

Recro Pharma, Inc.  
Form 424B3  
July 08, 2015

**Filed Pursuant to Rule 424(b)(3)  
Registration Statement No. 333-201841**

**Prospectus Supplement No. 9**

**to Prospectus dated February 26, 2015**

**2,500,000 Shares**

**Common Stock**

This Prospectus Supplement No. 9 supplements and amends our prospectus dated February 26, 2015 (the Prospectus ), relating to the sale, from time to time, of up to 2,500,000 shares of our common stock by Aspire Capital Fund, LLC.

This prospectus supplement is being filed to include the information set forth in our Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2015. This prospectus supplement should be read in conjunction with the Prospectus and any amendments or supplements thereto, which are to be delivered with this prospectus supplement, and is qualified by reference to the Prospectus, except to the extent that the information in this prospectus supplement updates or supersedes the information contained in the Prospectus, including any amendments or supplements thereto.

Our common stock trades on the NASDAQ Capital Market under the ticker symbol REPH. On July 7, 2015, the last reported sale price per share of our common stock was \$13.68 per share.

**Investing in our common stock involves risk. Please read carefully the section entitled Risk Factors beginning on page 8 of the Prospectus.**

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

**The date of this Prospectus Supplement No. 9 is July 8, 2015.**

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): July 1, 2015**

**Recro Pharma, Inc.**

**(Exact name of registrant as specified in its charter)**

<b>Pennsylvania</b> <b>(State or other jurisdiction</b>	<b>001-36329</b> <b>(Commission</b>	<b>26-1523233</b> <b>(I.R.S. Employer</b>
<b>of incorporation or organization)</b>	<b>File Number)</b>	<b>Identification No.)</b>
<b>490 Lapp Road, Malvern, Pennsylvania</b> <b>(Address of principal executive offices)</b>		<b>19355</b> <b>(Zip Code)</b>

**Registrant's telephone number, including area code: (484) 395-2470**

**Not Applicable**

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01. Entry Into a Material Definitive Agreement.**

On July 1, 2015, Recro Pharma, Inc. (the Company ) entered into a Securities Purchase Agreement (the Purchase Agreement ) with certain accredited investors (the Investors ), pursuant to which the Company agreed to issue and sell to the Investors in a private placement (the Private Placement ) an aggregate of 1,379,311 shares (the Shares ) of the Company s common stock, par value \$0.01 per share (the Common Stock ), at a price per share of \$11.60, for gross proceeds of approximately \$16 million. The Private Placement closed on July 7, 2015. The Company retained Jefferies LLC as the lead placement agent and Janney Montgomery Scott LLC, Brean Capital, LLC and MLV & Co. as co-placement agents for the Private Placement and agreed to pay the placement agents a fee equal to 6.0% of the aggregate gross proceeds from the Private Placement, plus reimbursement of certain expenses. The Company intends to use the net proceeds from the Private Placement to further fund the clinical development of the Company s product candidates and for general corporate purposes. The Purchase Agreement requires the Company to file a registration statement with the Securities and Exchange Commission (the Commission ) to register the resale of the Shares within 45 days of the closing of the Private Placement.

The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Purchase Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Purchase Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company s periodic reports and other filings with the Commission.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 3.02. Unregistered Sales of Equity Securities.**

Pursuant to the Private Placement described in Item 1.01 of this Current Report on Form 8-K, which description is incorporated by reference into this Item 3.02 in its entirety, on July 7, 2015, the Company sold the Shares to accredited investors, as that term is defined in the Securities Act of 1933, as amended (the Securities Act ), and in reliance on the exemption from registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act. Each of the Investors represented that it was acquiring the Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Shares have not been registered under the Securities Act and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor any exhibit attached hereto is an offer to sell or the solicitation of an offer to buy shares of Common Stock or other securities of the Company.

**Item 8.01. Other Events.**

On July 1, 2015, the Company issued a press release announcing the Private Placement and the entry into the Purchase Agreement. On July 7, 2015, the Company issued a press release announcing the closing of the Private Placement. Copies of such press releases are attached to this Current Report on Form 8-K as Exhibits 99.1 and 99.2, respectively.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

The following exhibits are filed herewith:

- 10.1 Form of Securities Purchase Agreement, dated July 1, 2015, by and among Recro Pharma, Inc. and the purchasers party thereto.
- 99.1 Press release dated July 1, 2015.
- 99.2 Press release dated July 7, 2015.

**SIGNATURES**

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

Recro Pharma, Inc.

By: /s/ Gerri A. Henwood  
*Name: Gerri A. Henwood*  
*Title: Chief Executive Officer*

Date: July 8, 2015

**EXHIBIT INDEX**

**Exhibit  
No.**

**Document**

- |      |  |
|------|--|
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| 99.1 | Press release dated July 1, 2015.  |
| 99.2 | Press release dated July 7, 2015.  |

## SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (this *Agreement* ), dated as of July 1, 2015, is made by and among **RECRO PHARMA, INC.**, a Pennsylvania corporation (the *Company* ), and the Purchasers listed on **Exhibit A** hereto, together with their permitted transferees (each, a *Purchaser* and collectively, the *Purchasers* ).

### RECITALS:

- A.** The Company and the Purchasers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D as promulgated by the SEC under the Securities Act.
- B.** The Purchasers desire to purchase and the Company desires to sell, upon the terms and conditions stated in this Agreement, up to a maximum of \$16,000,007.60 of Common Stock.
- C.** The capitalized terms used herein and not otherwise defined have the meanings given them in Article 7.

### AGREEMENT

In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Purchasers (severally and not jointly), intending to be legally bound, hereby agree as follows:

### ARTICLE 1

#### PURCHASE AND SALE OF SECURITIES

**1.1 Purchase and Sale of Securities.** At the Closing, the Company will issue and sell to each Purchaser, and each Purchaser will, severally and not jointly, purchase from the Company, the number of shares of Common Stock (the *Shares* ) set forth opposite such Purchaser's name on **Exhibit A** hereto. The Shares to be issued and sold are referred to collectively as the *Securities*. The purchase price for each share of Common Stock shall be \$11.60. Each Purchaser's aggregate purchase price for the Securities purchased by such Purchaser hereunder is referred to as the *Aggregate Purchase Price*.

**1.2 Payment.** At the Closing, each Purchaser will pay the Aggregate Purchase Price set forth opposite its name on **Exhibit A** hereto by wire transfer of immediately available funds in accordance with wire instructions provided by the Company to the Purchasers prior to the Closing. Upon payment in full of the Aggregate Purchase Price to the Company by each Purchaser, the Company will instruct its transfer agent to credit each Purchaser the number of Shares set forth on **Exhibit A** (and, upon request, will deliver stock certificates to the Purchasers representing the Shares) to each applicable Purchaser against delivery of the Aggregate Purchase Price on the Closing Date.

**1.3 Closing Date.** The closing of the transaction contemplated by this Agreement will take place on July 7, 2015 (the *Closing Date* ) and the closing (the *Closing* ) will be held at the offices of Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103-7599, or at such other time and place as shall be agreed upon by the Company and the Purchasers hereunder of a majority in interest of the aggregate Shares.

### ARTICLE 2



**REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as specifically contemplated by this Agreement, the Company hereby represents and warrants to the Purchasers and the Placement Agents that:

**2.1 Organization and Qualification.** Each of the Company and its *Subsidiaries* (which for purposes of this Agreement means any entity (i) in which the Company, directly or indirectly, owns capital stock or holds an equity or similar

interest and (ii) which has operations and material assets) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, as applicable, with full corporate or limited liability company power and authority to conduct its business as currently conducted as disclosed in the SEC Documents. Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not reasonably be expected to have a Material Adverse Effect.

**2.2 Authorization; Enforcement.** The Company has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement, to consummate the transactions contemplated hereby and to issue the Securities in accordance with the terms hereof. The execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby (including the issuance of the Securities) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its shareholders is required. This Agreement has been duly executed by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws.

**2.3 Capitalization.** The authorized capital stock of the Company, as of March 31, 2015, consisted of 50,000,000 shares of Common Stock, \$0.01 par value per share, of which 7,804,063 shares were issued and outstanding and 10,000,000 shares of Preferred Stock, \$0.01 par value per share, none of which have been designated. All of the issued and outstanding shares of Common Stock have been duly authorized, validly issued, fully paid, and nonassessable. Options to purchase an aggregate of 1,033,300 shares of Common Stock were outstanding as of March 31, 2015. Except as disclosed in or contemplated by the SEC Documents, neither the Company nor any of its Subsidiaries have any outstanding any options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of its capital stock or any such options, rights, convertible securities or obligations other than options granted under the Company's stock option plans and its employee stock purchase plan. The Company's Second Amended and Restated Certificate of Incorporation, as amended (the *Certificate of Incorporation*), as in effect on the date hereof, and the Company's Third Amended and Restated Bylaws (the *Bylaws*) as in effect on the date hereof, are each filed as exhibits to the SEC Documents.

**2.4 Issuance of Securities.** The Shares are duly authorized and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable and will not be subject to preemptive rights or other similar contractual rights granted by the Company to its shareholders.

**2.5 No Conflicts; Government Consents and Permits.**

(a) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby (including the issuance of the Securities) will not (i) conflict with or result in a violation of any provision of the Certificate of Incorporation or Bylaws of the Company or any of its Subsidiaries or require the approval of the Company's shareholders, (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default under, any Material Agreement, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including United States federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or any of its Subsidiaries or their securities are subject) applicable to the Company or any of its Subsidiaries, except in the case of clauses (ii) and (iii) only, for such conflicts, breaches, defaults, and violations as would not reasonably be expected to have a Material Adverse Effect.

**(b)** Neither the Company nor any of its Subsidiaries is required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement in accordance with the terms hereof, or to issue and sell the Securities in accordance with the terms hereof other than such as have been made or obtained,

and except for the registration of the Shares under the Securities Act pursuant to Section 6 hereof, any filings required to be made under federal or state securities laws, and any required filings or notifications regarding the issuance or listing of additional shares with Nasdaq.

(c) Each of the Company and its Subsidiaries has all franchises, permits, licenses, and any similar authority issued by the appropriate federal, state, local or foreign regulatory authority necessary for the conduct of its business as now being conducted by it and as currently proposed to be conducted as disclosed in the SEC Documents, except for such franchise, permit, license or similar authority, the lack of which would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 2.5(c), neither the Company nor any of its Subsidiaries has received any actual notice of any proceeding relating to revocation or modification of any such franchise, permit, license, or similar authority except where such revocation or modification would not reasonably be expected to have a Material Adverse Effect.

**2.6 SEC Documents, Financial Statements.** The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC, pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits) incorporated by reference therein, being hereinafter referred to herein as the *SEC Documents* ). The Company is eligible to register its Common Stock for resale using Form S-3 promulgated under the Securities Act. The Company has delivered to each Purchaser, or each Purchaser has had access to, true and complete copies of the SEC Documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates, the Financial Statements and the related notes complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. The Financial Statements and the related notes have been prepared in accordance with accounting principles generally accepted in the United States, consistently applied, during the periods involved (except (i) as may be otherwise indicated in the Financial Statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements or may conform to the SEC's rules and instructions for Reports on Form 10-Q) and fairly present in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments). The pro forma financial statements (including the related notes), as filed on June 26, 2015, comply in all material respects with the applicable requirements under the Securities Act and the Exchange Act, including, but not limited to, Article 11 of Regulation S-X, and, in the opinion of the Company, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. All material agreements that were required to be filed as exhibits to the SEC Documents under Item 601 of Regulation S-K (collectively, the *Material Agreements* ) to which the Company or any Subsidiary of the Company is a party, or the property or assets of the Company or any Subsidiary of the Company are subject, have been filed as exhibits to the SEC Documents. All Material Agreements are valid and enforceable against the Company in accordance with their respective terms, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting creditors and contracting parties' rights generally, and (ii) as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws. The Company is not in breach of or default under any of the Material Agreements, and to the Company's knowledge, no other party to a Material Agreement is in breach of or default under such Material Agreement, except in each case, for such breaches or defaults as would not reasonably be expected to have a Material Adverse Effect. The Company has not received a written notice of termination nor is the Company otherwise aware of any threats to terminate any of the Material Agreements.

**2.7 Disclosure Controls and Procedures.** Except as disclosed in the SEC Documents, each of the Company and its Subsidiaries has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) that are effective in all material respects to ensure that material information relating to the Company, including any consolidated Subsidiaries, is made known to its chief executive officer and chief financial officer by others within those entities. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure

controls and procedures as of the end of the period covered by the most recently filed quarterly or annual periodic report under the Exchange Act (such date, the *Evaluation Date* ). The Company presented in its most recently filed quarterly or annual periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f)).

**2.8 Accounting Controls.** Except as disclosed in the SEC Documents, each of the Company and its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

**2.9 Absence of Litigation.** Except as set forth on Schedule 2.9, as of the date hereof, there is no action, suit, proceeding or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries that if determined adversely to the Company would reasonably be expected to have a Material Adverse Effect or would reasonably be expected to impair the ability of the Company to perform its obligations under this Agreement. Neither the Company, its Subsidiaries, nor any director or officer thereof, is or has been the subject of any action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty relating to the Company. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC of the Company or any current or former director or officer of the Company. The Company has not received any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act and, to the Company's knowledge, the SEC has not issued any such order.

**2.10 Intellectual Property Rights.** The Company owns or possesses, or has a reasonable basis on which it believes it can obtain on reasonable terms, licenses or sufficient rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights necessary to enable it to conduct its business as conducted as of the date hereof and, to its knowledge, as proposed to be conducted as described in the SEC Documents. As used in this Agreement, the *Intellectual Property* means all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights necessary to enable the Company to conduct its business as conducted as of the date hereof and, to its knowledge, as proposed to be conducted as described in the SEC Documents. To the Company's knowledge, the Company has not infringed the intellectual property rights of third parties and, except as set forth on Schedule 2.10, no third party, to the Company's knowledge, is infringing the Intellectual Property, in each case, which could reasonably be expected to result in a Material Adverse Effect. Except as disclosed in the SEC Documents or as set forth on Schedule 2.10, there are no material options, licenses or agreements relating to the Intellectual Property, nor is the Company bound by or a party to any material options, licenses or agreements relating to the patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names or copyrights of any other Person. Except as set forth on Schedule 2.10, there is no material claim or action or proceeding pending or, to the Company's knowledge, threatened that challenges any of the rights of the Company in or to, or otherwise with respect to, any Intellectual Property that if determined adversely would reasonably be expected to result in a Material Adverse Effect.

**2.11 Placement Agents.** The Company has not engaged any placement agent or other agent in connection with the sale of the Securities, which engagement would give rise to any claim by any Person for brokerage commissions,

placement agents' fees or similar payments relating to this Agreement or the transactions contemplated hereby, except for dealings with the Placement Agents, whose commissions and fees will be paid by the Company.

**2.12 Investment Company.** The Company is not and, after giving effect to the offering and sale of the Securities, will not be required to register as an investment company as such term is defined in the Investment Company Act of 1940, as amended (the *Investment Company Act*). The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act.

**2.13 No Material Adverse Change.** Since March 31, 2015, except as described or referred to in the SEC Documents and except for cash expenditures in the ordinary course of business, there has not been any change in the assets, business, properties, financial condition or results of operations of the Company or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect. Since March 31, 2015, (i) there has not been any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, (ii) the Company has not sustained any material loss or interference with the Company's business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, and (iii) the Company has not incurred any material liabilities except in the ordinary course of business, as disclosed in the SEC Documents or that would not reasonably be expected to have a Material Adverse Effect.

**2.14 The Nasdaq Capital Market.** The Common Stock is listed on The Nasdaq Capital Market, and, except as disclosed in the SEC Documents, to the Company's knowledge, there are no proceedings to revoke or suspend such listing or the listing of the Shares. Except as disclosed in the SEC Documents, the Company is in compliance with the requirements of Nasdaq for continued listing of the Common Stock thereon and any other Nasdaq listing and maintenance requirements.

**2.15 Acknowledgment Regarding Purchasers' Purchase of Securities.** The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity with respect to the Company) with respect to this Agreement and the transactions contemplated hereby and any advice given by any Purchaser or any of their respective representatives or agents to the Company in connection with this Agreement and the transactions contemplated hereby is merely incidental to such Purchaser's purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement has been based on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

**2.16 Accountants.** KPMG LLP, who will have expressed or will express, as the case may be, their opinion with respect to the audited financial statements and schedules to be included as a part of any Registration Statement prior to the filing of any such Registration Statement, are independent accountants as required by the Securities Act. PricewaterhouseCoopers LLP, which has expressed its opinion with respect to the financial statements of DARA and its subsidiaries, are independent accountants as required by the Securities Act.

**2.17 Insurance.** The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary for a company (i) in the businesses and location in which the Company and its Subsidiaries are engaged, (ii) with the resources of the Company and its Subsidiaries, and (iii) at a similar stage of development as the Company. Neither the Company nor its Subsidiaries have received any written notice that they will not be able to renew their existing insurance coverage as and when such coverage expires.

**2.18 Foreign Corrupt Practices.** Since the Company's incorporation, neither the Company, nor any of its Subsidiaries, nor to the Company's knowledge, any director, officer, agent, employee or other Person acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of in any material respect any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.



**2.19 Sanctions.** Neither the Company nor any of its Subsidiaries, directors or officers, nor, to the knowledge of the Company, any other employee, agent, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. Government,

(including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State and including, without limitation, the designation as a specially designated national or blocked person), the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, *Sanctions*), nor is the Company, any of its Subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Burma (Myanmar), Iran, North Korea, Sudan and Syria (each, a *Sanctioned Country*); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

**2.20 Compliance with Anti-Money Laundering Laws.** The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its Subsidiaries conducts business, the applicable rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental or regulatory agency having jurisdiction over the Company or any of its Subsidiaries (collectively, the *Anti-Money Laundering Laws*) and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

**2.21 Private Placement.** Neither the Company nor any of its Subsidiaries or any affiliates, nor any Person acting on its or their behalf, has, directly or indirectly, at any time within the past six months made any offers or sales of any security or solicited any offers to buy any security, under any circumstances that would require registration of the Securities under the Securities Act. Assuming the accuracy of the representations and warranties of the Purchasers contained in Article 3 hereof, the issuance of the Securities is exempt from registration under the Securities Act.

**2.22 No Registration Rights.** No Person has the right to (i) prohibit the Company from filing a Registration Statement or (ii) other than as disclosed in the SEC Documents, require the Company to register any securities for sale under the Securities Act by reason of the filing of a Registration Statement except in the case of clause (ii) for rights which have been properly waived. The granting and performance of the registration rights under this Agreement will not violate or conflict with, or result in a breach of any provision of, or constitute a default under, any agreement, indenture, or instrument to which the Company is a party.

**2.23 Taxes.** Each of the Company and its Subsidiaries has filed (or has obtained an extension of time within which to file) all necessary federal, state and foreign income and franchise tax returns and has paid all taxes that are material in amount shown as due on such tax returns, except where the failure to so file or the failure to so pay would not reasonably be expected to have a Material Adverse Effect or that are being contested in good faith.

**2.24 Real and Personal Property.** Each of the Company and its Subsidiaries has good and marketable title to, or has valid rights to lease or otherwise use, all items of real and personal property that are material to the business of the Company and its Subsidiaries free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use of such property by the Company or its Subsidiaries or (ii) would not reasonably be expected to have a Material Adverse Effect.

**2.25 Application of Takeover Protections.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not impose any restriction on any Purchaser, or create in any party (including any current shareholder of the Company) any rights, under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement), or other similar anti-takeover provisions under the Company's charter documents or the laws of its state of incorporation.

**2.26 No Manipulation of Stock.** The Company has not taken, nor will it take, directly or indirectly any action designed to stabilize or manipulate the price of the Common Stock or any security of the Company to facilitate the sale or resale of any of the Shares.

**2.27 Related Party Transactions.** Except with respect to the transactions (i) that are not required to be disclosed and (ii) contemplated hereby to the extent an affiliate of any director purchases Securities hereunder, all transactions that have occurred between or among the Company or any of its Subsidiaries, on the one hand, and any of their respective officers or directors, or any affiliate or affiliates of any such officer or director, on the other hand, prior to the date hereof have been disclosed in the SEC Documents.

**2.28 Use of Proceeds.** The Company shall use the net proceeds of the sale of the Securities hereunder for research and development of the Company's product candidates, working capital and general corporate purposes.

### ARTICLE 3

#### PURCHASER'S REPRESENTATIONS AND WARRANTIES

Each Purchaser represents and warrants to the Company and the Placement Agents, with respect to itself and its purchase hereunder and not for any other Purchaser, that:

**3.1 Investment Purpose.** The Purchaser is purchasing the Securities for its own account and not with a present view toward the public sale or distribution thereof and has no intention of selling or distributing any of such Securities or any arrangement or understanding with any other Persons regarding the sale or distribution of such Securities except in accordance with the provisions of Article 6 and except as would not result in a violation of the Securities Act. The 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 Securities except in accordance with the provisions of Article 6 or pursuant to and in accordance with the Securities Act.

**3.2 Information.** The Purchaser has been furnished with all relevant materials relating to the business, finances and operations of the Company necessary to make an investment decision, and materials relating to the offer and sale of the Securities, that have been requested by the Purchaser, including, without limitation, the Company's SEC Documents, and the Purchaser has had the opportunity to review the SEC Documents. The Purchaser has been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the SEC Documents and the Company's representations and warranties contained in the Agreement.

#### **3.3 Acknowledgement of Risk.**

(a) The Purchaser acknowledges and understands that its investment in the Securities involves a significant degree of risk, including, without limitation, (i) the Company remains a development stage business with limited operating history and requires substantial funds in addition to the proceeds from the sale of the Securities; (ii) an investment in the Company is speculative, and only Purchasers who can afford the loss of their entire investment should consider investing in the Company and the Securities; (iii) the Purchaser may not be able to liquidate its investment; (iv) transferability of the Securities is extremely limited; (v) in the event of a disposition of the Securities, the Purchaser could sustain the loss of its entire investment; and (vi) the Company has not paid any dividends on its Common Stock since inception and does not anticipate the payment of dividends in the foreseeable future. Such risks are more fully set forth in the SEC Documents;



(b) The Purchaser is able to bear the economic risk of holding the Securities for an indefinite period, and has knowledge, sophistication and experience in financial and business matters such that it is capable of evaluating the risks of the investment in the Securities and has independently evaluated the merits and risks of such investment; and

(c) The Purchaser has, in connection with the Purchaser's decision to purchase Securities, not relied upon any representations or other information (whether oral or written) other than as set forth in the representations and warranties of the Company contained herein and the information disclosed in the SEC Documents, and the Purchaser has, with respect to all matters relating to this Agreement and the offer and sale of the Securities, relied solely upon the advice of such Purchaser's own counsel and has not relied upon or consulted any counsel to the Placement Agents or counsel to the Company.

**3.4 Governmental Review.** The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities or an investment therein.

**3.5 Transfer or Resale.** The Purchaser understands that:

(a) the Securities have not been and are not being registered under the Securities Act (other than as contemplated in Article 6) or any applicable state securities laws and, consequently, the Purchaser may have to bear the risk of owning the Securities for an indefinite period of time because the Securities may not be transferred unless (i) the resale of the Securities is registered pursuant to an effective registration statement under the Securities Act, as contemplated in Article 6; (ii) the Purchaser has delivered to the Company an opinion of counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) acceptable to the Company to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration; or (iii) the Securities are sold or transferred pursuant to Rule 144;

(b) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and

(c) except as set forth in Article 6, neither the Company nor any other Person is under any obligation to register the resale of the Shares under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

**3.6 Legends.**

(a) The Purchaser understands the certificates representing the Securities will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS, OR UNLESS OFFERED, SOLD, PLEDGED, HYPOTHECATED OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS. THE COMPANY SHALL BE ENTITLED TO REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED TO THE EXTENT THAT SUCH OPINION IS REQUIRED PURSUANT TO THAT CERTAIN

SECURITIES PURCHASE AGREEMENT UNDER WHICH THE SECURITIES WERE ISSUED.

(b) To the extent the resale of the Shares is registered under the Securities Act pursuant to an effective Registration Statement, the Company agrees to promptly (i) authorize the removal of the legend set forth in Section 3.6(a) and any other legend not required by applicable law from such Shares and (ii) cause its transfer agent to issue such Shares without such legends to the holders thereof by electronic delivery at the applicable balance account at the Depository Trust Company upon surrender of any stock certificates evidencing such Shares. With respect to any Shares for which restrictive legends are removed pursuant to this Section 3.6(b), the holder thereof agrees to only sell such Shares when and as permitted by the effective Registration Statement covering such resale and in accordance with applicable securities laws and regulations. Any fees (with respect to the Company's transfer agent, counsel or otherwise) associated with the removal of such legend(s) shall be borne by the Company.

(c) The Purchaser may request that the Company remove, and the Company agrees to authorize the removal of any legend from the Shares (i) following any sale of such Shares pursuant to Rule 144, or (ii) if such Shares are eligible for sale under Rule 144 following the expiration of the one-year holding requirement under subparagraphs (b)(1)(i) and (d) thereof; provided that, in each case, the Holder thereof provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company to the effect that the Securities can be sold under Rule 144. Following the time a legend is no longer required for the Shares under this Section 3.6(c), the Company will, no later than three Business Days following the delivery by a Purchaser to the Company or the Company's transfer agent of a legended certificate representing such securities, deliver or cause to be delivered to such Purchaser a certificate representing such securities that is free from all restrictive and other legends.

**3.7 Organization; Authorization; Enforcement.** The Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, partnership or other power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The Purchaser has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws.

**3.8 Residency.** Unless Purchaser has otherwise notified the Company in writing, the Purchaser is a resident of the jurisdiction set forth immediately below such Purchaser's name on the signature pages hereto.

### **3.9 Acknowledgements Regarding Placement Agents.**

(a) The Purchaser acknowledges that the Placement Agents are acting as Placement Agents on a "best efforts" basis for the Securities being offered hereby and will be compensated by the Company for acting in such capacity. The Purchaser represents that (i) the Purchaser was contacted regarding the sale of the Securities by a Placement Agent or the Company (or an authorized agent or representative thereof) with whom the Purchaser entered into a verbal or written confidentiality agreement; and (ii) no Securities were offered or sold to it by means of any form of general solicitation or general advertising as such terms are used in Regulation D of the Securities Act.

(b) The Purchaser represents that it is making this investment based on the results of its own due diligence investigation of the Company, and has not relied on any information or advice furnished by or on behalf of the Placement Agents in connection with the transactions contemplated hereby. The Purchaser acknowledges that the Placement Agents have not made, and will not make, any representations and warranties with respect to the Company or the transactions contemplated hereby, and the Purchaser will not rely on any statements made by the Placement Agents, orally or in writing, to the contrary.



**3.10 Investor Status.** At the time the Purchaser was offered the Securities, it was, and at the date hereof, it is, an accredited investor as defined in Rule 501(a) under the Securities Act or a qualified institutional buyer as defined in Rule 144A(a) under the Securities Act. The Purchaser is not a registered broker dealer under Section 15(a) of the Exchange Act, or a member of the Financial Industry Regulatory Authority or an entity engaged in the business of being a broker dealer.

**3.11 No Disqualification Events.** Neither the Purchaser or its affiliates nor any of their officers, directors, employees, partners, members or managers is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act, except for a disqualification covered by Rule 506(d)(2) under the Securities Act for which a description of which has been furnished in writing to the Company prior to the date hereof.

**3.12 Certain Trading Activities.** Other than with respect to the transactions contemplated herein, since the time that the Purchaser was first contacted by the Company or any other Person regarding the transactions contemplated hereby, neither the Purchaser nor any Affiliate of the Purchaser which (x) had knowledge of the transactions contemplated hereby, (y) has or shares discretion relating to the Purchaser's investments or trading or information concerning the Purchaser's investments, including in respect of the Securities, and (z) is subject to the Purchaser's review or input concerning such Affiliate's investments or trading (collectively, *Trading Affiliates*) has directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with the Purchaser or Trading Affiliate, effected or agreed to effect any purchases or sales of the securities of the Company (including, without limitation, any Short Sales involving the Company's securities). Notwithstanding the foregoing, in the case of the Purchaser or any Trading Affiliate that is, individually or collectively, a multi-managed investment bank or vehicle whereby separate portfolio managers manage separate portions of the Purchaser's or Trading Affiliate's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of the Purchaser's or Trading Affiliate's assets, the representation set forth above shall apply only with respect to the portion of assets managed by the portfolio managers that have knowledge about the financing transaction contemplated by this Agreement. Other than to other Persons party to this Agreement, the Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect short sales or similar transactions in the future. The Purchaser is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of Common Stock and other activities with respect to the Common Stock by the Purchaser.

## ARTICLE 4

### COVENANTS

**4.1 Reporting Status.** The Company's Common Stock is registered under Section 12 of the Exchange Act. During the Registration Period, the Company will timely file all documents with the SEC, and the Company will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination.

**4.2 Expenses.** The Company and each Purchaser is liable for, and will pay, its own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, including, without limitation, attorneys and consultants' fees and expenses.

**4.3 Financial Information.** The financial statements of the Company and its consolidated Subsidiaries to be included in any documents filed with the SEC will be prepared in accordance with accounting principles generally accepted in the United States, consistently applied (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements or may conform to the SEC's rules and instructions for Reports on Form 10-Q), and will fairly present in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments).



**4.4 Securities Laws Disclosure; Publicity.** On the date hereof, the Company shall issue a press release announcing the signing of this Agreement and describing the terms of the transactions contemplated by this Agreement. On or before July 8, 2015, the Company shall file a Current Report on Form 8-K with the SEC describing the terms of the transactions contemplated by this Agreement and including as an exhibit to such Current Report on Form 8-K this Agreement, in the form required by the Exchange Act. From and after the issuance of the press release, no Purchaser shall be in possession of any material, non-public information received from the Company or any of its officers, directors, employees or agents, that is not disclosed in the press release or Form 8-K. The Company shall not otherwise publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the SEC (other than in a Registration Statement and any exhibits to filings made in respect of this transaction in accordance with periodic filing requirements under the Exchange Act) or any regulatory agency, without the prior written consent of such Purchaser, except to the extent such disclosure is required by law or regulations.

**4.5 Sales by Purchasers.** Each Purchaser will sell any Securities in compliance with applicable prospectus delivery requirements, if any, or otherwise in compliance with the requirements for an exemption from registration under the Securities Act and the rules and regulations promulgated thereunder. No Purchaser will make any sale, transfer or other disposition of the Securities in violation of federal or state securities laws.

**4.6 Form D.** The Company agrees to file a Form D with respect to the Shares as required under Regulation D and to provide a copy thereof to each Subscriber upon request promptly after such filing.

## ARTICLE 5

### CONDITIONS TO CLOSING

**5.1 Conditions to Obligations of the Company.** The Company's obligation to complete the purchase and sale of the Securities and deliver such stock certificate(s) to each Purchaser is subject to the waiver by the Company or fulfillment as of the Closing Date of the following conditions:

**(a) Receipt of Funds.** The Company shall have received immediately available funds in the full amount of the Aggregate Purchase Price for the Securities being purchased hereunder as set forth opposite such Purchaser's name on **Exhibit A** hereto.

**(b) Representations and Warranties.** The representations and warranties made by each Purchaser in Article 3 shall be true and correct in all material respects as of the Closing Date.

**(c) Covenants.** All covenants, agreements and conditions contained in this Agreement to be performed by the Purchasers on or prior to the Closing Date shall have been performed or complied with in all material respects.

**(d) Blue Sky.** The Company shall have obtained all necessary blue sky law permits and qualifications, or secured exemptions therefrom, required by any state for the offer and sale of the Securities.

**(e) Nasdaq Qualification.** The Shares to be issued shall be duly authorized for listing by Nasdaq, subject to official notice of issuance, to the extent required by the rules of Nasdaq.

**(f) Absence of Litigation.** No proceeding challenging this Agreement or the transactions contemplated hereby, or seeking to prohibit, alter, prevent or materially delay the Closing, shall have been instituted or be pending before any court, arbitrator, governmental body, agency or official.

**(g) No Governmental Prohibition.** The sale of the Securities by the Company shall not be prohibited by any law or governmental order or regulation.



**5.2 Conditions to Purchasers Obligations at the Closing.** Each Purchaser's obligation to complete the purchase and sale of the Securities is subject to the waiver by such Purchaser or fulfillment as of the Closing Date of the following conditions:

(a) **Representations and Warranties.** The representations and warranties made by the Company in Article 2 shall be true and correct in all material respects as of the Closing Date.

(b) **Covenants.** All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects.

(c) **Blue Sky.** The Company shall have obtained all necessary blue sky law permits and qualifications, or secured exemptions therefrom, required by any state or foreign or other jurisdiction for the offer and sale of the Securities.

(d) **Legal Opinion.** The Company shall have delivered to such Purchaser an opinion, dated as of the Closing Date, from Ballard Spahr LLP, counsel to the Company, in substantially the form attached hereto as **Exhibit B** hereto.

(e) **Transfer Agent Instructions.** The Company shall have delivered to its transfer agent irrevocable instructions to issue to such Purchaser or in such nominee name(s) as designated by such Purchaser in writing such number of Shares set forth opposite such Purchaser's name on **Exhibit A** hereto or, if requested by the Purchaser, one or more certificates representing such Shares set forth opposite such Purchaser's name on **Exhibit A** hereto.

(f) **Nasdaq Qualification.** The Shares shall be duly authorized for listing by Nasdaq, subject to official notice of issuance, to the extent required by the rules of Nasdaq.

(g) **Absence of Litigation.** No proceeding challenging this Agreement or the transactions contemplated hereby, or seeking to prohibit, alter, prevent or materially delay the Closing, shall have been instituted or be pending before any court, arbitrator, governmental body, agency or official.

(h) **No Governmental Prohibition.** The sale of the Securities by the Company shall not be prohibited by any law or governmental order or regulation.

## ARTICLE 6

### REGISTRATION RIGHTS

**6.1** As soon as reasonably practicable, but in no event later than 45 days after the Closing Date (the **Filing Date**), the Company shall file a registration statement covering the resale of the Registrable Securities with the SEC for an offering to be made on a continuous basis pursuant to Rule 415, or if Rule 415 is not available for offers and sales of the Registrable Securities, by such other means of distribution of Registrable Securities as the Holders of a majority of the Registrable Securities may reasonably specify (the **Initial Registration Statement**). The Initial Registration Statement shall be on Form S-3 (except if the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) and the Company shall effect the registration, qualifications or compliances (including, without limitation, the execution of any required undertaking to file post-effective amendments, appropriate qualifications or exemptions under applicable blue sky or other state securities laws and appropriate compliance with applicable securities laws, requirements or regulations) as promptly as possible after the filing thereof, but in any event prior to the date which is 75 days in the event of no review by the SEC, or 120 days in the event of a review by the SEC, after the Closing Date. For purposes of clarification, any failure by the Company to file the Initial Registration Statement by the Filing Date or to effect such Registration Statement within such 75 or 120 days, as applicable, after the Closing Date shall not otherwise relieve the Company of its obligations to file or effect the Initial Registration Statement as set forth above in this Section 6.1. In the event the

SEC informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company

agrees to promptly (i) inform each of the Holders thereof, (ii) use its reasonable efforts to file amendments to the Initial Registration Statement as required by the SEC and/or (iii) withdraw the Initial Registration Statement and file a new registration statement (a **New Registration Statement**), in either case covering the maximum number of Registrable Securities permitted to be registered by the SEC, on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale the Registrable Securities as a secondary offering. In the event the Company amends the Initial Registration Statement or files a New Registration Statement, as the case may be, under clauses (ii) or (iii) above, the Company will use its reasonable efforts to file with the SEC, as promptly as allowed by the SEC, one or more registration statements on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the **Remainder Registration Statements**). Notwithstanding any other provision of this Agreement and subject to the payment of damages in Section 6.3, if the SEC limits the number of Registrable Securities permitted to be registered on a particular Registration Statement, any required cutback of Registrable Securities shall be applied to the Purchasers pro rata in accordance with the number of such Registrable Securities sought to be included in such Registration Statement by reference to the amount of Registrable Securities set forth opposite such Purchaser's name on **Exhibit A** (and in the case of a subsequent transfer, the initial Purchaser's transferee) relative to the aggregate amount of all Registrable Securities.

**6.2** All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 6.1 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of Holders shall be borne by such Holders pro rata on the basis of the number of securities so registered.

**6.3** The Company further agrees that, in the event that (i) the Initial Registration Statement has not been filed with the SEC within 45 days after the Closing Date, (ii) the Initial Registration Statement or the New Registration Statement, as applicable, has not been declared effective by the SEC (a) within 75 days after the Closing Date (in the event of a no-review by the SEC), or (b) within 120 days after the Closing Date (in the event of a review by the SEC), or (iii) after such Registration Statement is declared effective by the SEC, such Registration Statement is suspended by the Company or ceases to remain continuously effective as to all Registrable Securities for which it is required to be effective, other than, in each case, within the time period(s) permitted by Section 6.7(b) (each such event referred to in clauses (i), (ii) and (iii), (a **Registration Default**)), for all or part of any thirty-day period (a **Penalty Period**) during which the Registration Default remains uncured (which initial thirty-day period shall commence on the fifth Business Day after the date of such Registration Default if such Registration Default has not been cured by such date), the Company shall pay to each Purchaser 1.0% of the purchase price paid by such Purchaser for the number of Shares then held by such Purchaser for each Penalty Period during which the Registration Default remains uncured; *provided, however*, that if a Purchaser fails to provide the Company with any information that is required to be provided in such Registration Statement with respect to such Purchaser as set forth herein, then the commencement of the Penalty Period described above shall be extended until two Business Days following the date of receipt by the Company of such required information; *and provided, further*, that in no event shall the Company be required hereunder to pay to any Purchaser pursuant to this Agreement more than 1.0% of such Purchaser's Aggregate Purchase Price of his or her securities in any Penalty Period and in no event shall the Company be required hereunder to pay to any Purchaser pursuant to this Agreement an aggregate amount that exceeds 10.0% of the Aggregate Purchase Price paid by such Purchaser for such Purchaser's Securities. The Company shall deliver said cash payment to the Purchaser by the fifth Business Day after the end of such Penalty Period. If the Company fails to pay said cash payment to the Purchasers in full by the fifth Business Day after the end of such Penalty Period, the Company will pay interest thereon at a rate of 12% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Purchasers, accruing daily from the date such liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. Notwithstanding the foregoing, in the event a Registration Default occurs pursuant to clause (iii) hereof, the 1.0% of liquidated damages referred to above for any Penalty Period shall be reduced to equal the percentage determined by multiplying 1.0% by a fraction, the numerator of which shall be the number of Registrable Securities



covered by the Registration Statement that is suspended by the Company or ceases to remain continuously effective as to all Registrable Securities for which it is required to be effective which are still Registrable Securities at such time and for which there is not otherwise an effective Registration Statement at such time and the denominator of which shall be the number of Registrable Securities at such time.

**6.4** In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform each Holder as to the status of such registration, qualification, exemption and compliance. During the Registration Period, at its expense, the Company shall:

(a) except for such times as the Company is permitted hereunder to suspend the use of the prospectus forming part of a Registration Statement, use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which the Company determines to obtain, continuously effective with respect to a Holder, and to keep the applicable Registration Statement free of any material misstatements or omissions, until the earlier of the following: (i) the third anniversary of the Closing Date or (ii) the date all Shares held by such Holder may be sold under Rule 144 without being subject to any volume, manner of sale or publicly available information requirements. The period of time during which the Company is required hereunder to keep a Registration Statement effective is referred to herein as the **Registration Period**.

(b) advise the Holders within five Business Days:

(i) when a Registration Statement or any amendment thereto has been filed with the SEC and when such Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to any Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading;

(c) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as soon as reasonably practicable;

(d) if a Holder so requests in writing, promptly furnish to each such Holder, without charge, at least one copy of each Registration Statement and each post-effective amendment thereto, including financial statements and schedules, and, if explicitly requested, all exhibits in the form filed with the SEC;

(e) promptly deliver to each such Holder, without charge, as many copies of each prospectus included in a Registration Statement and any amendment or supplement thereto as such Holder may reasonably request in writing; and the Company consents to the use, consistent with the provisions hereof, of the prospectus or any amendment or supplement thereto by each of the selling Holders of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by a prospectus or any amendment or supplement thereto;

(f) if a Holder so requests in writing, deliver to each Holder, without charge, (i) one copy of the following documents, other than those documents available via EDGAR: (A) its annual report to its shareholders, if any (which annual report shall contain financial statements audited in accordance with generally accepted accounting principles in the United States of America by a firm of certified public accountants of recognized standing), (B) if not included in

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substance in its annual report to shareholders, its annual report on Form 10-K (or similar form), (C) its definitive proxy statement with respect to its annual meeting of shareholders, (D) each of its quarterly reports to its shareholders, and, if not included in substance in its quarterly reports to shareholders, its quarterly report on Form 10-Q (or similar form), and (E) a copy of each full Registration Statement (the foregoing, in each case, excluding exhibits); and (ii) if explicitly requested, all exhibits excluded by the parenthetical to the immediately preceding clause (E);

(g) prior to any public offering of Registrable Securities pursuant to any Registration Statement, promptly take such actions as may be necessary to register or qualify or obtain an exemption for offer and sale under the securities or blue sky laws of such United States jurisdictions as any such Holders reasonably request in writing, provided 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, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by any such Registration Statement;

(h) upon the occurrence of any event contemplated by Section 6.4(b)(v) above, except for such times as the Company is permitted hereunder to suspend the use of a prospectus forming part of a Registration Statement, the Company shall use its commercially reasonable efforts to as soon as reasonably practicable prepare a post-effective amendment to such Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC which could affect the sale of the Registrable Securities;

(j) use its commercially reasonable efforts to cause all Registrable Securities to be listed on each securities exchange or market, if any, on which equity securities issued by the Company have been listed; and

(k) provide to each Purchaser and its representatives, if requested, the opportunity to conduct a reasonable inquiry of the Company's financial and other records during normal business hours regarding information which such Purchaser may reasonably request in order to fulfill any due diligence obligation on its part;

(l) permit a single counsel for the Purchasers to review any Registration Statement and all amendments and supplements thereto (other than supplements to a Registration Statement on Form S-1 solely for the purpose of incorporating other filings with the SEC into such Registration Statement and other than an amendment to a Registration Statement on Form S-1 on Form S-3 for the purpose of converting such Registration Statement into a Registration Statement on Form S-3), within two Business Days prior to the filing thereof with the SEC;

*provided*, that, in the case of clauses (k) and (l) above, the Company shall not be required (A) to delay the filing of any Registration Statement or any amendment or supplement thereto as a result of any ongoing diligence inquiry by or on behalf of a Holder or to incorporate any comments to any Registration Statement or any amendment or supplement thereto by or on behalf of a Holder if such inquiry or comments would require a delay in the filing of such Registration Statement, amendment or supplement, as the case may be, or (B) to provide, and shall not provide, any Purchaser or its representatives with material, non-public information unless such Purchaser agrees to receive such information and enters into a written confidentiality agreement with the Company in a form reasonably acceptable to the Company.

**6.5** The Holders shall have no right to take any action to restrain, enjoin or otherwise delay any registration pursuant to Section 6.1 hereof as a result of any controversy that may arise with respect to the interpretation or implementation of this Agreement.

**6.6 (a)** To the extent permitted by law, the Company shall indemnify each Holder and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which any registration that has been effected pursuant to this Agreement, against all claims, losses, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 6.6(c) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact

contained in any Registration Statement, prospectus, or any amendment or supplement thereof or based on any omission (or alleged omission)

to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, or any violation by the Company of any rule or regulation promulgated by the Securities Act applicable to the Company and relating to any action or inaction required of the Company in connection with any such registration, qualification or compliance, and will reimburse each Holder and each Person controlling such Holder, for reasonable legal and other out-of-pocket expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as incurred; *provided* that the Company will not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder for use in preparation of any Registration Statement, prospectus, amendment or supplement; *provided further*, that the Company will not be liable in any such case where the claim, loss, damage or liability arises out of or is related to the inaccuracy of any representation or warranty made by the Holder in this Agreement or the failure of such Holder to comply with the covenants and agreements contained in this Agreement respecting sales of Registrable Securities, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time any Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a ***Final Prospectus*** ), such indemnity shall not inure to the benefit of any such Holder or any such controlling Person, if a copy of a Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage.

(b) Each Holder will severally, and not jointly, indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 6.6(c) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement, prospectus, or any amendment or supplement thereof, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each Person controlling the Company for reasonable legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as incurred, in each case to the extent, but only to the extent, that such untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Holder for use in preparation of any Registration Statement, prospectus, amendment or supplement. Notwithstanding the foregoing, a Holder's aggregate liability pursuant to this subsection (b) and subsection (d) shall be limited to the net amount received by the Holder from the sale of the Registrable Securities.

(c) Each party entitled to indemnification under this Section 6.6 (the ***Indemnified Party*** ) shall give notice to the party required to provide indemnification (the ***Indemnifying Party*** ) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such Indemnified Party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent (which consent will not be unreasonably withheld). No Indemnifying Party, in its defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not

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 to such claim or litigation.

**(d)** If the indemnification provided for in this Section 6.6 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall contribute to the amount paid or

payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense 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 in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party 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.

**6.7 (a)** Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Registrable Securities so that, as thereafter delivered to the Holders, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, each Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Registration Statement and prospectus contemplated by Section 6.1 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, each Holder shall deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

**(b)** Each Holder shall suspend, upon request of the Company, any disposition of Registrable Securities pursuant to any Registration Statement and prospectus contemplated by Section 6.1 to the extent that the Board of Directors of the Company determines in good faith that the sale of Registrable Securities under any such Registration Statement would be reasonably likely to cause a violation of the Securities Act or Exchange Act.

**(c)** As a condition to the inclusion of its Registrable Securities and the Company's obligation to complete the registration pursuant to this Agreement with respect to the Registrable Securities of any Holder or to make any payments to such Holder pursuant to Section 6.3, each Holder shall furnish to the Company such information regarding such Holder, the Registrable Securities and other shares of Common Stock held by such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing, including completing a Registration Statement Questionnaire in the form provided by the Company, or as shall be required in connection with any registration referred to in this Article 6.

**(d)** Each Holder hereby covenants with the Company (i) not to make any sale of the Registrable Securities without effectively causing the prospectus delivery requirements under the Securities Act to be satisfied, and (ii) if such Registrable Securities are to be sold by any method or in any transaction other than on a national securities exchange or in the over-the-counter market, in privately negotiated transactions, or in a combination of such methods, to notify the Company at least five Business Days prior to the date on which the Holder first offers to sell any such Registrable Securities.

**(e)** At the end of the Registration Period the Holders shall discontinue sales of shares pursuant to any Registration Statement upon receipt of notice from the Company of its intention to remove from registration the shares covered by any such Registration Statement which remain unsold, and such Holders shall notify the Company of the number of shares registered which remain unsold immediately upon receipt of such notice from the Company.

**6.8** With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which at any time permit the sale of the Registrable Securities to the public without registration, so long as the Holders still own Registrable Securities, the Company shall use its reasonable best efforts to, so long as a Holder owns any Registrable Securities, furnish to such Holder, upon any reasonable request, a written statement by the Company as to its compliance with Rule 144(c) under the Securities Act, and of the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company as such Holder may



reasonably request in availing itself of any rule or regulation of the SEC allowing a Holder to sell any such securities without registration.

**6.9** The rights to cause the Company to register Registrable Securities granted to the Holders by the Company under Section 6.1 may be assigned by a Holder in connection with a transfer by such Holder of all or a portion of its Registrable Securities, *provided, however*, that such transfer must be made at least ten days prior to the Filing Date and that (i) such transfer may otherwise be effected in accordance with applicable securities laws; (ii) such Holder gives prior written

notice to the Company at least ten days prior to the Filing Date; and (iii) such transferee agrees to comply with the terms and provisions of this Agreement, and such transfer is otherwise in compliance with this Agreement. Except as specifically permitted by this Section 6.9, the rights of a Holder with respect to Registrable Securities as set out herein shall not be transferable to any other Person, and any attempted transfer shall cause all rights of such Holder therein to be forfeited.

**6.10** Prior to the time that Registration Statement(s) covering the resale of all Registrable Securities have been declared effective by the SEC, the Company shall not file with the SEC a registration statement under the Securities Act of any of its equity securities other than a registration statement required to be filed pursuant to this Agreement, a registration statement on Form S-8 or, in connection with an acquisition, a registration statement on Form S-4; *provided, however*, that the foregoing restrictions in this Section 6.10 shall terminate upon such time as all of the Registrable Securities (i) have been publicly sold by the Holders or (ii) may be sold under Rule 144 during any 90-day period.

**6.11** The rights of any Holder under any provision of this Article 6 may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) or amended by an instrument in writing signed by such Holder.

## ARTICLE 7

### DEFINITIONS

**7.1** *Aggregate Purchase Price* has the meaning set forth in Section 1.1.

**7.2** *Agreement* has the meaning set forth in the preamble.

**7.3** *Affiliate* means, with respect to any Person (as defined below), any other Person controlling, controlled by or under direct or indirect common control with such Person (for the purposes of this definition *control*, when used with respect to any specified Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms *controlling* and *controlled* shall have meanings correlative to the foregoing).

**7.4** *Business Day* means a day Monday through Friday on which banks are generally open for business in New York City.

**7.5** *Bylaws* has the meaning set forth in Section 2.3.

**7.6** *Certificate of Incorporation* has the meaning set forth in Section 2.3.

**7.7** *Closing* has the meaning set forth in Section 1.3.

**7.8** *Closing Date* has the meaning set forth in Section 1.3.

**7.9** *Common Stock* means the common stock, par value \$0.01 per share, of the Company.

**7.10** *Company* means Recro Pharma, Inc.

**7.11** *DARA* means the business and assets of Alkermes plc acquired by the Company pursuant to that certain Purchase and Sale Agreement, dated as of March 7, 2015, by and among Alkermes Pharma Ireland Limited, Daravita Limited, Eagle Holdings USA, Inc., Recro Pharma, Inc. and Recro Pharma LLC.

**7.12 *Evaluation Date*** has the meaning set forth in Section 2.7.

**7.13 *Exchange Act*** means the Securities Exchange Act of 1934, as amended.

- 7.14 Filing Date** has the meaning set forth in Section 6.1.
- 7.15 Final Prospectus** has the meaning set forth in Section 6.6(a).
- 7.16 Financial Statements** means the financial statements of the Company and its consolidated Subsidiaries included in the SEC Documents, and the historical audited financial statements of DARA for the year ended December 31, 2014 and the nine months ended December 31, 2013, included in the SEC Documents.
- 7.17 Financing** has the meaning set forth in Section 8.14.
- 7.18 Holders** means any Person holding Registrable Securities or any Person to whom the rights under Article 6 have been transferred in accordance with Section 6.9 hereof.
- 7.19 Indemnified Party** has the meaning set forth in Section 6.6(c).
- 7.20 Indemnifying Party** has the meaning set forth in Section 6.6(c).
- 7.21 Initial Registration Statement** has the meaning set forth in Section 6.1.
- 7.22 Intellectual Property** has the meaning set forth in Section 2.10.
- 7.23 Investment Company Act** has the meaning set forth in Section 2.12.
- 7.24 Material Adverse Effect** means a material adverse effect on (a) the business, operations, assets or financial condition of the Company or (b) the ability of the Company to perform its obligations pursuant to the transactions contemplated by this Agreement; provided, that none of the following alone shall be deemed, in and of itself, to constitute a Material Adverse Effect: (i) a change in the market price or trading volume of the Common Stock; or (ii) changes in general economic conditions or changes affecting the industry in which the Company operates generally (as opposed to Company-specific changes) so long as such changes do not have a materially disproportionate effect on the Company..
- 7.25 Material Agreements** has the meaning set forth in Section 2.6.
- 7.26 Nasdaq** means The Nasdaq Stock Market LLC.
- 7.27 New Registration Statement** has the meaning set forth in Section 6.1.
- 7.28 Offering** means the private placement of the Company's Securities contemplated by this Agreement.
- 7.29 Penalty Period** has the meaning set forth in Section 6.3.
- 7.30 Person** means any person, individual, corporation, limited liability company, partnership, trust or other nongovernmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).
- 7.31 Placement Agents** means Jefferies LLC, Brean Capital, LLC, Janney Montgomery Scott LLC and MLV & Co.
- 7.32 Purchasers** mean the Purchasers whose names are set forth on the signature pages of this Agreement, and their permitted transferees.

**7.33** The terms *register*, *registered* and *registration* refer to the registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

**7.34 Registrable Securities** means the Shares; *provided, however*, that securities shall only be treated as Registrable Securities if and only for so long as they (A) have not been disposed of pursuant to a registration statement declared effective by the SEC, (B) have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale or (C) are held by a Holder or a permitted transferee pursuant to Section 6.9.

**7.35 Registration Default** has the meaning set forth in Section 6.3.

**7.36 Registration Expenses** means all expenses incurred by the Company in complying with Section 6.1 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the fees of legal counsel for any Holder).

**7.37 Registration Statement** means any one or more registration statements of the Company filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement (including without limitation the Initial Registration Statement, the New Registration Statement and any Remainder Registration Statements) and amendments and supplements to such Registration Statements, including post-effective amendments.

**7.38 Registration Period** has the meaning set forth in Section 6.4(a).

**7.39 Remainder Registration Statement** has the meaning set forth in Section 6.1.

**7.40 Rule 144** means Rule 144 promulgated under the Securities Act, or any successor rule.

**7.41 Rule 415** means Rule 415 promulgated under the Securities Act, or any successor rule.

**7.42 SEC** means the United States Securities and Exchange Commission.

**7.43 SEC Documents** has the meaning set forth in Section 2.6.

**7.44 Securities** has the meaning set forth in Section 1.1.

**7.45 Securities Act** means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute.

**7.46 Selling Expenses** means all selling commissions applicable to the sale of Registrable Securities and all fees and expenses of legal counsel for any Holder.

**7.47 Shares** has the meaning set forth in Section 1.1.

**7.48 Short Sales** include, without limitation, (i) all short sales as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, whether or not against the box, and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, put equivalent positions (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements (including on a total return basis), and (ii) sales and other transactions through non-U.S. broker dealers or foreign regulated brokers (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

**7.49 *Subsidiary*** of any Person shall mean any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person (either above or through or together with any other subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

**7.50 Transaction Documents** means this Agreement and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement.

## ARTICLE 8

### GOVERNING LAW; MISCELLANEOUS

**8.1 Governing Law; Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws.

**8.2 Counterparts; Signatures by Facsimile.** This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other parties. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile or e-mail transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

**8.3 Headings.** The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

**8.4 Severability.** If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

**8.5 Entire Agreement; Amendments.** This Agreement (including all schedules and exhibits hereto) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the party to be charged with enforcement. Any amendment or waiver by a party effected in accordance with this Section 8.5 shall be binding upon such party, including with respect to any Securities purchased under this Agreement at the time outstanding and held by such party (including securities into which such Securities are convertible and for which such Securities are exercisable) and each future holder of all such securities.

**8.6 Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed email, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. The addresses for such communications are:

If to the Company: Recro Pharma, Inc.  
490 Lapp Road  
Malvern, PA 19355  
Attn: Charles Garner

with a copy to:



Ballard Spahr LLP  
1735 Market Street  
Philadelphia, PA 19103  
Attn: Katayun I. Jaffari

If to a Purchaser: To the address set forth immediately below such Purchaser's name on the signature pages hereto.

Each party will provide ten days' advance written notice to the other parties of any change in its address.

**8.7 Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. The Company will not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers, and no Purchaser may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company, except as permitted in accordance with Section 6.9 hereof.

**8.8 Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto, their respective permitted successors and assigns and the Placement Agents, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

**8.9 Further Assurances.** Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

**8.10 No Strict Construction.** The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

**8.11 Equitable Relief.** The Company recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Purchasers. The Company therefore agrees that the Purchasers are entitled to seek temporary and permanent injunctive relief in any such case. Each Purchaser also recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Company. Each Purchaser therefore agrees that the Company is entitled to seek temporary and permanent injunctive relief in any such case.

**8.12 Survival of Representations and Warranties.** Notwithstanding any investigation made by any party to this Agreement, all representations and warranties made by the Company and the Purchasers herein shall survive for a period of one year following the date hereof.

**8.13 Exculpation of the Agent.** Each party acknowledges that it has read the notice available at [http://www.jefferies.com/CMSFiles/Jefferies.com/files/Reg%20A%20and%20D%20Disclosure%207\\_2014\(1\).pdf](http://www.jefferies.com/CMSFiles/Jefferies.com/files/Reg%20A%20and%20D%20Disclosure%207_2014(1).pdf) and hereto agrees for the express benefit of each of the Placement Agents, its affiliates and its representatives that:

(a) Neither the Placement Agents nor any of their affiliates or any of their representatives (1) has any duties or obligations other than those specifically set forth herein or in the engagement letter, dated as of June 24, 2015, among the Company and Jefferies LLC (the **Engagement Letter**); (2) shall be liable for any improper payment made in accordance with the information provided by the Company; (3) makes any representation or warranty, or has any responsibilities as to the validity, accuracy, value or genuineness of any information, certificates or documentation delivered by or on behalf of the Company pursuant to this Agreement or the Transaction Documents or in connection with any of the transactions contemplated hereby and thereby; or (4) shall be liable (x) for any action taken, suffered or omitted by any of them in good faith and reasonably believed to be authorized or within the discretion or rights or powers conferred upon it by this Agreement or any Transaction Documents or (y) for anything which any of them may do or refrain from doing in connection with this Agreement or any Transaction Documents, except for such party's own gross negligence, willful misconduct or bad faith.

**(b)** Each of the Placement Agents, their affiliates and their representatives shall be entitled to (1) rely on, and shall be protected in acting upon, any certificate, instrument, notice, letter or any other document or security delivered to any of them by or on behalf of the Company, and (2) be indemnified by the Company for acting as the Agent hereunder pursuant the indemnification provisions set forth in the Engagement Letter.

**8.14 Independent Nature of Purchasers Obligations and Rights.** The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. Nothing contained herein and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group, or are deemed affiliates with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the undersigned has caused this Securities Purchase Agreement to be duly executed as of the date first above written.

**RECRO PHARMA, INC.**

By:

Name: Charles Garner

Title: Chief Financial Officer

**[Signature Page to Securities Purchase Agreement]**

**IN WITNESS WHEREOF**, the undersigned has caused this Securities Purchase Agreement to be duly executed as of the date first above written.

**PURCHASER:**

By:  
Name:  
Title:

Address:

Facsimile:

**[Signature Page to Securities Purchase Agreement]**

### **Recro Pharma Announces \$16 Million Financing**

MALVERN, PA, July 1, 2015 Recro Pharma, Inc. (Nasdaq: REPH), a revenue generating specialty pharmaceutical company developing multiple non-opioid therapeutics for the treatment of acute post operative pain, today announced that it has entered into a definitive purchase agreement with institutional investors to issue and sell an aggregate of 1,379,311 shares of common stock in a private placement resulting in aggregate gross proceeds of approximately \$16 million. The purchase price for the common stock will be \$11.60 per share. The private placement is expected to close on or about July 7, 2015 and is subject to the satisfaction of customary closing conditions.

The Company intends to use the net proceeds of the financing to further fund the clinical development of Recro Pharma's lead candidates, IV/IM meloxicam and Dex-IN, in addition to general corporate purposes.

The securities to be issued and sold in the private placement have not been registered under the Securities Act of 1933, as amended, or state securities laws and may not be offered or sold in the United States absent registration with the Securities and Exchange Commission (SEC) or an applicable exemption from such registration requirements. Recro has agreed to file a registration statement with the SEC covering the resale of the shares of common stock issued in the private placement.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such state or jurisdiction.

#### **About Recro Pharma, Inc.**

Recro Pharma is a revenue generating specialty pharmaceutical company developing multiple non-opioid therapeutics for the treatment of acute post operative pain. Recro Pharma is currently developing IV/IM meloxicam, a proprietary, Phase III-ready, long-acting preferential COX-2 inhibitor, and Dex-IN, a proprietary intranasal formulation of dexmedetomidine currently being tested in Phase II, for the treatment of acute post operative pain. As Recro Pharma's product candidates are not in the opioid class of drugs, the Company believes its candidates would avoid many of the side effects associated with commonly prescribed opioid therapeutics, such as addiction, constipation and respiratory distress, while maintaining analgesic effect.

Recro Pharma also owns and operates an 87,000 square foot, DEA-licensed facility that manufactures five commercial products and receives royalties associated with the sales of these products.

#### **Cautionary Statement Regarding Forward Looking Statements**

This press release contains forward-looking statements that involve risks and uncertainties. Such forward-looking statements reflect Recro Pharma's expectations about its future operating results, performance and opportunities that involve substantial risks and uncertainties. When used herein, the words anticipate, believe, estimate, upcoming, target, intend and expect and similar expressions, as they relate to Recro Pharma or its management, are intended to identify such forward-looking statements. These forward-looking statements are based on information available to Recro Pharma as of the date of this press release and are subject to a number of risks, uncertainties, and other factors that could cause Recro Pharma's actual results, performance, prospects, and opportunities to differ materially from those expressed in, or implied by, these forward-looking statements. Recro Pharma assumes no obligation to update

any such forward-looking statements. Factors that could cause Recro Pharma's actual results to materially differ from those expressed in the forward-looking statements set forth in this press release include, without limitation: the ability to close the private placement; the results



and timing of the clinical trials of IV/IM meloxicam and Dex-IN and any future clinical and preclinical studies; the ability to obtain and maintain regulatory approval of product candidates, and the labeling under any such approval; regulatory developments in the United States and foreign countries; the Company's ability to raise future financing for continued development; the performance of third-party suppliers and manufacturers; the Company's ability to obtain, maintain and successfully enforce adequate patent and other intellectual property protection; the successful commercialization of the Company's product candidates; the successful implementation of the Company's strategy; the Company's ability to integrate the recent acquisition of assets from Alkermes; and the Company's ability to meet required debt payments and operate under increased leverage and associated lending covenants in connection with the recent acquisition. In addition, the forward-looking statements in this press release should be considered together with the risks and uncertainties that may affect Recro Pharma's business and future results included in Recro Pharma's filings with the Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov). Recro Pharma assumes no obligation to update any such forward looking statements.

**CONTACT:**

**Recro Pharma, Inc.**

Charles T. Garner

Chief Financial Officer

(484) 395-2425

**Media and Investors:**

Argot Partners

Susan Kim

(212) 600-1902

[susan@argotpartners.com](mailto:susan@argotpartners.com)

### **Recro Pharma Completes \$16 Million Private Financing**

MALVERN, PA, July 7, 2015 Recro Pharma, Inc. (Nasdaq: REPH), a revenue generating specialty pharmaceutical company developing multiple non-opioid therapeutics for the treatment of acute post operative pain, today announced that it has closed the private placement announced on July 1, 2015.

Pursuant to the securities purchase agreement with a group of institutional accredited investors led by Broadfin Capital, LLC, the Company issued 1,379,311 shares of common stock, providing the Company with gross proceeds of approximately \$16 million. The purchase price for the common stock was \$11.60 per share.

The Company intends to use the net proceeds of the financing to further fund the clinical development of Recro Pharma's lead candidates, IV/IM meloxicam and Dex-IN, in addition to general corporate purposes.

Jefferies LLC acted as lead placement agent and Brean Capital, LLC, Janney Montgomery Scott LLC and MLV & Co. acted as co-placement agents for the offering.

#### **About Recro Pharma, Inc.**

Recro Pharma is a revenue generating specialty pharmaceutical company developing multiple non-opioid therapeutics for the treatment of acute post operative pain. Recro Pharma is currently developing IV/IM meloxicam, a proprietary, Phase III-ready, long-acting preferential COX-2 inhibitor, and Dex-IN, a proprietary intranasal formulation of dexmedetomidine currently being tested in Phase II, for the treatment of acute post operative pain. As Recro Pharma's product candidates are not in the opioid class of drugs, the Company believes its candidates would avoid many of the side effects associated with commonly prescribed opioid therapeutics, such as addiction, constipation and respiratory distress, while maintaining analgesic effect.

Recro Pharma also owns and operates an 87,000 square foot, DEA-licensed facility that manufactures five commercial products and receives royalties associated with the sales of these products.

#### **Cautionary Statement Regarding Forward Looking Statements**

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maintain and successfully enforce adequate patent and other intellectual property protection; the successful commercialization of the Company's product candidates; the successful

implementation of the Company's strategy; the Company's ability to integrate the recent acquisition of assets from Alkermes; and the Company's ability to meet required debt payments and operate under increased leverage and associated lending covenants in connection with the recent acquisition. In addition, the forward-looking statements in this press release should be considered together with the risks and uncertainties that may affect Recro Pharma's business and future results included in Recro Pharma's filings with the Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov). Recro Pharma assumes no obligation to update any such forward looking statements.

**CONTACT:**

**Recro Pharma, Inc.**

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Chief Financial Officer

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Susan Kim

(212) 600-1902

[susan@argotpartners.com](mailto:susan@argotpartners.com)