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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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

For the quarterly period ended September 30, 2015

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-36152

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**Aerie Pharmaceuticals, Inc.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

20-3109565  
(I.R.S. Employer  
Identification Number)

2030 Main Street, Suite 1500  
Irvine, California 92614  
(949) 526-8700  
(Address of principal executive offices, zip code and telephone number, including area code)

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

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

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

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

As of October 28, 2015, there were 26,364,924 shares of the registrant's common stock, par value \$0.001, outstanding.

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TABLE OF CONTENTS

	<u>Page</u>
<b><a href="#">SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</a></b>	<a href="#">ii</a>
<b><a href="#">PART I. FINANCIAL INFORMATION</a></b>	<a href="#">1</a>
Item 1. <a href="#">Financial Statements (Unaudited)</a>	<a href="#">1</a>
<a href="#">Consolidated Balance Sheets</a>	<a href="#">1</a>
<a href="#">Consolidated Statements of Operations and Comprehensive Loss</a>	<a href="#">2</a>
<a href="#">Consolidated Statements of Cash Flows</a>	<a href="#">3</a>
<a href="#">Notes to the Consolidated Financial Statements</a>	<a href="#">4</a>
Item 2. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	<a href="#">16</a>
Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	<a href="#">25</a>
Item 4. <a href="#">Controls and Procedures</a>	<a href="#">26</a>
<b><a href="#">PART II. OTHER INFORMATION</a></b>	<a href="#">27</a>
Item 1. <a href="#">Legal Proceedings</a>	<a href="#">27</a>
Item 1A. <a href="#">Risk Factors</a>	<a href="#">27</a>
Item 2. <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>	<a href="#">27</a>
Item 3. <a href="#">Defaults Upon Senior Securities</a>	<a href="#">28</a>
Item 4. <a href="#">Mine Safety Disclosures</a>	<a href="#">28</a>
Item 5. <a href="#">Other Information</a>	<a href="#">28</a>
Item 6. <a href="#">Exhibits</a>	<a href="#">28</a>

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We may, in some cases, use terms such as “predicts,” “believes,” “potential,” “proposed,” “continue,” “estimates,” “anticipates,” “expects,” “plans,” “intends,” “may,” “would,” “could,” “might,” “will,” “should,” “exploring,” “pursuing” or other words that convey uncertainty of future events or outcomes to identify these forward-looking statements.

Forward-looking statements appear in a number of places throughout this report and include statements regarding our intentions, beliefs, projections, outlook, analyses or current expectations concerning, among other things:

- the success, timing and cost of our ongoing and anticipated preclinical studies and clinical trials for our current product candidates and potential future product candidates, including statements regarding the timing of initiation and completion of the studies and trials;
- our expectations regarding the clinical effectiveness of our product candidates and results of our clinical trials;
- the timing of and our ability to obtain and maintain U.S. Food and Drug Administration (“FDA”) or other regulatory authority approval of, or other action with respect to, our product candidates;
- our expectations related to the use of proceeds from our initial public offering (“IPO”) in October 2013, the issuance and sale of our 2014 Convertible Notes (as defined herein) in September 2014 and the issuance and sale of common stock under our shelf registration statement on Form S-3 and “at-the-market” sales agreement;
- our estimates regarding anticipated capital requirements and our needs for additional financing;
- the commercial launch and potential future sales of our current or any other future product candidates;
- our commercialization, marketing and manufacturing capabilities and strategy;
- third-party payor coverage and reimbursement for our product candidates;
- the glaucoma patient market size and the rate and degree of market adoption of our product candidates by eye-care professionals and patients;
- the timing, cost or other aspects of the commercial launch of our product candidates;
- our plans to pursue development of our product candidates for additional indications and other therapeutic opportunities;
- the potential advantages of our product candidates;
- our plans to explore possible uses of our existing proprietary compounds beyond glaucoma;
- our ability to protect our proprietary technology and enforce our intellectual property rights;
- our expectations regarding collaborations, licensing, acquisitions and strategic operations, including our ability to in-license or acquire additional ophthalmic products or product candidates; and
- our stated objective of building a major ophthalmic pharmaceutical company.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events, competitive dynamics and industry change, and depend on regulatory approvals and economic and other environmental circumstances that may or may not occur in the future or may occur on longer or shorter timelines than anticipated. We discuss many of these risks under the heading “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, as filed with the Securities and Exchange Commission (“SEC”) on February 27, 2015, and in Part II, Item 1A of our Quarterly Report on Form 10-Q for the period ended March 31, 2015, as filed with the SEC on May 7, 2015. You should not rely upon forward-looking statements as predictions of future events.

Although we believe that we have a reasonable basis for each forward-looking statement contained in this report, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the evolution of the industry in which we operate may differ materially from the forward-looking statements contained in this report. In addition, even if our results of operations, financial condition and liquidity, and events in the industry in which we operate are consistent with the forward-looking statements contained in this report, they may not be predictive of results or developments in future periods.

[Table of Contents](#)

Any forward-looking statements that we make in this report are as of the date of this report. Except as required by law, we are under no duty to update or revise any of the forward-looking statements, whether as a result of new information, future events or otherwise, after the date of this report.

**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements****AERIE PHARMACEUTICALS, INC.****Consolidated Balance Sheets  
(Unaudited)**

(in thousands, except share and per share data)

	<b>SEPTEMBER 30, 2015</b>	<b>DECEMBER 31, 2014</b>
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 106,946	\$ 85,586
Short-term investments	48,292	54,339
Prepaid expenses and other current assets	1,348	1,122
Total current assets	156,586	141,047
Long-term investments	7,707	18,275
Furniture, fixtures and equipment, net	2,912	240
Other assets, net	8,034	1,523
Total assets	\$ 175,239	\$ 161,085
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable and other current liabilities	\$ 17,961	\$ 8,336
Interest payable	551	551
Total current liabilities	18,512	8,887
Convertible notes, net of discounts	124,250	124,156
Total liabilities	142,762	133,043
Commitments and contingencies (Note 12)		
Stockholders' equity		
Preferred stock, \$0.001 par value; 15,000,000 shares authorized as of September 30, 2015 and December 31, 2014; None issued and outstanding	—	—
Common stock, \$0.001 par value; 150,000,000 shares authorized as of September 30, 2015 and December 31, 2014; 26,290,705 and 24,018,577 shares issued and outstanding as of September 30, 2015 and December 31, 2014, respectively	26	24
Additional paid-in capital	229,670	171,326
Accumulated other comprehensive loss	(32)	(107)
Accumulated deficit	(197,187)	(143,201)
Total stockholders' equity	32,477	28,042
Total liabilities and stockholders' equity	\$ 175,239	\$ 161,085

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

## AERIE PHARMACEUTICALS, INC.

**Consolidated Statements of Operations and Comprehensive Loss**  
**(Unaudited)**

(in thousands, except share and per share data)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014	2015	2014
<b>Operating expenses</b>				
General and administrative	\$ (7,462)	\$ (4,944)	\$ (22,987)	\$ (13,723)
Research and development	(9,904)	(8,230)	(32,149)	(20,276)
Loss from operations	(17,366)	(13,174)	(55,136)	(33,999)
Other income (expense), net	(523)	27	1,374	2,367
Net loss before income taxes	\$ (17,889)	\$ (13,147)	\$ (53,762)	\$ (31,632)
Income tax expense	(72)	—	(224)	—
Net loss	\$ (17,961)	\$ (13,147)	\$ (53,986)	\$ (31,632)
Net loss attributable to common stockholders—basic and diluted	\$ (17,961)	\$ (13,147)	\$ (53,986)	\$ (31,632)
Net loss per share attributable to common stockholders—basic and diluted	\$ (0.69)	\$ (0.54)	\$ (2.12)	\$ (1.32)
Weighted average number of common shares outstanding—basic and diluted	26,061,993	24,325,166	25,507,409	23,980,963
Net loss	\$ (17,961)	\$ (13,147)	\$ (53,986)	\$ (31,632)
Unrealized gain (loss) on available-for-sale investments	9	4	75	(9)
Comprehensive loss	\$ (17,952)	\$ (13,143)	\$ (53,911)	\$ (31,641)

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

**AERIE PHARMACEUTICALS, INC.**  
**Consolidated Statements of Cash Flows**  
**(Unaudited)**  
(in thousands, except share and per share data)

	<b>NINE MONTHS ENDED SEPTEMBER 30,</b>	
	<b>2015</b>	<b>2014</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (53,986)	\$ (31,632)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation	102	50
Amortization of deferred financing costs and debt discount	232	—
Amortization of discount on available-for-sale investments	439	247
Stock-based compensation	9,533	6,696
Changes in operating assets and liabilities		
Prepaid, current and other assets	(238)	(20)
Accounts payable and other current liabilities	2,407	2,267
<b>Net cash used in operating activities</b>	<b>(41,511)</b>	<b>(22,392)</b>
<b>Cash flows from investing activities</b>		
Purchase of available-for-sale investments	(26,560)	(34,593)
Maturity of available-for-sale investments	40,813	10,660
Sale of available-for-sale investments	1,999	1,500
Purchase of furniture, fixtures and equipment	(1,855)	(146)
<b>Net cash provided by (used in) investing activities</b>	<b>14,397</b>	<b>(22,579)</b>
<b>Cash flows from financing activities</b>		
Proceeds from sale of common stock	47,100	—
Proceeds from exercise of stock options	1,269	9
Proceeds from exercise of warrants	9	—
Proceeds from exercise of stock purchase rights	96	119
Proceeds from issuance of convertible notes, net of discounts	—	124,375
Payments of debt issuance costs	—	(297)
<b>Net cash provided by financing activities</b>	<b>48,474</b>	<b>124,206</b>
<b>Net change in cash and cash equivalents</b>	<b>21,360</b>	<b>79,235</b>
<b>Beginning of period</b>	<b>85,586</b>	<b>69,649</b>
<b>End of period</b>	<b>\$ 106,946</b>	<b>\$ 148,884</b>
<b>Supplemental disclosures</b>		
Interest paid	\$ 1,635	\$ —
Income taxes paid	600	—
Noncash financing activities		
Deferred costs from issuance of convertible notes	—	250
Deferred financing costs	—	1,000

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

**AERIE PHARMACEUTICALS, INC.**

**Notes to the Consolidated Financial Statements  
(Unaudited)**

**1. The Company**

Aerie Pharmaceuticals, Inc. (“Aerie”), with its wholly-owned subsidiaries Aerie Pharmaceuticals Limited and Aerie Pharmaceuticals Ireland Limited (“Aerie Limited” and “Aerie Ireland Limited”, respectively, together with Aerie, the “Company”), is a clinical-stage pharmaceutical company focused on the discovery, development and commercialization of small molecule products to treat patients with glaucoma and other diseases of the eye. The Company has its principal executive offices in Irvine, California and operates as one business segment.

The Company has not yet commenced commercial operations and therefore has not generated product revenue. The Company’s activities since inception have primarily consisted of developing product candidates, raising capital and performing research and development activities. The Company does not expect to generate revenue until and unless it receives regulatory approval of and successfully commercializes its product candidates. The Company has incurred losses and experienced negative operating cash flows since inception.

The Company has funded its operations primarily through the sale of equity securities and issuance of convertible notes. In October 2013, the Company completed its initial public offering (“IPO”) and issued 7,728,000 shares of its common stock at an IPO price of \$10.00 per share, including 1,008,000 shares of common stock issued upon the exercise in full by the underwriters of their option to purchase additional shares to cover over-allotments. The Company received net proceeds from the IPO of approximately \$68.3 million, after deducting underwriting discounts and commissions of \$5.4 million and expenses of \$3.6 million. On September 30, 2014, the Company issued \$125.0 million aggregate principal amount of senior secured convertible notes (the “2014 Convertible Notes”). The Company received net proceeds from the issuance of the 2014 Convertible Notes of approximately \$124.1 million, after deducting discounts and certain expenses of \$875,000. Refer to Note 8 for further information regarding the 2014 Convertible Notes.

On November 3, 2014, the Company filed a shelf registration statement on Form S-3, which was declared effective by the SEC on November 10, 2014. The shelf registration statement permits: (i) the offering, issuance and sale of up to a maximum aggregate offering price of \$150.0 million of the Company’s common stock; (ii) sales of common stock by certain selling stockholders; and (iii) the offering, issuance and sale by the Company of up to a maximum aggregate offering price of \$50.0 million of the Company’s common stock that may be issued and sold under an “at-the-market” sales agreement with Cantor Fitzgerald & Co. The common stock that may be offered, issued and sold by the Company under the “at-the-market” sales agreement is included in the \$150.0 million of common stock that may be offered, issued and sold by the Company under the shelf registration statement. As of and for the nine months ended September 30, 2015, the Company issued and sold 1,610,466 shares of its common stock under the “at-the-market” sales agreement. The Company received net proceeds of approximately \$47.1 million through September 30, 2015, after deducting commissions at a rate of up to 3% of the gross sales price per share sold and other fees and expenses.

In March 2015, the Company revised its corporate structure to align with its business strategy outside of North America by establishing Aerie Limited, a wholly-owned subsidiary organized under the laws of the Cayman Islands. In addition, Aerie assigned the beneficial rights to its non-U.S. and Canadian intellectual property to Aerie Limited (the “IP Assignment”). As part of the IP Assignment, Aerie and Aerie Limited entered into a research and development cost sharing agreement pursuant to which Aerie and Aerie Limited will share the costs of the development of intellectual property. Refer to Note 9 for a description of the tax impact of the IP Assignment. Additionally, in April 2015, the Company continued to prepare for foreign-based activities and established Aerie Ireland Limited as a wholly-owned subsidiary of Aerie Limited to develop and commercialize the beneficial rights of the intellectual property assigned as part of the IP Assignment pursuant to a license arrangement to be entered into between Aerie Limited and Aerie Ireland Limited.

If the Company does not successfully commercialize any of its product candidates, it may be unable to generate product revenue or achieve profitability. Accordingly, the Company may be required to obtain further funding through other public or private offerings, debt financing, collaboration and licensing arrangements or other sources. Adequate additional funding may not be available to the Company on acceptable terms, or at all. If the Company is unable to raise capital when needed or on attractive terms, it would be forced to delay, reduce or eliminate its research and development programs or commercialization efforts. The Company currently estimates that it has sufficient funding to sustain operations through product commercialization of Rhopressa™ and Roclatan™, pending successful outcome of their clinical trials and U.S. Food and Drug Administration (“FDA”) approval.

## **2. Significant Accounting Policies**

### ***Basis of Presentation***

The Company's interim consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP"). In the opinion of management, the Company has made all necessary adjustments, which include normal recurring adjustments necessary for a fair statement of the Company's consolidated financial position and results of operations for the interim periods presented. Certain information and disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These interim consolidated financial statements should be read in conjunction with the audited financial statements and accompanying notes for the year ended December 31, 2014 included in the Company's Annual Report on Form 10-K. The results for the three and nine months ended September 30, 2015 are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

### ***Principles of Consolidation***

The interim consolidated financial statements include the accounts of Aerie and its wholly-owned subsidiaries. All intercompany accounts, transactions and profits have been eliminated in consolidation.

### ***Use of Estimates***

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and reported amounts of income and expenses during the reporting periods. Significant items subject to such estimates and assumptions include the valuation of stock options and operating expense accruals. Actual results could differ from these estimates.

### ***Investments***

The Company determines the appropriate classification of its investments in debt and equity securities at the time of purchase. The Company's investments are comprised of certificates of deposit, commercial paper, corporate bonds and government agency securities that are classified as available-for-sale in accordance with ASC 320, Investments—Debt and Equity Securities. The Company classifies investments available to fund current operations as current assets on its consolidated balance sheets. Investments are classified as long-term assets on the consolidated balance sheets if (i) the Company has the intent and ability to hold the investments for a period of at least one year and (ii) the contractual maturity date of the investments is greater than one year.

Available-for-sale investments are recorded at fair value, with unrealized gains or losses included in Accumulated other comprehensive gain (loss) on the Company's consolidated balance sheets. Realized gains and losses are determined using the specific identification method and are included as a component of Other income (expense), net (Note 3). There were no realized gains or losses recognized for the three and nine months ended September 30, 2015 or 2014.

The Company reviews investments for other-than-temporary impairment whenever the fair value of an investment is less than the amortized cost and evidence indicates that an investment's carrying amount is not recoverable within a reasonable period of time. To determine whether an impairment is other-than-temporary, the Company considers its intent to sell, or whether it is more likely than not that the Company will be required to sell the investment before recovery of the investment's amortized cost basis. Evidence considered in this assessment includes reasons for the impairment, the severity and the duration of the impairment and changes in value subsequent to period end. As of September 30, 2015, there were no investments with a fair value that was significantly lower than the amortized cost basis or any investments that had been in an unrealized loss position for a significant period.

### ***Deferred Financing Costs***

Deferred financing costs consist of financing costs incurred by the Company in connection with the closing of Aerie's 2014 Convertible Notes and are included in Other assets. The Company amortizes deferred financing costs through the earlier of maturity or the conversion of the 2014 Convertible Notes using the effective interest method. Refer to Note 8 for further information regarding the 2014 Convertible Notes.

### ***Fair Value Measurements***

The Company records certain financial assets and liabilities at fair value based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. The fair value of the Company's financial instruments, including cash and cash equivalents, short-term investments, other current assets, accounts payable and accrued expenses approximate their respective carrying values due to the short-term nature of these instruments. The carrying amounts of long-term investments represent their estimated fair values. The estimated fair value of Aerie's 2014 Convertible Notes was \$114.7 million and \$163.8 million as of September 30, 2015 and December 31, 2014, respectively. The decrease in the estimated fair value of the 2014 Convertible Notes was primarily attributable to the change in the closing price of Aerie's common stock on September 30, 2015 as compared to December 31, 2014. As of September 30, 2015 and December 31, 2014, all outstanding warrants are classified as equity and are recorded within additional paid-in capital on the consolidated balance sheets.

### ***Software Capitalization***

The Company capitalizes certain costs incurred in connection with obtaining or developing internal-use software including external direct costs of materials and services involved with the software development. Capitalized software costs are included in Furniture, fixtures, and equipment and are amortized over a period of 3 years beginning when the software project is substantially complete and the asset is ready for its intended use. Costs incurred during the preliminary project stage and post-implementation stage, as well as maintenance and training costs, are expensed as incurred.

### ***Recent Accounting Pronouncements***

In April 2015, the Financial Accounting Standards Board (the "FASB") issued ASU 2015-03, which simplifies the presentation of debt issuance costs. The new standard is effective for the Company for interim and annual periods beginning after December 15, 2015, with early adoption permitted. Upon adoption of ASU 2015-03, the Company will present debt issuance costs as a direct reduction to the debt liability rather than as an asset on its consolidated balance sheets.

In August 2014, the FASB issued ASU 2014-15, which provides guidance about management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. The new standard is effective for the Company for the annual period ending after December 15, 2016 and for annual and interim periods thereafter, with early adoption permitted. The Company is currently evaluating the impact of this accounting standard update on the Company's consolidated financial statements.

### ***Net Loss per Share Attributable to Common Stock***

Basic net loss per share attributable to common stock ("Basic EPS") is calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period, without consideration for potentially dilutive securities with the exception of warrants for common stock with a \$0.05 exercise price, which are exercisable for nominal consideration and are therefore included in the calculation of the weighted-average number of shares of common stock as common stock equivalents. Diluted net loss per share attributable to common stock ("Diluted EPS") gives effect to all dilutive potential shares of common stock outstanding during this period. For Diluted EPS, net loss attributable to common stockholders used in calculating Basic EPS is adjusted for certain items related to the dilutive securities.

For all periods presented, the Company's potential common stock equivalents have been excluded from the computation of Diluted EPS as their inclusion would have the effect of reducing the net loss per share of common stock. Therefore, the denominator used to calculate Basic EPS and Diluted EPS is the same in all periods presented.

[Table of Contents](#)

The Company's potential common stock equivalents that have been excluded from the computation of Diluted EPS for all periods presented consist of the following:

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014	2015	2014
2014 Convertible Notes <sup>(1)</sup>	5,040,323	5,040,323	5,040,323	5,040,323
Outstanding stock options	4,364,943	3,792,152	4,364,943	3,792,152
Stock purchase warrants	159,506	309,506	159,506	309,506
Unvested restricted common stock awards	132,622	138,815	132,622	138,815

(1) Conversion is limited to a 9.985% ownership cap in shares of common stock by the holder. In addition to the common stock equivalents presented above, the 2014 Convertible Notes provide for an increase in the conversion rate if conversion is elected in connection with a significant corporate transaction. Refer to Note 8 for further information regarding the 2014 Convertible Notes.

### 3. Other Income (Expense), Net

Other income (expense), net consists of the following:

(in thousands)	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014	2015	2014
Interest and amortization expense	\$ (629)	\$ —	\$ (1,868)	\$ —
Sale of New Jersey state tax benefit	—	—	2,898	2,288
Investment and other income, net	106	27	344	79
	<u>\$ (523)</u>	<u>\$ 27</u>	<u>\$ 1,374</u>	<u>\$ 2,367</u>

### 4. Investments

Cash, cash equivalents and investments as of September 30, 2015 included the following:

(in thousands)	AMORTIZED COST	GROSS UNREALIZED GAINS	GROSS UNREALIZED LOSSES	FAIR VALUE
<b>Cash and cash equivalents:</b>				
Cash and money market accounts	\$ 106,946	\$ —	\$ —	\$ 106,946
Total cash and cash equivalents	<u>\$ 106,946</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 106,946</u>
<b>Investments:</b>				
Certificates of deposit (due within 1 year)	\$ 20,241	\$ 9	\$ —	\$ 20,250
Certificates of deposit (due within 2 years)	3,840	1	(1)	3,840
Commercial paper (due within 1 year)	4,477	—	(2)	4,475
Corporate bonds (due within 1 year)	20,582	—	(24)	20,558
Corporate bonds (due within 2 years)	3,882	—	(15)	3,867
Government agencies (due within 1 year)	3,009	—	—	3,009
Total investments	<u>\$ 56,031</u>	<u>\$ 10</u>	<u>\$ (42)</u>	<u>\$ 55,999</u>
Total cash, cash equivalents, and investments	<u>\$ 162,977</u>	<u>\$ 10</u>	<u>\$ (42)</u>	<u>\$ 162,945</u>

[Table of Contents](#)

Cash, cash equivalents and investments as of December 31, 2014 included the following:

(in thousands)	AMORTIZED COST	GROSS UNREALIZED GAINS	GROSS UNREALIZED LOSSES	FAIR VALUE
<b>Cash and cash equivalents:</b>				
Cash and money market accounts	\$ 84,613	\$ —	\$ —	\$ 84,613
Certificates of deposit	472	—	—	472
Corporate bonds	501	—	—	501
Total cash and cash equivalents	\$ 85,586	\$ —	\$ —	\$ 85,586
<b>Investments:</b>				
Certificates of deposit (due within 1 year)	\$ 25,823	\$ —	\$ (9)	\$ 25,814
Certificates of deposit (due within 2 years)	4,429	1	(3)	4,427
Commercial paper (due within 1 year)	5,988	1	(3)	5,986
Corporate bonds (due within 1 year)	16,487	—	(24)	16,463
Corporate bonds (due within 2 years)	13,912	—	(64)	13,848
Government agencies (due within 1 year)	6,082	—	(6)	6,076
Total investments	\$ 72,721	\$ 2	\$ (109)	\$ 72,614
Total cash, cash equivalents, and investments	\$ 158,307	\$ 2	\$ (109)	\$ 158,200

## 5. Fair Value Measurements

The Company records certain financial assets and liabilities at fair value in accordance with the provisions of ASC Topic 820 on fair value measurements. As defined in the guidance, fair value, defined as an exit price, represents the amount that would be received to sell an asset or pay to transfer a liability in an orderly transaction between market participants. As a result, fair value is a market-based approach that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering these assumptions, the guidance defines a three-tier value hierarchy that prioritizes the inputs used in the valuation methodologies in measuring fair value.

- Level 1—Unadjusted quoted prices in active, accessible markets for identical assets or liabilities.
- Level 2—Other inputs that are directly or indirectly observable in the marketplace.
- Level 3—Unobservable inputs that are supported by little or no market activity.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

[Table of Contents](#)

The following tables summarize the fair value of financial assets and liabilities that are measured at fair value and the classification by level of input within the fair value hierarchy:

<b>FAIR VALUE MEASUREMENTS AS OF SEPTEMBER 30, 2015</b>				
(in thousands)	Level 1	Level 2	Level 3	Total
<b>Cash and cash equivalents:</b>				
Cash and money market accounts	\$ 106,946	\$ —	\$ —	\$ 106,946
Total cash and cash equivalents	\$ 106,946	\$ —	\$ —	\$ 106,946
<b>Investments:</b>				
Certificates of deposit	\$ —	\$ 24,090	\$ —	\$ 24,090
Commercial paper	—	4,475	—	4,475
Corporate bonds	—	24,425	—	24,425
Government agencies	—	3,009	—	3,009
Total investments	\$ —	\$ 55,999	\$ —	\$ 55,999
Total cash, cash equivalents, and investments	\$ 106,946	\$ 55,999	\$ —	\$ 162,945

<b>FAIR VALUE MEASUREMENTS AS OF DECEMBER 31, 2014</b>				
(in thousands)	Level 1	Level 2	Level 3	Total
<b>Cash and cash equivalents:</b>				
Cash and money market accounts	\$ 84,613	\$ —	\$ —	\$ 84,613
Certificates of deposit	—	472	—	472
Corporate bonds	—	501	—	501
Total cash and cash equivalents	\$ 84,613	\$ 973	\$ —	\$ 85,586
<b>Investments:</b>				
Certificates of deposit	\$ —	\$ 30,241	\$ —	\$ 30,241
Commercial paper	—	5,986	—	5,986
Corporate bonds	—	30,311	—	30,311
Government agencies	—	6,076	—	6,076
Total investments	\$ —	\$ 72,614	\$ —	\$ 72,614
Total cash, cash equivalents, and investments	\$ 84,613	\$ 73,587	\$ —	\$ 158,200

As of September 30, 2015 and December 31, 2014, the estimated fair value of Aerie's 2014 Convertible Notes was \$114.7 million and \$163.8 million, respectively. The estimated fair value of the 2014 Convertible Notes was determined using a scenario analysis and Monte Carlo simulation model to capture the various features of the 2014 Convertible Notes. The scenario analysis and Monte Carlo simulation require the use of Level 3 unobservable inputs and subjective assumptions, including but not limited to the probability of conversion, stock price volatility, the risk free interest rate and credit spread. The decrease in the estimated fair value of the 2014 Convertible Notes was primarily attributable to the change in the closing price of Aerie's common stock on September 30, 2015 as compared to December 31, 2014. The estimates presented are not necessarily indicative of amounts that could be realized in a current market exchange. The use of alternative market assumptions and estimation methodologies could have a material effect on these estimates of fair value.

**6. Other Assets, Net**

Other assets, net consists of the following:

(in thousands)	SEPTEMBER 30, 2015	DECEMBER 31, 2014
Deferred financing costs	\$ 1,266	\$ 1,479
Prepaid taxes <sup>(1)</sup>	6,488	—
Other	280	44
	\$ 8,034	\$ 1,523

- (1) Under ASC 810, Consolidation, the income tax expense resulting from the IP Assignment of \$6.5 million for the nine months ended September 30, 2015 was recorded as a prepaid asset. The prepaid asset is expected to be substantially offset by current year losses and amortized ratably over the estimated remaining patent life of the intellectual property subject to the IP Assignment, through approximately 2030. Refer to Note 9 for a description of the tax impact of the IP Assignment.

**7. Accounts Payable & Other Current Liabilities**

Accounts payable and other current liabilities consist of the following:

(in thousands)	SEPTEMBER 30, 2015	DECEMBER 31, 2014
Accounts payable	\$ 2,022	\$ 2,068
Accrued expenses and other liabilities:		
Employee benefits and compensation related accruals <sup>(1)</sup>	2,494	2,257
General and administrative related accruals	1,646	731
Research and development related accruals	6,100	3,280
Accrued income taxes <sup>(2)</sup>	5,699	—
	\$ 17,961	\$ 8,336

- (1) Comprised of accrued bonus, accrued vacation, and liabilities under the Company's employee stock purchase plan.  
(2) Accrued income taxes are the result of the tax gain from the IP Assignment and are expected to be substantially offset by current year losses. Refer to Note 9 for a description of the tax impact of the IP Assignment.

**8. Convertible Notes**

On September 30, 2014, Aerie issued the 2014 Convertible Notes to Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Private Design Fund III, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P. (collectively, "Deerfield"). On January 1, 2015, Deerfield Special Situations International Master Fund, L.P. transferred all of its rights under the 2014 Convertible Notes to Deerfield Special Situations Fund, L.P.

The 2014 Convertible Notes bear interest at a rate of 1.75% per annum payable quarterly in arrears on the first business day of each January, April, July and October. The 2014 Convertible Notes mature on the seventh anniversary from the date of issuance, unless earlier converted.

The 2014 Convertible Notes constitute a senior secured obligation of Aerie, collateralized by a first priority security interest in substantially all of the assets of Aerie. The 2014 Convertible Notes provide that, upon the request of Aerie, Deerfield will release all of the liens on the collateral if both of the following occur: (i) beginning one month after FDA approval of either Rhopressa™ or Roclatan™, shares of Aerie's common stock have traded at a price above \$30 per share (subject to adjustment for any subdivision or combination of outstanding common stock) for 30 consecutive trading days, and (ii) Aerie is prepared to close a financing that will be secured by a lien on Aerie's assets, subject only to the release of the lien on Aerie's assets held by Deerfield.

## [Table of Contents](#)

In connection with the IP Assignment, Aerie granted Deerfield a security interest in an intercompany promissory note and pledged 65% of the voting stock of Aerie Limited. Upon the request of Aerie, Deerfield will release the lien on the intercompany promissory note under certain circumstances.

At closing, Aerie paid Deerfield a one-time transaction fee of \$625,000. In addition, Aerie reimbursed Deerfield in the amount of \$250,000 for certain expenses incurred by Deerfield in connection with the transaction. Aerie also incurred \$1.3 million of legal and advisory fees in connection with the transaction.

The 2014 Convertible Notes are convertible at any time at the option of Deerfield, in whole or in part, into shares of common stock, including upon the repayment of the 2014 Convertible Notes at maturity (the "Conversion Option"). However, upon conversion, Deerfield (together with their affiliates) is limited to a 9.985% ownership cap in shares of common stock (the "9.985% Cap"). The 9.985% Cap would remain in place upon any assignment of the 2014 Convertible Notes by Deerfield.

The initial conversion price is \$24.80 per share of common stock (equivalent to an initial conversion rate of 40.32 shares of common stock per \$1,000 principal amount of 2014 Convertible Notes), representing a 30% premium over the closing price of the common stock on September 8, 2014. The conversion rate and the corresponding conversion price are subject to adjustment for stock dividends (other than a dividend for which Deerfield would be entitled to participate on an as-converted basis), stock splits, reverse stock splits and reclassifications. In addition, in connection with certain significant corporate transactions, Deerfield, at its option, may (i) require Aerie to prepay all or a portion of the principal amount of the 2014 Convertible Notes, plus accrued and unpaid interest, or (ii) convert all or a portion of the principal amount of the 2014 Convertible Notes into, depending upon the type of transaction, shares of common stock or the right to receive upon consummation of the transaction the consideration Deerfield would have received had Deerfield converted the 2014 Convertible Notes immediately prior to the consummation of the transaction. The 2014 Convertible Notes provide for an increase in the conversion rate if Deerfield elects to convert their 2014 Convertible Notes in connection with a significant corporate transaction. The current maximum increase to the initial conversion rate, in connection with a significant corporate transaction, is 12.07 shares of common stock per \$1,000 principal amount of 2014 Conversion Notes, which decreases over time and is determined by reference to the price of the common stock prior to the consummation of the significant corporate transaction or the value of the significant corporate transaction.

The agreement governing the 2014 Convertible Notes contains various representations and warranties, and affirmative and negative covenants, customary for financings of this type, including restrictions on the incurrence of additional debt and liens on Aerie's assets. As of September 30, 2015, Aerie was in compliance with the covenants. The agreement governing the 2014 Convertible Notes also provides for certain events of default, including the failure to pay principal and interest when due; inaccuracies in Aerie's representations and warranties to Deerfield; failure to comply with any of the covenants; Aerie's insolvency or the occurrence of certain bankruptcy-related events; certain judgments against Aerie; the suspension, cancellation or revocation of governmental authorizations that are reasonably expected to have a material adverse effect on Aerie's business; the acceleration of a specified amount of indebtedness; and the failure to deliver shares of common stock upon conversion of the 2014 Convertible Notes. If any event of default were to occur, and continue beyond any applicable cure period, the holders of more than 50% of the aggregate principal amount of the then outstanding 2014 Convertible Notes would be permitted to declare the principal and accrued and unpaid interest to be immediately due and payable.

The Company recorded the 2014 Convertible Notes as long-term debt at face value less debt discounts relating to fees and certain expenses paid to Deerfield in connection with the transaction. The Conversion Option is a derivative that qualifies for an exemption from bifurcation and liability accounting as provided for in ASC Topic 815, Derivatives and Hedging – Contracts in Entity's Own Equity ("ASC 815"). Since the Conversion Option is not bifurcated as a derivative pursuant to ASC 815, the Company further evaluated the Conversion Option to determine whether it is considered a beneficial conversion feature ("BCF"). The Company determined that the initial accounting conversion price was greater than the fair value of the common stock at the close of trading on the date of issuance, therefore no BCF existed at inception. However, if Deerfield elects to convert their 2014 Convertible Notes in connection with a significant corporate transaction, the increase to the initial conversion rate may cause a contingent BCF to exist at the time of conversion. The contingent BCF, if any, will be recognized in earnings when the contingency is resolved and will be measured using the fair value of the common stock at the close of trading on the date of issuance and the accounting conversion price as adjusted for such an increase to the initial conversion rate.

As of September 30, 2015, the Company recognized unamortized debt discounts of \$750,000. Debt discounts are amortized using the effective interest method through the earlier of maturity or the conversion of the 2014 Convertible Notes.

[Table of Contents](#)

The table below summarizes the carrying value of the 2014 Convertible Notes as of September 30, 2015:

<i>(in thousands)</i>	<b>SEPTEMBER 30, 2015</b>
Gross proceeds	\$ 125,000
Initial value of issuance costs recorded as debt discount	(875)
Amortization of debt discount	125
Carrying value	<u>\$ 124,250</u>

For the three and nine months ended September 30, 2015, interest expense related to the 2014 Convertible Notes was \$551,000 and \$1.6 million, respectively.

## 9. Income Taxes

The IP Assignment resulted in the recognition of a taxable gain for U.S. federal and state income tax purposes. As of September 30, 2015, the estimated income tax liability was \$5.7 million after utilization of net operating loss carry-forwards, current year losses generated through September 30, 2015 and quarterly estimated payments made through September 30, 2015. Under ASC 810, Consolidation, the income tax expense of \$6.5 million for the nine months ended September 30, 2015 was recorded as a prepaid asset. The income tax liability and prepaid asset are expected to be substantially reduced by current year losses projected after September 30, 2015. In accordance with ASC 810, Consolidation, the remaining estimated prepaid asset will be amortized into income tax expense over the estimated remaining patent life of the intellectual property subject to the IP Assignment, through approximately 2030.

As a result of the IP Assignment, the Company reversed approximately \$40.9 million of its valuation allowance on certain deferred tax assets, primarily federal and state net operating losses, as of September 30, 2015. Due to the Company's history of operating losses and lack of available evidence supporting future taxable income, the Company believes that a valuation allowance on its remaining deferred tax assets as of September 30, 2015 remains appropriate.

In addition, the IP Assignment is subject to complex tax and transfer pricing regulations administered by taxing authorities in various jurisdictions. The relevant taxing authorities may disagree with the Company's determinations as to the income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and the Company's position were not sustained, the Company could be required to pay additional taxes, interest and penalties, which could result in one-time tax charges, higher effective tax rates and reduced cash flows than otherwise would be expected.

## 10. Stock Purchase Warrants

As of September 30, 2015, the following equity classified warrants were outstanding:

NUMBER OF UNDERLYING SHARES	EXERCISE PRICE PER SHARE	WARRANT EXPIRATION DATE	TYPE OF EQUITY SECURITY
2,006	\$ 5.00	March 2016	Common Stock
75,000	\$ 5.00	February 2019	Common Stock
75,000	\$ 5.00	November 2019	Common Stock
7,500	\$ 5.00	August 2020	Common Stock
223,483	\$ 0.05	December 2019	Common Stock

The warrants outstanding as of September 30, 2015 are all currently exercisable with weighted-average remaining lives of 4.01 years.

## 11. Stock-based Compensation

Stock-based compensation expense for options granted and restricted stock awards (“RSAs”) is reflected in the consolidated statement of operations as follows:

(in thousands)	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014	2015	2014
Research and development	\$ 597	\$ 220	\$ 1,691	\$ 1,072
General and administrative	2,719	2,172	7,842	5,624
Total	\$ 3,316	\$ 2,392	\$ 9,533	\$ 6,696

The estimated fair value of options granted is determined on the date of grant using the Black-Scholes option pricing model. Options granted to non-employees are revalued at each financial reporting period until the required service is performed. Compensation expense related to RSAs is based on the market value of the Company’s common stock on the date of grant and is expensed on a straight-line basis (net of estimated forfeitures) over the vesting period.

As of September 30, 2015, the Company had \$26.9 million of unrecognized compensation expense related to options granted under its equity plans. This cost is expected to be recognized over a weighted average period of 2.6 years as of September 30, 2015. The weighted average remaining contractual life on all outstanding options as of September 30, 2015 was 8.1 years.

As of September 30, 2015, the Company had \$2.0 million of unrecognized compensation expense, related to unvested RSAs. This cost is expected to be recognized over a weighted average period of 3.1 years as of September 30, 2015. The weighted average remaining contractual term for RSAs as of September 30, 2015 was 3.1 years.

### Equity Plans

The Company maintains two equity compensation plans, the 2005 Aerie Pharmaceutical Stock Plan (the “2005 Plan”) and the 2013 Omnibus Incentive Plan (the “2013 Equity Plan”), which was amended and restated as the Aerie Pharmaceuticals, Inc. Amended and Restated Omnibus Incentive Plan (the “Amended and Restated Equity Plan”). The 2005 Plan and the Amended and Restated Equity Plan are referred to collectively as the “Plans.”

On October 30, 2013, the effective date of the 2013 Equity Plan, the 2005 Plan was frozen and no additional awards have been or will be made under the 2005 Plan. Any remaining shares available for future grant under the 2005 Plan were allocated to the 2013 Equity Plan.

At the 2015 Annual Meeting of Stockholders held on April 10, 2015, the Company’s stockholders approved the adoption of the Amended and Restated Equity Plan and no additional awards have been or will be made under the 2013 Equity Plan. Any remaining shares available under the 2013 Equity Plan were allocated to the Amended and Restated Equity Plan.

The Amended and Restated Equity Plan provides for the granting of up to 5,729,068 equity awards in respect of common stock of the Company, including equity awards that were available for issuance under the 2013 Equity Plan. The Company granted stock options to employees to purchase 1,081,000 and 1,211,700 shares of common stock during the nine months ended September 30, 2015 and 2014, respectively. The Company granted 99,027 RSAs to employees during the nine months ended September 30, 2015. No RSAs were granted by the Company during the nine months ended September 30, 2014.

[Table of Contents](#)

The following table summarizes the stock option activity under the Plans:

	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	AGGREGATE INTRINSIC VALUE  (000's)
Options outstanding at December 31, 2014	3,826,459	\$ 8.39	\$ 79,792
Granted	1,081,000	25.50	—
Exercised	(287,193)	4.49	—
Canceled	(255,323)	17.11	—
Options outstanding at September 30, 2015	4,364,943	\$ 12.33	\$ 23,614
Options exercisable at September 30, 2015	2,006,263	\$ 7.27	\$ 21,006

The following table summarizes the RSA activity under the Plans:

	NUMBER OF SHARES	WEIGHTED AVERAGE FAIR VALUE PER SHARE
RSAs outstanding at December 31, 2014	103,064	\$ 2.47
Granted	99,027	28.00
Vested	(58,165)	3.10
Canceled	(11,304)	28.54
RSAs outstanding at September 30, 2015	132,622	\$ 19.03

The vesting of the RSAs is time and service based with terms of two to four years. The RSAs are subject to repurchase, such that the Company has the right, but not the obligation, to repurchase unvested shares upon the employee's termination.

## 12. Commitments and Contingencies

### *Litigation*

The Company may periodically become subject to legal proceedings and claims arising in connection with its business. Except as set forth below, the Company is not a party to any known litigation, is not aware of any unasserted claims and does not have contingency reserves established for any litigation liabilities.

A putative securities class action lawsuit captioned Kelley et al. v. Aerie Pharmaceuticals, Inc., et al., Case No. 3:15-cv-03007, was filed against the Company and certain of its officers and directors in the United States District Court for the District of New Jersey on April 29, 2015. An amended complaint was filed on September 28, 2015 on behalf of a purported class of persons and entities who purchased or otherwise acquired the Company's publicly traded securities between June 25, 2014 and April 23, 2015. The amended complaint asserts claims under the Exchange Act and alleges that the defendants made materially false and misleading statements or omitted allegedly material information during that period related to, among other things, the prospects of the Company's initial Phase 3 registration trial of Rhopressa™, named "Rocket 1," and Rhopressa™.

The Company believes that the claims asserted in the action are without merit and intends to defend the lawsuit vigorously, and the Company expects to incur costs associated with defending the action. In addition, the Company has various insurance policies related to the risks associated with its business, including directors' and officers' liability insurance policies. However, there is no assurance that the Company will be successful in its defense of the action, and there is no assurance that the Company's insurance coverage, which contains a self-insured retention, will be sufficient or that its insurance carriers will cover all claims or litigation costs. At this time, the Company cannot accurately predict the ultimate outcome of this matter. Due to the inherent uncertainties of litigation, the Company cannot reasonably predict the timing or outcomes, or estimate the amount of loss, or range of loss, if any, or their effect, if any, on the Company's financial statements.

***Contract Service Providers***

In the course of the Company's normal business operations, it has agreements with contract service providers to assist in the performance of its research and development, clinical research and manufacturing activities. Substantially all of these contracts are on an as-needed basis.

**13. Related Party Transactions**

On August 4, 2015, the Company and GrayBug, Inc. ("GrayBug") entered into a research collaboration and license agreement to explore the potential of GrayBug's proprietary drug delivery technology to administer small molecule ophthalmic products to the back and front of the eye. The Board of Directors of the Company and that of GrayBug have a common Board member. This Board member did not participate in any deliberations associated with this transaction.

**14. Subsequent Events**

On November 6, 2015, the Company entered into separate at-the-market sales agreements with RBC Capital Markets, LLC and Cantor Fitzgerald & Co. In accordance with the terms of the sales agreements, the Company may offer and sell shares of our common stock having an aggregate offering price of up to \$50.0 million from time to time through RBC Capital Markets, LLC and Cantor Fitzgerald & Co., each acting as an agent. The common stock that may be offered, issued and sold by the Company under the "at-the-market" sales agreement is included in the \$150.0 million of common stock that may be offered, issued and sold by the Company under the shelf registration statement on Form S-3 (File No. 333-199821), which was declared effective by the SEC on November 10, 2014.

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

*The following management's discussion and analysis should be read in conjunction with our unaudited consolidated financial statements and related notes that appear elsewhere in this report and with our audited financial statements and related notes and management's discussion and analysis of financial condition and results of operations included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, as filed with the SEC on February 27, 2015. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see "Special Note Regarding Forward-Looking Statements" for additional factors relating to such statements, and see "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014 and our Quarterly Report on Form 10-Q for the period ended March 31, 2015, as filed on May 7, 2015, for a discussion of certain risk factors applicable to our business, financial condition and results of operations. Past operating results are not necessarily indicative of operating results in any future periods.*

### Overview

We are a clinical-stage pharmaceutical company focused on the discovery, development, and commercialization of first-in-class therapies for the treatment of patients with glaucoma and other diseases of the eye. Our lead product candidate, once-daily, triple-action Rhopressa™, successfully completed a Phase 2b clinical trial in patients with open-angle glaucoma and ocular hypertension in May 2013. Phase 3 registration trials commenced in July 2014 and we completed our initial Phase 3 registration trial, named "Rocket 1," which was designed to measure efficacy over three months, in April 2015. The Rocket 1 trial did not meet its primary efficacy endpoint of demonstrating non-inferiority of intra-ocular pressure, or IOP, lowering for once-daily Rhopressa™ compared to twice-daily timolol, but did achieve its pre-specified secondary endpoint. We evaluated the data and results from Rocket 1 and obtained agreement from the U.S. Food and Drug Administration ("FDA") to change the IOP range used for the primary endpoint of our second Phase 3 registration trial, named "Rocket 2," which is designed to measure efficacy over three months and assess safety over 12 months. The modified clinical endpoint range for Rocket 2 was set to a level where Rocket 1 would have been successful. In September 2015, the Rocket 2 trial achieved its primary efficacy endpoint of demonstrating non-inferiority of Rhopressa™ compared to timolol. Safety data for the 12-month period of the Rocket 2 trial are expected in early 2016. In addition to our Rocket 1 and Rocket 2 clinical trials, we are currently conducting a one year, safety-only study in Canada, named "Rocket 3," and an additional Phase 3 registration trial for Rhopressa™, "Rocket 4," which commenced in September 2015. Rocket 4 was initiated by Aerie in part to gain adequate safety data for regulatory filings in Europe. Based upon recent discussions with the FDA, we expect to file a new drug application ("NDA") for Rhopressa™ in the third quarter of 2016 utilizing Rocket 2 as the pivotal clinical trial and Rocket 1 as supportive in nature. We do not anticipate that completion of Rocket 4 will be necessary prior to submitting the NDA.

Our second product candidate, once-daily, quadruple-action Roclatan™, which is a fixed-dose combination of Rhopressa™ and latanoprost, the most commonly prescribed drug for the treatment of patients with glaucoma, successfully completed a Phase 2b clinical trial in patients with open-angle glaucoma and ocular hypertension in June 2014. The first Phase 3 registration trial, named "Mercury 1," commenced in September 2015. We expect to commence an additional Phase 3 trial in the U.S. for Roclatan™ in the second quarter of 2016.

We are developing Rhopressa™ as the first of a new class of compounds that is designed to lower intraocular pressure, or IOP, through novel biochemical targets. By inhibiting these targets, we believe Rhopressa™ reduces IOP via three separate mechanisms of action, or MOAs: (i) it increases fluid outflow through the trabecular meshwork, the diseased tissue of the eye, (ii) it reduces episcleral venous pressure, which represents the pressure of the blood in the episcleral veins of the eye where eye fluid drains into the bloodstream, and (iii) it reduces the production of eye fluid. Roclatan™ is a combination of Rhopressa™ and latanoprost and is designed to lower IOP through the same three MOAs as Rhopressa™ and, with a fourth MOA, through the ability of latanoprost to increase fluid outflow through the uveoscleral pathway, the eye's secondary drain.

Our stated objective is to build a major ophthalmic pharmaceutical company. In addition to our primary product candidates, Rhopressa™ and Roclatan™, we are also exploring the impact of Rhopressa™ on the diseased trabecular meshwork as well as neuroprotection, and evaluating possible uses of our existing proprietary portfolio of Rho Kinase inhibitors beyond glaucoma. In February 2015, we issued a research update on preclinical results demonstrating the potential for Rhopressa™ to have disease-modifying activity in glaucoma by stopping fibrosis in the trabecular meshwork, and also increasing perfusion in the trabecular outflow pathway thus increasing the delivery of nutrients to the diseased tissue. Additionally, an early-stage molecule, AR-13154, has shown preclinically the potential to decrease lesion size in wet age-related macular degeneration at numerically higher levels than a current market-leading product. Our strategy includes developing our business outside of North America, including potentially obtaining clinical approval on our own for our lead compounds in Europe and possibly Japan. Regarding commercialization strategy, if our products are successful, we may potentially commercialize ourselves or with a partner in Europe, and likely with a partner in Japan.

## [Table of Contents](#)

In March 2015, we revised our corporate structure to align with our business strategy outside of North America by establishing Aerie Pharmaceuticals Limited, a wholly-owned subsidiary organized under the laws of the Cayman Islands (“Aerie Limited”). In addition, we assigned the beneficial rights to our non-U.S. and Canadian intellectual property to Aerie Limited (the “IP Assignment”). As part of the IP Assignment, we and Aerie Limited entered into a research and development and cost sharing agreement pursuant to which we and Aerie Limited will share the costs of the development of intellectual property. Additionally, in April 2015, we continued to prepare for foreign-based activities and established Aerie Pharmaceuticals Ireland Limited (“Aerie Ireland Limited”) as a wholly-owned subsidiary of Aerie Limited to develop and commercialize the beneficial rights of the intellectual property assigned as part of the IP Assignment pursuant to a license arrangement to be entered into between Aerie Limited and Aerie Ireland Limited.

We may license, acquire or develop additional product candidates to broaden our presence in ophthalmology. In August 2015 and September 2015, we entered into collaboration and license arrangements with GrayBug, Inc. and Ramot at Tel Aviv University Ltd., respectively, neither of which represents a material financial commitment from Aerie. We continually explore and discuss potential additional opportunities for new ophthalmic products, delivery alternatives and new therapeutic areas with potential partners.

We have incurred net losses since our inception in June 2005. Our operations to date have been limited to research and development and raising capital. As of September 30, 2015, we had an accumulated deficit of \$197.2 million. We recorded net losses of \$18.0 million and \$54.0 million for the three and nine months ended September 30, 2015, respectively, and net losses of \$13.1 million and \$31.6 million for the three and nine months ended September 30, 2014, respectively. We anticipate that a substantial portion of our capital resources and efforts in the foreseeable future will be focused on completing the development and obtaining regulatory approval and preparing for potential commercialization of our product candidates.

We expect our research and development expenses to increase as we continue to initiate and conduct clinical trials for our Rhopressa™ and Roclatan™ product candidates and pursue regulatory approval. As we prepare for commercialization, we will likely incur significant commercial, sales, marketing and outsourced manufacturing expenses. Since our initial public offering (“IPO”) in October 2013, we are also incurring additional expenses associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses at least for the next several years.

Prior to our IPO, we raised net cash proceeds of \$78.6 million from the private placement of \$43.8 million of convertible preferred stock and \$34.8 million of convertible notes. Subsequent to the issuance of the convertible notes, we made \$0.5 million in cash payments, \$16.2 million of the convertible notes were converted into shares of convertible preferred stock, which were subsequently converted into shares of common stock in connection with our IPO, and \$18.0 million of convertible notes initially sold in 2012 were converted into shares of common stock in connection with our IPO. In connection with our IPO, all outstanding shares of convertible preferred stock were converted into shares of common stock.

On October 30, 2013, we completed our IPO and issued 7,728,000 shares of our common stock at an IPO price of \$10.00 per share, including 1,008,000 shares of common stock issued upon the exercise in full by the underwriters of their option to purchase additional shares to cover over-allotments. Our shares began trading on the NASDAQ Global Market on October 25, 2013. We received net proceeds from the IPO of approximately \$68.3 million, after deducting underwriting discounts and commissions of \$5.4 million and expenses of \$3.6 million.

On September 30, 2014, we issued \$125.0 million aggregate principal amount of senior secured convertible notes (the “2014 Convertible Notes”). We received net proceeds from the issuance of the 2014 Convertible Notes of approximately \$124.1 million, after deducting discounts and certain expenses of \$875,000.

On November 3, 2014, we filed a shelf registration statement on Form S-3, which was declared effective by the SEC on November 10, 2014. The shelf registration statement permits: (i) the offering, issuance and sale by us of up to a maximum aggregate offering price of \$150.0 million of our common stock; (ii) sales of common stock by certain selling stockholders; and (iii) the offering, issuance and sale of up to a maximum aggregate offering price of \$50.0 million of our common stock that may be issued and sold by us under an “at-the-market” sales agreement with Cantor Fitzgerald & Co. The common stock that may be offered, issued and sold by us under the “at-the-market” sales agreement is included in the \$150.0 million of common stock that may be offered, issued and sold by us under the shelf registration statement. As of and for the nine months ended September 30, 2015, we issued and sold 1,610,466 shares of our common stock under the “at-the-market” sales agreement. We received net proceeds of approximately \$47.1 million through September 30, 2015, after deducting commissions at a rate of up to 3% of the gross sales price per share sold and other fees and expenses.

Proceeds from the “at-the-market” sales, the 2014 Convertible Notes financing in September 2014 and our IPO in October 2013, are currently expected to provide sufficient resources to complete all currently known non-clinical and clinical

## [Table of Contents](#)

requirements for our development programs advancing Rhopressa™ and Roclatan™, and approval by the FDA and product commercialization, pending successful outcome of the trials. We also intend to use the proceeds in part for general corporate purposes and potentially for strategic growth opportunities.

To date, we have not generated product revenue and we do not expect to generate product revenue unless and until we successfully complete development and obtain regulatory approval for one or more of our product candidates. If we do not successfully commercialize any of our product candidates, we may be unable to generate product revenue or achieve profitability.

We may be required to obtain further funding through public or private offerings, debt financing, collaboration and licensing arrangements or other sources. Adequate additional funding may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed or on acceptable terms, we would be forced to delay, reduce or eliminate our research and development programs or commercialization efforts.

### **Financial Overview**

#### ***Revenue***

We have not generated any revenue from the sale of any products, and we do not expect to generate any revenue unless or until we obtain regulatory approval of and commercialize our products.

#### ***General and Administrative Expenses***

General and administrative expenses consist primarily of salaries, benefits and stock-based compensation for all officers and employees in general management, finance and administration. Other significant expenses include facilities expenses and professional fees for accounting, legal and other services.

We expect that our general and administrative expenses will increase with the continued advancement of our product candidates and with our increased management, legal, compliance, accounting and investor relations expenses as we continue to grow. We expect these increases will likely include higher expenses for insurance, expenses related to the hiring of additional personnel and payments to outside service providers, lawyers and accountants.

#### ***Research and Development Expenses***

Since our inception, we have focused on our development programs. Research and development expenses consist primarily of costs incurred for the research and development of our preclinical and clinical candidates, which include:

- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense for research and development personnel;
- expenses incurred under agreements with contract research organizations (“CROs”), contract manufacturing organizations and service providers that assist in conducting clinical trials and preclinical studies;
- costs associated with preclinical activities and development activities;
- costs associated with regulatory operations; and
- depreciation expense for assets used in research and development activities.

We expense research and development costs to operations as incurred. The costs for certain development activities, such as clinical trials, are recognized based on the terms of underlying agreements as well as an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations along with additional information provided to us by our vendors.

Expenses relating to activities, such as manufacturing and stability and toxicology studies, that are supportive of the product candidate itself, are classified as direct non-clinical. Expenses relating to clinical trials and similar activities, including costs associated with CROs, are classified as direct clinical. Expenses relating to activities that support more than one development program or activity such as personnel costs, stock-based compensation and depreciation are not allocated to direct clinical or non-clinical expenses and are separately classified as “unallocated.”

[Table of Contents](#)

The following table shows our research and development expenses by product candidate and type of activity for the three and nine months ended September 30, 2015 and 2014:

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014	2015	2014
	(unaudited) (in thousands)			
<b>Rhopressa™</b>				
Direct non-clinical	\$ 1,505	\$ 2,298	\$ 5,006	\$ 6,826
Direct clinical	2,958	3,762	12,841	5,980
<b>Total</b>	<b>\$ 4,463</b>	<b>\$ 6,060</b>	<b>\$ 17,847</b>	<b>\$ 12,806</b>
<b>Roclatan™</b>				
Direct non-clinical	\$ 468	\$ 301	\$ 1,730	\$ 455
Direct clinical	1,512	18	2,091	1,868
<b>Total</b>	<b>\$ 1,980</b>	<b>\$ 319</b>	<b>\$ 3,821</b>	<b>\$ 2,323</b>
<b>Discontinued product candidates</b>				
Direct non-clinical	\$ —	\$ 22	\$ 56	\$ 75
Direct clinical	—	—	—	1
<b>Total</b>	<b>\$ —</b>	<b>\$ 22</b>	<b>\$ 56</b>	<b>\$ 76</b>
<b>Unallocated</b>	<b>3,461</b>	<b>1,829</b>	<b>10,425</b>	<b>5,071</b>
<b>Total research and development expense</b>	<b>\$ 9,904</b>	<b>\$ 8,230</b>	<b>\$ 32,149</b>	<b>\$ 20,276</b>

For the periods presented, we did not incur significant direct non-clinical or direct clinical costs for our exploration of the impact of Rhopressa™ on the diseased trabecular meshwork and neuroprotection or for possible uses of our existing proprietary portfolio of Rho Kinase inhibitors beyond glaucoma. Costs for these activities were primarily comprised of internal personnel costs and were included in unallocated costs. Discontinued product candidates relate to previously developed AR-12286 and related compounds for which further development for the treatment of glaucoma was discontinued in 2013.

Research and development activities associated with the discovery and development of new drugs and products for the treatment of diseases of the eye are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials. We expect our research and development expenses to increase as we continue to conduct clinical trials for our product candidates, or if the FDA requires us to conduct additional trials for approval.

Our research and development expenditures are subject to numerous uncertainties in timing and cost to completion. Development timelines, the probability of success and development expenses can differ materially from expectations. The cost of clinical trials may vary significantly over the life of a project as a result of differences arising during clinical development, including, among others, the following:

- number of trials required for approval;
- number of sites included in the trials;
- length of time required to enroll suitable patients;
- number of patients that participate in the trials;
- drop-out or discontinuation rates of patients;
- duration of patient follow-up;
- costs related to compliance with regulatory requirements;
- number and complexity of analyses and tests performed during the trial;
- phase of development of the product candidate; and
- efficacy and safety profile of the product candidate.

## [Table of Contents](#)

Our expenses related to clinical trials are based on estimates of patient enrollment and related expenses at clinical investigator sites as well as estimates for the services received and efforts expended pursuant to contracts with research institutions, consultants and CROs that assist in conducting and managing our clinical trials. We generally accrue expenses related to clinical trials based on contracted amounts applied to the level of patient enrollment and activity according to the protocol. If future timelines or contracts are modified based upon changes in the clinical trial protocol or scope of work to be performed, we modify our estimates of accrued expenses accordingly on a prospective basis. Historically, such modifications have not been material.

As a result of the uncertainties discussed above, we are unable to determine with certainty the duration and completion costs of our development programs or precisely when and to what extent we will receive revenue from the commercialization and sale of our products. We may never succeed in achieving regulatory approval for one or more of our product candidates. The duration, costs and timing of clinical trials and development of any product candidate will depend on a variety of factors, including the uncertainties of future preclinical studies and clinical trials, uncertainties in the clinical trial enrollment rate and changing government regulation. In addition, the probability of success for each product candidate will depend on numerous factors, including efficacy and tolerability profiles, manufacturing capability, competition, and commercial viability.

### ***Other Income (Expense), Net***

Other income consists of interest earned on our cash and cash equivalents and investments as well as the net proceeds from the sale of our net operating loss tax benefits for the state of New Jersey. Refer to Note 3 to our unaudited consolidated financial statements appearing elsewhere in this report for further information.

Other expense consists of interest expense under the 2014 Convertible Notes, amortization of debt discounts and other miscellaneous expense.

### ***Critical Accounting Policies and Use of Estimates***

Our management's discussion and analysis of financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States, or U.S. GAAP. The preparation of consolidated financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, costs and expenses and related disclosures. We evaluate our estimates and judgments on an ongoing basis. Significant estimates include assumptions used in the determination of stock-based compensation and certain research and development expenses. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are more fully described in Note 2 to our unaudited consolidated financial statements included elsewhere in this report and Note 2 to our audited financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2014.

**Results of Operations****Comparison of the Three Months Ended September 30, 2015 and 2014**

The following table summarizes the results of our operations for the three months ended September 30, 2015 and 2014:

	<b>THREE MONTHS ENDED SEPTEMBER 30,</b>		<b>INCREASE (DECREASE)</b>	<b>% INCREASE (DECREASE)</b>
	<b>2015</b>	<b>2014</b>		
	(unaudited)			
	(in thousands)			
<b>Expenses</b>				
General and administrative	\$ (7,462)	\$ (4,944)	\$ 2,518	51%
Research and development	(9,904)	(8,230)	1,674	20%
Other income (expense), net	(523)	27	(550)	N/A
Net loss before income taxes	<u>\$ (17,889)</u>	<u>\$ (13,147)</u>		

*General and administrative expenses*

General and administrative expenses increased by \$2.5 million for the three months ended September 30, 2015 as compared to the three months ended September 30, 2014. This increase was primarily associated with the expansion of our employee base to support the growth of our operations. Personnel costs increased by \$1.2 million, including new salaried employees and related expenses of \$0.7 million and employee stock-based compensation expense of \$0.5 million. As a result of increased legal, tax and system integration activities, outside professional fees increased by \$0.6 million. Additionally, other fees associated with operating as a public company increased by \$0.7 million.

*Research and development expenses*

During the three months ended September 30, 2015, our research and development activity was primarily associated with Phase 3 clinical trials for Rhopressa™ and Roclatan™. Research and development expenses increased by \$1.7 million for the three months ended September 30, 2015 as compared to the three months ended September 30, 2014. Costs for Roclatan™ increased by \$1.7 million as direct clinical costs increased by \$1.5 million and direct non-clinical costs increased by \$0.2 million as a result of commencing Mercury 1 and preparatory activities for our other Phase 3 registration trials for Roclatan™. Costs for Rhopressa™ decreased by \$1.6 million as direct clinical costs decreased by \$0.8 million and direct non-clinical costs decreased by \$0.8 million due to the timing of our clinical trials. Both Rocket 1 and Rocket 2 commenced in July 2014. Rocket 1 completed in April 2015 and we received three-month efficacy results for Rocket 2 in September 2015. Additionally, we began to incur expenses for Rocket 4 in mid-2015. Unallocated expenses, including employee salary, consulting costs and related expenses, increased by \$1.6 million.

*Other income (expense), net*

Other income (expense), net decreased by \$0.6 million for the three months ended September 30, 2015 as compared to the three months ended September 30, 2014. The decrease was mainly due to an increase in interest and amortization expense of \$0.6 million.

**Comparison of the Nine Months Ended September 30, 2015 and 2014**

The following table summarizes the results of our operations for the nine months ended September 30, 2015 and 2014:

	NINE MONTHS ENDED SEPTEMBER 30,		INCREASE (DECREASE)	% INCREASE (DECREASE)
	2015	2014		
	(unaudited)			
	(in thousands)			
<b>Expenses</b>				
General and administrative	\$ (22,987)	\$ (13,723)	\$ 9,264	68%
Research and development	(32,149)	(20,276)	11,873	59%
Other income (expense), net	1,374	2,367	(993)	N/A
Net loss before income taxes	<u>\$ (53,762)</u>	<u>\$ (31,632)</u>		

*General and administrative expenses*

General and administrative expenses increased by \$9.3 million for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014. This increase was primarily associated with the expansion of our employee base to support the growth of our operations. Personnel costs increased by \$4.1 million, including employee stock-based compensation expense of \$2.2 million and new salaried employees and related expenses of \$1.9 million. As a result of the IP Assignment and increased legal, accounting and tax activities, outside professional fees increased by \$3.1 million. Other fees associated with operating as a public company increased by \$2.1 million.

*Research and development expenses*

During the nine months ended September 30, 2015, our research and development activity was primarily associated with Phase 3 clinical trials for Rhopressa™ and preparatory activities for, as well as commencing, our Phase 3 registration trials for Roclatan™. Research and development expenses increased by \$11.9 million for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014. Costs for Rhopressa™ increased by \$5.0 million as direct clinical costs increased by \$6.9 million and direct non-clinical costs decreased by \$1.9 million due to the timing of our clinical trials. Both Rocket 1 and Rocket 2 commenced in July 2014. Rocket 1 completed in April 2015 and we received three-month efficacy results for Rocket 2 in September 2015. Additionally, we began to incur expenses related to Rocket 4 in mid-2015. Costs for Roclatan™ increased by \$1.5 million as direct non-clinical costs increased by \$1.3 million and direct clinical costs increased by \$0.2 million as a result of preparatory activities for, as well as commencing, Mercury 1. Unallocated expenses including employee salary, consulting costs and related expenses, increased by \$5.4 million.

*Other income (expense), net*

Other income (expense), net decreased by \$1.0 million for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014. The decrease was mainly due to an increase in interest and amortization expense of \$1.9 million partially offset by an increase in income of \$0.9 million related to the sale of deferred state tax benefits to unrelated third parties and an increase in investment income.

**Liquidity and Capital Resources**

Since our inception, we have funded operations primarily through the sale of equity securities, including our IPO, and the issuance of convertible notes. We have incurred losses and experienced negative operating cash flows since our inception and anticipate that we will continue to incur losses for at least the next several years.

Prior to our IPO, we raised net cash proceeds of \$78.6 million from the private placement of \$43.8 million of convertible preferred stock and \$34.8 million of convertible notes. Subsequent to their issuance, we paid \$0.5 million in cash payments on the convertible notes, \$16.2 million of the convertible notes were converted into shares of convertible preferred stock, which were subsequently converted into shares of common stock in connection with our IPO, and \$18.0 million of convertible notes initially sold in 2012 were converted into shares of common stock in connection with our IPO. In connection with our IPO, all outstanding shares of convertible preferred stock were converted into shares of common stock.

[Table of Contents](#)

On October 30, 2013, we completed our IPO and issued 7,728,000 shares of our common stock at an IPO price of \$10.00 per share, including 1,008,000 shares of common stock issued upon the exercise in full by the underwriters of their option to purchase additional shares to cover over-allotments. We received net proceeds from the IPO of approximately \$68.3 million, after deducting underwriting discounts and commissions of \$5.4 million and expenses of \$3.6 million.

On September 30, 2014, we issued \$125.0 million aggregate principal amount of 2014 Convertible Notes. We received net proceeds from the issuance of the 2014 Convertible Notes of approximately \$124.1 million, after deducting discounts and certain expenses of \$875,000.

On November 3, 2014, we filed a shelf registration statement on Form S-3, which was declared effective by the SEC on November 10, 2014. The shelf registration statement permits: (i) the offering, issuance and sale by us of up to a maximum aggregate offering price of \$150.0 million of our common stock; (ii) sales of common stock by certain selling stockholders; and (iii) the offering, issuance and sale of up to a maximum aggregate offering price of \$50.0 million of our common stock that may be issued and sold by us under an “at-the-market” sales agreement with Cantor Fitzgerald & Co. The common stock that may be offered, issued and sold by us under the “at-the-market” sales agreement is included in the \$150.0 million of common stock that may be offered, issued and sold by us under the shelf registration statement. As of and for the nine months ended September 30, 2015, we issued and sold 1,610,466 shares of our common stock under the “at-the-market” sales agreement. We received net proceeds of approximately \$47.1 million through September 30, 2015, after deducting commissions at a rate of up to 3% of the gross sales price per share sold and other fees and expenses.

As of September 30, 2015, our principal sources of liquidity were our cash and cash equivalents and investments, which totaled approximately \$162.9 million.

We currently estimate that our cash and cash equivalents and investments as of September 30, 2015 will provide sufficient resources to complete all currently known non-clinical and clinical requirements for our development programs advancing Rhopressa™ and Roclatan™, and approval by the FDA and product commercialization, pending successful outcome of the trials. Our ability to continue as a going concern will depend, in large part, on our ability to successfully commercialize our product candidates and generate positive cash flow from operations, neither of which is certain.

The following table summarizes our sources and uses of cash:

	NINE MONTHS ENDED SEPTEMBER 30,	
	2015	2014
	(unaudited) (in thousands)	
<b>Net cash (used in) provided by:</b>		
Operating activities	\$ (41,511)	\$ (22,392)
Investing activities	14,397	(22,579)
Financing activities	48,474	124,206
Net change in cash and cash equivalents	<u>\$ 21,360</u>	<u>\$ 79,235</u>

During the nine months ended September 30, 2015 and 2014, our operating activities used net cash of \$41.5 million and \$22.4 million, respectively. The use of net cash in each of these periods primarily resulted from our net losses, adjusted for certain non-cash items. The increase in net loss from operations for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014 was due to increases in general and administrative and research and development expenses as previously described, see “—Results of Operations.” For the nine months ended September 30, 2015 and 2014, we received \$2.9 million and \$2.3 million, respectively, of cash proceeds from the sale of deferred state tax benefits to unrelated parties, which decreased net cash used in operating activities.

During the nine months ended September 30, 2015, our investing activities provided net cash of \$14.4 million primarily related to maturities and sales of available-for-sale investments of \$42.8 million, which were partially offset by purchases of available-for-sale investments of \$26.6 million and by purchases of office furnishings, software and equipment of \$1.9 million to facilitate our increased research and development and corporate activities. During the nine months ended September 30, 2014, our investing activities used net cash of approximately \$22.6 million primarily related to purchases of available-for-sale investments of \$34.6 million, which was partially offset by maturities and sales of available-for-sale investments of \$12.2 million.

## [Table of Contents](#)

During the nine months ended September 30, 2015 and 2014, our financing activities provided net cash of \$48.5 million and \$124.2 million, respectively. The net cash provided by financing activities during the nine months ended September 30, 2015 was primarily related to the issuance and sale of common stock under the “at-the-market” sales agreement pursuant to our shelf registration statement. We received net proceeds of approximately \$47.1 million, after deducting commissions of approximately \$1.3 million. The net cash provided by financing activities during the nine months ended September 30, 2014 was primarily related to net proceeds of \$124.4 from the issuance of the 2014 Convertible Notes, partially offset by payments of debt issuance costs of \$0.3 million.

### ***Operating Capital Requirements***

We expect to incur increasing operating losses for at least the next several years as we continue to conduct Phase 3 clinical trials for Rhopressa™ and initiate, conduct and complete Phase 3 clinical trials for Roclatan™. We currently expect that our existing cash and cash equivalents and investments will provide sufficient resources to complete all currently known non-clinical and clinical requirements for our development programs advancing Rhopressa™ and Roclatan™, and approval by the FDA and product commercialization, pending successful outcome of the trials.

We expect to continue to incur increasing costs associated with the growth of our operations, including but not limited to, increased costs and expenses for personnel associated with the expansion of our employee base, increased business development activities, increased audit and legal fees, investor relations fees, expenses for compliance programs and various other costs.

Due to the numerous risks and uncertainties associated with research, development and commercialization of pharmaceutical products, we are unable to estimate the exact amount of our operating capital requirements. We based our projections on assumptions that may prove to be incorrect or unreliable or may change due to circumstances beyond our control, and as a result we may consume our available capital resources earlier than we originally projected. Our future funding requirements will depend on many factors, including, but not limited to the following:

- timing and costs of our future preclinical studies and clinical trials for our product candidates;
- costs of any follow-on development or products;
- timing and cost of the ongoing supportive preclinical studies and activities for our product candidates;
- outcome, timing and costs of seeking regulatory approval;
- costs of commercialization activities for our product candidates, if we receive regulatory approval, including the costs and timing of establishing product sales, marketing, manufacturing and distribution capabilities;
- costs of operating as a public company, including legal, compliance, accounting and investor relations expenses;
- terms and timing of any current or future collaborations, licensing, consulting or other arrangements; and
- filing and prosecuting patent applications, maintaining and protecting our intellectual property rights and defending against intellectual property related claims.

We may need to obtain additional financing to fund our future operations, including supporting our international operations and sales and marketing activities, as well as funding the ongoing development of any additional product candidates we might license, acquire or develop internally. To the extent that we raise additional capital through the sale of common stock, convertible securities or other equity securities, the ownership interests of our existing stockholders may be materially diluted and the terms of these securities could include liquidation or other preferences that could adversely affect the rights of our existing stockholders. If we are unable to raise capital when needed or on acceptable terms, we could be forced to delay, reduce or discontinue our research and development programs or commercialization efforts.

**Contractual Obligations and Commitments**

The following table summarizes our contractual obligations at September 30, 2015:

(in thousands)	TOTAL	LESS THAN 1 YEAR	1 TO 3 YEARS	3 TO 5 YEARS	MORE THAN 5 YEARS
Operating lease and other obligations <sup>(1)</sup>	\$ 7,980	\$ 1,506	\$ 2,852	\$ 2,751	\$ 871
2014 Convertible Notes <sup>(2)</sup>	125,000	—	—	—	125,000
	<u>132,980</u>	<u>1,506</u>	<u>2,852</u>	<u>2,751</u>	<u>125,871</u>

(1) Our operating lease obligations are primarily related to our principal executive offices in Irvine, California, corporate offices in New Jersey and research facility in North Carolina.

(2) On September 30, 2014, we issued the 2014 Convertible Notes to Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Private Design Fund III, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P. The 2014 Convertible Notes mature on the seventh anniversary from the date of issuance, unless earlier converted. On January 1, 2015, Deerfield Special Situations International Master Fund, L.P. transferred all of its rights under the 2014 Convertible Notes to Deerfield Special Situations Fund, L.P. Refer to Note 8 to our unaudited consolidated financial statements appearing elsewhere in this report for further information.

We have no other contractual obligations or commitments that are not subject to our existing financial statement accrual processes.

**Off-Balance Sheet Arrangements**

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements as defined under SEC rules.

**Jumpstart Our Business Startups Act of 2012**

The Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") provides that an emerging growth company can take advantage of certain exemptions from various reporting and other requirements that are applicable to public companies that are not emerging growth companies. We currently take advantage of some, but not all, of the reduced regulatory and reporting requirements that are available to us for as long as we qualify as an emerging growth company. We have irrevocably elected under Section 107 of the JOBS Act not to take advantage of the extension of time to comply with new or revised financial accounting standards available under Section 102(b) of the JOBS Act and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. Our independent registered public accounting firm will not be required to provide an attestation report on the effectiveness of our internal control over financial reporting for as long as we qualify as an emerging growth company.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. Our cash and cash equivalents as of September 30, 2015, totaled \$106.9 million and consisted of cash and money market funds with original maturities of three months or less from the date of purchase. Our investments totaled \$56.0 million as of September 30, 2015 and consisted of certificates of deposit, commercial paper, corporate bonds and government agency securities. We had cash and cash equivalents and investments of \$158.2 million as of December 31, 2014. Given the short-term nature of our cash equivalents and investments and our investment policy, a sudden change in market interest rates would not be expected to have a material impact on our financial condition or results of operations. We do not engage in any hedging activities against changes in interest rates. The 2014 Convertible Notes carry a fixed interest rate and, as such, are not subject to interest rate risk. We do not have any material foreign currency or any other derivative financial instruments.

**Item 4. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15(d)-15(e)), as of the end of the period covered by this report. Based upon the evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2015, the disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports we file and submit under the Exchange Act, is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

***Changes in Internal Control Over Financial Reporting***

There have been no significant changes in our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

We may periodically become subject to legal proceedings and claims arising in connection with our business. Except as set forth below, we are not a party to any known litigation, are not aware of any unasserted claims and do not have contingency reserves established for any litigation liabilities.

A putative securities class action lawsuit captioned *Kelley et al. v. Aerie Pharmaceuticals, Inc., et al.*, Case No. 3:15-cv-03007, was filed against us and certain of our officers and directors in the United States District Court for the District of New Jersey on April 29, 2015. An amended complaint was filed on September 28, 2015 on behalf of a purported class of persons and entities who purchased or otherwise acquired our publicly traded securities between June 25, 2014 and April 23, 2015. The amended complaint asserts claims under the Exchange Act and alleges that the defendants made materially false and misleading statements or omitted allegedly material information during that period related to, among other things, the prospects of Rocket 1 and Rhopressa™.

We believe that the claims in the asserted action are without merit and intend to defend the lawsuit vigorously, and we expect to incur costs associated with defending the action. In addition, we have various insurance policies related to the risks associated with our business, including directors' and officers' liability insurance policies. However, there is no assurance that we will be successful in our defense of the action, and there is no assurance that our insurance coverage, which contains a self-insured retention, will be sufficient or that our insurance carriers will cover all claims or litigation costs. At this time, we cannot accurately predict the ultimate outcome of this matter. Due to the inherent uncertainties of litigation, we cannot reasonably predict the timing or outcomes, or estimate the amount of loss, or range of loss, if any, or their effect, if any, on our financial statements.

### **Item 1A. Risk Factors**

You should consider carefully the risks set forth under "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2014, filed with the SEC on February 27, 2015, as supplemented and updated by the risks set forth under "Risk Factors" in our Quarterly Report on Form 10-Q for the period ended March 31, 2015, filed with the SEC on May 7, 2015.

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

#### *Unregistered Sales of Equity Securities*

None.

#### *Use of Proceeds from Registered Securities*

On October 30, 2013, we completed our IPO and issued 7,728,000 shares of our common stock at an IPO price of \$10.00 per share, including 1,008,000 shares of common stock issued upon the exercise in full by the underwriters of their option to purchase additional shares to cover over-allotments. The shares were registered under the Securities Act on a registration statement on Form S-1 (Registration No. 333-191219). The SEC declared the registration statement effective on October 24, 2013.

We have invested the net proceeds from the IPO in a variety of capital preservation investments, including short-term and long-term, investment grade, interest bearing instruments. There has been no material change in our planned use of the net proceeds from our IPO as described in our final prospectus filed with the SEC on October 28, 2013 pursuant to Rule 424(b) under the Securities Act.

On November 3, 2014, we filed a shelf registration statement on Form S-3 (Registration No. 333-199821), which was declared effective by the SEC on November 10, 2014. The shelf registration statement permits: (i) the offering, issuance and sale by us of up to a maximum aggregate offering price of \$150.0 million of our common stock; (ii) sales of common stock by certain selling stockholders; and (iii) the offering, issuance and sale of up to a maximum aggregate offering price of \$50.0 million of our common stock that may be issued and sold by us under an "at-the-market" sales agreement with Cantor Fitzgerald & Co. The common stock that may be offered, issued and sold by us under the "at-the-market" sales agreement is included in the \$150.0 million of common stock that may be offered, issued and sold by us under the shelf registration statement.

During the nine months ended September 30, 2015, we issued and sold 1,610,466 shares of our common stock under the "at-the-market" sales agreement. We received net proceeds of approximately \$47.1 million through September 30, 2015, after deducting commissions and other fees and expenses of \$1.3 million.

[Table of Contents](#)

We currently hold the net proceeds from the “at-the-market” sales as cash deposits and intend to invest the net proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments and U.S. government securities. There has been no material change in our planned use of the net proceeds as described in our shelf registration statement filed on November 3, 2014.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

*Departure of Director*

On November 3, 2015, Anand Mehra, MD notified the Board of Directors (the “Board”) of the Company of his intention to resign as a director of the Company, effective as of November 3, 2015. Dr. Mehra’s resignation was not the result of any dispute or disagreement with the Company or the Board on any matter relating to the operations, policies or practices of the Company. The Company expresses its appreciation for Dr. Mehra’s service as a member of the Board.

*At-the-Market Sales Agreements*

On November 6, 2015, we entered into separate at-the-market sales agreements with RBC Capital Markets, LLC and Cantor Fitzgerald & Co. In accordance with the terms of the sales agreements, we may offer and sell shares of our common stock having an aggregate offering price of up to \$50.0 million from time to time through RBC Capital Markets, LLC and Cantor Fitzgerald & Co., each acting as an agent. The common stock will be issued pursuant to our registration statement on Form S-3 (File No. 333-199821).

Pursuant to the at-the-market sales agreements, shares of common stock may be offered and sold through RBC Capital Markets, LLC and Cantor Fitzgerald & Co. in transactions that are deemed to be “at-the-market” offerings as defined in Rule 415 of the Securities Act, including sales made directly on or through the NASDAQ Global Market, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices, and/or any other method permitted by law, including in privately negotiated transactions. RBC Capital Markets, LLC and Cantor Fitzgerald & Co. will act as sales agents on a best efforts basis and use commercially reasonable efforts to sell on our behalf all of the shares of common stock requested to be sold by us, consistent with its normal trading and sales practices, on mutually agreed terms between RBC Capital Markets, LLC and us and Cantor Fitzgerald & Co. and us. Except as otherwise described in the at-the-market sales agreements, RBC Capital Markets, LLC and Cantor Fitzgerald & Co. will be entitled to compensation at a commission rate of up to 3.0% of the gross sales price per share sold. We have no obligation to sell any shares under the at-the-market sales agreements, and may at any time suspend offers under the at-the-market sales agreements or terminate the at-the-market sales agreements.

The summary of the at-the-market sales agreements in this report does not purport to be complete and are qualified by reference to such agreements, which are filed as Exhibit 1.1 and Exhibit 1.2 to this report.

A copy of the opinion of Fried, Frank, Harris, Shriver & Jacobson LLP relating to the validity of the issuance and sale of shares of our common stock pursuant to the Sales Agreements (the “Opinion”) is also filed herewith as Exhibit 5.1. The Sales Agreements and the Opinion filed with this Quarterly Report on Form 10-Q are incorporated by reference into our above-referenced registration statement on Form S-3.

**Item 6. Exhibits**

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index, which is incorporated herein by reference.

**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.

AERIE PHARMACEUTICALS, INC.

Date: November 6, 2015

/s/ RICHARD J. RUBINO

Richard J. Rubino  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**EXHIBIT INDEX**

<u>EXHIBIT NO.</u>	<u>EXHIBIT</u>
1.1*	Sales Agreement, dated November 6, 2015, by and between Aerie Pharmaceuticals, Inc. and RBC Capital Markets LLC.
1.2*	Sales Agreement, dated November 6, 2015, by and between Aerie Pharmaceuticals, Inc. and Cantor Fitzgerald & Co.
5.1*	Opinion of Fried, Frank, Harris, Shriver & Jacobson LLP.
23.1*	Consent of Fried, Frank, Harris, Shriver & Jacobson LLP (included in Exhibit 5.1).
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS**	XBRL Instance Document.
101.SCH**	XBRL Taxonomy Extension Schema Document.
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB**	XBRL Taxonomy Extension Label Linkbase Database.
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.
*	Filed herewith.
**	Attached as Exhibit 101 to this report are the following formatted in XBRL (Extensible Business Reporting Language):
	(i) Consolidated Balance Sheets at September 30, 2015 (unaudited) and December 31, 2014, (ii) Consolidated Statements of Operations and Comprehensive Loss for the three and nine months ended September 30, 2015 and 2014 (unaudited), (iii) Consolidated Statements of Cash Flows for the nine months ended September 30, 2015 and 2014 (unaudited) and (iv) Notes to Consolidated Financial Statements (unaudited).

**AERIE PHARMACEUTICALS, INC.**

Up to \$50,000,000 of  
Shares of Common Stock  
(par value \$0.001 per share)

**Controlled Equity Offering<sup>SM</sup>**

**Sales Agreement**

November 6, 2015

RBC Capital Markets, LLC  
200 Vesey Street, 8th Floor  
New York, New York 10281

Ladies and Gentlemen:

Aerie Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”), confirms its agreement (this “**Agreement**”) with RBC Capital Markets, LLC (“**RBC**”) (the “**Agent**”), as follows:

1. **Issuance and Sale of Shares.** The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agent up to \$50,000,000 shares of common stock (the “**Placement Shares**”) of the Company, par value \$0.001 per share (the “**Common Stock**”); provided, however, that in no event shall the Company issue or sell through the Agent such number or dollar amount of Placement Shares that (a) exceeds the number or dollar amount of shares of Common Stock registered pursuant to the Registration Statement (as defined below), pursuant to which the offering will be made or (b) exceeds the number of authorized but unissued and unreserved shares of Common Stock of the Company (the “**Maximum Amount**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that the Agent shall have no obligation in connection with such compliance. The issuance and sale of Placement Shares through the Agent will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the “**Commission**”), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue Common Stock.

The Company has also entered into a sales agreement (the “**Other Sales Agreement**”) of even date herewith with Cantor Fitzgerald & Co. (“**CF&Co**”) for the issuance and sale from time to time to or through CF&Co of the Placement Shares on the terms set forth in the Other Sales Agreement. The Agent and CF&Co are collectively referred to herein as the “**Agents**.” This Agreement and the Other Sales Agreement are collectively referred to herein as the “**Sales Agreements**.” The aggregate number of Shares that may be sold pursuant to the Sales Agreements shall not exceed \$50,000,000 aggregate gross proceeds of Placement Shares.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended (the “**Securities Act**”) and the rules and regulations thereunder (the “**Securities Act Regulations**”), with the Commission a registration statement on Form S-3, including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference certain documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder. The Company has prepared a prospectus supplement to the base prospectus included as part of the registration statement, which prospectus supplement relates to the Placement Shares to be issued from time to time by the Company (the “**Prospectus Supplement**”). The Company will furnish to the Agent, for use by the Agent, copies of the base prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares to be issued from time to time by the Company. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus Supplement), with respect to the Placement Shares. Except where the context otherwise requires, such registration statement(s), including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, is herein called the “**Registration Statement**.” The base prospectus or base prospectuses, including all documents incorporated by reference therein, included in the Registration Statement, as it may be supplemented, if necessary, by the Prospectus Supplement, in the form in which such prospectus or prospectuses and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act Regulations, together with any issued Issuer Free Writing Prospectus(es) (as defined below), is herein called the “**Prospectus**.”

Any reference herein to the Registration Statement or the Prospectus, including any Prospectus Supplement or any Issuer Free Writing Prospectus, shall be deemed to refer to and include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the most-recent effective date of the Registration Statement or the date of the Prospectus Supplement, Prospectus or such Issuer Free Writing Prospectus, as the case may be, and incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “**Placement**”), it will notify the Agent by email notice (or other method mutually

agreed to in writing by the parties) of the number of Placement Shares, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a "**Placement Notice**"), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines in writing or by email to accept the terms contained therein for any reason, in its sole discretion, within two (2) Business Days (as defined below) of receipt of such Placement Notice, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) this Agreement has been terminated under the provisions of Section 13. The amount of any discount, commission or other compensation to be paid by the Company to Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by Agent. Subject to the provisions of Section 5(a), unless the sale of the Placement Shares described in a Placement Notice has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the NASDAQ Global Market (the "**Exchange**"), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation (including by email correspondence) to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act Regulations, including without limitation sales made directly on the Exchange, on any other existing trading market for the Common Stock or to or through a market maker. Subject to the terms of a Placement Notice, the Agent may also sell Placement Shares by any other method permitted by law, including but not limited to in privately negotiated transactions with the Company's prior written consent. "**Trading Day**" means any day on which the Common Stock is traded on the Exchange.

4. Suspension of Sales.

(a) Suspension by Company or Agent. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares (a “**Suspension**”); provided, however, that such suspension shall not affect or impair any party’s obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. While a Suspension is in effect any obligation under Sections 7(l), 7(m), and 7(n) with respect to the delivery of certificates, opinions, or comfort letters to the Agent, shall be waived. Each of the parties agrees that no such notice under this Section 4(a) shall be effective against any other party unless it is made to and acknowledged by one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

(b) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company shall not offer or sell, or request the offer or sale of, any of the Placement Shares and, by notice to the Agent in writing (including by email correspondence to each of the individuals of the Agent set forth on Schedule 3 if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the Agent set forth on Schedule 3), shall cancel any instructions for the offer or sale of any of the Placement Shares, and the Agent shall not be obligated to offer or sell any of the Placement Shares, during any period in which the Company is in possession of material non-public information, it being understood and agreed that the only information that constitutes material non-public information is any information the omission of which from the Prospectus would result in a breach of Section 6(a) of this Agreement. For the avoidance of doubt, any notice delivered pursuant to this Section 4(b) is subject to Section 20 of this Agreement.

5. Sale and Delivery to the Agent; Settlement.

(a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent’s acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws, rules and regulations to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws, rules and regulations to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.

(b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the third (3<sup>rd</sup>) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a “**Settlement Date**”). The Agent shall notify the Company in writing or by email of each sale of Placement Shares on the date of such sale. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the “**Net Proceeds**”) will be equal to the aggregate sales price received by the Agent, after deduction for (i) the Agent’s commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(c) Delivery of Placement Shares. On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent’s or its designee’s account (provided the Agent shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, then, in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Denominations; Registration. Certificates for the Placement Shares, if any, shall be in such denominations and registered in such names as the Agent may request in writing at least one full Business Day before the Settlement Date. The certificates for the Placement Shares, if any, will be made available by the Company for examination and packaging by the Agent in The City of New York not later than noon (New York time) on the Business Day prior to the Settlement Date.

(e) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement and the Other Sales Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement and the Other Sales Agreement, the Maximum Amount, (B) the amount available for offer and sale under the currently effective Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement by the Company’s Board of Directors, or a duly authorized committee thereof, and notified to the Agent in writing or by email. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price

authorized from time to time by the Company's Board of Directors, or a duly authorized committee thereof, and notified to the Agent in writing or by email. Further, under no circumstances shall the Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

(f) One Agent. The Company agrees that any offer to sell Placement Shares, any solicitation of an offer to buy Placement Shares, or any sales of Placement Shares shall be effected by or through only one of the Agents on any single given day and the Company shall in no event request that more than one of the Agents offer or sell Shares on the same day, provided that, the Company and the Agent agree that nothing herein shall prohibit the Company from terminating a Placement Notice and issuing a subsequent Placement Notice to either CF&Co or the Agent on the same day, provided further that, prior to the issuance of any subsequent Placement Notice, the Company have terminated any outstanding Placement Notice in accordance with Section 4 of this Agreement.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below), unless such representation, warranty or agreement speaks as of a different time:

(a) Compliance with Registration Requirements. The Company and the transactions contemplated by this Agreement meet the requirements for and comply with the conditions for the use of Form S-3 under the Securities Act. The Registration Statement has been filed with the Commission under the Securities Act and has been declared effective by the Commission under the Securities Act. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. No stop order suspending the effectiveness of such registration statement is in effect, and no proceedings for such purpose are pending before or, to the knowledge of the Company, threatened by the Commission. The Commission has not issued any order preventing or suspending the use of any Prospectus or any Issuer Free Writing Prospectus. Copies of such registration statement that was filed with the Commission on or prior to the date of this Agreement have been delivered by the Company to you. When it became effective and at each Applicable Time, the Registration Statement did not and will not, and any further amendments to the Registration Statement will not, when they become effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; as of its date and the date hereof, the Prospectus does not, and as amended or supplemented at each Applicable Time will not, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Incorporated Documents did not, and any further Incorporated Documents filed after the date of this Agreement will not, when filed with the Commission, contain an untrue statement of any material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; any Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time, will not, through the completion of the Placement for which such Issuer Free Writing Prospectus is used or deemed used, include any information that

will conflict with the information contained in the Registration Statement or the Prospectus, including any Incorporated Document that has not been superseded or modified; and any Issuer Free Writing Prospectus (taken together with the Registration Statement and the Prospectus), as of its issue date and as of each Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties set forth in this sentence shall not apply to statements or omissions in any such document in reliance upon and in conformity with written information furnished to the Company by the Agents expressly for use therein.

(b) Distribution and Registration. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus to which the Agent has consented. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed on the Exchange under the trading symbol “AERI.”

(c) [Reserved].

(d) Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal, and binding obligation of the Company. The Company has full power and authority to enter into this Agreement and to issue and sell the Placement Shares as contemplated by this Agreement.

(e) Organization. The Company is a corporation duly incorporated and validly existing under the laws of the State of Delaware, and is validly existing as a corporation in good standing under such laws. The Company has requisite corporate power to conduct its business as described in the Registration Statement and the Prospectus. The Company is duly qualified to transact business and is in good standing in all jurisdictions in which the conduct of its business requires such qualification; except where the failure to be so qualified or to be in good standing would not, individually or in the aggregate, (i) have a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings, business or prospects of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business, (ii) prevent or materially interfere with consummation of the transactions contemplated hereby or (iii) prevent the Placement Shares from being accepted for listing on, or resulting in the delisting of the Placement Shares from, the Exchange (the occurrence of any of the foregoing events in clauses (i), (ii) or (iii) being a “**Material Adverse Effect**”). The Company has no subsidiaries as of the date of this Agreement, except Aerie Pharmaceuticals Limited, a company organized under the laws of the Cayman Islands, and Aerie Pharmaceuticals Ireland Limited, a company organized under the laws of Ireland (collectively, the “**Subsidiaries**”).

(f) Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company, or a duly authorized committee thereof, against payment therefor as provided herein, will be duly authorized, validly issued, fully paid and non-assessable; and no preemptive or similar rights exist or are

applicable with respect to any of the Placement Shares or the issue and sale thereof. Neither the filing of the Registration Statement nor the offering or sale of the Placement Shares as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock, other than such rights that have been waived or otherwise satisfied and disclosed in the Registration Statement and the Prospectus.

(g) No Preferential Rights. Except as set forth in the Registration Statement and the Prospectus, (i) no person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a “**Person**”), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company (other than upon the exercise of options or warrants to purchase Common Stock or upon the exercise of options or vesting of restricted stock units or stock awards that may be granted from time to time under the Company’s stock option plans) and (ii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Common Stock.

(h) Capitalization. The description of the securities of the Company in the Registration Statement and the Prospectus is true and correct in all material respects. All of the securities of the Company conform to the description thereof contained in the Registration Statement and the Prospectus in all material respects. No shares of preferred stock of the Company shall be issued and outstanding and no holder of any shares of capital stock, securities convertible into or exchangeable or exercisable for capital stock or options, warrants or other rights to purchase capital stock or any other securities of the Company shall have any existing or future right to acquire any shares of preferred stock of the Company, except to the extent disclosed in the Registration Statement and the Prospectus. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance in all material respects with all applicable securities laws, and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right.

(i) Financial Information. The financial statements of the Company, together with related notes and schedules as set forth in the Registration Statement and the Prospectus, present fairly in all material respects the financial position and the results of operations and cash flows of the Company, at the indicated dates and for the indicated periods. Such financial statements and related schedules have been prepared in accordance with U.S. generally accepted principles of accounting (“**U.S. GAAP**”), consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. There are no financial statements (historical or pro forma) that are required to be included in the Registration Statement and the Prospectus that are not included as required.

(j) Accounting Controls. The Company 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 U.S. GAAP 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.

(k) Independent Public Accounting Firm. PricewaterhouseCoopers LLP, which has certified certain financial statements of the Company and delivered its opinion with respect to the audited financial statements and schedules included in the Registration Statement and the Prospectus, is an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the rules and regulations thereunder.

(l) No Adverse Proceeding. There is no action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened against the Company before any court or administrative or regulatory agency or otherwise (i) that is required to be described in the Registration Statement or the Prospectus and is not so described or (ii) which, if determined adversely to the Company, individually or in the aggregate, could have a Material Adverse Effect, except as set forth in the Registration Statement or the Prospectus.

(m) Labor Disputes. No labor problem or dispute with the employees of the Company exists or, to the Company's knowledge, is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, contractors or customers, that could, individually or in the aggregate, have a Material Adverse Effect. To the Company's knowledge, no union organizing activities are currently taking place concerning the employees of the Company and, except as would not, individually or in the aggregate, have a Material Adverse Effect, there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"), or the rules and regulations promulgated thereunder concerning the employees of the Company.

(n) Title to Property. The Company has good and marketable title to all of the properties and assets reflected in the financial statements (or as described in the Registration Statement and the Prospectus) hereinabove described, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those (i) reflected in such financial statements, (ii) described in the Registration Statement and the Prospectus, including, for the avoidance of doubt, those securing the Company's senior secured convertible notes issued in September 2014 (the "Convertible Notes") or (iii) which are not material in amount. The Company occupies its leased properties under valid and binding leases conforming to the description thereof set forth in the Registration Statement and the Prospectus.

(o) Tax Returns. The Company has filed, or has properly requested extensions for, all federal income tax returns and all other material tax returns which have been required to be filed by or with respect to it, and has paid all taxes shown on said tax returns and all written assessments received by it to the extent that such taxes have become due and payable, except for any such taxes as are being contested in good faith and for which adequate reserves for accrual have been established in accordance with U.S. GAAP. All material amounts of the tax liabilities of the Company have been adequately provided for in the financial statements of the Company as required in accordance with U.S. GAAP.

(p) No Material Adverse Change. Since the respective dates as of which information is given in the Registration Statement and the Prospectus (including any Incorporated Documents), except as set forth in the Registration Statement and the Prospectus, or contemplated thereby, there has not been (i) any material adverse change or any development involving a prospective change which has had or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings, or business of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business (a "**Material Adverse Change**"), (ii) any occurrence that would prevent or materially interfere with consummation of the transactions contemplated hereby or (iii) any occurrence that would prevent the Placement Shares from being accepted for listing on, or resulting in the delisting of the Placement Shares from, the Exchange, and there has not been any material transaction entered into by the Company, other than transactions described in the Registration Statement and the Prospectus. Other than the Convertible Notes, the Company has no material contingent obligations or liabilities that are not disclosed in the Company's financial statements in the Registration Statement and the Prospectus.

(q) No Conflicts. The Company is not, nor with the giving of notice or lapse of time or both, will the Company be, in violation of or in default under (i) its Certificate of Incorporation ("**Charter**") or bylaws or (ii) any agreement, lease, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound and, in the case of this clause (ii), which default has had or is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. With respect to those agreements, leases, contracts, indentures or other instruments or obligations under clause (ii) above, which are material to the Company, the Company has not received or sent notice of termination or intentions to terminate, and no such termination has been threatened to the Company's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated and the performance by the Company of its obligations hereunder will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, (x) any contract, indenture, mortgage, deed of trust or other agreement or instrument to which the Company is a party, (y) the Charter or bylaws of the Company or (z) any order, rule or regulation applicable to the Company of any court or of any regulatory body or administrative agency or other governmental body having jurisdiction over the Company, except in the case of clauses (x) and (z) where such conflict, breach or default would not individually or in the aggregate cause a Material Adverse Effect.

(r) No Consents Required. No approval, consent, order, authorization or filing by or with any regulatory, administrative or other governmental body is necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated (except such as have been already obtained or such additional steps as may be required by the Commission, the Financial Industry Regulatory Authority, Inc. ("**FINRA**") or the Exchange or such additional steps as may be necessary to qualify the Placement Shares for public offering by the Agent under state securities or Blue Sky laws).

(s) [Reserved].

(t) Permits. The Company has all licenses, certifications, permits, franchises, approvals, clearances, exemptions and other regulatory authorizations (“Permits”) from governmental authorities as are necessary to conduct its businesses as currently conducted and to own, lease and operate its properties in the manner described in the Registration Statement and Prospectus, except where the failure to have the same would not, individually or in the aggregate, have a Material Adverse Effect. There is no claim, proceeding or controversy, pending or, to the knowledge of the Company, threatened, involving the status of or sanctions under any of the Permits which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect. The Company has fulfilled and performed all of its material obligations with respect to the Permits.

(u) Certain Market Activities. Neither the Company, nor to the Company’s knowledge, any of its affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Placement Shares.

(v) Investment Company Act. The Company is not, and upon consummation of the transactions contemplated by the Agreement will not be, an “investment company” within the meaning of such term under the Investment Company Act of 1940, and the rules and regulations of the Commission thereunder (collectively, the “1940 Act”).

(w) Insurance. The Company carries, or is covered by, insurance in such amounts and covering such risks as is adequate in all material respects for the conduct of its business and the value of its properties. All policies of insurance insuring the Company or any of its businesses, assets, employees, officers and directors are in full force and effect, and the Company is in compliance with the terms of such policies in all material respects. There are no claims by the Company under any such policy or instrument as to which an insurance company is denying liability or defending under a reservation of rights clause, which would have a Material Adverse Effect.

(x) ERISA. The Company and its applicable employee benefits plans are in compliance in all material respects with all presently applicable provisions of the ERISA; no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company could have any liability; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); and each “pension plan” for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss of such qualification.

(y) Finder’s Fees. Other than as contemplated by this Agreement, the Company has not incurred any liability for any finder’s or broker’s fee, or agent’s commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(z) No Ownership. As of the date of this Agreement, the Company does not own, directly or indirectly, any shares of capital stock and does not have any other equity or ownership or proprietary interest in any corporation, partnership, association, trust, limited liability company, joint venture or other similar entity, other than the Subsidiaries.

(aa) No Required Filings. There are no statutes, regulations, contracts or other documents (including, without limitation, any shareholders' agreement, investor rights agreement or voting agreement) that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(bb) No Improper Practices. Neither the Company, nor, to the knowledge of the Company, any director and officer, agent, employee or other person associated with or acting on behalf of the Company has not, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment in connection with the business of the Company.

(cc) Intellectual Property. The Company and the Subsidiaries own all United States and foreign patents, trademarks, service marks, tradenames, copyrights, trade secrets and other proprietary rights described in the Registration Statement and the Prospectus as being owned by them (collectively, the "**Intellectual Property**") and, to the Company's knowledge, own or have obtained valid and enforceable licenses for, or other rights to use, all Intellectual Property used in, or necessary for the conduct of their respective businesses as currently carried on and as proposed to be carried on as described in the Registration Statement and the Prospectus. Except as specifically described in the Registration Statement and the Prospectus, (i) no third parties have obtained or will be able to establish any interest in or rights to any Intellectual Property from the Company, other than limited licenses and transfers granted in the ordinary course; (ii) to the Company's knowledge, there is no infringement, misappropriation or other violation by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's interest or rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a basis for any such claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability, or scope of any Intellectual Property, and the Company is unaware of any facts which would form a basis for any such claim; (v) there is no prior, pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company has infringed, misappropriated or violated, does infringe, misappropriate or otherwise violate, or would, upon further development or commercialization of any product, product candidate or service described in the Registration Statement and the Prospectus as under development, infringe, misappropriate or violate, any intellectual property of others, and the Company is unaware of any facts which would form a basis for any such claim; (vi) to the Company's knowledge there is no patent or patent application that contains claims that cover or overlap (or may cover or overlap) the claims of any patent or patent application included in the Intellectual Property or that interferes with the issued or pending claims of any such patent or patent

application; (vii) there is no prior art or public or commercial activity of which the Company is aware that may render any patent included in the Intellectual Property invalid or that would preclude the issuance of any patent on any patent application included in the Intellectual Property which has not been disclosed to the U.S. Patent and Trademark Office or the relevant foreign patent authority, as the case may be; (viii) the Company has not committed any act or omitted to undertake any act the effect of such commission or omission would reasonably be expected to result in a legal determination that any item of Intellectual Property thereby was rendered invalid or unenforceable in whole or in part; (ix) to the Company's knowledge, the issued patents included in the Intellectual Property are valid and enforceable and the Company is unaware of any facts that would preclude the issuance of a valid and enforceable patent on any pending patent application included in the Intellectual Property; (x) the manufacture, use and sale of the products or product candidates described in the Registration Statement and the Prospectus as under development by the Company fall within the scope of one or more claims of the patents or patent applications included in the Intellectual Property; (xi) the Company has taken reasonable steps necessary to secure the interests of the Company in the Intellectual Property purported to be owned by the Company from any employees, consultants, agents or contractors that developed (in whole or in part) such Intellectual Property; (xii) there are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property or intellectual property of any other person or entity that are required to be described in the Registration Statement and the Prospectus that are not so described therein; and (xiii) no government funding, facilities or resources of a university, college, other educational institution or research center was used in the development of any Intellectual Property that is owned or purported to be owned by the Company that would confer upon any governmental agency or body, university, college, other educational institution or research center any claim or right in or to any such Intellectual Property. To the Company's knowledge, none of the technology employed by the Company has been obtained or is being used by the Company in violation of the rights of any person.

(dd) Compliance with Laws. The conduct of business by the Company complies, and at all times has complied, in all material respects with federal, state, local and foreign laws, statutes, ordinances, rules, regulations, decrees, orders, Permits and other similar items ("**Laws**") applicable to its business, including, without limitation, (a) the Federal Food, Drug, and Cosmetic Act (the "**FD&C Act**"), (b) the Occupational Safety and Health Act, the Environmental Protection Act, the Toxic Substances Control Act and Laws applicable to hazardous or regulated substances and radioactive or biologic materials, (c) the federal Anti-Kickback Statute, (d) the False Claims Act, (e) the Stark law, (f) the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act, (g) licensing and certification Laws covering any aspect of the business of the Company, (h) similar federal, state, local and foreign Laws and (i) the regulations promulgated pursuant to such Laws. The Company has not received any written notification asserting, nor has no knowledge of, any present or past failure to comply with or violation of any such Laws except where such failure would not reasonably be expected to have a Material Adverse Effect.

(ee) Clinical Studies. Except to the extent disclosed in the Registration Statement and the Prospectus (and to the Company's knowledge, after due inquiry, with respect to such trials, studies or tests conducted by third parties), the clinical trials and pre-clinical studies and tests

conducted by or on behalf of or sponsored by the Company are, and at all times have been, conducted in all material respects in accordance with the FD&C Act and the regulations promulgated thereunder, including all U.S. Food and Drug Administration (“**FDA**”) regulations governing clinical trials, as well as other applicable federal, state, local and foreign Laws, and consistent with the protocols submitted to the FDA and procedures and controls generally used by qualified experts in the pre-clinical and clinical development of drugs. The descriptions of the results of such trials, studies and tests that have been submitted to the FDA or other governmental authority as the basis for a Permit are accurate and complete in all material respects and fairly present the data derived from such trials, studies and tests, and the Company does not have any knowledge of any other trials, studies or tests the results of which reasonably call into question the results described in the Registration Statement and the Prospectus. Except to the extent disclosed in the Registration Statement and the Prospectus, the Company has not received any written notices or other correspondence from the FDA or any other federal, state, local or foreign governmental agency with respect to any clinical trials or pre-clinical studies or tests that are described in the Registration Statement and the Prospectus or the results of which are described in the Registration Statement and the Prospectus that require the termination, suspension, delay or modification of such trials, studies or tests, or otherwise require the Company to engage in any remedial activities with respect to such trials, studies or tests or threaten to impose or actually impose any fines or other disciplinary actions, except where such remedial activities or disciplinary actions would not reasonably be expected to have a Material Adverse Effect.

(ff) Operations and Manufacturing. All the operations of the Company and, to the best of the Company’s knowledge, all the manufacturing facilities and operations of the Company’s suppliers and manufacturers of product candidates and the components thereof that are intended to be used in clinical trials are in compliance in all material respects with applicable FDA and other governmental regulations, including current good manufacturing practice regulations and applicable standards set forth in FDA guidance documents, the FD&C Act and other applicable federal, state, local or foreign Laws.

(gg) Forward Looking Statements. The information contained in the Registration Statement and the Prospectus that constitutes “forward-looking” information within the meaning of the Securities Act was made by the Company on a reasonable basis and reflect the Company’s good faith belief and/or estimate of the matters described therein.

(hh) Operations. The operations of the Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the USA Patriot Act, the Bank Secrecy Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”); and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company with respect to the Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(ii) Environmental Laws. The Company is not in violation in any material respect of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous chemicals, toxic substances or radioactive and biological materials or relating to the protection or restoration of the environment or human exposure to hazardous chemicals, toxic substances or radioactive and biological materials (collectively, "Environmental Laws"). The Company does not own or operate any real property contaminated with any substance that is subject to any Environmental Laws, is not liable for any off-site disposal or contamination pursuant to any Environmental Laws, and is not subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would, individually or in the aggregate, have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(jj) Statistical Data. All statistical or market-related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate.

(kk) Sarbanes-Oxley Act. The Company is in compliance with all applicable provisions of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), including Section 402 thereof relating to loans.

(ll) Disclosure Controls. The Company has established and maintains "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act; the Company's "disclosure controls and procedures" are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it will file or furnish under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and regulations of the Commission, including controls and procedures reasonably designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(mm) Conformity with Securities Act and Exchange Act. The Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto, and the Incorporated Documents, when such documents were or are filed with the Commission under the Securities Act or the Exchange Act or became or will become effective under the Securities Act, as the case may be, conformed or will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act.

(nn) Conformity with EDGAR Filing. The Prospectus delivered to the Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(oo) [Reserved].

(pp) Market Capitalization. At the time the Registration Statement was originally declared effective, and thereafter, at the time the Company's then most recent Annual Report on Form 10-K will be filed with the Commission, the Company met or will meet the then applicable requirements for the use of Form S-3 under the Securities Act, including but not limited to Instruction I.B.1 of Form S-3, subject to the 60-day period relating to the Non-Affiliate Shares (as defined below). The aggregate market value of the outstanding voting and non-voting common equity (as defined in Securities Act Rule 405) of the Company held by persons other than affiliates of the Company (as defined in Securities Act Rule 405, those that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the Company) (the "**Non-Affiliate Shares**"), was equal to or greater than \$75 million (calculated by multiplying (x) the highest price at which the common equity of the Company was sold on the Exchange within 60 days of the date of filing of the Registration Statement times (y) the number of Non-Affiliate Shares). The Company is not a shell company (as defined in Rule 405 under the Securities Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in Instruction I.B.6 of Form S-3) with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

(qq) Broker/Dealer Relationships. Neither the Company nor any related entities (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

(rr) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(ss) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an "**Off Balance Sheet Transaction**") that could reasonably be expected to affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Registration Statement which have not been described as required.

(tt) Underwriter Agreements. Other than this Agreement and the Other Sales Agreement, the Company is not a party to any agreement with an agent or underwriter for any other "at-the-market" or continuous equity transaction.

(uu) Agent Purchases. The Company acknowledges and agrees that the Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is

in effect; provided that the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

(vv) Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(ww) Status Under the Securities Act. The Company was not and is not an ineligible issuer as defined in Rule 405 under the Securities Act at the times specified in Rules 164 and 433 under the Securities Act in connection with the offering of the Placement Shares.

(xx) Sanctions. (i) The Company represents that neither the Company nor, to the Company's knowledge, any director, officer, employee, agent, affiliate or representative of the Company, is a government, individual, or entity (in this paragraph, "Person") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan, Syria and the Crimea region of Ukraine).

(ii) The Company represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Company represents and covenants that, except as detailed in the Registration Statement and the Prospectus, for the past 5 years, it has not knowingly engaged in, is not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(yy) Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer

of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with in all material respects.

Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with the Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by the Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (provided, however, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to the Agent within a reasonable period of time before the filing and the Agent has not objected in writing or by email thereto (provided, however, that the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure by the Company to seek such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

(b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will comply in all material respects with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430B under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430B and to notify the Agent promptly of all such filings. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; provided, however, that the Company may delay any such amendment or supplement if, in the reasonable judgment of the Company, it is in the best interests of the Company to do so.

(d) Listing of Placement Shares. During any period in which the Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, the Company will use its reasonable best efforts to cause the Placement Shares to be listed on the Exchange.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all Incorporated Documents) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under

the Securities Act (including all Incorporated Documents filed with the Commission during such period), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at the Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; provided, however, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

(g) Use of Proceeds. The Company will use the Net Proceeds in all material respects as described in the Prospectus in the section entitled "Use of Proceeds."

(h) Notice of Other Sales. Without the prior written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to the Sales Agreements) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the fifth (5th) Trading Day immediately prior to the date on which any Placement Notice is delivered to the Agent hereunder and ending on the fifth (5th) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other "at-the-market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to the Sales Agreements) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the later of the termination of this Agreement and the thirtieth (30th) day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice; provided, however, that such restrictions will not be required in connection with the Company's issuance or sale of (i) Common Stock, options to purchase Common Stock or restricted stock units or restricted stock awards or Common Stock issuable upon the exercise of options or vesting of restricted stock, pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent and (iii) Common Stock or securities convertible into or exchangeable for shares of Common Stock as consideration for mergers, acquisitions, other business combinations or strategic alliances occurring after the date of this Agreement which are not issued for capital raising purposes.

(i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice, advise the Agent promptly after it shall have received notice or

obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

(j) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as the Agent may reasonably request.

(k) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act, which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agents under the Sales Agreements, the Net Proceeds to the Company and the compensation payable by the Company to the Agents with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(l) Representation Dates; Certificate. (1) On or prior to the date of the first Placement Notice and (2) following delivery of the first Placement Notice, each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

(iii) files its quarterly reports on Form 10-Q under the Exchange Act; or

(iv) files a current report on Form 8-K containing amended financial information (other than information "furnished" pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a "**Representation Date**");

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit 7(l). The requirement to provide a certificate under this Section 7

(l) shall be waived for any Representation Date occurring at a time a Suspension is in effect or prior to the delivery of the first Placement Notice, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Placement Shares hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when a Suspension was in effect and did not provide the Agent with a certificate under this Section 7(l), then before the Company delivers the instructions for the sale of Placement Shares or the Agent sells any Placement Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 7(l) dated as of the date that the instructions for the sale of Placement Shares are issued.

(m) Legal Opinions. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion of each of (A) Fried, Frank, Harris, Shriver & Jacobson LLP (“Company Counsel”), or other counsel satisfactory to the Agent, (B) Hyman, Phelps & McNamara, P.C. (“Regulatory Counsel”), or other counsel satisfactory to the Agent and (C) Michael Best & Friedrich LLP (“IP Counsel”), or other counsel satisfactory to the Agent, in each case in form and substance reasonably satisfactory to the Agent and their counsel, substantially in the form provided to the Agent and their counsel; provided, however, the Company shall be required to furnish to the Agent no more than one opinion from each of Company Counsel, Regulatory Counsel and the IP Counsel hereunder per calendar quarter; provided, further, that in lieu of such opinions for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “Reliance Letter”) to the effect that the Agent may rely on a prior opinion delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).

(n) Comfort Letter. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause its independent registered public accounting firm to furnish the Agent letters (the “Comfort Letters”), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); provided, however, the Company shall be required to furnish to the Agent no more than one Comfort Letter hereunder per calendar quarter. Notwithstanding the foregoing, if reasonably requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event, including the restatement of the Company’s financial statements. The Comfort Letter from the Company’s independent registered public accounting firm shall be in a form and substance reasonably satisfactory to the Agent, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants’ “comfort letters” to underwriters in connection with registered

public offerings (the first such letter, the “**Initial Comfort Letter**”) and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(o) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock or (ii) sell, bid for, or purchase the Placement Shares, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agents.

(p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that it will not be or become, at any time prior to the termination of this Agreement, required to register as an “investment company,” as such term is defined in the Investment Company Act.

(q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than the Agent in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(r) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Agent, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Agent may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(s) Sarbanes-Oxley Act. The Company will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company’s financial statements in accordance with U.S. GAAP, (iii) that receipts

and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(t) Secretary's Certificate; Further Documentation. On or prior to the date of the first Placement Notice, the Company shall deliver to the Agent a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Certificate of Incorporation of the Company, (ii) the bylaws of the Company, (iii) the resolutions of the Board of Directors of the Company, or a duly authorized committee thereof, authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within five (5) Trading Days of each Representation Date, the Company shall have furnished to the Agent such further information, certificates and documents as the Agents may reasonably request.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation and filing of the Registration Statement, including any fees required by the Commission, and the printing or electronic delivery of the Prospectus as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the out-of-pocket expenses of the Agent (including, without limitation, the fees and disbursements of the counsel to the Agent), payable upon the execution of this Agreement, in an amount not to exceed \$50,000 (it being understood that the Company shall not be required to reimburse such expenses under this Agreement and under Section 8(v) of the Other Sales Agreement in excess of \$50,000 in the aggregate); (vi) the qualification or exemption of the Placement Shares under state securities laws in accordance with the provisions of Section 7(r) hereof, including filing fees, (vii) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus and the Prospectus and any

amendments or supplements thereto in such number as the Agent shall deem necessary, (viii) the preparation, printing and delivery to the Agent of copies of the blue sky survey, (ix) the fees and expenses of the transfer agent and registrar for the Common Stock, (x) the filing and other fees incident to any review by FINRA of the terms of the sale of the Placement Shares, and (xi) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Representations and Covenants of Agent. The Agent represents and warrants that it is duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required. The Agent shall continue, for the term of this Agreement, to be duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required, during the term of this Agreement. The Agent will comply with all applicable law and regulations in connection with the Placement Shares, including but not limited to Regulation M.

10. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions as of each Representation Date, as applicable:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus if such post-effective amendment or supplement has not been made and become effective; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material Incorporated Document untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or material Incorporated Document so that, in the case of the Registration Statement, it will not contain any materially 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 and so that, in the case of the Prospectus, it will not contain any materially 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, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Change, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities), if any, by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), if any, the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinion. The Agent shall have received the opinions of Company Counsel, Regulatory Counsel and the IP Counsel required to be delivered pursuant to Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

(f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant to Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

(g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

(h) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange and the Common Stock shall not have been delisted from the Exchange.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, opinions, certificates, letters and other documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof.

(j) Securities Act Filings Made. All filings with the Commission with respect to the Placement Shares required by Rule 424 under the Securities Act to have been filed prior to

the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) Approval for Listing. The Placement Shares shall either have been approved for listing on the Exchange, subject only to notice of issuance, or the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice.

(l) FINRA. FINRA shall have raised no objection to the terms of the offering of Placement Shares contemplated by this Agreement and the amount of compensation allowable or payable to the Agents as described in the Prospectus.

(m) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 13(a).

#### 11. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 11(d) below) any such settlement is effected with the written consent of the Company, which consent shall not unreasonably be delayed or withheld; and

(iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above,

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with written information furnished to the Company by the Agents expressly for use in the Registration Statement (or any amendment thereto), or in any related Issuer Free Writing Prospectus or in Prospectus (or any amendment or supplement thereto).

(b) Agent Indemnification. The Agent agrees to indemnify and hold harmless the Company and its directors and each officer and director of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 11(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information furnished to the Company in writing by the Agent expressly for use therein. The Company hereby acknowledges that, as of the date of this Agreement, the only information that the Agent has furnished to the Company expressly for use in the Registration Statement (or any amendment thereto) or any related Issuer Free Writing Prospectus or in the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus are the statements set forth in the seventh and eighth paragraphs under the caption “Plan of Distribution” in the Prospectus.

(c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 11 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 11, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 11 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 11 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal

defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred and after the indemnifying party receives a written notice relating to the fees, disbursements and other charges in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 11 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) [Reserved].

(e) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 11 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than the Agent, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent (before deducting expenses) from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability,

expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 11(e) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 11(e) shall be deemed to include, for the purpose of this Section 11(e), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 11(c) hereof. Notwithstanding the foregoing provisions of this Section 11(e), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 11(e), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of the Agent, will have the same rights to contribution as that party, and each officer and director of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 11(e), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 11(e) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 11(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 11(c) hereof.

12. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 11 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

13. Termination.

(a) The Agent may terminate this Agreement by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any material adverse change,

or any development or event involving a prospective change, which has had or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings or business of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business, which in the sole judgment of the Agent makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any material change or development involving a prospective material change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or materially limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or materially limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Payment of Expenses), Section 11 (Indemnification and Contribution), Section 12 (Representations and Agreements to Survive Delivery), Section 18 (Governing Law and Time; Waiver of Jury Trial) and Section 19 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 13(a), the Agent shall provide the required notice as specified in Section 14 (Notices).

(b) The Company shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(c) The Agent shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agents on the terms and subject to the conditions set forth herein; provided that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such terminations.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 13(a), (b), (c) or (d) above or otherwise by mutual agreement of the parties; provided, however, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 11, Section 12, Section 18 and Section 19 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided, however, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

14. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

RBC Capital Markets, LLC  
200 Vesey Street, 8th Floor  
New York, New York 10281  
Attention: Equity Capital Markets

with copies to

RBC Capital Markets, LLC  
200 Vesey Street, 8th Floor  
New York, New York 10281  
Attention: General Counsel  
Facsimile: (212) 858-7455

and with a copy to:

Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Cheston J. Larson, Esq.  
Facsimile: (858) 523-5450

and if to the Company, shall be delivered to:

Aerie Pharmaceuticals, Inc.  
135 US Highway 206, Suite 15  
Bedminster, NJ 07921  
Attention: Richard J. Rubino  
Facsimile: 908-470-4329

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004  
Attention: Andrew B. Barkan, Esq.  
Facsimile: 212-859-4000

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, “**Business Day**” shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

An electronic communication (“**Electronic Notice**”) shall be deemed written notice for purposes of this Section 14 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form (“**Nonelectronic Notice**”) which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 11 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that the Agent may assign its rights and obligations hereunder to an affiliate thereof, so long as such affiliate is a registered broker-dealer, without obtaining the Company’s consent.

16. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

17. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter

hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

**18. GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**19. CONSENT TO JURISDICTION. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.**

20. Use of Information. The Agent may not provide any information gained in connection with this Agreement and the transactions contemplated by this Agreement, including due diligence, to any third party other than its legal counsel advising it on this Agreement unless expressly approved by the Company in writing.

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

instrument. Delivery of an executed Agreement by one party to the other may be made by .pdf or facsimile transmission.

22. Effect of Headings. The section and exhibit headings herein are for convenience only and shall not affect the construction hereof.

23. Permitted Free Writing Prospectuses. The Company represents, warrants and agrees that, unless it obtains the prior consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed, and the Agent represents, warrants and agrees that, unless it obtains the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. For the purposes of clarity, the parties hereto agree that all free writing prospectuses, if any, listed in Exhibit 22 hereto are Permitted Free Writing Prospectuses.

24. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) the Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) neither the Agent nor its affiliates have provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent and its affiliates have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent and its affiliates shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company, other than in respect of the Agent's obligations under this Agreement and to keep information provided by the Company to the Agent and the Agent's counsel confidential to the extent not otherwise publicly-available.

25. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

**"Applicable Time"** means (i) each Representation Date and (ii) the time of each sale of any Placement Shares pursuant to this Agreement.

**"Issuer Free Writing Prospectus"** means any "issuer free writing prospectus," as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a "road show" that is a "written communication" within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act Regulations.

**"Rule 164," "Rule 172," "Rule 405," "Rule 415," "Rule 424," "Rule 424(b)," "Rule 430B,"** and **"Rule 433"** refer to such rules under the Securities Act Regulations.

All references in this Agreement to financial statements and schedules and other information that is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; and all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR.

*[Signature Page Follows]*

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

AERIE PHARMACEUTICALS, INC.

By: /s/ Richard J. Rubino  
Name: Richard J. Rubino  
Title: Chief Financial Officer

ACCEPTED as of the date first-above written:

RBC CAPITAL MARKETS, LLC

By: /s/ Jason Levitz  
Name: Jason Levitz  
Title: Managing Director

**SCHEDULE 1**

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**FORM OF PLACEMENT NOTICE**

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From: Aerie Pharmaceuticals, Inc.

To: [Agent]  
Attention: \_\_\_\_\_

Subject: Placement Notice

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between Aerie Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and RBC Capital Markets, LLC ("**RBC**"), dated \_\_\_\_\_, the Company hereby requests that RBC sell up to \_\_\_\_\_ shares ("**Placement Shares**") of the Company's common stock, par value \$0.001 per share, at a minimum market price of \$\_\_\_\_\_ per share, during the time period beginning [month, day, time] and ending [month, day, time] [and no more than \_\_\_\_\_ Placement Shares shall be sold in any one Trading Day].

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## **SCHEDULE 2**

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### **Compensation**

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The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to up to 3.0% of the aggregate gross proceeds from each sale of Placement Shares.

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## SCHEDULE 3

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### Notice Parties

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#### The Company

Richard J. Rubino (rrubino@eriepharma.com)

#### RBC

Andrew Jones (andrew.jones@rbccm.com)

Jennifer Caruso (jennifer.caruso@rbccm.com)

Joao Soares (joao.soares@rbccm.com)

Morten Marott (morten.marott@rbccm.com)

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**EXHIBIT 7(I)**

**Form of Representation Date Certificate**

The undersigned, the duly qualified and elected \_\_\_\_\_, of Aerie Pharmaceuticals, Inc., a Delaware corporation (the "Company"), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(l) of each of the Controlled Equity Offering Sales Agreements, dated November 6, 2015 (the "Sales Agreements"), between the Company and RBC Capital Markets, LLC and Cantor Fitzgerald & Co.(collectively, the "Agents"), that to the best of the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 6 of the Sales Agreements (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreements in all material respects at or prior to the date hereof.

AERIE PHARMACEUTICALS, INC.

By:

Name:

Title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

---

**Exhibit 22**

**Permitted Free Writing Prospectus**

None.

AERIE PHARMACEUTICALS, INC.

Up to \$50,000,000 of  
Shares of Common Stock  
(par value \$0.001 per share)

Controlled Equity Offering<sup>SM</sup>

Sales Agreement

November 6, 2015

Cantor Fitzgerald & Co.  
499 Park Avenue  
New York, NY 10022

Ladies and Gentlemen:

Aerie Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), confirms its agreement (this "**Agreement**") with Cantor Fitzgerald & Co. ("**CF&Co**") (the "**Agent**"), as follows:

1. Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agent up to \$50,000,000 shares of common stock (the "**Placement Shares**") of the Company, par value \$0.001 per share (the "**Common Stock**"); provided, however, that in no event shall the Company issue or sell through the Agent such number or dollar amount of Placement Shares that (a) exceeds the number or dollar amount of shares of Common Stock registered pursuant to the Registration Statement (as defined below), pursuant to which the offering will be made or (b) exceeds the number of authorized but unissued and unreserved shares of Common Stock of the Company (the "**Maximum Amount**"). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that the Agent shall have no obligation in connection with such compliance. The issuance and sale of Placement Shares through the Agent will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the "**Commission**"), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue Common Stock.

The Company has also entered into a sales agreement (the "**Other Sales Agreement**") of even date herewith with RBC Capital Markets, LLC ("**RBC**") for the issuance and sale from time to time to or through RBC of the Placement Shares on the terms set forth in the Other Sales Agreement. The Agent and RBC are collectively referred to herein as the "**Agents**." This Agreement and the Other Sales Agreement are collectively referred to herein as the "**Sales Agreements**." The aggregate number of Shares that may be sold pursuant to the Sales Agreements shall not exceed \$50,000,000 aggregate gross proceeds of Placement Shares.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended (the “**Securities Act**”) and the rules and regulations thereunder (the “**Securities Act Regulations**”), with the Commission a registration statement on Form S-3, including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference certain documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder. The Company has prepared a prospectus supplement to the base prospectus included as part of the registration statement, which prospectus supplement relates to the Placement Shares to be issued from time to time by the Company (the “**Prospectus Supplement**”). The Company will furnish to the Agent, for use by the Agent, copies of the base prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares to be issued from time to time by the Company. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus Supplement), with respect to the Placement Shares. Except where the context otherwise requires, such registration statement(s), including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, is herein called the “**Registration Statement**.” The base prospectus or base prospectuses, including all documents incorporated by reference therein, included in the Registration Statement, as it may be supplemented, if necessary, by the Prospectus Supplement, in the form in which such prospectus or prospectuses and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act Regulations, together with any issued Issuer Free Writing Prospectus(es) (as defined below), is herein called the “**Prospectus**.”

Any reference herein to the Registration Statement or the Prospectus, including any Prospectus Supplement or any Issuer Free Writing Prospectus, shall be deemed to refer to and include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the most-recent effective date of the Registration Statement or the date of the Prospectus Supplement, Prospectus or such Issuer Free Writing Prospectus, as the case may be, and incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “**Placement**”), it will notify the Agent by email notice (or other method mutually agreed to in writing by the parties) of the number of Placement Shares, the time period during which

sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a "**Placement Notice**"), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines in writing or by email to accept the terms contained therein for any reason, in its sole discretion, within two (2) Business Days (as defined below) of receipt of such Placement Notice, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) this Agreement has been terminated under the provisions of Section 13. The amount of any discount, commission or other compensation to be paid by the Company to Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by Agent. Subject to the provisions of Section 5(a), unless the sale of the Placement Shares described in a Placement Notice has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the NASDAQ Global Market (the "**Exchange**"), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation (including by email correspondence) to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act Regulations, including without limitation sales made directly on the Exchange, on any other existing trading market for the Common Stock or to or through a market maker. Subject to the terms of a Placement Notice, the Agent may also sell Placement Shares by any other method permitted by law, including but not limited to in privately negotiated transactions with the Company's prior written consent. "**Trading Day**" means any day on which the Common Stock is traded on the Exchange.

4. Suspension of Sales.

(a) Suspension by Company or Agent. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals

of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares (a “**Suspension**”); provided, however, that such suspension shall not affect or impair any party’s obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. While a Suspension is in effect any obligation under Sections 7(l), 7(m), and 7(n) with respect to the delivery of certificates, opinions, or comfort letters to the Agent, shall be waived. Each of the parties agrees that no such notice under this Section 4(a) shall be effective against any other party unless it is made to and acknowledged by one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

(b) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company shall not offer or sell, or request the offer or sale of, any of the Placement Shares and, by notice to the Agent in writing (including by email correspondence to each of the individuals of the Agent set forth on Schedule 3 if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the Agent set forth on Schedule 3), shall cancel any instructions for the offer or sale of any of the Placement Shares, and the Agent shall not be obligated to offer or sell any of the Placement Shares, during any period in which the Company is in possession of material non-public information, it being understood and agreed that the only information that constitutes material non-public information is any information the omission of which from the Prospectus would result in a breach of Section 6(a) of this Agreement. For the avoidance of doubt, any notice delivered pursuant to this Section 4(b) is subject to Section 20 of this Agreement.

5. Sale and Delivery to the Agent; Settlement.

(a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent’s acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws, rules and regulations to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws, rules and regulations to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.

(b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the third (3<sup>rd</sup>) Trading

Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a “**Settlement Date**”). The Agent shall notify the Company in writing or by email of each sale of Placement Shares on the date of such sale. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the “**Net Proceeds**”) will be equal to the aggregate sales price received by the Agent, after deduction for (i) the Agent’s commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(c) Delivery of Placement Shares. On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent’s or its designee’s account (provided the Agent shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, then, in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Denominations; Registration. Certificates for the Placement Shares, if any, shall be in such denominations and registered in such names as the Agent may request in writing at least one full Business Day before the Settlement Date. The certificates for the Placement Shares, if any, will be made available by the Company for examination and packaging by the Agent in The City of New York not later than noon (New York time) on the Business Day prior to the Settlement Date.

(e) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement and the Other Sales Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement and the Other Sales Agreement, the Maximum Amount, (B) the amount available for offer and sale under the currently effective Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement by the Company’s Board of Directors, or a duly authorized committee thereof, and notified to the Agent in writing or by email. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company’s Board of Directors, or a duly authorized committee thereof, and notified to the Agent in writing or by email. Further, under no circumstances shall the

Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

(f) One Agent. The Company agrees that any offer to sell Placement Shares, any solicitation of an offer to buy Placement Shares, or any sales of Placement Shares shall be effected by or through only one of the Agents on any single given day and the Company shall in no event request that more than one of the Agents offer or sell Shares on the same day, provided that, the Company and the Agent agree that nothing herein shall prohibit the Company from terminating a Placement Notice and issuing a subsequent Placement Notice to either RBC or the Agent on the same day, provided further that, prior to the issuance of any subsequent Placement Notice, the Company have terminated any outstanding Placement Notice in accordance with Section 4 of this Agreement.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below), unless such representation, warranty or agreement speaks as of a different time:

(a) Compliance with Registration Requirements. The Company and the transactions contemplated by this Agreement meet the requirements for and comply with the conditions for the use of Form S-3 under the Securities Act. The Registration Statement has been filed with the Commission under the Securities Act and has been declared effective by the Commission under the Securities Act. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. No stop order suspending the effectiveness of such registration statement is in effect, and no proceedings for such purpose are pending before or, to the knowledge of the Company, threatened by the Commission. The Commission has not issued any order preventing or suspending the use of any Prospectus or any Issuer Free Writing Prospectus. Copies of such registration statement that was filed with the Commission on or prior to the date of this Agreement have been delivered by the Company to you. When it became effective and at each Applicable Time, the Registration Statement did not and will not, and any further amendments to the Registration Statement will not, when they become effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; as of its date and the date hereof, the Prospectus does not, and as amended or supplemented at each Applicable Time will not, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Incorporated Documents did not, and any further Incorporated Documents filed after the date of this Agreement will not, when filed with the Commission, contain an untrue statement of any material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; any Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time, will not, through the completion of the Placement for which such Issuer Free Writing Prospectus is used or deemed used, include any information that will conflict with the information contained in the Registration Statement or the Prospectus, including any Incorporated Document that has not been superseded or modified; and any Issuer Free Writing Prospectus (taken together with the Registration Statement and the Prospectus), as of

its issue date and as of each Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties set forth in this sentence shall not apply to statements or omissions in any such document in reliance upon and in conformity with written information furnished to the Company by the Agents expressly for use therein.

(b) Distribution and Registration. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus to which the Agent has consented. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed on the Exchange under the trading symbol “AERI.”

(c) [Reserved].

(d) Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal, and binding obligation of the Company. The Company has full power and authority to enter into this Agreement and to issue and sell the Placement Shares as contemplated by this Agreement.

(e) Organization. The Company is a corporation duly incorporated and validly existing under the laws of the State of Delaware, and is validly existing as a corporation in good standing under such laws. The Company has requisite corporate power to conduct its business as described in the Registration Statement and the Prospectus. The Company is duly qualified to transact business and is in good standing in all jurisdictions in which the conduct of its business requires such qualification; except where the failure to be so qualified or to be in good standing would not, individually or in the aggregate, (i) have a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings, business or prospects of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business, (ii) prevent or materially interfere with consummation of the transactions contemplated hereby or (iii) prevent the Placement Shares from being accepted for listing on, or resulting in the delisting of the Placement Shares from, the Exchange (the occurrence of any of the foregoing events in clauses (i), (ii) or (iii) being a “**Material Adverse Effect**”). The Company has no subsidiaries as of the date of this Agreement, except Aerie Pharmaceuticals Limited, a company organized under the laws of the Cayman Islands, and Aerie Pharmaceuticals Ireland Limited, a company organized under the laws of Ireland (collectively, the “**Subsidiaries**”).

(f) Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company, or a duly authorized committee thereof, against payment therefor as provided herein, will be duly authorized, validly issued, fully paid and non-assessable; and no preemptive or similar rights exist or are applicable with respect to any of the Placement Shares or the issue and sale thereof. Neither the filing of the Registration Statement nor the offering or sale of the Placement Shares as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common

Stock, other than such rights that have been waived or otherwise satisfied and disclosed in the Registration Statement and the Prospectus.

(g) No Preferential Rights. Except as set forth in the Registration Statement and the Prospectus, (i) no person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a “**Person**”), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company (other than upon the exercise of options or warrants to purchase Common Stock or upon the exercise of options or vesting of restricted stock units or stock awards that may be granted from time to time under the Company’s stock option plans) and (ii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Common Stock.

(h) Capitalization. The description of the securities of the Company in the Registration Statement and the Prospectus is true and correct in all material respects. All of the securities of the Company conform to the description thereof contained in the Registration Statement and the Prospectus in all material respects. No shares of preferred stock of the Company shall be issued and outstanding and no holder of any shares of capital stock, securities convertible into or exchangeable or exercisable for capital stock or options, warrants or other rights to purchase capital stock or any other securities of the Company shall have any existing or future right to acquire any shares of preferred stock of the Company, except to the extent disclosed in the Registration Statement and the Prospectus. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance in all material respects with all applicable securities laws, and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right.

(i) Financial Information. The financial statements of the Company, together with related notes and schedules as set forth in the Registration Statement and the Prospectus, present fairly in all material respects the financial position and the results of operations and cash flows of the Company, at the indicated dates and for the indicated periods. Such financial statements and related schedules have been prepared in accordance with U.S. generally accepted principles of accounting (“**U.S. GAAP**”), consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. There are no financial statements (historical or pro forma) that are required to be included in the Registration Statement and the Prospectus that are not included as required.

(j) Accounting Controls. The Company 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 U.S. GAAP 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.

(k) Independent Public Accounting Firm. PricewaterhouseCoopers LLP, which has certified certain financial statements of the Company and delivered its opinion with respect to the audited financial statements and schedules included in the Registration Statement and the Prospectus, is an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the rules and regulations thereunder.

(l) No Adverse Proceeding. There is no action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened against the Company before any court or administrative or regulatory agency or otherwise (i) that is required to be described in the Registration Statement or the Prospectus and is not so described or (ii) which, if determined adversely to the Company, individually or in the aggregate, could have a Material Adverse Effect, except as set forth in the Registration Statement or the Prospectus.

(m) Labor Disputes. No labor problem or dispute with the employees of the Company exists or, to the Company's knowledge, is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, contractors or customers, that could, individually or in the aggregate, have a Material Adverse Effect. To the Company's knowledge, no union organizing activities are currently taking place concerning the employees of the Company and, except as would not, individually or in the aggregate, have a Material Adverse Effect, there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"), or the rules and regulations promulgated thereunder concerning the employees of the Company.

(n) Title to Property. The Company has good and marketable title to all of the properties and assets reflected in the financial statements (or as described in the Registration Statement and the Prospectus) hereinabove described, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those (i) reflected in such financial statements, (ii) described in the Registration Statement and the Prospectus, including, for the avoidance of doubt, those securing the Company's senior secured convertible notes issued in September 2014 (the "Convertible Notes") or (iii) which are not material in amount. The Company occupies its leased properties under valid and binding leases conforming to the description thereof set forth in the Registration Statement and the Prospectus.

(o) Tax Returns. The Company has filed, or has properly requested extensions for, all federal income tax returns and all other material tax returns which have been required to be filed by or with respect to it, and has paid all taxes shown on said tax returns and all written assessments received by it to the extent that such taxes have become due and payable, except for any such taxes as are being contested in good faith and for which adequate reserves for accrual have been established in accordance with U.S. GAAP. All material amounts of the tax liabilities of the Company have been adequately provided for in the financial statements of the Company as required in accordance with U.S. GAAP.

(p) No Material Adverse Change. Since the respective dates as of which information is given in the Registration Statement and the Prospectus (including any Incorporated

Documents), except as set forth in the Registration Statement and the Prospectus, or contemplated thereby, there has not been (i) any material adverse change or any development involving a prospective change which has had or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings, or business of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business (a “**Material Adverse Change**”), (ii) any occurrence that would prevent or materially interfere with consummation of the transactions contemplated hereby or (iii) any occurrence that would prevent the Placement Shares from being accepted for listing on, or resulting in the delisting of the Placement Shares from, the Exchange, and there has not been any material transaction entered into by the Company, other than transactions described in the Registration Statement and the Prospectus. Other than the Convertible Notes, the Company has no material contingent obligations or liabilities that are not disclosed in the Company’s financial statements in the Registration Statement and the Prospectus.

(q) **No Conflicts.** The Company is not, nor with the giving of notice or lapse of time or both, will the Company be, in violation of or in default under (i) its Certificate of Incorporation (“**Charter**”) or bylaws or (ii) any agreement, lease, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound and, in the case of this clause (ii), which default has had or is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. With respect to those agreements, leases, contracts, indentures or other instruments or obligations under clause (ii) above, which are material to the Company, the Company has not received or sent notice of termination or intentions to terminate, and no such termination has been threatened to the Company’s knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated and the performance by the Company of its obligations hereunder will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, (x) any contract, indenture, mortgage, deed of trust or other agreement or instrument to which the Company is a party, (y) the Charter or bylaws of the Company or (z) any order, rule or regulation applicable to the Company of any court or of any regulatory body or administrative agency or other governmental body having jurisdiction over the Company, except in the case of clauses (x) and (z) where such conflict, breach or default would not individually or in the aggregate cause a Material Adverse Effect.

(r) **No Consents Required.** No approval, consent, order, authorization or filing by or with any regulatory, administrative or other governmental body is necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated (except such as have been already obtained or such additional steps as may be required by the Commission, the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) or the Exchange or such additional steps as may be necessary to qualify the Placement Shares for public offering by the Agent under state securities or Blue Sky laws).

(s) [Reserved].

(t) **Permits.** The Company has all licenses, certifications, permits, franchises, approvals, clearances, exemptions and other regulatory authorizations (“**Permits**”) from governmental authorities as are necessary to conduct its businesses as currently conducted and to

own, lease and operate its properties in the manner described in the Registration Statement and Prospectus, except where the failure to have the same would not, individually or in the aggregate, have a Material Adverse Effect. There is no claim, proceeding or controversy, pending or, to the knowledge of the Company, threatened, involving the status of or sanctions under any of the Permits which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect. The Company has fulfilled and performed all of its material obligations with respect to the Permits.

(u) Certain Market Activities. Neither the Company, nor to the Company's knowledge, any of its affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Placement Shares.

(v) Investment Company Act. The Company is not, and upon consummation of the transactions contemplated by the Agreement will not be, an "investment company" within the meaning of such term under the Investment Company Act of 1940, and the rules and regulations of the Commission thereunder (collectively, the "1940 Act").

(w) Insurance. The Company carries, or is covered by, insurance in such amounts and covering such risks as is adequate in all material respects for the conduct of its business and the value of its properties. All policies of insurance insuring the Company or any of its businesses, assets, employees, officers and directors are in full force and effect, and the Company is in compliance with the terms of such policies in all material respects. There are no claims by the Company under any such policy or instrument as to which an insurance company is denying liability or defending under a reservation of rights clause, which would have a Material Adverse Effect.

(x) ERISA. The Company and its applicable employee benefits plans are in compliance in all material respects with all presently applicable provisions of the ERISA; no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company could have any liability; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"); and each "pension plan" for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss of such qualification.

(y) Finder's Fees. Other than as contemplated by this Agreement, the Company has not incurred any liability for any finder's or broker's fee, or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(z) No Ownership. As of the date of this Agreement, the Company does not own, directly or indirectly, any shares of capital stock and does not have any other equity or ownership

or proprietary interest in any corporation, partnership, association, trust, limited liability company, joint venture or other similar entity, other than the Subsidiaries.

(aa) No Required Filings. There are no statutes, regulations, contracts or other documents (including, without limitation, any shareholders' agreement, investor rights agreement or voting agreement) that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(bb) No Improper Practices. Neither the Company, nor, to the knowledge of the Company, any director and officer, agent, employee or other person associated with or acting on behalf of the Company has not, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment in connection with the business of the Company.

(cc) Intellectual Property. The Company and the Subsidiaries own all United States and foreign patents, trademarks, service marks, tradenames, copyrights, trade secrets and other proprietary rights described in the Registration Statement and the Prospectus as being owned by them (collectively, the "**Intellectual Property**") and, to the Company's knowledge, own or have obtained valid and enforceable licenses for, or other rights to use, all Intellectual Property used in, or necessary for the conduct of their respective businesses as currently carried on and as proposed to be carried on as described in the Registration Statement and the Prospectus. Except as specifically described in the Registration Statement and the Prospectus, (i) no third parties have obtained or will be able to establish any interest in or rights to any Intellectual Property from the Company, other than limited licenses and transfers granted in the ordinary course; (ii) to the Company's knowledge, there is no infringement, misappropriation or other violation by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's interest or rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a basis for any such claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability, or scope of any Intellectual Property, and the Company is unaware of any facts which would form a basis for any such claim; (v) there is no prior, pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company has infringed, misappropriated or violated, does infringe, misappropriate or otherwise violate, or would, upon further development or commercialization of any product, product candidate or service described in the Registration Statement and the Prospectus as under development, infringe, misappropriate or violate, any intellectual property of others, and the Company is unaware of any facts which would form a basis for any such claim; (vi) to the Company's knowledge there is no patent or patent application that contains claims that cover or overlap (or may cover or overlap) the claims of any patent or patent application included in the Intellectual Property or that interferes with the issued or pending claims of any such patent or patent application; (vii) there is no prior art or public or commercial activity of which the Company is aware that may render any patent included in the Intellectual Property invalid or that would preclude the issuance of any patent on any patent application included in the Intellectual Property which has

not been disclosed to the U.S. Patent and Trademark Office or the relevant foreign patent authority, as the case may be; (viii) the Company has not committed any act or omitted to undertake any act the effect of such commission or omission would reasonably be expected to result in a legal determination that any item of Intellectual Property thereby was rendered invalid or unenforceable in whole or in part; (ix) to the Company's knowledge, the issued patents included in the Intellectual Property are valid and enforceable and the Company is unaware of any facts that would preclude the issuance of a valid and enforceable patent on any pending patent application included in the Intellectual Property; (x) the manufacture, use and sale of the products or product candidates described in the Registration Statement and the Prospectus as under development by the Company fall within the scope of one or more claims of the patents or patent applications included in the Intellectual Property; (xi) the Company has taken reasonable steps necessary to secure the interests of the Company in the Intellectual Property purported to be owned by the Company from any employees, consultants, agents or contractors that developed (in whole or in part) such Intellectual Property; (xii) there are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property or intellectual property of any other person or entity that are required to be described in the Registration Statement and the Prospectus that are not so described therein; and (xiii) no government funding, facilities or resources of a university, college, other educational institution or research center was used in the development of any Intellectual Property that is owned or purported to be owned by the Company that would confer upon any governmental agency or body, university, college, other educational institution or research center any claim or right in or to any such Intellectual Property. To the Company's knowledge, none of the technology employed by the Company has been obtained or is being used by the Company in violation of the rights of any person.

(dd) Compliance with Laws. The conduct of business by the Company complies, and at all times has complied, in all material respects with federal, state, local and foreign laws, statutes, ordinances, rules, regulations, decrees, orders, Permits and other similar items ("Laws") applicable to its business, including, without limitation, (a) the Federal Food, Drug, and Cosmetic Act (the "FD&C Act"), (b) the Occupational Safety and Health Act, the Environmental Protection Act, the Toxic Substances Control Act and Laws applicable to hazardous or regulated substances and radioactive or biologic materials, (c) the federal Anti-Kickback Statute, (d) the False Claims Act, (e) the Stark law, (f) the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act, (g) licensing and certification Laws covering any aspect of the business of the Company, (h) similar federal, state, local and foreign Laws and (i) the regulations promulgated pursuant to such Laws. The Company has not received any written notification asserting, nor has no knowledge of, any present or past failure to comply with or violation of any such Laws except where such failure would not reasonably be expected to have a Material Adverse Effect.

(ee) Clinical Studies. Except to the extent disclosed in the Registration Statement and the Prospectus (and to the Company's knowledge, after due inquiry, with respect to such trials, studies or tests conducted by third parties), the clinical trials and pre-clinical studies and tests conducted by or on behalf of or sponsored by the Company are, and at all times have been, conducted in all material respects in accordance with the FD&C Act and the regulations promulgated thereunder, including all U.S. Food and Drug Administration ("FDA") regulations governing clinical trials, as well as other applicable federal, state, local and foreign Laws, and consistent with

the protocols submitted to the FDA and procedures and controls generally used by qualified experts in the pre-clinical and clinical development of drugs. The descriptions of the results of such trials, studies and tests that have been submitted to the FDA or other governmental authority as the basis for a Permit are accurate and complete in all material respects and fairly present the data derived from such trials, studies and tests, and the Company does not have any knowledge of any other trials, studies or tests the results of which reasonably call into question the results described in the Registration Statement and the Prospectus. Except to the extent disclosed in the Registration Statement and the Prospectus, the Company has not received any written notices or other correspondence from the FDA or any other federal, state, local or foreign governmental agency with respect to any clinical trials or pre-clinical studies or tests that are described in the Registration Statement and the Prospectus or the results of which are described in the Registration Statement and the Prospectus that require the termination, suspension, delay or modification of such trials, studies or tests, or otherwise require the Company to engage in any remedial activities with respect to such trials, studies or tests or threaten to impose or actually impose any fines or other disciplinary actions, except where such remedial activities or disciplinary actions would not reasonably be expected to have a Material Adverse Effect.

(ff) Operations and Manufacturing. All the operations of the Company and, to the best of the Company's knowledge, all the manufacturing facilities and operations of the Company's suppliers and manufacturers of product candidates and the components thereof that are intended to be used in clinical trials are in compliance in all material respects with applicable FDA and other governmental regulations, including current good manufacturing practice regulations and applicable standards set forth in FDA guidance documents, the FD&C Act and other applicable federal, state, local or foreign Laws.

(gg) Forward Looking Statements. The information contained in the Registration Statement and the Prospectus that constitutes "forward-looking" information within the meaning of the Securities Act was made by the Company on a reasonable basis and reflect the Company's good faith belief and/or estimate of the matters described therein.

(hh) Operations. The operations of the Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the USA Patriot Act, the Bank Secrecy Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**"); and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened.

(ii) Environmental Laws. The Company is not in violation in any material respect of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous chemicals, toxic substances or radioactive and biological materials or relating to the protection or restoration of the environment or human exposure to hazardous chemicals, toxic substances or radioactive and biological materials (collectively, "**Environmental Laws**"). The Company does not own or operate

any real property contaminated with any substance that is subject to any Environmental Laws, is not liable for any off-site disposal or contamination pursuant to any Environmental Laws, and is not subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would, individually or in the aggregate, have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(jj) Statistical Data. All statistical or market-related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate.

(kk) Sarbanes-Oxley Act. The Company is in compliance with all applicable provisions of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), including Section 402 thereof relating to loans.

(ll) Disclosure Controls. The Company has established and maintains "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act; the Company's "disclosure controls and procedures" are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it will file or furnish under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and regulations of the Commission, including controls and procedures reasonably designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(mm) Conformity with Securities Act and Exchange Act. The Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto, and the Incorporated Documents, when such documents were or are filed with the Commission under the Securities Act or the Exchange Act or became or will become effective under the Securities Act, as the case may be, conformed or will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act.

(nn) Conformity with EDGAR Filing. The Prospectus delivered to the Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(oo) [Reserved].

(pp) Market Capitalization. At the time the Registration Statement was originally declared effective, and thereafter, at the time the Company's then most recent Annual Report on Form 10-K will be filed with the Commission, the Company met or will meet the then applicable requirements for the use of Form S-3 under the Securities Act, including but not limited to Instruction I.B.1 of Form S-3, subject to the 60-day period relating to the Non-Affiliate Shares (as defined below). The aggregate market value of the outstanding voting and non-voting common equity (as

defined in Securities Act Rule 405) of the Company held by persons other than affiliates of the Company (as defined in Securities Act Rule 405, those that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the Company) (the “**Non-Affiliate Shares**”), was equal to or greater than \$75 million (calculated by multiplying (x) the highest price at which the common equity of the Company was sold on the Exchange within 60 days of the date of filing of the Registration Statement times (y) the number of Non-Affiliate Shares). The Company is not a shell company (as defined in Rule 405 under the Securities Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in Instruction I.B.6 of Form S-3) with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

(qq) Broker/Dealer Relationships. Neither the Company nor any related entities (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a “person associated with a member” or “associated person of a member” (within the meaning set forth in the FINRA Manual).

(rr) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(ss) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an “**Off Balance Sheet Transaction**”) that could reasonably be expected to affect materially the Company’s liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission’s Statement about Management’s Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Registration Statement which have not been described as required.

(tt) Underwriter Agreements. Other than this Agreement and the Other Sales Agreement, the Company is not a party to any agreement with an agent or underwriter for any other “at-the-market” or continuous equity transaction.

(uu) Agent Purchases. The Company acknowledges and agrees that the Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect; provided that the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

(vv) Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement

and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(ww) Status Under the Securities Act. The Company was not and is not an ineligible issuer as defined in Rule 405 under the Securities Act at the times specified in Rules 164 and 433 under the Securities Act in connection with the offering of the Placement Shares.

(xx) Sanctions. (i) The Company represents that neither the Company nor, to the Company's knowledge, any director, officer, employee, agent, affiliate or representative of the Company, is a government, individual, or entity (in this paragraph, "Person") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan, Syria and the Crimea region of Ukraine).

(ii) The Company represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Company represents and covenants that, except as detailed in the Registration Statement and the Prospectus, for the past 5 years, it has not knowingly engaged in, is not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(yy) Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with in all material respects.

Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with the Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by the Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (provided, however, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to the Agent within a reasonable period of time before the filing and the Agent has not objected in writing or by email thereto (provided, however, that the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure by the Company to seek such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

(b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction,

or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will comply in all material respects with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430B under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430B and to notify the Agent promptly of all such filings. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; provided, however, that the Company may delay any such amendment or supplement if, in the reasonable judgment of the Company, it is in the best interests of the Company to do so.

(d) Listing of Placement Shares. During any period in which the Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, the Company will use its reasonable best efforts to cause the Placement Shares to be listed on the Exchange.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all Incorporated Documents) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all Incorporated Documents filed with the Commission during such period), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at the Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; provided, however,

that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

(g) Use of Proceeds. The Company will use the Net Proceeds in all material respects as described in the Prospectus in the section entitled "Use of Proceeds."

(h) Notice of Other Sales. Without the prior written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to the Sales Agreements) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the fifth (5th) Trading Day immediately prior to the date on which any Placement Notice is delivered to the Agent hereunder and ending on the fifth (5th) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other "at-the-market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to the Sales Agreements) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the later of the termination of this Agreement and the thirtieth (30th) day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice; provided, however, that such restrictions will not be required in connection with the Company's issuance or sale of (i) Common Stock, options to purchase Common Stock or restricted stock units or restricted stock awards or Common Stock issuable upon the exercise of options or vesting of restricted stock, pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent and (iii) Common Stock or securities convertible into or exchangeable for shares of Common Stock as consideration for mergers, acquisitions, other business combinations or strategic alliances occurring after the date of this Agreement which are not issued for capital raising purposes.

(i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice, advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

(j) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as the Agent may reasonably request.

(k) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act, which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agents under the Sales Agreements, the Net Proceeds to the Company and the compensation payable by the Company to the Agents with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(l) Representation Dates; Certificate. (1) On or prior to the date of the first Placement Notice and (2) following delivery of the first Placement Notice, each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

(iii) files its quarterly reports on Form 10-Q under the Exchange Act; or

(iv) files a current report on Form 8-K containing amended financial information (other than information "furnished" pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a "**Representation Date**");

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit 7(l). The requirement to provide a certificate under this Section 7(l) shall be waived for any Representation Date occurring at a time a Suspension is in effect or prior to the delivery of the first Placement Notice, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Placement Shares hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring

Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when a Suspension was in effect and did not provide the Agent with a certificate under this Section 7(l), then before the Company delivers the instructions for the sale of Placement Shares or the Agent sells any Placement Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 7(l) dated as of the date that the instructions for the sale of Placement Shares are issued.

(m) Legal Opinions. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion of each of (A) Fried, Frank, Harris, Shriver & Jacobson LLP (“**Company Counsel**”), or other counsel satisfactory to the Agent, (B) Hyman, Phelps & McNamara, P.C. (“**Regulatory Counsel**”), or other counsel satisfactory to the Agent and (C) Michael Best & Friedrich LLP (“**IP Counsel**”), or other counsel satisfactory to the Agent, in each case in form and substance reasonably satisfactory to the Agent and their counsel, substantially in the form provided to the Agent and their counsel; provided, however, the Company shall be required to furnish to the Agent no more than one opinion from each of Company Counsel, Regulatory Counsel and the IP Counsel hereunder per calendar quarter; provided, further, that in lieu of such opinions for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “**Reliance Letter**”) to the effect that the Agent may rely on a prior opinion delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).

(n) Comfort Letter. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause its independent registered public accounting firm to furnish the Agent letters (the “**Comfort Letters**”), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); provided, however, the Company shall be required to furnish to the Agent no more than one Comfort Letter hereunder per calendar quarter. Notwithstanding the foregoing, if reasonably requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event, including the restatement of the Company’s financial statements. The Comfort Letter from the Company’s independent registered public accounting firm shall be in a form and substance reasonably satisfactory to the Agent, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants’ “comfort letters” to underwriters in connection with registered public offerings (the first such letter, the “**Initial Comfort Letter**”) and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(o) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock or (ii) sell, bid for, or purchase the Placement Shares, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agents.

(p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that it will not be or become, at any time prior to the termination of this Agreement, required to register as an “investment company,” as such term is defined in the Investment Company Act.

(q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than the Agent in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(r) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Agent, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Agent may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(s) Sarbanes-Oxley Act. The Company will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company’s financial statements in accordance with U.S. GAAP, (iii) that receipts and expenditures of the Company are being made only in accordance with management’s and the Company’s directors’ authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on its financial statements. The Company will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the

Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(t) Secretary's Certificate; Further Documentation. On or prior to the date of the first Placement Notice, the Company shall deliver to the Agent a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Certificate of Incorporation of the Company, (ii) the bylaws of the Company, (iii) the resolutions of the Board of Directors of the Company, or a duly authorized committee thereof, authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within five (5) Trading Days of each Representation Date, the Company shall have furnished to the Agent such further information, certificates and documents as the Agents may reasonably request.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation and filing of the Registration Statement, including any fees required by the Commission, and the printing or electronic delivery of the Prospectus as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the out-of-pocket expenses of the Agent (including, without limitation, the fees and disbursements of the counsel to the Agent), payable upon the execution of this Agreement, in an amount not to exceed \$50,000 (it being understood that the Company shall not be required to reimburse such expenses under this Agreement and under Section 8(v) of the Other Sales Agreement in excess of \$50,000 in the aggregate); (vi) the qualification or exemption of the Placement Shares under state securities laws in accordance with the provisions of Section 7(r) hereof, including filing fees, (vii) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (viii) the preparation, printing and delivery to the Agent of copies of the blue sky survey, (ix) the fees and expenses of the transfer agent and registrar for the Common Stock, (x) the filing and other fees incident to any review by FINRA of the terms of the sale of the Placement Shares, and (xi) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Representations and Covenants of Agent. The Agent represents and warrants that it is duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required. The Agent shall continue, for the term of this Agreement, to be duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required, during the term of this Agreement. The Agent will comply with all applicable law and regulations in connection with the Placement Shares, including but not limited to Regulation M.

10. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions as of each Representation Date, as applicable:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus if such post-effective amendment or supplement has not been made and become effective; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material Incorporated Document untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or material Incorporated Document so that, in the case of the Registration Statement, it will not contain any materially 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 and so that, in the case of the Prospectus, it will not contain any materially 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, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement

thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Change, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities), if any, by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), if any, the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinion. The Agent shall have received the opinions of Company Counsel, Regulatory Counsel and the IP Counsel required to be delivered pursuant to Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

(f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant to Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

(g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

(h) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange and the Common Stock shall not have been delisted from the Exchange.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, opinions, certificates, letters and other documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof.

(j) Securities Act Filings Made. All filings with the Commission with respect to the Placement Shares required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) Approval for Listing. The Placement Shares shall either have been approved for listing on the Exchange, subject only to notice of issuance, or the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice.

(l) FINRA. FINRA shall have raised no objection to the terms of the offering of Placement Shares contemplated by this Agreement and the amount of compensation allowable or payable to the Agents as described in the Prospectus.

(m) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 13(a).

11. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 11(d) below) any such settlement is effected with the written consent of the Company, which consent shall not unreasonably be delayed or withheld; and

(iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above,

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with written information furnished to the Company by the Agents expressly for use in the Registration Statement (or any amendment thereto), or in any related Issuer Free Writing Prospectus or in Prospectus (or any amendment or supplement thereto).

(b) Agent Indemnification. The Agent agrees to indemnify and hold harmless the Company and its directors and each officer and director of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 11(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information furnished to the Company in writing by the Agent expressly for use therein. The Company hereby acknowledges that, as of the date of this Agreement, the only information that the Agent has furnished to the Company expressly for use in the Registration Statement (or any amendment thereto) or any related Issuer Free Writing Prospectus or in the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus are the statements set forth in the seventh and eighth paragraphs under the caption “Plan of Distribution” in the Prospectus.

(c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 11 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 11, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 11 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 11 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other

charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred and after the indemnifying party receives a written notice relating to the fees, disbursements and other charges in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 11 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) [Reserved].

(e) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 11 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than the Agent, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent (before deducting expenses) from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 11(e) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable

considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 11(e) shall be deemed to include, for the purpose of this Section 11(e), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 11(c) hereof. Notwithstanding the foregoing provisions of this Section 11(e), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 11(e), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of the Agent, will have the same rights to contribution as that party, and each officer and director of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 11(e), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 11(e) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 11(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 11(c) hereof.

12. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 11 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

13. Termination.

(a) The Agent may terminate this Agreement by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any material adverse change, or any development or event involving a prospective change, which has had or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the condition (financial or otherwise), properties, assets, liabilities, operations, earnings or business of the Company taken as a whole, whether or not arising from transactions in the ordinary course of business, which in the sole judgment of the Agent makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any material change or development involving a prospective material change in national or international political,

financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or materially limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or materially limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Payment of Expenses), Section 11 (Indemnification and Contribution), Section 12 (Representations and Agreements to Survive Delivery), Section 18 (Governing Law and Time; Waiver of Jury Trial) and Section 19 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 13(a), the Agent shall provide the required notice as specified in Section 14 (Notices).

(b) The Company shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(c) The Agent shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agents on the terms and subject to the conditions set forth herein; provided that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such terminations.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 13(a), (b), (c) or (d) above or otherwise by mutual agreement of the parties; provided, however, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 11, Section 12, Section 18 and Section 19 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided, however, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

14. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Cantor Fitzgerald & Co.  
499 Park Avenue  
New York, NY 10022  
Attention: Capital Markets/Jeff Lumby  
Facsimile: (212) 307-3730

with copies to

Cantor Fitzgerald & Co.  
499 Park Avenue  
New York, NY 10022  
Attention: General Counsel  
Facsimile: (212) 829-4708

and with a copy to:

Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Cheston J. Larson, Esq.  
Facsimile: (858) 523-5450

and if to the Company, shall be delivered to:

Aerie Pharmaceuticals, Inc.  
135 US Highway 206, Suite 15  
Bedminster, NJ 07921  
Attention: Richard J. Rubino  
Facsimile: 908-470-4329

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004  
Attention: Andrew B. Barkan, Esq.  
Facsimile: 212-859-4000

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile

transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, “**Business Day**” shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

An electronic communication (“**Electronic Notice**”) shall be deemed written notice for purposes of this Section 14 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form (“**Nonelectronic Notice**”) which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 11 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that the Agent may assign its rights and obligations hereunder to an affiliate thereof, so long as such affiliate is a registered broker-dealer, without obtaining the Company’s consent.

16. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

17. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

18. GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

19. CONSENT TO JURISDICTION. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

20. Use of Information. The Agent may not provide any information gained in connection with this Agreement and the transactions contemplated by this Agreement, including due diligence, to any third party other than its legal counsel advising it on this Agreement unless expressly approved by the Company in writing.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by .pdf or facsimile transmission.

22. Effect of Headings. The section and exhibit headings herein are for convenience only and shall not affect the construction hereof.

23. Permitted Free Writing Prospectuses. The Company represents, warrants and agrees that, unless it obtains the prior consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed, and the Agent represents, warrants and agrees that, unless it obtains the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. For the purposes of clarity, the parties hereto agree that all free writing prospectuses, if any, listed in Exhibit 22 hereto are Permitted Free Writing Prospectuses.

24. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) the Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) neither the Agent nor its affiliates have provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent and its affiliates have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent and its affiliates shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in

right of it or the Company, employees or creditors of Company, other than in respect of the Agent's obligations under this Agreement and to keep information provided by the Company to the Agent and the Agent's counsel confidential to the extent not otherwise publicly-available.

25. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

**"Applicable Time"** means (i) each Representation Date and (ii) the time of each sale of any Placement Shares pursuant to this Agreement.

**"Issuer Free Writing Prospectus"** means any "issuer free writing prospectus," as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a "road show" that is a "written communication" within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act Regulations.

**"Rule 164," "Rule 172," "Rule 405," "Rule 415," "Rule 424," "Rule 424(b)," "Rule 430B,"** and **"Rule 433"** refer to such rules under the Securities Act Regulations.

All references in this Agreement to financial statements and schedules and other information that is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; and all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR.

*[Signature Page Follows]*

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

AERIE PHARMACEUTICALS, INC.

By: /s/ Richard J. Rubino  
Name: Richard J. Rubino  
Title: Chief Financial Officer

ACCEPTED as of the date first-above written:

CANTOR FITZGERALD & CO.

By: /s/ Jeffrey Lumby  
Name: Jeffrey Lumby  
Title: Senior Managing Director

**SCHEDULE 1**

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**FORM OF PLACEMENT NOTICE**

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From: Aerie Pharmaceuticals, Inc.

To: [Agent]  
Attention: \_\_\_\_\_

Subject: Placement Notice

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between Aerie Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and Cantor Fitzgerald & Co. ("**CF&Co**"), dated \_\_\_\_\_, the Company hereby requests that CF&Co sell up to \_\_\_\_\_ shares ("**Placement Shares**") of the Company's common stock, par value \$0.001 per share, at a minimum market price of \$\_\_\_\_\_ per share, during the time period beginning [month, day, time] and ending [month, day, time] [and no more than \_\_\_\_\_ Placement Shares shall be sold in any one Trading Day].

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## **SCHEDULE 2**

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### **Compensation**

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The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to up to 3.0% of the aggregate gross proceeds from each sale of Placement Shares.

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## SCHEDULE 3

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### Notice Parties

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#### The Company

Richard J. Rubino (rrubino@aeriepharma.com)

#### CF&Co

Jeff Lumby (jlumby@cantor.com)

Josh Feldman (jfeldman@cantor.com)

Sameer Vasudev (svasudev@cantor.com)

With copies to:

CFControlledEquityOffering@cantor.com

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**EXHIBIT 7(I)**

**Form of Representation Date Certificate**

The undersigned, the duly qualified and elected \_\_\_\_\_, of Aerie Pharmaceuticals, Inc., a Delaware corporation (the "Company"), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(l) of each of the Controlled Equity Offering Sales Agreements, dated November 6, 2015 (the "Sales Agreements"), between the Company and RBC Capital Markets, LLC and Cantor Fitzgerald & Co.(collectively, the "Agents"), that to the best of the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 6 of the Sales Agreements (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreements in all material respects at or prior to the date hereof.

AERIE PHARMACEUTICALS, INC.

By:

Name:

Title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit 22**

**Permitted Free Writing Prospectus**

None.

November 6, 2015

Aerie Pharmaceuticals, Inc.  
135 Bedminster 206, Suite 15  
Bedminster, New Jersey 07921

**Re: Issuance and sale of shares of common stock, par value \$0.001 per share (the “Common Stock”), of Aerie Pharmaceuticals, Inc.**

Ladies and Gentlemen:

We have acted as counsel to Aerie Pharmaceuticals, Inc., a Delaware corporation (the “Company”), in connection with the registration of up to \$50,000,000 of shares of Common Stock (the “Shares”), pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-199821), filed with the Securities and Exchange Commission (as it may be amended from time to time, the “Registration Statement”), under the Securities Act of 1933, as amended, to be offered by the Company from time to time under (i) the sales agreement, dated as of November 6, 2015, by and between the Company and RBC Capital Markets, LLC and (ii) the sales agreement, dated as of November 6, 2015, by and between the Company and Cantor Fitzgerald & Co. (collectively, the “Sales Agreements”). With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part except to the extent otherwise expressly stated, and we express no opinion with respect to the subject matter or accuracy of such assumptions or items relied upon.

In connection with this opinion, we have (i) investigated such questions of law, (ii) examined originals or certified, conformed or reproduction copies of such agreements, instruments, documents and records of the Company, such certificates of public officials and such other documents (collectively, the “Documents”) and (iii) received such information from officers and representatives of the Company as we have deemed necessary or appropriate for the purposes of this opinion.

In all such examinations, we have assumed the legal capacity of all natural persons executing the Documents, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified documents of all copies submitted to us as conformed or reproduction copies. As to various questions of fact relevant to the opinions expressed herein, we have relied upon, and assume the accuracy of, representations and warranties in the Documents, certificates and oral or written statements and other information of or from public officials and officers and representatives of the Company and others and assume compliance on the part of all parties to the Documents with their covenants and agreements contained therein.

To the extent it may be relevant to the opinions expressed below, we have assumed that the Company will have sufficient authorized but unissued and unreserved shares of Common Stock on the date of any issuance of Shares registered pursuant to the Registration Statement.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that, when the Shares have been issued and delivered against payment therefor in an amount in excess of the par value thereof, in accordance with the terms of the applicable Sales Agreement under which they are sold and in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, such Shares will be validly issued, fully paid and non-assessable.

With respect to the opinion expressed above, we have assumed that the aggregate gross sales price of all of the Shares issued and sold will not exceed, and that the offering price per share for each Share issued and sold will not be less than, any amounts authorized in the applicable resolutions of the Board of Directors of the Company and the applicable placement notice delivered in accordance with the applicable Sales Agreement.

The opinion expressed herein is limited to the General Corporation Law of the State of Delaware, as currently in effect. The opinion expressed herein is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. This letter is given only as of the time of its delivery, and we undertake no responsibility to update or supplement this letter after its delivery.

We hereby consent to the filing of this opinion as an exhibit to the Company’s Form 10-Q, which will be incorporated by reference in the Registration Statement, and to the references to this firm under the captions “Legal Matters” in the Registration Statement and in any prospectus supplement filed in connection with the issuance and sale of the Shares. In giving these consents, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Fried, Frank, Harris, Shriver & Jacobson LLP



## CERTIFICATION

I, Vicente Anido, Jr., PhD, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Aerie Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2015

/s/ VICENTE ANIDO, JR., PHD

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Vicente Anido, Jr., PhD  
Chief Executive Officer, Chairman of the Board  
(Principal Executive Officer)

## CERTIFICATION

I, Richard J. Rubino, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Aerie Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2015

/s/ RICHARD J. RUBINO

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Richard J. Rubino  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q of Aerie Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for the period ended September 30, 2015 (the "Report"), the undersigned, Vicente Anido, Jr., PhD, Chief Executive Officer and Chairman of the Board of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2015

/s/ VICENTE ANIDO, JR., PHD

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Vicente Anido, Jr., PhD  
Chief Executive Officer, Chairman of the Board  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q of Aerie Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for the period ended September 30, 2015 (the "Report"), the undersigned, Richard J. Rubino, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2015

/s/ RICHARD J. RUBINO

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Richard J. Rubino  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

