is not dismissed within sixty (60) days after filing, Licensee shall have the option, as permitted by applicable law, to either:

(a) Immediately terminate this Agreement; or

(b) Continue to market the Licensed Products under the Licensed Know-How, Patent Rights, Marketing Regulatory Approvals and the Trademark, in which case the license granted hereunder to Licensee pursuant to Section 2.1 shall become a license to "make, have made, import, use, offer to sell and sell Licensed Products", provided that such license to make or have made Licensed Products shall be nonexclusive and that Licensor shall be entitled to a royalty in an amount equal to the sum of (i) any and all royalties owed by Licensor to third parties (including without limitation, Original Licensor) with respect to sales of Licensed Products and (ii) five percent (5%) of such Licensed Product sales. Licensee shall be solely responsible for payment of the third party royalty obligations under such circumstances; provided, however, that any royalties to be paid under this Section 7.5 (b) shall be due only to the extent that Licensee's cost of the Licensed Product in finished, packaged and labeled form, quality controlled and ready for resale to the ultimate customer plus the royalties hereinabove established shall not exceed the Transfer Price established in Section 2.2 of the Supply Agreement. In addition the parties agree that in such event the intellectual property delivered to Licensee shall include all know-how necessary or useful to give Licensee the capability of manufacturing the Licensed Products and such know-how shall be delivered to Licensee in such a way as to communicate it to Licensee promptly, effectively and economically.

Section 7.6. Termination With Respect to Competitive Activities. During the term of this Agreement, in the event Licensee acquires marketing rights in the Licensed Territory for a surfactant product suitable for use in treating any Indication (including off-label use)(a "Competitive Product"), or in the event Licensee becomes an Affiliate of a Person whose product line includes a Competitive Product (an "Affiliation"), Licensee shall notify Licensor within thirty (30) days of such acquisition or Affiliation and of its intention to either (a) divest such Competitive Product or Affiliation or (b) terminate this Agreement and the Supply Agreement. Any such termination shall be effective sixty (60) days after such notice becomes effective in accordance with Section 14.2. Alternatively, Licensee may notify Licensor that it intends to retain such Competitive Product in its portfolio but does not wish to terminate this Agreement, in which event Licensor can in its sole discretion, within ninety (90) days after receipt of such notice, advise Licensee of its intent to terminate this Agreement, provided that (i) Licensee hereby agrees that in any such event, in order to minimize disruption of the availability of Licensed Product in the Licensed Territory, Licensee shall negotiate with Licensor and or Licensor's designee mutually agreeable terms and conditions providing for the transfer of Licensee's rights and obligations hereunder to Licensor and or appropriate third parties and (ii) Licensee shall not be obligated to make any further payments to Licensor other than those

payments accruing prior to such termination (including, without limitation, any payments owed by Licensee pursuant to Sections 4.4 and 5.2(a)(ii), or pursuant to Section 7.8.

Section 7.7. Reversion upon certain Early Termination Cases. Upon termination of this Agreement for any reason, other than expiry of the Initial Period (which shall be governed by Section 7.1 hereinabove) or the breach of this Agreement by Licensor (which shall be governed by Section 7.2 hereinabove), all rights granted to Licensee hereunder shall revert to Licensor and Licensee undertakes:

(a) to deliver to Licensor all copies of any Licensed Know-how in its possession,

(b) not to use the Licensed Know-how as long as it has to be kept confidential under Article 6 hereof;

(c) to transfer to Licensor, at Licensor's request, a single copy of all Licensee Proprietary Information and, at Licensor's expense, all health regulatory approvals and regulatory filings relating to Licensed Products in Licensee's possession;

(d) to the extent requested by Licensor, to transfer to Licensor or its designee responsibility for and control of ongoing Licensed Products Development work, including control over contracts with third parties for such work, where permissible in accordance with such contracts, in an expeditious and orderly manner with the costs for such work to be assumed by Licensor or its designee as of the date of such transfer; and

(e) to the extent requested by Licensor, to transfer to Licensor or its designee all inventory of Licensed Products at a price equal to Licensee's fully amortized standard cost.

Section 7.8. Survival. Upon any termination of this Agreement, Articles 3, 6, 9, 10 and 11 and Sections 5.15, 7.1, 7.2, 7.7 and 7.9, shall survive such termination and continue in force and effect to the extent necessary to effectuate such provisions.

Section 7.9. Disposition. Upon termination of this Agreement (other than by expiration of the Initial Period), subject to Sections 7.4 and 7.6, Licensee shall have no right under the Patent Rights to import, use or sell Licensed Products, except that Licensee shall have the right for one hundred twenty (120) days following termination to dispose of Licensed Products on hand and complete any existing contracts requiring rights under the Patent Rights which can be completed within the one hundred twenty (120) days.

ARTICLE 8

INFRINGEMENT

Section 8.1. Notice. (a) In the event that Licensee believes that there is an infringement of the Licensed Rights by a third party hereto selling material quantities of products in the Licensed Territory in competition with Licensee's sale of Licensed Products hereunder, Licensee shall promptly provide Licensor with written notice that such infringement is occurring. In the event that Licensee believes that such infringement is to Licensee's substantial detriment, Licensee shall provide Licensor with reasonable evidence of the infringement.

(b) Licensor shall have the right, at Licensor's sole expense (subject to Section 8.5(a)), to bring suit against the infringer for infringement of the Licensed Rights. However, if after six (6) months from the date of receipt of evidence of infringement from Licensee, Licensor has not initiated suit against the infringer, Licensee shall have the right, at Licensee's sole expense (subject to Section 8.5(b)), to bring such suit provided that the Original Licensor has consented to Licensee bringing such suit. Licensor shall make its best efforts to obtain the Original Licensor's consent in favor of Licensee.

Section 8.2. Assistance. In the event either party hereto shall initiate or carry on legal proceedings to enforce the Licensed Rights against an alleged infringer, as provided herein, the other party hereto shall render reasonable assistance to and cooperate with the party initiating or carrying on such proceedings.

Section 8.3. Legal Proceedings. In the event that either party shall institute legal proceedings to enforce the Licensed Rights, it shall have sole control of such suit and the other party shall be entitled to be represented in any such suit by counsel of its choosing, at its sole expense.

Section 8.4. Discontinuance. Neither party hereto shall discontinue or settle any such proceedings brought by it without obtaining the concurrence of the other party if such action would impose any obligations on such other party or affect the exercise of the rights granted hereunder to such other party (which concurrence shall not be unreasonably withheld).

Section 8.5. Recoveries. All damages, settlements and awards made or obtained in connection with any suit or other legal proceeding under this Article 8 shall be distributed as follows:

(a) If Licensor initiated the suit and prosecuted it to its conclusion, Licensor shall be entitled to retain the balance of any damages, settlements and awards, provided that Licensee may elect (within thirty (30) days of initiation of such suit) to fund up to twenty-five percent (25%) of Licensor's litigation costs and to share in the same proportion of net recoveries.

(b) If the Licensee initiated the suit and prosecuted it to its conclusion, Licensee shall be entitled to retain the balance of any damages, settlements and awards; provided that Licensor may elect (within thirty (30) days of initiation of such suit) to fund up to twenty-five percent (25%) of Licensee's litigation costs and to share in the same proportion of net recoveries received by Licensee.

ARTICLE 9

NON-USE OF NAMES

Section 9.1. Non-Use. Subject to the licenses expressly granted hereunder with respect to the Trademark, nothing contained in this Agreement shall be construed as granting to Licensor or Licensee any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of the other (including contraction, abbreviation or simulation of any of the foregoing) without the prior, written consent of the other.

Section 9.2. Relationship. Nothing herein shall be deemed to establish a relationship of principal and agent between Licensor and Licensee, nor any of their agents or employees for any purpose whatsoever. This Agreement shall not be construed as constituting Licensor and Licensee as partners, or as creating any other form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

Section 10.1 Representations of Licensor. Licensor represents and warrants to Licensee that:

(a) it has the right to grant the license granted and the Right of First Negotiation of New Products granted under Sections 2.1. and 2.5, respectively, of this Agreement and that it has full power and authority to execute, deliver and perform this Agreement, the Supply Agreement and the Stock Purchase Agreement and the obligations hereunder and thereunder.

(b) to Licensor's knowledge, there are no claims or potential claims by any third parties (other than the Original Licensor and Scripps) to an ownership interest in the Licensed Rights licensed to Licensee under this Agreement.

(c) Licensor has obtained any required third-party consents under contracts to which Licensor or any of its Affiliates is a party to Licensor's entry into this Agreement,

the Supply Agreement and the Stock Purchase Agreement and the performance of its obligations hereunder and thereunder.

(d) To Licensor's knowledge, based solely on a review of the records of the United States Patent and Trademark Office and the corresponding offices in countries other than the United States, the patents listed on Schedule I are valid.

(e) No third party has served on Licensor or any of its Affiliates any claim, lawsuit, charge, complaint or other action alleging that the Licensed Rights are invalid or unenforceable or that the Licensed Rights infringe any patent or other proprietary or property rights of any third parties or advised Licensor or any of its Affiliates that it intends to pursue any such claim, lawsuit, charge, complaint or other action. Licensor has not, prior to the date hereof, entered into any compulsory license with a third party with respect to the Patent Rights.

(f) The rights of the Original Licensor and of any subsequent licensor (excluding the Licensor) of the Scripps Patent Rights do not prevent the grant of the license made hereunder nor do such rights permit any such person to sell (directly or indirectly) or license for sale surfactant pharmaceutical preparations based on or embodying the Patent Rights in the Licensed Territory or enable such person to demand any indemnity, royalty or compensation of whatever nature from Licensee as a result of Licensee's sales of Licensed Products in the Licensed Territory in accordance with the terms of this Agreement.

(g) Licensor is not in breach of any of its material obligations under the Original License as of the date hereof.

(h) All of Licensor's employees having access to any confidential information with respect to the Licensed Rights are subject to written confidentiality obligations with respect to the disclosure of such information.

(i) Prior to the execution of this Agreement it has disclosed to Licensee all material information pertaining to the Licensed Products and the Patent Rights reasonably relevant to Licensee in order to assess its interest in entering into this Agreement, and that no material information pertaining to the Licensed Products and the Patent Rights actually known to Licensor as of the Effective Date regarding the foregoing has been withheld from Licensee by Licensor.

Section 10.2. Mutual Representation. Each party hereby warrants that the execution, delivery and performance of this Agreement, the Supply Agreement and the Stock Purchase Agreement has been duly approved and authorized by all necessary corporate actions of both parties; does not require any shareholder approval which has not been obtained or the approval and consent of any trustee or the holders of any indebtedness of either party; does not contravene any law, regulation rules or order binding on either party, and does not contravene the provisions of or constitute a default under any indenture, mortgage contract or other agreement or instrument to which either party is a signatory.

Section 10.3. Validity. Subject to the foregoing provisions of this Article 10, nothing in this Agreement shall be construed as a representation or a warranty by Licensor that any process practiced or anything imported, used or sold under any license granted under this Agreement is or will be free from infringement of patents of third parties.

Section 10.4. No Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT.

ARTICLE 11

INDEMNIFICATION

Section 11.1. Indemnification by Licensee. Subject to Section 10.4 and to the extent not covered by Licensor's indemnity under Section 11.2, Licensee agrees to indemnify and hold harmless Licensor and its Affiliates and their respective officers, directors, employees and agents from and against any and all claims, damages and liabilities, including reasonable attorneys fees and expenses, asserted by third parties, both government and private (collectively, "Claims"), arising from Licensee's or its Affiliates' or sublicensees' import, use, offer to sell or sale of Licensed Products pursuant to this Agreement, including without limitation any claim for breach of warranty, negligence or strict liability with respect to any Licensed Product. This Section shall apply to the Supply Agreement. In the event of any contradiction between the Supply Agreement and any of the terms contained in this Agreement, the terms of this Agreement shall prevail.

Section 11.2. Indemnification by Licensor. Subject to Section 10.4, Licensor agrees to indemnify and hold harmless Licensee, its Affiliates and sublicensees and their respective officers, directors, employees and agents from and against any and all Claims arising from (a) any infringement of any patent or other intellectual property interest in the Licensed Territory by any Person other than the parties to this Agreement relating to the Licensed Products; (b) any breach by Licensor of its representations and warranties set forth in this Agreement; (c) any negligent act or omission of Licensor and (d) any intrinsic or manufacturing defect of the Licensed Products existing when the Licensed Products are placed by Licensor in the custody of the carrier for transport to Licensee. This Section shall apply to the Supply Agreement. In the event of any contradiction between the Supply Agreement and any of the terms contained in this Agreement, the terms of this Agreement shall prevail.

Section 11.3. Insurance. Licensor and Licensee shall maintain during the term of this Agreement insurance policies covering their respective obligations under this Article 11, issued by reputable insurance companies under ordinary terms and conditions in the pharmaceutical industry and will prove the existence thereof to the other party if so requested.

ARTICLE 12

TRADEMARK MATTERS; PATENT MARKING

Section 12.1. Trademarks Used in Connection With Licensed Products. (a) Licensed Products shall be marketed under the Trademark. Licensee admits the validity of the Trademark and agrees that it shall not challenge the same in the Licensed Territory or elsewhere.

(b) Licensor shall be responsible, at its own cost and expense, to register, maintain and renew registrations of the Trademark in the Licensed Territory, to the extent that it is necessary for the purposes of obtaining Marketing Regulatory Approval and for the marketing of the Licensed Products in the Licensed Territory. Licensee agrees not to take any actions (including without limitation effecting any trademark registrations) inconsistent with the foregoing and not to register anywhere in the world any trademark confusingly similar to Surfaxin(R) or any derivative thereof.

(c) Licensee agrees to take such actions as may be reasonably requested by Licensor to assist Licensor to register, maintain or renew any Trademark at the sole cost and expense of Licensor.

Section 12.2. Patent Marking. Licensee shall mark all Licensed Products made, used, or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws.

ARTICLE 13

PATENT PROSECUTION AND MAINTENANCE

Section 13.1. Maintenance of Patent Rights. Licensor has obtained certain commitments from the Original Licensor of the Scripps Patent Rights and the patent rights listed in Section (b) of Schedule I (collectively, the "Third Party Patent Rights") that the Original Licensor will maintain the Third Party Patent Rights or, in the event that the Original Licensor does not do so, that Licensor shall be given the right to do so. Licensor undertakes to enforce its rights with respect to maintenance of the Third Party Patent Rights against the Original Licensor and, to the extent Licensor succeeds to the maintenance of the Third Party Patent Rights, to use all commercially reasonable efforts to do so. Licensor further undertakes to maintain the Patent Rights owned by Licensor as well as to carry out any and all necessary steps in order to enable such Patent Rights be enforced and applicable in each country of the Licensed Territory. Licensor shall provide Licensee with copies of all written materials received by Licensor from the Original Licensor, the Original Licensor's or Licensor's counsel, or any governmental agency or instrumentality relating to prosecution and/or maintenance of Patent Rights and shall afford Licensee the opportunity to review and comment upon any filings to be made with respect to the Patent Rights (in the case of the Third Party Patent Rights, to the same extent Licensor is entitled to do so).

Section 13.2. Cooperation By Parties. Licensor and Licensee agree to cooperate in order to avoid loss of any rights which may be available to Licensor or the Original Licensor under the U.S. Drug Price Competition and Patent Term Restoration Act of 1984, the Supplementary Certificate of Protection of Member States of the European Community and other similar measures in any country. Without limiting the foregoing, Licensee agrees to timely supply Licensor with all information reasonably requested by Licensor to file or have filed (or to permit the Original Licensor to file or have filed) an application for patent term extension within the 60-day period following U.S. NDA approval. The same shall apply with respect to the approval by health regulatory authorities in a country of the European Community or approval by the appropriate authorities in any other country in the Licensed Territory.

ARTICLE 14

GENERAL

Section 14.1. Entire Agreement. This Agreement, including the Schedules, Annexes and Exhibits hereto, constitutes the entire agreement and understanding between the parties as to the subject matter hereof. All prior negotiations, representations, agreements, contracts, offers and earlier understandings of whatsoever kind, whether written or oral between Licensor and Licensee in respect of the subject matter of this Agreement including, without limitation, the Sublicense Agreement dated October 26, 1999, the Supply Agreement and the Securities Agreement of even date between Licensee and Licensor, are superseded by, merged into, extinguished by and completely expressed by this Agreement. No aspect, part or wording of this Agreement may be modified except by mutual agreement between the Licensor and Licensee taking the form of an instrument in writing signed and dated by duly authorized representatives of both Licensor and Licensee.

Section 14.2. Notices. Any notice or communication or permitted to be given by this Agreement shall be given by post-paid, first class, registered or certified mail or by reputable courier service addressed to:

In the case of Licensor: Discovery Laboratories, Inc.
350 South Main Street, Suite 307
Doylestown, Pennsylvania 18901
Attention: Robert J. Capetola, Ph.D.
Chief Executive Officer

With a copy to: Roberts, Sheridan & Kotel
The New York Practice of
Dickstein Shapiro's Corporate &
Finance Group
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
Attn: Ira L. Kotel
Facsimile: (212) 997-9880

In the case of Licensee: Laboratorios del Dr. Esteve, S.A.
Av. Mare de Deu de Montserrat, 221
08041 Barcelona (Spain)
Attention: Development Director
Facsimile: (34) 93 433 00 72

Such addresses may be altered by notice so given. If no time limit is specified for a notice required or permitted to be given by this Agreement, the time limit therefor shall be ten (10) Business Days, not including the day of mailing. Notice shall be considered made as of the date of deposit with the appropriate post office or courier service.

Section 14.3. Governing Law. This Agreement and its effect are subject and shall be construed and enforced in accordance with the laws of the State of New York, United States (without giving effect to the principles of conflict of laws), except as to any issue which depends upon the validity, scope or enforceability of any patent within the Patent Rights, which issue shall be determined in accordance with the applicable patent laws of the country of such patent.

Section 14.4 Dispute Resolution.

(a) Internal Review. In the event that a dispute, difference, claim, action, demand, request, investigation, controversy, threat, discovery request or request for testimony or information or other question arises pertaining to any matters which arise under, out of, in connection with, or in relation to this Agreement (a "Dispute") and either party so requests in writing, prior to the initiation of any formal legal action, the Dispute will be submitted to the Chief Executive Officers (or equivalent position) of Licensee and Licensor. For all Disputes referred to the Chief Executive Officers (or equivalent position), the Chief Executive Officers (or equivalent position) shall use their good faith efforts to meet in person and to resolve the Dispute within two weeks after such referral.

(b) Arbitration. If, pursuant to Section 14.4(a), within two weeks or such other period as may be agreed upon between the parties following such reference, the dispute remains unresolved, it shall be settled on application by either party by arbitration conducted in the English language, in Stockholm (Sweden) in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The parties expressly agree to abide the award rendered. This provision shall not prevent either party from addressing any competent court or tribunal in order to seek for interim measures.

(c) Costs. The parties shall bear their own costs in preparing for and participating in the resolution of any Dispute, and the costs of mediator(s) and arbitrator(s) shall be equally divided between the parties.

Section 14.5. Conflicts. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement or concerning the legal right of the parties to contract and any statute, law, ordinance or treaty, the latter shall prevail, but in such event the affected provisions of this Agreement shall be curtailed and limited only to the extent necessary to bring it within the applicable legal requirements.

Section 14.6. Registration. Licensee shall take all reasonable and necessary steps to register this Agreement in any country where such is required to permit the transfer of funds and/or payment of royalties to Licensor hereunder or is otherwise required by the government or law of such country to effectuate or carry out this Agreement. Notwithstanding anything contained herein, Licensee shall not be relieved of any of its obligations under this Agreement by any failure to register this Agreement in any country, and, specifically, Licensee shall not be relieved of its obligation to make any payment due to Licensor hereunder at Licensor's address specified in Article 14.2 hereof, where such payment is blocked due to any failure to register this Agreement.

Section 14.7. Headings. As used in this Agreement, singular includes the plural and plural includes the singular, wherever so required by the context. The headings appearing at the beginning of the numbered Articles and Sections hereof have been inserted for convenience only and do not constitute a part of this Agreement.

Section 14.8. Force Majeure. Notwithstanding any other provisions of this Agreement, neither of the parties hereto shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, governmental restrictions, wars, or insurrections, strikes, floods, work stoppages and/or lack of materials; provided, however, that the party suffering such delay or default shall notify the other party in writing of the reasons for the delay or default. If such reasons for delay or default continuously exist for six (6) months and the parties are unable to reasonably agree upon alternatives, this Agreement may be terminated by either party.

Section 14.9. Assignment. Except as otherwise set forth in Sections 2.1 and 2.3 of this Agreement with respect to Licensor's right to grant sublicenses, neither party hereto may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except that a party may make such an assignment without the other party's consent to Affiliates or to a successor to substantially all of the business of such party, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning party. Any assignment or attempted assignment by either party in violation of the terms of this Section 14.9 shall be null and void and of no legal effect.

Section 14.10. Successors and Assigns. Subject to Section 14.9, this Agreement shall be binding upon and inure to the benefit of the permitted successors or permitted assigns of Licensor and Licensee respectively.

Section 14.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 14.12. Announcements. Neither party shall make any public announcement or press release regarding the content or signature of this Agreement without the other party's prior written consent other than as may be required by law or any stock exchange rules. If such public announcement or press release is required by law or any stock exchange rules the parties shall use their reasonable endeavors to agree to the text and content thereof prior to making such public announcement or press release.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and duly executed this Agreement on the date(s) indicated below, to be effective the day and year first above written.

DISCOVERY LABORATORIES, INC.

By: /s/ Robert J. Capetola

Name: Robert J Capetola, Ph.D.
Title: President and Chief Executive Officer

LABORATORIOS DEL DR. ESTEVE, S.A.

By: /s/ Joan Esteve

Name: Mr. Joan Esteve
Title: Vice-President

Portions of this Exhibit have been omitted pursuant to a request for confidential treatment. The omitted portions, marked by [***], have been separately filed with the Securities and Exchange Commission.

SUPPLY AGREEMENT

SUPPLY AGREEMENT dated as of March 6, 2002, by and between DISCOVERY LABORATORIES, INC. ("Seller") and LABORATORIOS DEL DR. ESTEVE, S.A., a company organized and existing under the laws of Spain ("Buyer").

WHEREAS, Seller and Buyer are parties to a Sublicense and Collaboration Agreement (the "Collaboration Agreement") dated as of the date hereof pursuant to which Buyer and Seller have agreed to collaborate in a product development, commercialization and marketing effort for the Licensed Products (such term and other capitalized terms used and not otherwise defined herein having the meanings assigned to them in the Collaboration Agreement); and

WHEREAS, Buyer hereby agrees to purchase one hundred percent (100%) of its requirements of Licensed Products from Seller, and Seller hereby agrees to supply one hundred percent (100%) of Buyer's requirements of Licensed Products, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants set forth below, Seller and Buyer mutually agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Current Good Manufacturing Practices" or "cGMP" shall mean (i) with respect to the United States, the good manufacturing practices required by the FDA and set forth in the Federal Food, Drugs and Cosmetics Act or FDA regulations, policies or guidelines in effect at a particular time for the manufacture, testing and quality control of pharmaceutical materials and (ii) with respect to any other country of the Licensed Territory, the standards for the manufacture and testing of pharmaceutical materials that are imposed by any regulatory authority having jurisdiction.

"Facility" means an Owned Facility or a Contract Facility (in each case as defined in Section 3.1).

"First Commercial Sale" shall mean the first commercial sale by Buyer, its Affiliates or sublicensees of any Licensed Product following final EMEA or other regulatory approval required to market such Licensed Product commercially in the Licensed Territory for use in humans.

"Specifications" shall mean the Licensed Product specifications contained in the registration dossier of the Licensed Product as approved by the EMEA and the other regulatory authorities having jurisdiction in the Licensed Territory, as the same may be amended from time to time in accordance with applicable regulatory procedures.

"Transfer Price" shall mean the price for each Licensed Product established in accordance with the pricing system as set forth in Section 2.2.

"Unrelated Third Parties" shall mean Persons other than Buyer and Seller and Affiliates and sublicensees of Buyer and Seller or any other related Persons and shall include hospital formularies and other similar critical and therapeutic care providers who typically purchase and administer products and therapies such as the Licensed Products.

ARTICLE II

PURCHASE AND SALE OF PRODUCTS

Section 2.1. Purchase and Sale; Delivery; Acceptance or Rejection.

(a) Seller agrees to sell to Buyer such quantities of Licensed Products, manufactured in conformity with cGMP and meeting the Specifications, as Buyer may order in accordance with the terms and

conditions of this Agreement. Subject to the provisions of Section 7.2 hereof, so long as this Agreement shall remain in effect, Buyer agrees, for itself and its Affiliates and sublicensees, to satisfy solely through the purchase of Licensed Products from Seller under this Agreement one hundred percent (100%) of Buyer's and its Affiliates' and sublicensees' requirements for Licensed Products.

(b) Purchase orders issued by Buyer to Seller with respect to purchases of Licensed Products shall be subject to, and governed exclusively by, the terms of this Agreement. Buyer agrees not to issue to Seller any purchase order containing terms different from those set forth herein and further agrees that no shipment of Licensed Product by Seller in accordance with a nonconforming purchase order shall be deemed to be acceptance of any terms of such purchase order conflicting with the terms of this Agreement except to the extent such conflicting terms are initialed by Seller with the words "change

accepted" written thereon by Seller. Except as aforesaid, this Agreement shall override all other conflicting terms of purchase and/or sale contained in any purchase and/or sale document generated by Seller or Buyer.

(c) Subject to paragraph (d) below, all Licensed Product sold to Buyer hereunder shall be delivered FCA Seller's Facility or distribution warehouse (Incoterms 2000). Seller shall assist Buyer in arranging transportation in the manner specified by Buyer, in accordance with applicable regulatory requirements, to any destinations specified in writing from time to time by Buyer; provided that all costs and expenses relating to such transportation and delivery (including without limitation customs, duties, taxes, insurance premiums and all expenses relating to validation of temperature-controlled shipment conditions) shall be at Buyer's expense.

(d) Seller will include with each shipment copies of all applicable quality and testing records, which shall be in a form acceptable for any applicable EMEA or other regulatory submission in the Licensed Territory. Product shipments for sale by Buyer in European countries of the Licensed Territory shall originate from such European Union member state and shall be accompanied, as required, by a certificate of analysis made in such state. Seller shall certify in writing, to Buyer's reasonable satisfaction, that each delivery of Licensed Product was produced and tested in compliance with (i) the Specifications, (ii) cGMP requirements and (iii) all applicable regulatory documents.

(e) Buyer may reject any portion of any shipment of Licensed Product which does not conform with the Specifications. In order to reject a shipment, Buyer must (i) give notice to Seller of Buyer's intent to reject the shipment within thirty (30) days of receipt together with a detailed written indication of the reasons for such possible rejection, and (ii) as promptly as reasonably possible thereafter, but in any event within an additional thirty (30) days, provide Seller with notice of final rejection and the full basis therefor. After notice of intent to reject is given, Buyer shall cooperate with Seller in determining whether rejection is necessary or justified. If such notices of intent to reject and final rejection are not timely received, Buyer shall be deemed to have accepted such delivery of Licensed Product and to have waived all claims for non-conformity with the Specifications, damage, defect or shortage, other than claims for latent defects not capable of discovery by Buyer upon physical examination. In the event of latent defects not capable of discovery by Buyer upon physical examination, Buyer shall inform Seller within fifteen (15) days of discovering any such defect. Buyer shall be entitled to a refund of the purchase price (together with insurance, freight charges and, where applicable, custom duties) of properly rejected Licensed Products at the time they are ultimately rejected, provided that if Seller disputes the rejection, refund shall be made, if at all, at the time the dispute is finally resolved. Seller shall notify Buyer as promptly as reasonably possible (but in any event no later than thirty (30) days after receipt of Buyer's

final rejection notice) whether it accepts Buyer's basis for any rejection. In the event Seller disputes Buyer's rejection, the parties will select a mutually agreeable independent third party laboratory which shall determine whether the rejected Licensed Products meet the applicable Specifications and shall confirm or dissent from Buyer's rejection of Licensed Products. If the parties are unable to agree on a laboratory firm within thirty (30) days after receipt of Buyer's final rejection notice, the laboratory shall be appointed by computer generation of a random number, with an even number signifying Seller's right to designate the laboratory and an odd number designating Buyer's right to designate the laboratory. If the independent tester confirms Buyer's rejection, Seller will pay the fees of the tester, and if the tester dissents from Buyer's rejection, Buyer will pay the fees.

(f) Whether or not Seller accepts Buyer's basis for rejection, promptly on receipt of a notice of rejection, Seller shall use its commercially reasonable efforts, at Buyer's request, to provide replacement Licensed Product, which shall be purchased by Buyer as provided in this Agreement as soon as reasonably practicable.

(g) Unless Seller requests the return to it of a rejected batch within sixty (60) days of receipt of Buyer's final notice of rejection, Buyer shall, at Seller's cost, destroy such batch promptly and provide Seller with certification of such destruction. Buyer shall, upon receipt of Seller's request for return, promptly dispatch said batch to Seller, at Seller's cost.

(h) No change to the Specifications shall be effective unless the same shall be required or permitted by any regulatory agency having jurisdiction over (i) any country in the Licensed Territory, (ii) Buyer or (iii) the Licensed Products (and if not required, shall be agreed to in writing by Buyer and Seller). Seller shall give Buyer advance notice of any change to the Specifications required by a regulatory agency.

2.2 Transfer Price; Method of Payment. (a) Buyer shall purchase Licensed Products from Seller hereunder at the applicable Transfer Price. The Transfer Price for each unit of Licensed Product shall equal [***] of the Base Integrated Price (as such term is hereinafter defined) for any such Licensed Product in the Licensed Territory, subject to paragraph (d) below. The "Base Integrated Price" shall mean, with respect to each unit of Licensed Product purchased by Licensee, that price that is determined prior to the first commercial sale of any such Licensed Product in any country of the Licensed Territory by mutual agreement between Buyer and Seller in their best good faith efforts (and as such price may be amended from time to time by mutual agreement of the parties); provided, however, that should the parties fail to agree on any such price prior to the first commercial sale of any such Licensed Product in the Licensed Territory such price shall equal the gross amount invoiced to Unrelated Third Parties for such Licensed Product in the Licensed Territory, less: (i) trade and reasonable and customary cash

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Information marked by [***] has been omitted pursuant to a request for confidential treatment. The omitted portion has been separately filed with the Securities and Exchange Commission.

discounts allowed; (ii) refunds, rebates, chargebacks, retroactive price adjustments and any other allowances which effectively reduce the net selling price; (iii) returns, credits and allowances and (iv) sales taxes paid or absorbed by Buyer in respect of such sales. Except as set forth in subsections (i)-(iv) in the immediately preceding sentence, no deductions or offsets shall be made against any such gross amount invoiced including, without limitation, on account of any commissions paid to employees of Buyer, its Affiliates or sublicensees, cost of collections, bad debts or sales, marketing and promotional expenses of any kind. Such amounts shall be determined from books and records maintained in accordance with generally accepted accounting principles applied in each country of the Licensed Territory, consistently applied.

(b) Seller shall invoice Buyer for each shipment of Licensed Products delivered by Seller to Buyer, its Affiliates or sublicensees at the Transfer Price converted into U.S. Dollars at the exchange rate of the last Business Day of the calendar month immediately preceding the month when the Licensed Product is shipped to Buyer, as quoted by the Wall Street Journal.

(c) Buyer shall pay Seller's invoices in U.S. Dollars not later than ninety (90) days following the date of the applicable invoice by wire transfer to the bank account designated by Seller.

(d) For the avoidance of doubt, the parties hereby acknowledge and agree that the Base Integrated Transfer Price for Licensed Products shall be determined by the parties in good faith and shall be based upon a mutually agreeable pricing schedule for such Licensed Products that is intended to ensure that both Buyer and Seller achieve reasonable profits with respect to sales thereof.

(e) All payments under this Section 2.2 shall be free of all withholdings of any nature whatsoever (including, without limitation, withholding taxes, monetary transfer fees, or similar taxes and charges), and in the event any withholding is required, Buyer shall pay the same together with such additional amount as is required so that each such payment shall be, under any circumstances and in any event, in the amount as set forth or referred to herein.

ARTICLE III

PRODUCTION OF PRODUCTS

Section 3.1. Manufacturing of Licensed Products.

(a) Until such time, if any, as a Seller-owned manufacturing facility (an "Owned Facility") is qualified for the manufacture of Licensed Products sold to Buyer hereunder, Seller shall manufacture or have manufactured the Licensed Products sold to Buyer hereunder at a contract manufacturing facility

(a "Contract Facility") selected by Seller and reasonably acceptable to Buyer. Commencing sixty (60) days prior to the First Commercial Sale of any Licensed Product in a country of the Licensed Territory (provided that such date of First Commercial Sale has been communicated to Seller at least one hundred and eighty (180) days in advance) Seller shall maintain at least one alternate production site for Licensed Products sold to Buyer hereunder, which alternate production site, if a Contract Facility, shall also be selected by Seller and reasonably acceptable to Buyer. Seller's obligation to maintain an alternate manufacturing facility may also be satisfied through a sublicensing arrangement complying with Section 3.2.

(b) Seller shall be responsible for obtaining and maintaining all necessary licenses, registrations, authorizations and approvals (other than such licenses, registrations, authorizations and approvals that are required to be obtained or made by an owner or operator of a Contract Facility) which are necessary to manufacture, handle, store, label, package, transport and ship Licensed Products under cGMP conditions and in accordance with other regulatory requirements.

(c) Seller shall provide Buyer with copies of any correspondence sent from Seller to governmental entities relating to the manufacturing, handling, storage, labeling, packaging, transportation or shipment of Licensed Products at the time such correspondence is sent by Seller, purged of Seller proprietary and/or confidential information and trade secrets. Seller shall provide Buyer with copies of any comments, responses, notices or other correspondence received by Seller from any governmental entity relating to the foregoing matters within five (5) Business Days of receipt of such correspondence by Seller, purged of any Seller proprietary information and/or trade secrets.

(d) Seller shall furnish to Buyer (i) a summary of any report or correspondence issued by a governmental entity (or a third party authorized by a governmental entity) in connection with a visit or inquiry relating to any Owned Facility or, to the extent Seller is provided with such information, any Contract Facility, including but not limited to, any FDA Form 483 or warning letter and (ii) not later than ten (10) Business Days after the time Seller provides such to a governmental entity, summaries of any and all proposed responses or explanations relating thereto, in each case purged of trade secrets or other confidential or proprietary information of Seller. After the filing of a response with the appropriate governmental entity, Seller will notify Buyer of any further oral and/or written contacts with a governmental entity (or a third party authorized by a governmental entity) relating to the manufacturing, handling, storage, labeling, packaging, transportation or shipment of Licensed Products.

(e) If requested in writing by Buyer, Seller shall permit Buyer to inspect, once per year, during normal business hours, Seller's Facilities and

manufacturing records to the extent Buyer deems it reasonably necessary to enable Buyer to verify compliance with any statutory or regulatory requirements to which Buyer is subject and which are applicable to the manufacture and/or packaging of Licensed Products. Notwithstanding the foregoing, Buyer shall have the right to inspect Seller's Facilities and manufacturing records at any time, in the event that there is a quality or regulatory problem with any Licensed Product. If, as a result of any such inspection, Buyer reasonably and in good faith concludes that Seller is not in compliance with any regulatory obligations or requirements applicable to Buyer, Buyer shall so notify Seller in writing, specifying such areas of noncompliance in reasonable detail and Seller shall remedy the problems identified.

(f) Seller agrees to use all reasonable efforts to promptly rectify or resolve any deficiencies noted by a governmental entity (or third party authorized by a governmental entity) in a report or correspondence issued to Seller with respect to an Owned Facility or a Contract Facility.

Section 3.2. Subcontracting.

It is understood and agreed that Seller shall have the right in connection with its performance hereunder to contract with such third parties as Seller deems advisable to manufacture Licensed Products, provided that (i) manufacture and/or quality control by any such third party has been authorized by the competent regulatory authorities in the Licensed Territory, (ii) Seller shall provide Buyer with not less than fifteen (15) Business Days' advance notice of its intent to contract with any third party and shall identify such third party to Buyer, (iii) Buyer may audit Seller's contractor's qualifications and (iv) Seller shall remain fully liable for its performance hereunder to the same extent as if such contractor had not been engaged.

Section 3.3. Exclusivity.

On a country-by country basis, for so long as the Collaboration Agreement remains in effect with respect to any such country in the Licensed Territory, until such time as Buyer has a fully paid-up license in such country in accordance with the terms of the Collaboration Agreement, Seller shall supply Licensed Products only to Buyer for distribution within such country.

Section 3.4. Allocation of Supplied Licensed Products

In the event of shortage or inability to timely supply the required Licensed Product, Licensor undertakes and agrees that the amounts of Licensed Products available shall be allocated on an equitable basis according to forecasts received and that Licensee shall not be treated less favorably than Licensor, its Affiliates and other distributors and/or sublicensees.

ARTICLE IV

QUANTITY FORECASTS; ORDERS

Section 4.1. Forecasts.

(a) In order to assist Seller in planning its production, commencing sixty (60) days prior to the calendar month in which the First Commercial Sale of Licensed Products takes place in any country in the Licensed Territory, Buyer shall provide Seller with a twelve (12) month rolling forecast of the quantities of such Licensed Product required by Buyer, by month, for the following twelve (12) months. The first three (3) months of such projections shall constitute a binding commitment to order the quantity of such Licensed Product forecast for such period, provided that with respect to the first twelve (12) months following such First Commercial Sale of Licensed Products in any country in the Licensed Territory, only the first month's forecast with respect to such country shall be binding provided that the portion of such forecast relating to such country is separately stated and is so indicated. Projections for months four (4) through twelve (12) (or, as provided above with respect to product launches in the Licensed Territory, months two (2) through twelve (12)) shall be made in good faith and shall constitute Buyer's best estimates of future orders, but shall not be binding on Buyer. Updated twelve (12) month forecasts will be provided at the beginning of each succeeding calendar month for the twelve (12) month period commencing sixty (60) days thereafter. Buyer's forecast shall also describe anticipated regulatory modifications to any English language version of Licensed Product labeling proposed by Seller. Seller shall, no later than fifteen (15) Business Days after receipt of each such forecast, notify Buyer in writing of any prospective problems of which Seller is aware of that might prevent Seller from meeting Buyer's forecast order quantities or estimated delivery dates.

(b) Notwithstanding Buyer's obligation to provide forecasts as set forth in Section 4.1(a), Buyer hereby agrees that it shall provide Seller with its firm purchase orders for Licensed Product in accordance with the lead-times and batch size increments to be specified by Seller in writing as soon as reasonably practicable but in any event before Buyer places its first order for Licensed Products, such lead-times and batch sizes to be applicable during the term of this Agreement unless otherwise agreed in writing by the parties; provided, however, that Buyer shall have the right, up to the date of manufacture, to issue binding change orders to increase or decrease such purchase orders with the consent of Seller, which shall not be unreasonably withheld so long as Buyer agrees to compensate Seller for any damages suffered by Seller as a consequence of such change order (including damages attributable to loss of allocable overhead recoupment, but excluding loss of profit), provided that Seller shall advise Buyer before carrying out any change order of Seller's estimated increased cost of doing so. Buyer agrees to accept partial shipments of Licensed Products should, for any reason, it become necessary to ship in advance of order completion, provided that

Seller shall (i) give advance written notice to Buyer of such shipment and (ii) bear any additional cost to Buyer of receiving Licensed Products in partial shipments. Seller shall make all commercially reasonable efforts to comply with any revisions to purchase order requirements consistent with the provisions of Section 4.1(a) and this Section 4.1(b). Seller, within ten (10) Business Days after the date that a purchase order is issued to it, shall acknowledge receipt of Buyer's order and confirm in writing that the order can be supplied. For purposes hereof, a purchase order will be deemed issued on the earlier of (i) the date that Seller receives the purchase order via mail and (ii) the date of receipt of the telecopied purchase order.

Section 4.2. Purchase Order Contents.

(a) Each purchase order shall specify the quantity, concentration and container size of Licensed Product ordered within the Specifications, and the required delivery schedule. Seller shall use reasonable commercial efforts to deliver each shipment of Licensed Product within five (5) days of the delivery dates specified in the delivery schedule set forth in Buyer's purchase order relating thereto (provided that in no event shall any such delivery dates be less than the lead time established pursuant to Section 4.1(b), unless otherwise consented to by Seller) using carriers mutually agreeable to Buyer and Seller. Seller shall use commercially reasonable efforts to accommodate "Rush" orders from Buyer.

(b) When all appropriate validation and quality control release criteria for a particular shipment of Licensed Product have been met (the "Release Date"), Seller shall notify Buyer in writing of the expected delivery dates (including details of destination, date and time) to enable delivery and receipt to be coordinated. Title and risk of loss to Licensed Products shall pass to Buyer upon delivery of Licensed Products by Seller to the carrier.

Section 4.3. Packaging.

(a) Licensed Products shall be delivered to Buyer as finished goods in final packaged and labeled form, quality controlled in accordance with Section 2.1 (d) and ready for resale to the ultimate customer and in accordance with the packaging requirements set forth in the Marketing Regulatory Approvals.

(b) Buyer shall distribute all Licensed Products as packaged by Seller in accordance with Section 4.3(a). In no event shall any Licensed Products be repackaged or reconfigured by Buyer without Seller's prior written consent.

Section 4.4. Labeling.

With respect to each country in the Licensed Territory, prior to distribution of a Licensed Product, Buyer shall provide Seller with evidence of the regulatory approval of labeling specifications for such Licensed Product in such country and any variations required by the applicable regulatory agency. All such materials shall be provided to Seller together with a proper English translation. Seller shall distribute Licensed Products bearing only labeling supplied or approved by Buyer and in accordance with such regulatory requirements.

ARTICLE V

CERTAIN OBLIGATIONS OF BUYER

Buyer agrees to ascertain and comply with all applicable laws and regulations and standards of industry or professional conduct in connection with the use, distribution or promotion of the Licensed Products, including without limitation, those applicable to product claims, labeling, approvals, registrations and notifications, and also to obtain Seller's prior written consent to all claims, labels, instructions, packaging or the like, which consent shall not be unreasonably withheld.

ARTICLE VI

REGULATORY MATTERS

Section 6.1. Information Regarding Regulatory Approvals. Seller shall promptly advise Buyer in matters pertaining to U.S. regulatory requirements relating to Seller's activities hereunder. Seller shall also provide to Buyer reasonable advance notice of any regulatory submission containing information or data provided by Buyer to Seller which Seller intends to disclose to regulatory agencies under this Agreement.

Section 6.2. Quality Control Program; Additional Testing Programs. Seller shall maintain a quality control program consistent with cGMP, as required by the FDA and/or any other governmental entity in the Licensed Territory, with respect to Seller's manufacture of Licensed Products hereunder. In addition, Seller will perform such additional testing programs, and provide Buyer with documentation arising from such testing programs, as may be agreed to by Buyer and Seller or required by any applicable regulatory authority.

Section 6.3. Retention of Samples. Seller shall retain as samples such quantities of Licensed Products from each batch of Licensed Product as Buyer shall reasonably request. Retained samples shall be maintained in a suitable storage facility for one (1) year past the product's expiration date. All such samples shall be available for inspection and testing by Buyer at reasonable times and upon reasonable notice.

Section 6.4. Recalls. Buyer shall notify Seller promptly if any Licensed Product is the subject of a recall, market withdrawal or correction within the Licensed Territory (a "Recall"), and Buyer and/or its designee shall have sole responsibility for the handling and disposition of such Recall. Buyer and/or its designee shall bear the costs of all Recalls of Licensed Products except to the extent that such Recall shall have been the result of Seller's breach of any of the warranties set forth in this Agreement and/or the Collaboration Agreement, in which case Seller will promptly reimburse Buyer to such extent for actual, direct costs sustained as a result of the Recall. In the event that Seller disputes Buyer's determination that the fault is due to Seller and/or to its agent, the Parties will select a mutually agreeable outside consulting firm which will be instructed to review the applicable information and data and to confirm or dissent from Buyer's determination. If the consulting firm confirms Buyer's determination, Seller will pay the fees of such consulting firm. Buyer and/or its designee shall maintain records of all sales of Licensed Products and customers sufficient to adequately administer a Recall, market withdrawal or correction for a period of three (3) years after termination or expiration of this Agreement. Except as required by law, Buyer and/or its designee shall serve as the sole point of contact with the applicable governmental entity concerning any Recall within the Licensed Territory with respect to Licensed Products and Seller shall serve as the sole point of contact with the FDA with respect to any Recall. In the event that Seller is required to communicate with the FDA with respect to Recall of Licensed Products, Seller shall within one (1) Business Day notify Buyer of such communication.

ARTICLE VII

TERMINATION; RIGHTS AND OBLIGATIONS UPON TERMINATION

Section 7.1. Term. This Agreement shall commence on the date hereof and shall continue in effect with respect to each Licensed Product in each country in the Licensed Territory, unless the parties mutually agree to extend such term, for so long as the Collaboration Agreement remains in effect with respect to such Licensed Product in such country(ies).

Section 7.2. Termination for Default. If either party materially defaults in the performance of any material agreement, condition or covenant of this Agreement and such default or noncompliance shall not have been remedied, or steps initiated to remedy the same to the other party's reasonable satisfaction, within ninety (90) days (or thirty(30) days in the case of non-payment) after receipt by the defaulting party of a notice thereof from the other party, the party not in default may terminate this Agreement. A material breach or default of this Agreement shall be considered as a material breach or default under the Collaboration Agreement, and Section 7.2 of the Collaboration Agreement shall apply.

Section 7.3 Rights and Obligations on Expiration or Termination. Except to the extent expressly provided to the contrary, the following provisions shall survive the termination of this Agreement: Sections 6.3 and 6.4 and Articles I and VIII through X. Any rights of Seller to payments accrued through termination as well as obligations of the parties under firm orders for purchase and delivery of Licensed Products at the time of such termination shall remain in effect, except that in the case of termination under Section 7.2, the terminating party may elect whether obligations under firm orders will remain in effect and except that Seller will have no obligation with respect to delivery dates more than three (3) months after termination.

ARTICLE VIII

WARRANTIES; REPLACEMENT OF PRODUCTS; INSURANCE

Section 8.1. Warranties. Seller warrants to Buyer for itself and on behalf of its subcontractors and agents who assume any of Seller's obligations hereunder that (i) when shipped to Buyer by Seller, the Licensed Products will conform to the Specifications, as then in effect, and will not be (A) adulterated or misbranded within the meaning of the Food, Drugs & Cosmetic Act or (B) be an article which may not, under the provisions of the Food, Drugs & Cosmetic Act, be introduced into interstate commerce, and (ii) any Facility used by Seller will remain in compliance with cGMP at all times during the term of this Agreement and (iii) Seller shall obtain and maintain all necessary permits, registrations and licenses necessary to carry out its obligations pursuant to this Agreement. The foregoing warranties are the only warranties made by Seller with respect to the Licensed Products delivered hereunder, and may only be modified or amended by a written instrument signed by a duly authorized officer of Seller and duly authorized officer of Buyer. THE EXPRESS WARRANTIES CONTAINED IN THIS ARTICLE 8 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTIBILITY OR FITNESS FOR A PARTICULAR USE.

Section 8.2. Replacement of Licensed Products. Any Licensed Products delivered to Buyer by Seller which do not conform to the Specifications and are properly rejected as set forth in Article 2, or which are otherwise not in compliance with the warranties made in Section 8.1, shall be replaced, or Buyer's account may be credited, at Buyer's election. The remedy of replacement or credit shall not be available if and to the extent that such nonconformance was caused by Buyer's misuse, unauthorized modification, neglect, improper testing or improper storage, including without limitation storage at inappropriate temperatures, transportation, use beyond any dating provided, by accident, fire or other hazard. THE EXPRESS OBLIGATIONS STATED IN THIS SECTION 8.2 AND IN SECTIONS 2.1 AND 8.3 ARE IN LIEU OF ALL OTHER LIABILITIES OR OBLIGATIONS OF SELLER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO DIRECT OR CONSEQUENTIAL DAMAGES, ARISING OUT OF

OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE PRODUCTS.

Section 8.3. Insurance.

Buyer and Seller shall maintain during the term of this Agreement products liability insurance policies, covering their respective obligations under this Agreement, issued by reputable insurance companies under ordinary terms and conditions in the pharmaceutical industry and will prove the existence thereof to the other party if so requested.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Entire Agreement This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter hereof. All prior negotiations, representations, agreements, contracts, offers and earlier understandings of whatsoever kind, whether written or oral between Seller and Buyer in respect of the subject matter of this Agreement, are superseded by, merged into, extinguished by and completely expressed by this Agreement (including, without limitation, the Supply Agreement dated October 26, 1999, between Buyer and Seller). No aspect, part or wording of this Agreement may be modified except by mutual agreement between the Seller and Buyer taking the form of an instrument in writing signed and dated by duly authorized representatives of both Seller and Buyer. The representation and warranties made by Licensor (i.e. Seller) in the Collaboration Agreement are incorporated herein by reference, provided that no breach of such representations and warranties shall be the basis for the termination of this Agreement unless the Collaboration Agreement is terminated simultaneously.

Section 9.2. Notices Any notice or communication or permitted to be given by this Agreement shall be given by post-paid, first class, registered or certified mail or reputable courier service addressed to:

In the case of Seller: Discovery Laboratories, Inc.
350 South Main Street, Suite 307
Doylestown, Pennsylvania 18901
Attention: Robert J. Capetola, Ph.D.
Chief Executive Officer

With a copy to: Roberts, Sheridan & Kotel
The New York Practice of
Dickstein Shapiro's Corporate & Finance Group
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714

Attn: Ira L. Kotel
Facsimile: (212) 997-9880

In the case of Buyer: Laboratorios del Dr. Esteve, S.A.
Av. Mare de Deu de Montserrat, 221
08041 Barcelona (Spain)
Attention: Development Director
Facsimile: (34) 93 433 00 72

Such addresses may be altered by notice so given. If no time limit is specified for a notice required or permitted to be given by this Agreement, the time limit therefor shall be ten (10) Business Days, not including the day of mailing. Notice shall be considered made as of the date of deposit with the appropriate Post Office or courier service.

Section 9.3. Governing Law. This Agreement and its effect are subject and shall be construed and enforced in accordance with the laws of the State of New York, United States (without giving effect to the principles of conflict of laws), except as to any issue which depends upon the validity, scope or enforceability of any patent within the Patent Rights, which issue shall be determined in accordance with the applicable patent laws of the country of such patent.

Section 9.4. Representations regarding Authorization; Organization; Corporate Action; No Conflicts. Each party hereto severally represents and warrants that it is a duly organized and validly existing corporation and/or partnership under the laws of its jurisdiction of incorporation, and has taken all required corporate action to authorize the execution, delivery and performance of this Agreement, the Collaboration Agreement and the Stock Purchase Agreement and perform all of its obligations hereunder and thereunder; the execution and delivery of this Agreement the Collaboration Agreement and the Stock Purchase Agreement and the consummation of the transactions contemplated herein and therein do not violate, conflict with, or constitute a default under its charter or similar organization document, its by-laws or the terms or provisions of any material agreement or other instrument to which it is a party or by which it is bound, or any order, award, judgment or decree to which it is a party or by which it is bound; and upon execution and delivery, this Agreement the Collaboration Agreement and the Stock Purchase Agreement will constitute the legal, valid and binding obligation of it. The persons signing on behalf of each of the parties hereby warrant and represent that they have the authority to execute this Agreement the Collaboration Agreement and the Stock Purchase Agreement on behalf of the party for whom they have signed.

Section 9.5. Registration. Buyer shall take all reasonable and necessary steps to register this Agreement in any country where such is required to permit the transfer of funds and/or payment of royalties to Seller hereunder or is otherwise required by the government or law of such country to effectuate or carry out this Agreement.

Notwithstanding anything contained herein but subject to Section 9.4 hereof, Buyer shall not be relieved of any of its obligations under this Agreement by any failure to register this Agreement in any country, and, specifically, Buyer shall not be relieved of its obligation to make any payment due to Seller hereunder at Seller's address specified in Section 9.2 hereof, where such payment is blocked due to any failure to register this Agreement.

Section 9.6. Headings. As used in this Agreement, singular includes the plural and plural includes the singular, wherever so required by the context. The headings appearing at the beginning of the numbered Articles and Sections hereof have been inserted for convenience only and do not constitute a part of this Agreement.

Section 9.7. Agency. Nothing herein shall be deemed to create an agency, joint venture or partnership between the parties hereto.

Section 9.8 Dispute Resolution.

(a) Internal Review. In the event that a dispute, difference, claim, action, demand, request, investigation, controversy, threat, discovery request or request for testimony or information or other question arises pertaining to any matters which arise under, out of, in connection with, or in relation to this Agreement (a "Dispute") and either party so requests in writing, prior to the initiation of any formal legal action, the Dispute will be submitted to the Steering Committee, which will use its good faith efforts to resolve the Dispute within ten (10) Business Days. If the Steering Committee is unable to resolve the Dispute in such period, the Steering Committee will refer the Dispute to the Chief Executive Officers or equivalent position of Buyer and Seller. For all Disputes referred to the Chief Executive Officers (or equivalent position), the Chief Executive Officers (or equivalent position) shall use their good faith efforts to meet in person and to resolve the Dispute within ten (10) Business Days after such referral.

(b) Arbitration.

If, pursuant to Section 9.8(a), within such ten (10) Business Days or such other period as may be agreed upon between the parties, the dispute remains unresolved, it shall be settled on application by either party by arbitration conducted in the English language, in Stockholm (Sweden) in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The parties expressly agree to abide the award rendered. This provision shall not prevent either party from addressing any competent court or tribunal in order to seek interim measures.

(c) Costs. The parties shall bear their own costs in preparing for and participating in the resolution of any Dispute, and the costs of mediator(s) and arbitrator(s) shall be equally divided between the parties.

Section 9.9. Force Majeure. Notwithstanding any other provisions of this Agreement, neither of the parties hereto shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, governmental restrictions, wars, or insurrections, strikes, floods, work stoppages and/or lack of materials; provided, however, that the party suffering such delay or default shall notify the other party in writing of the reasons for the delay or default. If such reasons for delay or default continuous exist for six (6) months, this Agreement may be terminated by either party.

Section 9.10. Assignment. Except as otherwise set forth in Sections 2.1 and 2.3 of the Collaboration Agreement with respect to Buyer's right to grant sublicenses, neither party hereto may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except that a party may make such an assignment without the other party's consent to Affiliates or to a successor to substantially all of the business of such party, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning party. Any assignment or attempted assignment by either party in violation of the terms of this Section 9.10 shall be null and void and of no legal effect.

Section 9.11. Successors and Assigns. Subject to Section 9.10, this Agreement shall be binding upon and inure to the benefit of the permitted successors or permitted assigns of Seller and Buyer respectively.

Section 9.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE X

BASIS OF BARGAIN

EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

DISCOVERY LABORATORIES, INC.

By: /s/ Robert J. Capetola

Name: Robert J. Capetola, Ph.D.
Title: President and Chief Executive Officer

LABORATORIOS DEL DR. ESTEVE, S.A.

By: /s/ Joan Esteve

Name: Mr. Joan Esteve
Title: Vice-President

COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (this "Agreement") is dated and entered into as of March 6, 2002, by and between DISCOVERY LABORATORIES, INC., a Delaware corporation (the "Company"), and LABORATORIOS DEL DR. ESTEVE S.A., a corporation organized and existing under the laws of Spain ("Purchaser").

WHEREAS, the Company and Purchaser, have entered into a (i) Sublicense and Collaboration Agreement (the "Collaboration Agreement") and (ii) a Supply Agreement (the "Supply Agreement," both dated as of the date hereof, and collectively with this Agreement, the "Transaction Agreements"); and

WHEREAS, in connection with the foregoing, the Company wishes to issue and sell and Purchaser desires to purchase a number of shares (the "Shares") of common stock, par value $.001 per share, of the Company ("Common Stock"), determined by dividing $4,000,000 by the Purchase Price (as defined below). The "Purchase Price" shall mean the average Closing Sales Price for the 30 consecutive trading days immediately preceding March 5, 2002, multiplied by 1.5, i.e., 150% of such number. The "Closing Sales Price" shall be the reported per share closing sales price of the Common Stock on the Nasdaq SmallCap Market (the "SmallCap Market") at 4PM on the applicable trading day.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Purchase and Sale of Shares and Warrants.

1.1 At the Closing (as hereinafter defined), subject to the terms and conditions contained in this Agreement, in payment of the full purchase price for the Shares, Purchaser shall provide a wire transfer of immediately available funds to the Company in an amount equal to Four Million Dollars ($4,000,000) using the following wire transfer instructions (all amounts referred to in this Agreement shall be in United Stated Dollars):

Bank Name:	First Union Bank 401 Tryon Street Charlotte, NC (USA) 28288
ABA No.:	053000219
Beneficiary:	Discovery Laboratories, Inc
Account No.:	9070293484
Swift Code:	PNBPUS3NNYC

2. Closing; Deliveries at Closing.

2.1 Closing. The purchase and sale of the Shares shall take place at a closing (the "Closing") to be held at the offices of Roberts, Sheridan & Kotel, The New York Practice of Dickstein Shapiro's Corporate & Finance Group at 1177 Avenue of the Americas, 41st Floor, New York, NY 10036-2714 within twenty four (24) hours after the date of this Agreement, or at such other location, time and date as may be mutually agreed upon by the parties (the "Closing Date").

2.2 Deliveries at Closing. After the Closing, the Company shall deliver a stock certificate evidencing the Shares, all issued in the name of Purchaser and dated as of the Closing Date.

3. Conditions to Closing.

3.1 Conditions to Purchaser's Obligations at Closing. The obligation of Purchaser to purchase and pay for the Shares at the Closing is subject to each of the following conditions precedent:

(a) Officer's Certificate. Purchaser shall have received at the Closing, a certificate, executed by the appropriate officer of the Company and dated as of the Closing Date, together with and certifying: (i) the names of the officers of the Company authorized to sign this Agreement together with the true signatures of such officers; (ii) a copy of the certificate of incorporation of the Company, as amended and in effect as of the Closing Date; (iii) a copy of the bylaws of the Company, as amended and in effect as of the Closing Date; (iv) that the representations and warranties contained in Section 4 hereof are true and correct as of the Closing Date; and (v) that the Company has complied with all the agreements and satisfied all the conditions herein on its part to be performed or satisfied on or prior to the Closing Date;

(b) Transaction Agreements. Purchaser shall have received at the Closing the Transaction Agreements, duly executed by an authorized officer of the Company; and

(c) Instruction Letter. The Company shall have transmitted an instruction letter to its stock transfer agent directing it to issue to Purchaser the stock certificate for the Shares, and Purchaser shall have received a copy of such letter.

3.2 Conditions to Company's Obligations at Closing. The obligation of the Company to issue and sell the Shares at the Closing is subject to each of the following additional conditions precedent:

(a) Transaction Agreements. The Company shall have received at the Closing the Transaction Agreements, duly executed by an authorized officer of Purchaser; and

(b) Payment. Purchaser shall have delivered Four Million Dollars ($4,000,000) in immediately available funds to Company's specified account in accordance with Section 1.1.

4. Representations and Warranties by the Company. The Company represents and warrants to the Purchaser as of the date hereof that:

4.1 Organization and Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company is qualified to do business and is in good standing as a foreign corporation in every jurisdiction in which the failure to so qualify would have a material adverse effect on the financial condition or business of the Company.

4.2 No Actions. There are no legal or governmental actions, suits, proceedings or investigations pending or, to the Company's knowledge, threatened to which the Company is or may be a party or of which property owned or leased by the Company is or may be the subject, or related to environmental or discrimination matters, which actions, suits, proceedings or investigations, individually or in the aggregate, might prevent or might reasonably be expected to have a material adverse affect on the transactions contemplated by this Agreement. The Company is not a party to or subject to the provisions of any material injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental body.

4.3 Compliance with Other Instruments. Except for such matters which, either individually or in the aggregate, would not have a material adverse effect on the financial condition or business of the Company, the execution and delivery of, and the performance and compliance with this Agreement and the transactions contemplated hereby, with or without the giving of notice, will not (i) result in any breach of, or constitute a default under, or result in the imposition of any lien or encumbrance upon any asset or property of the Company pursuant to any agreement or other instrument to which the Company is a party or by which it or any of its properties, assets or rights is bound or affected, (ii) violate the Certificate of Incorporation or Bylaws of the Company, or, subject to the accuracy of the representations and warranties of the Purchasers contained in Article 5 of this Agreement, any law, rule, regulation, judgment, order or decree or (iii) except for the registration of the Shares under the Securities Act of 1933 (the "Securities Act"), the listing of the Shares on the SmallCap Market and such consents, notifications, approvals, authorizations, registrations or qualifications as may be required under the Securities Exchange Act of 1934 (the "Exchange Act") and applicable state securities or "blue sky" laws in connection with the purchase of the Shares by the Purchaser, require any consent, notification, approval, authorization or order of or filing with any court or governmental agency or body. The Company is not in violation of its Certificate of Incorporation or Bylaws nor in violation of, or in default under, any lien, mortgage, lease, agreement or instrument, except for such defaults which would not, individually or in the aggregate, have a material adverse effect on the financial condition or business of the Company. The Company is not subject to any restriction which would prohibit the Company from entering into or performing its obligations under this Agreement, except for such restrictions which would not, individually or in the aggregate, have a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

4.4 Shares. The Shares, when issued and paid for pursuant to the terms of this Agreement, will be duly and validly authorized, issued and outstanding, fully paid, nonassessable and free and clear of all pledges, liens, encumbrances and restrictions (other than arising herein

or under federal or state securities or "blue sky" laws). The issuance of the Shares shall not be subject to any preemptive or other similar rights.

4.5 Securities Laws. Subject to the accuracy of the representations and warranties of the Purchasers contained in Section 5 of this Agreement, the offer, sale and issuance of the Shares as contemplated by this Agreement is exempt from the registration requirements of the Securities Act, and from the registration or qualifications requirements of the laws, rules and regulations of any applicable state or other U.S. jurisdiction.

4.6 Authorized Capital Stock.

(a) As of the Closing Date, 25,563,818 shares of Common Stock and no shares of the Company's preferred stock, par value $.001 per share ("Preferred Stock"), were issued and outstanding. All of the outstanding shares of the Company's capital stock are duly authorized, validly issued, fully paid and nonassessable.

(b) Except as set forth on Schedule 4.6(b) and in Section 5.12, there are no outstanding subscriptions, options, warrants, rights, calls, contracts, demands, commitments, conversion rights or other agreements or arrangements of any character or nature whatever under which the Company is or may be obligated (x) to issue or sell shares of its Common Stock or Preferred Stock or (y) to register shares of its Common Stock or Preferred Stock. No holder of any security of the Company is entitled to any preemptive or similar rights to purchase any securities of the Company.

4.7 Corporate Acts and Proceedings. This Agreement has been duly authorized by the requisite corporate action and has been duly executed and delivered by an authorized officer of the Company, and is a valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally and as to limitations on the enforcement of the remedy of specific performance and other equitable remedies. The requisite corporate action necessary to the authorization, issuance and delivery of the Shares has been taken by the Company.

4.8 No Implied Representations. All of the Company's representations and warranties are contained in this Agreement, and no other representations or warranties by the Company shall be implied.

4.9 Filing of Reports. Since the Company's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2000, the Company has filed with the SEC all reports and other material required to be filed by it therewith pursuant to Section 13, 14 or 15(d) of the Exchange Act and the Company is eligible to register the offer and resale of the Shares and the Warrant Shares on a Registration Statement on Form S-3, or a successor form.

4.10 Compliance with Laws. The business and operations of the Company have been conducted in accordance with all applicable laws, rules and regulations of all governmental authorities, except for such violations which would not, individually or in the aggregate, have a material adverse effect on the financial condition or business of the Company.

4.11 Proprietary Rights. The Company does not have any actual knowledge of, and the Company has not given or received any notice of, any pending conflicts with or infringement of the rights of others with respect to any patents, patent applications, inventions, trademarks, trade names, applications for registration of trademarks, service marks, service mark applications, copyrights, know-how, manufacturing processes, formulae, trade secrets, licenses and rights in any thereof and any other intangible property and assets (herein called the "Proprietary Rights") which are material to the business of the Company, as now conducted or as proposed to be conducted. To the Company's actual knowledge, no action, suit, arbitration, or legal, administrative or other proceeding or investigation is pending or threatened which involves any Proprietary Rights. To the Company's knowledge, the Company is not subject to any judgment, order, writ, injunction or decree of any court or any Federal, state, local, foreign or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitrator, and the Company has not entered into and is not a party to any contract which restricts or impairs the use of any such Proprietary Rights in a manner which would have a material adverse effect on the financial condition or business of the Company. The Company has not received written notice of any pending conflict with or infringement upon any third-party proprietary rights by the Company.

4.12 Closing Date. Except as to representations and warranties that speak of a specific date or period, all the representations and warranties made by the Company in this Section 4 shall be true and complete from the date of this Agreement through the Closing Date.

4.13 Permits, Licenses, Etc. The Company owns, possesses or has obtained, and is operating in compliance with, all governmental, administrative and third party licenses, permits, certificates, registrations, approvals, consents and other authorizations (collectively, "Permits") necessary to own or lease (as the case may be) and operate its properties, whether tangible or intangible, and to conduct its businesses or operations as currently conducted, except such Permits the failure of which to obtain would not have a material adverse effect on the business, properties, operations, financial condition or results of operations of the Company, and the Company has not received any notice of proceedings relating to the revocation, modification or suspension of any Permits), if such proceedings would have a material adverse effect on the Company, or any circumstance which would lead it to believe that such proceedings are reasonably likely.

4.14 Insurance. The Company maintains insurance of the type and in the amount reasonably adequate for its business, including, but not limited to, insurance covering all real and personal property owned or leased by the Company against theft, damage, destruction, acts of vandalism and all other risks customarily insured against by similarly situated companies, all of which insurance is in full force and effect.

4.15 Changes. Since the Company last filed its Current Report on Form 8-K on January 14, 2002, the Company has not, to the extent material to the Company, (i) incurred any debts obligations or liabilities, absolute, accrued or contingent, whether due or to become due, other than in the ordinary course of business, (ii) mortgaged, pledged or subjected to lien, charge, security interest or other encumbrance any of its assets, tangible or intangible, (iii) waived any debt owed to the Company or its subsidiaries, (iv) satisfied or discharged any lien, claim, or encumbrance or paid any obligation other than in the ordinary course of business, (v) declared or

paid any dividends or (vi) entered into any transaction other than in the usual and ordinary course of business.

4.16. Reports and Financial Statements. Prior to the execution hereof, the Company has delivered to the Purchasers true and complete copies of the Company's most recently filed Form 10-KSB, as amended, and the Proxy Statement in connection with the Company's most recent Annual Meeting of Stockholders and all Forms 10-QSB, 8-K and 8-K/A filed by the Company with the Securities and Exchange Commission (collectively, the "SEC") after January 1, 2001, in each case without exhibits thereto (the "SEC Reports"). As of their respective filing dates, the SEC Reports were prepared in all material respects in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such SEC Reports. The SEC Reports, when read as a whole, as they may be updated or amended, do not contain any untrue statements of a material fact and do not omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The audited consolidated financial statements and unaudited interim financial statements of the Company included in the SEC Reports have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis (except as may be indicated therein or in the notes thereto) and fairly present, in all material respects, the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended subject, in the case of the unaudited interim financial statements, to normal year-end adjustments and any other adjustments described in such financial statements.

5. Representations and Warranties by, and Covenants of, the Purchaser.

The Purchaser represents and warrants to, and covenants and agrees with, the Company, as of the Closing Date, as follows:

5.1 Authorization. Purchaser is duly organized and in good standing in the jurisdiction of its organization and has all requisite legal and corporate or other power and capacity and has taken all requisite corporate or other action to execute and deliver the Agreement, to purchase the Shares to be purchased by it and to carry out and perform all of its obligations under the Agreement. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally and as to limitations on the enforcement of the remedy of specific performance and other equitable remedies. If Purchaser is an entity, the person(s) signing on behalf of such entity hereby warrant and represent that they have the authority to execute this Agreement on behalf of each party for whom they have signed.

5.2 Investor Status. Purchaser is an "Accredited Investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act. Purchaser acknowledges receiving and reviewing the documents comprising the SEC Reports, including the documents filed with the SEC included as exhibits thereto. Purchaser is aware of the Company's business affairs and financial condition and has had access to and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser has such business and financial experience as is required to give it the capacity to utilize the

information received, to evaluate the risks involved in purchasing the Shares, to make an informed decision about purchasing the Shares and to protect its own interests in connection with the purchase of the Shares and is able to bear the risks of an investment in the Shares. Purchaser is not itself a "broker" or a "dealer" as defined in the Exchange Act and is not an "affiliate" of the Company as defined in Rule 405 promulgated under the Securities Act.

5.3 Investment Intent. Purchaser is purchasing the Shares for its own account as principal, for investment purposes only and not with a present view to or for resale, distribution or fractionalization thereof, in whole or in part, within the meaning of the Securities Act. Purchaser understands that its acquisition of the Shares has not been registered under the Securities Act or registered or qualified under any state securities or "blue sky" laws in reliance on specific exemptions therefrom, which exemptions may depend upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein. Purchaser has, in connection with its decision to purchase the number of Shares set forth in this Agreement, relied solely upon the SEC Reports and the representations and warranties of the Company contained herein. Purchaser will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) any of the Shares, except in compliance with the Securities Act and the rules and regulations promulgated thereunder and under this Agreement.

5.4 Registration or Exemption Requirements. Purchaser further acknowledges and understands that the Shares may not be resold or otherwise transferred except in a transaction registered under the Securities Act or unless an exemption from such registration is available. Purchaser is able to bear the economic risk of holding the Shares for an indefinite period of time and can afford a complete lost of its investment. Purchaser understands that until the Shares have been registered for resale by the Purchasers in compliance with applicable securities laws, the certificates evidencing the Shares will be imprinted with the legend set forth in Section 5.5 that prohibits the transfer of the Shares unless (a) such transaction is registered or such registration is not required or (b) if the transfer is pursuant to an exemption from registration, an opinion of counsel reasonably satisfactory to the Company is obtained to the effect that the transaction is not required to be registered or is so exempt.

5.5 Legend. Until and unless the Registrable Securities (as such term is hereinafter defined) are registered under the Securities Act and any applicable state securities or "blue sky" laws and regulations, and as permitted by law, each certificate representing the Registrable Securities shall bear substantially the following legend (in addition to any legends required under applicable state securities or "blue sky" laws):

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR ANY APPLICABLE STATE SECURITIES OR "BLUE-SKY" LAWS AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER SUCH ACT OR UNDER SUCH LAWS, OR PURSUANT TO AN EXEMPTION FROM SUCH REGISTRATION, AND ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE COMMON STOCK PURCHASE AGREEMENT DATED MARCH __, 2002, BETWEEN

DISCOVERY LABORATORIES, INC., AND LABORATORIOS DEL Dr. esteve S.A., A COPY OF WHICH IS AVAILABLE UPON WRITTEN REQUEST OF THE CORPORATE SECRETARY OF DISCOVERY LABORATORIES, INC."

"Registrable Securities" shall mean (i) the Shares and (ii) any Common Stock issued as a dividend or other distribution with respect to, or in exchange for or in replacement of, the Shares; provided, however, that "Registrable Securities" shall not include any securities sold by a person either pursuant to a registration statement or Rule 144 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

5.6 No Legal, Tax Or Investment Advice. Purchaser understands that nothing in this Agreement or any other materials presented to Purchaser in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice. Purchaser has consulted, at its own risk and expense, such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Shares.

5.7 Closing Date. All the representations and warranties made by the Purchaser in this Section 5 shall be true and complete from the date of this Agreement through the Closing Date and the Purchaser shall provide the Company, before the Closing, with any documents or information necessary for such representations and warranties to remain true and complete as of the Closing Date.

5.8 Compliance with Other Instruments. The execution and delivery of this Agreement, the purchase of the Shares and the performance by the Purchaser of all other obligations of the Purchaser contemplated hereby will not (i) violate any law, rule, regulation, judgment, order or decree applicable to Purchaser or (ii) require any consent, approval, authorization or order of, or filing with, any court or governmental agency or body. Purchaser is not subject to any restriction which would prohibit it from entering into or performing its obligations under this Agreement, except for such restrictions which would not, individually or in the aggregate, have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement.

5.9 Compliance with Insider Trading Rules. Purchaser acknowledges and agrees that it is aware, and that it will advise each of its affiliates and representatives that is provided any confidential information of the Company that the United States securities laws provide that any person who has received directly or indirectly from an issuer such as the Company material, non-public information is prohibited from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities, and that violation of such prohibition may involve severe civil and criminal penalties. Accordingly, Purchaser will not directly or indirectly, through related parties or otherwise, purchase, trade, offer, pledge, sell, contract to sell or to purchase or sell or "short" or "short against the box" (as those terms are generally understood in the securities markets), or otherwise dispose of or acquire, any securities of the Company or options in respect of such securities. Purchaser further agrees not to provide any person with material, nonpublic information, received from the Company or its representatives, including any relative, associate, or other

individual who intends to, or may, (a) trade securities with respect to the Company which is the subject of such information or (b) otherwise directly or indirectly benefit from such information.

5.10 No Brokers. Purchaser represents and warrants that it has not "engaged," "consented to" or "authorized" any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. Purchaser agrees to indemnify and hold the Company harmless from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Purchaser hereunder.

5.11 Reliance on Representations. Purchaser acknowledges that the Company and its counsel are entitled to rely on the representations and warranties made above.

5.12 Pre-existing Registration Rights. Purchaser acknowledges that 1,765,608 shares of Common Stock (subject to adjustment in the case of a stock split or recapitalization of the Company and, potentially additional shares that shall be issuable upon the exercise of certain warrants which are issuable upon the certain contractual obligations of the Company) that have been previously issued by the Company, or are issuable by the Company upon the exercise of certain warrants, are subject to "piggyback" registration rights and that the holder(s) thereof may elect to exercise such rights in connection with any registration statement to be filed by the Company pursuant to Section 6, and that the exercise of any such rights, and the performance by the Company of its obligations in connection therewith shall not be a violation of the terms of this Agreement.

6. Registration Rights, Indemnification. As used herein, "Holder" shall mean the Purchaser or any subsequent valid transferee of the Registrable Securities of the Purchaser in accordance with the terms of this Agreement.

6.1 Required Registration.

(a) At any time following one hundred eighty (180) days after the date of this Agreement, the Holders of Registrable Securities who hold and propose to sell Registrable Securities with an aggregate value of at least $500,000 shall have the right to require the Company to register under the Securities Act on Form S-3, or other comparable or successor form, such shares by delivering written notice thereof to the Company. All such registrations shall be non-underwritten. For so long as the Company may be obligated to effect a registration statement pursuant to this Section 6.1, the Company shall use reasonable efforts to be and remain eligible to use Form S-3 or other appropriate comparable or successor form under the Securities Act.

(b) The Company shall be obligated to register Registrable Securities pursuant to this Section 6.1 on not more than one occasion during any twelve-month rolling period, or on more than two occasions in the aggregate; provided, however, that such obligation shall be deemed satisfied only when a registration statement covering all shares of Registrable Securities requested to be included in such registration statement by the Holders thereof, for sale in accordance with the method of disposition specified by the requesting Holders, shall have become effective or if the Holders participating in the registration withdraw from the registration.

(c) The Company shall be entitled to include in any registration statement referred to in this Section 6.1, for sale in accordance with the method of disposition specified by requesting holders, shares of Common Stock to be sold by the Company for its own account or for the account of other security holders of the Company, but, with respect to shares to be sold by the Company, only to the extent that such inclusion will not adversely affect, in the Company's good faith determination, the offering for the account of the Holders of Registrable Securities.

(d) If, in the event of an offering pursuant to this Section 6.1, the Company, in its good faith discretion, or, in the event the offering is underwritten, the managing underwriter, shall be of the opinion that the inclusion of the Registrable Securities would adversely affect the marketing of the securities to be sold pursuant to such registration statement or would otherwise have a material adverse effect on the Company, the number of shares of Registrable Securities to be included in such registration statement may be limited and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated in the following manner: (I) first, pro rata among the holders of Registrable Securities demanded to be registered therein by the Holders in proportion, as nearly as practicable, to the respective amounts of shares of Common Stock requested to be registered therein by such holders at the time of filing the registration statement; and (II) second, other securities requested to be registered in such registration, including, without limitation, securities requested to be registered therein by the Company and by any holders of "piggyback" registrations rights.

6.2 Incidental Registration. If the Company at any time (other than pursuant to Section 6.1) proposes to register any of its securities under the Securities Act for sale to the public, whether for its own account or for the account of other security holders or both (except with respect to registration statements on Forms S-4, S-8 or another form not available for registering the Registrable Securities for sale to the public, or which relate to employee benefit plans or with respect to corporate reorganizations or other transactions subject to Rule 145 of the Securities Act), each such time it will give written notice to all Holders of outstanding Registrable Securities of its intention so to do. Upon the written request of any such Holder, received by the Company within thirty (30) days after the giving of any such notice by the Company, to register any of its Registrable Securities, the Company will use its reasonable efforts to cause such Registrable Securities to be included in the registration statement proposed to be filed by the Company, all to the extent requisite to permit the sale or other disposition of such Registrable Securities so registered. If, in the event of an offering pursuant to this Section 6.2, the Company, in its good faith discretion, or, in the event the offering is underwritten, the managing underwriter, shall be of the opinion that the inclusion of the Registrable Securities would adversely affect the marketing of the securities to be sold pursuant to such registration statement or would otherwise have a material adverse effect on the Company, the number of shares of Registrable Securities to be included in such registration statement may be limited and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated in the following manner: (I) first, the securities requested to be registered therein by the Company shall be included; (II) second, the securities demanded to be registered therein by the holders of "demand" registration rights; (III) third, pro rata among the other holders of shares of Common Stock, including the Registrable Securities, in proportion, as nearly as practicable, to the respective amounts of shares of Common Stock requested to be registered by such holders at the time of filing the registration statement.

6.3 Registration Procedures. If and whenever the Company is required by the provisions of Section 6.1 or 6.2 to effect the registration of any Registrable Securities under the Securities Act, the Company will, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such securities as soon as reasonably practicable after delivery of the applicable notice, and in any event within thirty (30) days thereof, and use reasonable efforts to cause such registration statement to become effective within ninety (90) days after delivery of such notice and remain effective for the period of the distribution contemplated thereby (determined as hereinafter provided); provided, however, that that Company's obligation to file a registration statement, or cause such registration statement to become and remain effective, shall be suspended for a period not to exceed ninety (90) days in any twelve-month period if in the reasonable judgment of the Company's Board of Directors it would be detrimental to the Company to effect a registration at such time;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the related prospectus as may be necessary to keep such registration statement effective for the period specified in paragraph (a) above and comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such registration statement in accordance with the sellers' intended method of disposition set forth in such registration statement for such period; provided, however, the Holders hereby acknowledge that the Company may notify the Holders of the suspension of the use of the prospectus forming a part of the registration statement until such time as an amendment to such registration statement has been filed by the Company and declared effective by the SEC or until the Company has otherwise amended or supplemented such prospectus, and upon receipt of such notice the Holders shall immediately suspend the use of the prospectus and shall not offer or sell any securities pursuant to said prospectus during the period commencing at the time at which the Company gives the Holders notice of the suspension of the use of said prospectus and ending at the time the Company gives the Holders notice that Holders may thereafter effect sales pursuant to said prospectus. Notwithstanding anything herein to the contrary, the Company (i) shall not suspend use of the registration statement by Holders unless such suspension is in the good faith opinion of the Company and its counsel advisable under the federal securities laws and the rules and regulations promulgated thereunder; and (ii) shall use its best efforts to amend to such registration statement or amend or supplement such prospectus as soon as practicable to again permit sales pursuant to said prospectus;

(c) furnish to each seller of Registrable Securities and to each underwriter, if applicable, such number of copies of the registration statement and the prospectus included therein (including each preliminary prospectus) as such persons reasonably may request in order to facilitate the public sale or other disposition of the Registrable Securities covered by such registration statement;

(d) use its best efforts to register or qualify the Registrable Securities covered by such registration statement under the securities or "blue sky" laws of such jurisdictions as the sellers of Registrable Securities or, in the case of an underwritten public offering, the managing underwriter reasonably shall request; provided, however, that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any

jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction;

(e) promptly notify each seller of Registrable Securities and each underwriter, if applicable, under such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event of which the Company has knowledge as a result of which the prospectus contained in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; and

(f) if the offering is underwritten and at the request of any seller of Registrable Securities, use its best efforts to furnish on the date that Registrable Securities are delivered to the underwriters for sale pursuant to such registration: (i) an opinion dated such date of counsel representing the Company for the purposes of such registration, addressed to the underwriters and to such seller, in form and substance as is customarily given in an underwritten public offering; and (ii) a letter dated such date from the independent public accountants retained by the Company, addressed to the underwriters and to such seller, in form and substance as is customarily given in an underwritten public offering.

For purposes of Section 6.3(a) and (b), the period of distribution of Registrable Securities in any registration shall be deemed to extend until the earlier of the sale of all Registrable Securities covered thereby and one hundred twenty (120) days after the effective date thereof (the "Registration Period").

6.4 Expenses. All expenses incurred by the Company in complying with Sections 6.1 and 6.3 (to the extent applicable), including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of the NASD, transfer taxes, fees of transfer agents and registrars, but excluding Selling Expenses, are called "Registration Expenses". All underwriting discounts and selling commissions applicable to the sale of Registrable Securities are called "Selling Expenses". The Company will pay all Registration Expenses in connection with each registration statement under Section 6.1. All (i) Selling Expenses, (ii) fees and disbursements of counsel for the sellers of Registrable Securities and (iii) any expenses incurred in complying with Section 6.2, in connection with each such registration statement shall be borne by the participating sellers on a pro rata basis based on the number of Registrable Securities included in such registration statement.

6.5 Indemnification and Contribution.

(a) In the event of a registration of any of the Registrable Securities under the Securities Act pursuant to Section 6.1 or 6.2, to the extent permitted by applicable law, the Company will indemnify and hold harmless each seller of such Registrable Securities thereunder, each underwriter of such Registrable Securities thereunder and each other person, if any, who controls such seller or underwriter within the meaning of Section 15 of the Securities Act, against any losses, claims, damages, actions or liabilities, joint or several, to which such seller, underwriter or controlling person may become subject under the Securities Act or other

applicable Federal or State securities or "blue sky" laws, to the extent that such losses, claims, damages, actions or liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each such seller, each such underwriter and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable, to any such indemnitee if and to the extent that any such loss, claim, damage, action or liability arises out of or is based upon an (i) untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by or on behalf of such indemnitee in writing or (ii) such untrue statement or alleged untrue statement or omission or alleged omission was contained in a preliminary or earlier effective prospectus and corrected in a final or amended prospectus, and such indemnitee failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the buyer of such Registrable Securities; provided, further, that the indemnity agreement contained in this Section 6.5(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld.

(b) In the event of a registration of any of the Registrable Securities under the Securities Act pursuant to Section 6.1 or 6.2, to the extent permitted by applicable law, each seller of such Registrable Securities thereunder, severally and not jointly, will indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, each officer of the Company, each director of the Company, each underwriter and each person who controls any underwriter within the meaning of the Securities Act, against all losses, claims, damages, actions or liabilities, joint or several, to which the Company or such officer, director, underwriter or controlling person may become subject under the Securities Act or other applicable Federal or State securities or "blue sky" laws, to the extent that such losses, claims, damages, actions or liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company and each such officer, director, underwriter and controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that such seller will be liable hereunder in any such case if and only to the extent that any such loss, claim, damage, action or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information pertaining to such seller, as such, furnished in writing to the Company by or on behalf of such seller specifically for use in such registration statement or prospectus; provided, further, that the indemnity agreement contained in this Section 6.5(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such seller, which consent shall not be

unreasonably withheld; provided, that such consent shall not be required if the settlement shall include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(c) Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to such indemnified party other than under this Section 6.5 and shall only relieve it from any liability which it may have to such indemnified party under this Section 6.5 if and to the extent the indemnifying party is prejudiced by such omission. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 6.5 for any legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected; provided, however, that, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have provided the Company with a legal opinion of counsel reasonably satisfactory to the Company and its counsel that there may be reasonable defenses available to it which are different from or additional to those available to the indemnifying party or if the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, the indemnified party shall have the right to select a separate counsel and to assume such legal defenses and otherwise to participate in the defense of such action, with the reasonable expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the indemnifying party as incurred; provided, further, that the Company shall not have any reimbursement obligation for the expenses and fees of more than one such separate counsel for all indemnitees.

(d) In order to provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any Holder of Registrable Securities exercising rights under this Agreement, or any controlling person of any such Holder, makes a claim for indemnification pursuant to this Section 6.5 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 6.5 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any such selling Holder or any such controlling person in circumstances for which indemnification is provided under this Section 6.5; then, and in each such case, the Company and such Holder will contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other, as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to

information and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case, (A) no such Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered by it pursuant to such registration statement; and (B) no person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

6.6 Changes in Common Stock. If, and as often as, there is any change in the Common Stock by way of a stock split, stock dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof so that the rights and privileges granted hereby shall continue with respect to the Common Stock as so changed.

6.7 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may at any time permit the sale of the Registrable Securities to the public without registration, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to each Holder of Registrable Securities forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing such Holder to sell any Registrable Securities without registration.

6.8 Certain Holder Obligations. (a) As a condition to the inclusion of its Registrable Securities in a registration effected pursuant to Section 6.1 or 6.2, the Holders will promptly provide the Company with such information as the Company shall reasonably request in order to prepare the applicable registration statement for such registration, including, but not limited to, information regarding the Holders, the securities of the Company owned beneficially or of record by the Holders, the distribution proposed by the Holders, a customary selling securityholders questionnaire and, upon the Company's request, the Holders shall provide such information in writing and signed by the Holders and stated to be specifically for inclusion in the applicable registrations. In the event that the distribution of the Common Stock covered by the applicable registration statement shall be effected pursuant to an underwritten offering as contemplated by Section 6.2, the inclusion of the Registrable Securities shall be conditioned on the Holders' execution and delivery of a customary underwriting agreement with terms and conditions reasonably satisfactory to the Company with respect thereto.

(b) The Holders shall not take any action with respect to any distribution deemed to be made pursuant to any registration statement pursuant to Section 6.1 or 6.2, which would constitute a violation of Regulation M under the Exchange Act.

(c) If, at the end of the Registration Period, the Holders have Registrable Securities which were included in such registration statement, the Holders shall discontinue sales of such securities pursuant to the registration statement and prospectus upon receipt of notice from the Company of its intention to remove from registration the shares covered by registration statement which remain unsold (as permitted under the provisions of this Section 6), and the Holders shall notify the Company of the number of shares registered which remain unsold promptly upon receipt of such notice from the Company.

(d) The Holders shall have no right to take any action to restrain, enjoin or otherwise delay any registration as a result of any controversy that may arise with respect to the interpretation or implementation of the terms of this Section 6.

(e) The Registrable Securities shall not be transferable in the absence of registration under the Securities Act and any applicable state securities or "blue sky" laws and regulations or an exemption therefrom or in the absence of compliance with any term of the Agreement.

(f) Purchaser hereby covenants with the Company not to make any sale of the Registrable Securities except either (i) a sale of Registrable Securities in accordance with the Registration Statement, in which case the Purchaser covenants to comply with the requirement of delivering a current prospectus, (ii) a sale of Registrable Securities in accordance with Rule 144, in which case the Purchaser covenants to comply with Rule 144 and to deliver such additional certificates and documents as the Company may reasonably request or (iii) in accordance with another exemption from the registration requirements of the Securities Act. The legend set forth in Section 5.5 will be removed from a certificate representing Registrable Securities following and in connection with any sale of Registrable Securities or pursuant to subsection (i) or (ii) hereof but not in connection with any sale of Registrable Securities pursuant to subsection (iii) hereof.

6.9 Termination of Registration Rights. Notwithstanding Section 6.3, the obligations of the Company to register shares of Registrable Securities under Section 6.1 or 6.2 for a Holder of Registrable Securities shall terminate on the date on which such Holder can, in the reasonable opinion of counsel to the Company, sell all shares of its Registrable Securities in a three-month period without registration under the Securities Act pursuant to Rule 144 under the Securities Act.

7. Additional Agreements.

7.1 Short Sales, etc. Purchaser represents and agrees that, during the period from February 1, 2002 through the date of this Agreement, Purchaser and its Affiliates (as hereinafter defined) did not and, from the date hereof until the second anniversary of the date of this Agreement, Purchaser will not, and shall cause its Affiliates not to, execute or effect or cause to be executed or effected any "short sale" (as defined in Rule 3b-3 of the Exchange Act) of Common Stock or any hedging transaction in which the other party to such transaction is reasonably likely to engage in such a short sale as a direct result of such transaction. For the purposes of this Agreement, "Affiliate" shall have the meaning given such term in Rule 12b of the Exchange Act.

7.2 Restriction on Purchase of Common Stock. Until the expiration or termination of the Collaboration Agreement, Purchaser will not, and shall cause its Affiliates not to, purchase or become the beneficial owner of any shares of Common Stock which results in Purchaser and its Affiliates beneficially owning more than nineteen percent (19%) of the issued and outstanding shares of Common Stock; provided, however, that (a) nothing in this Section shall prevent Purchaser and its Affiliates from acquiring Common Stock contemplated by the Transaction Agreements and (b) Purchaser shall not be deemed to violate this Section as a result of any reorganization, recapitalization, stock repurchase, stock combination or other similar transaction effected by the Company with respect to the Common Stock if Purchaser and its Affiliates beneficially owned less than 19% of the issued and outstanding shares of Common Stock before giving effect to such transaction. For the purposes of this Section 7.2, "beneficial ownership" shall be determined in accordance with Rule 13d-3 promulgated under the Exchange Act.

7.3 Restrictions on Sale of Shares.

(a) Until one hundred eighty (180) days after the date of this Agreement, Purchaser will not sell or otherwise transfer the Shares.

(b) If, at any time prior to the third anniversary of the date of this Agreement, Purchaser proposes to sell Shares constituting one percent (1.0%) or more of the outstanding shares of Common Stock, then Purchaser shall first offer to sell such Shares of the Company, and the parties agree to negotiate in good faith to reach an agreement on the purchase price and other terms of the sale of such Shares to the Company. If the parties are not able to reach such an agreement within 30 business days (a business day shall be any day other than a Saturday, Sunday or legal holiday on which banks in New York and Spain are open for the conduct of their banking business), then Purchaser shall be free to proceed with such sale to a third party so long as it complies with any other applicable terms of this Agreement.

(c) Until the expiration or termination of the Collaboration Agreement, Purchaser will not knowingly sell the Shares to a person or entity which actively sells, distributes, markets, develops, or produces a pharmaceutical product which directly competes with the Company. In any event, this subsection (c) shall not prevent Purchaser from selling the Shares in open-market transactions.

(d) The restrictions under this Section shall not be applicable to any transfers of the Shares to any Affiliate of Purchaser, so long as such Affiliate agrees in advance of such transfer in an enforceable written instrument to be bound by all the terms and conditions of this Agreement as if it were Purchaser and a party hereto, which instrument shall be delivered a reasonably practicable time prior to such sale or transfer.

7.4 Voting Agreement. Until the earlier of (i) such time that Purchaser beneficially owns less than 1.5% of the issued and outstanding shares of Common Stock of the Company, and (ii) the completion of the Company's annual meeting of shareholders for the calendar year 2003, at each annual meeting of the shareholders of the Company or in connection with any other meeting or action by written consent in lieu of a meeting of the shareholders of the Company, Purchaser shall vote or act with respect to all shares of Common Stock beneficially owned by it (x) in favor of all persons nominated by the then current Board of

Directors of the Company for election to the Board of Directors of the Company and (y) in accordance with the recommendations of the Board of Directors with respect to any other issue; provided, that this clause (y) shall not apply to any issue that is directly related to the matters which are subject to the Transaction Agreements. The voting agreement contained in this Section 7.4 is irrevocable to the extent permitted by applicable law and is coupled with an interest. Until the earlier of (i) such time that Purchaser beneficially owns less than 2.5% of the issued and outstanding shares of Common Stock of the Company, and (ii) three years after the date of this Agreement, at and in relation to each annual meeting of the shareholders of the Company or in connection with any other meeting or action by written consent in lieu of a meeting of shareholders of the Company, Purchaser will not actively oppose any items referred to in clauses (x) and (y) above.

7.5 Continuation of Certain Restrictions. If at any time prior to the third anniversary of the date of this Agreement, Purchaser transfers Shares in accordance with the provisions of this Agreement, Purchaser shall not effect such transfer unless the transferee agrees in an enforceable written instrument to be bound by the terms and conditions of Sections 7.1, 7.3(c), and 7.4; provided, however, that (i) such transferee shall not be bound to any greater extent as to duration of time or otherwise than Purchaser is bound under such Sections on the date of this Agreement and (ii) this Section 7.5 shall not apply to any transfer by Purchaser to a transferee that will own one-half of one percent (.5%) or less of the Company's outstanding shares of Common Stock after giving effect to such transfer.

8. Miscellaneous.

8.1 Headings. The headings of the sections of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

8.2 Choice of Law; Venue. (a) Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of New York without regard to principles of conflicts of law. In the event that a judicial proceeding is necessary, the sole forum for resolving disputes arising out of or relating to this Agreement is the Supreme Court of the State of New York in and for the County of New York or the Federal Courts for such state and county, and all related appellate courts (collectively, the "New York Courts"). The parties hereby irrevocably and unconditionally consent to the jurisdiction of such courts.

(b) Each of the parties hereby irrevocably and unconditionally consents to venue in the New York Courts, and hereby irrevocably and unconditionally waives any objection to the laying of venue of any judicial proceeding in the New York Courts, and agrees not to plead or claim in any such New York Court that any such judicial proceeding brought in any such court has been brought in an inconvenient forum.

(c) Each of the parties waives the right to a trial by jury in any action under this Agreement or any judicial proceeding arising out of the transactions contemplated hereby, regardless of which party initiates such judicial proceeding.

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

8.4 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Company and Purchaser and their respective successors and assigns, provided that neither the Company nor Purchaser may assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of the other party and any attempted assignment without such consent shall be null and void.

8.5 Amendments. No amendment, modification, waiver, discharge or termination of any provision of this Agreement nor consent to any departure by the Purchasers or the Company therefrom shall in any event be effective unless the same shall be in writing and signed by the party to be charged with enforcement, and then shall be effective only in the specific instance and for the purpose for which given. No course of dealing between the parties hereto shall operate as an amendment of, or a waiver of any right under, this Agreement.

8.6 Severability. The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

8.7 Notices. All notices and other communications provided for hereunder shall be in writing, shall specifically refer to this Agreement, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be deemed to have been sufficiently given for all purposes if (a) mailed by first class certified or registered mail, postage prepaid, (b) sent by nationally recognized overnight courier for next Business Day delivery, (c) personally delivered, or (d) made by telecopy or facsimile transmission with confirmed receipt.

If to Company: Discovery Laboratories, Inc.
350 South Main Street, Suite 307
Doylestown, PA 18901-4874
Attn: President
Facsimile: (215) 340-3940

with a copy to: Roberts, Sheridan & Kotel
The New York Practice of
Dickstein Shapiro's Corporate & Finance Group
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
Attn: Ira L. Kotel
Facsimile: (212) 997-9880

In the case of Buyer: Laboratorios del Dr. Esteve, S.A.
Av. Mare de Deu de Montserrat, 221
08041 Barcelona (Spain)
Attention: Development Director
Facsimile: 34.93.433.00.72

8.8 Waiver. It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

8.9 Other Documents. The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

8.10 Publicity. Except as otherwise required by applicable law or by obligations pursuant to any listing agreement with or rules of any securities exchange or automated quotation system, neither party shall, and shall cause its respective Affiliates not to, not, issue any press release or make any other public statement relating to, connected with or arising out of this Agreement or the matters contained herein without the other parties' prior written approval of the contents and the manner of presentation and publication thereof (which approval shall not be unreasonably withheld or delayed).

8.11 No Third Party Beneficiaries. Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement, except for the Holders of Registrable Securities and certain indemnitees.

8.12 Survival. The representations, warranties, covenants and agreements made herein by the Company and Purchaser shall survive the Closing.

8.13 HSR Filings. Purchaser acknowledges and agrees that if any of the transactions contemplated by this Agreement or any other Transaction Agreement shall require compliance with any applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act"), and the antitrust, competition, foreign investment or similar laws of any foreign countries or supranational commissions or boards that require pre-merger notifications or filings by either the Company or Purchaser, neither party shall have breached in any material respect its obligations under this Agreement if the closing of any such transaction is delayed to allow the parties to comply with any such laws, rules and regulations, and any waiting periods required thereunder, including, but not limited to compliance with any "Second Requests" as provided for, and defined in, the HSR Act.

8.14 Entire Agreement. This Agreement and the other Transaction Agreements embody the entire agreement and understanding between the parties hereto with respect to the subject matter thereof and supersede all prior oral or written agreements and understandings relating to the subject matter thereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Transaction Agreements shall affect, or be

used to interpret, change or restrict, the express terms and provisions of the Transaction Agreements.

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IN WITNESS WHEREOF, Company and Purchaser have caused this Common Stock Purchase Agreement to be executed in their names by their duly authorized officers or representatives effective as of the date first above written.

DISCOVERY LABORATORIES, INC.

By: /s/ Robert J. Capetola

Name: Robert J Capetola, Ph.D.
Title: President and Chief Executive Officer

LABORATORIOS DEL DR. ESTEVE S.A.

By: /s/ Joan Esteve

Name: Mr. Joan Esteve
Title: Vice-President

SCHEDULE 4.6(b)

Options:	
ATI Plan, available & unexercised	157,040
1996 Plan, available & unexercised	58,374
1998 Plan, available & unexercised	3,931,926
Non-Plan, issued & unavailable	120,000
Common Placement Warrants	55,621
Common Placement Warrants	164,911
Preferred B Placement Warrants	654,911
Unit Options	394,959
Common Placement Warrants	348,341
Class C Warrants	56,907
Class E Warrants	580,569
Class F Warrants	712,552
Class G Warrants	357,143
Class H Warrants*	564,706
Other Warrants:	
Leerink Swann	65,000
Shipley Raidy	50,000
	8,272,960

*Includes 244,706 Class H Warrants that may be issued in conjunction with the PharmaBio Development Inc. Class H Warrant Agreement.

[LOGO]
DISCOVERY LABORATORIES, INC.

EXHIBIT 99.1

FOR IMMEDIATE RELEASE:

Company Contact:
John G. Cooper
SVP/CFO
215-340-4699
Info@discoverylabs.com

Investor Contact:
Harvey Goralnick/Brad Meyer
FOCUS Partners LLC
212-752-9445
dsco@focuspartners.com

Discovery Laboratories & Esteve Expand Relationship to Develop and Commercialize Surfaxin(R) in Europe

Doylestown, PA -- March 7, 2002 -- Discovery Laboratories, Inc. (Nasdaq: DSCO), a late-stage specialty pharmaceutical company leveraging its platform technology in humanized lung surfactants to develop potential novel respiratory therapies and pulmonary drug delivery products, today announced a significantly expanded alliance with Laboratorios Del Dr. Esteve S.A ("Esteve") for the development, marketing and sales of Surfaxin throughout Europe, Central America and South America. This expanded collaboration supersedes existing sublicense and supply agreements between Discovery and Esteve in October 1999, which limited the European territory to Southern Europe.

Through the alliance, Esteve will market Surfaxin for respiratory distress syndrome (RDS) in premature infants, meconium aspiration syndrome (MAS) in full term babies, and acute lung injury/acute respiratory distress syndrome (ALI/ARDS) in adults. Currently, Discovery is conducting two phase 3 clinical trials for RDS, a phase 3 trial for MAS and a Phase 2 trial for ARDS. In addition, the new arrangement anticipates an opportunity for Esteve to negotiate licenses for the development and marketing of future Discovery products in the above territories.

The agreement provides for an up-front licensing fee to Discovery of $500,000, a purchase by Esteve of $4 million of Discovery's common stock at $4.867 per share (a 50% premium to the trailing 30 day average determined as of March 4, 2002), and milestone payments to be made to Discovery tied to attaining specific regulatory approvals for Surfaxin. Additionally, Esteve will sponsor clinical trial costs for ALI/ARDS to obtain European Agency for the Evaluation of Medicinal Products (EMEA) approval for marketing in Europe. Under the prior arrangement, Esteve had provided support for Discovery's multinational clinical trials for RDS and MAS in Europe. Discovery retains manufacturing rights and, as part of the collaboration, Esteve has agreed to an exclusive supply agreement, whereby, they will purchase Surfaxin drug product from Discovery. Discovery will receive, as a potential ongoing revenue stream, a transfer price based on sales of Surfaxin by Esteve and/or its sublicensee(s).

- more-

Antoni Esteve, Ph.D., Esteve's Director of Scientific and Commercial Operations, commented, "Esteve is very proud to expand our collaboration with Discovery. Over the last several years, we have increased our confidence in the significant potential of humanized surfactants to improve therapies for the treatment of babies suffering from respiratory disorders, adults suffering from acute respiratory distress syndrome, and the downstream possibility of aerosolized surfactants treating a broader range of respiratory diseases and as a drug delivery platform. Our additional investment in Discovery supports this confidence and gives Esteve the opportunity to broaden our product portfolio for the medical communities we serve."

"We have worked closely with Esteve since 1999 and they have been an excellent partner," said Robert J. Capetola, Ph.D., President and Chief Executive Officer of Discovery. "Expanding our relationship to now include all of Europe was a natural progression for us. Esteve has a superb reputation of marketing innovative pharmaceuticals, and we are pleased to be represented by their professional team to effectively market and distribute Surfaxin to the critical care hospital community. In combination with our recent Quintiles Transnational collaboration, Discovery now has in place the sales and marketing infrastructure to bring Surfaxin to the critical care markets in Europe, the United States and Latin America. Discovery will establish and maintain the global brand strategy for Surfaxin, while our collaborators will be responsible for regional implementation. Our objective is to have a uniform, recognizable Discovery/Surfaxin image visible to the critical care markets throughout the world. Meanwhile, Discovery will record a significant share of the revenues, and in the case of the United States, Discovery should generate margins typical of a fully-integrated specialty pharmaceutical company."

Human lung surfactants are substances naturally present in the lung tissue and are essential to the lungs' ability to absorb oxygen. Discovery's Surfaxin is the first humanized peptide-based surfactant that mimics the human surfactant protein B, considered physiologically the most important of the four major proteins found in human lung surfactants.

RDS in premature infants is a breathing disorder in which the lungs of infants do not stay open due to an insufficient amount of surfactant, which is produced naturally in normally developing infants as their lungs mature. Approximately 270,000 cases of RDS in premature infants occur in the developed world annually. MAS results when a full-term baby inhales meconium, a material produced in the intestine of a full-term baby before birth. Severe respiratory distress is a result and there are currently no approved therapies anywhere in the world. Approximately 60,000 cases of MAS occur in the developed world annually. ALI/ARDS is a life-threatening disorder for which there are currently no approved therapies anywhere in the world. ALI/ARDS is characterized by an excess of fluid in the lungs and decreased oxygen levels in the patient. One prominent characteristic is the destruction of surfactants. These conditions are caused by events such as smoke inhalation, near drowning, industrial accidents and other traumas and illnesses including pneumonia and septic shock. Because there are no approved treatments, the mortality rate can range from 35% to 50%. There are estimated to be between 150,000 and 250,000 ALI/ARDS patients per year in each of the U.S. and Europe. The current standard of care includes placing patients on mechanical ventilators in intensive care units. Surfaxin is intended to re-establish the lung's capacity to absorb oxygen.

About Esteve

Privately owned, Esteve is one of the largest pharmaceutical corporations in Southern Europe. With a turnover of EURO 561 million in 2001, its own products distributed in more than 80 markets worldwide, patents granted in more than 40 countries, and employing more than 2,000 people, it is committed to research and international expansion as a key to its future and continued growth.

About Discovery Laboratories

Discovery Laboratories, Inc. is a specialty pharmaceutical company leveraging its platform technology in humanized lung surfactants to develop potential novel respiratory therapies and pulmonary drug delivery products. Surfaxin, the Company's lead product, is currently in two pivotal Phase 3 multi-national clinical trials for Respiratory Distress Syndrome (RDS) in premature infants, a Phase 3 clinical trial for Meconium Aspiration Syndrome (MAS) in full-term infants, and a Phase 2 clinical trial for Acute Lung Injury/Acute Respiratory Distress Syndrome (ALI/ARDS) in adults. Aerosol formulations of the Company's surfactant technology are being developed in an effort to treat other respiratory conditions, including asthma and chronic obstructive pulmonary disease, and as a novel pulmonary drug delivery vehicle to efficiently deliver drugs to the respiratory tract that are currently delivered orally or by injection. To serve the critical care marketplace, the Company is developing a dedicated sales and marketing capability through a collaboration with Quintiles Transnational Corp for the US, and has a commercialization alliance with Laboratorios Del Dr. Esteve S.A for Europe and Latin America. Interested parties can receive corporate updates by sending their email addresses to dsco@focuspartners.com. More information about Discovery Laboratories is available on the Company's Web site at www.discoverylabs.com.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy any securities of the Company. To the extent that statements in this press release are not strictly historical, including statements as to the Company's business strategy, outlook, objectives, plans intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development, or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this release are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Among the factors which could affect the Company's actual results and could cause results to differ from those contained in the forward-looking statements contained herein are the risk that financial conditions may change, the risk that the Company will not be able to raise additional capital or enter into additional collaboration agreements, risks relating to the progress of the Company's research and development and the development of competing therapies and/or technologies by other companies. Those associated risks and others are further described in the Company's periodic filings with the Securities and Exchange Commission including the most recent reports on Form 10-KSB, 8-K and 10-QSB, and amendments thereto.

Statements in this press release regarding Esteve and Discovery have been made by each respective company and are that company's sole responsibility.

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