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

FORM 10-Q

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

For the quarterly period ended March 31, 2022

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

Aerie Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**20-3109565**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

4301 Emperor Boulevard, Suite 400
Durham, North Carolina 27703
(919) 237-5300
(Address of principal executive offices, zip code and telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	AERI	Nasdaq Global Market

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 every Interactive Data File required to be submitted 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 such files). Yes: ☒ No: ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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

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

As of April 29, 2022, there were 48,622,987 shares of the registrant’s common stock, par value $0.001 per share, outstanding.

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Unless otherwise indicated or the context requires, the terms “Aerie,” “Company,” “we,” “us” and “our” refer to Aerie Pharmaceuticals, Inc. and its subsidiaries. References to “products” mean products approved by the U.S. Food and Drug Administration (“FDA”) or other regulatory authorities; references to “product candidates” mean products that are in development but not yet approved by the FDA or other regulatory authorities; and references to “future product candidates” mean products that have not yet been developed.

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 broad impact of the coronavirus (“COVID-19”) pandemic on our business;
- the sales of Rhopressa® (netarsudil ophthalmic solution) 0.02% (“Rhopressa®”) or of Rocklatan® (netarsudil and latanoprost ophthalmic solution) 0.02%/0.005% (“Rocklatan®”), in the United States, and the potential future sales in the United States of any product candidates or future product candidates, if approved;
- the potential future sales in jurisdictions outside of the United States of Rhopressa®, named Rhokiinsa® (netarsudil ophthalmic solution) 0.02% (“Rhokiinsa®”) in Europe, or Rocklatan®, named Roclanda® (netarsudil and latanoprost ophthalmic solution) 0.02%/0.005% (“Roclanda®”) in Europe, or their equivalents, and those of any product candidates or future product candidates;
- our commercialization, marketing, manufacturing and supply management capabilities and strategies in and outside of the United States;
- third-party payer coverage and reimbursement for our products, product candidates and any future product candidates, if approved;
- the glaucoma patient market size and the rate and degree of market adoption of our products, product candidates and any future product candidates, if approved, by eye-care professionals and patients;
- the timing, cost or other aspects of the commercial launch of our products, product candidates and any future product candidates, if approved;
- the success, timing and cost of our ongoing and anticipated preclinical studies and clinical trials for our product candidates and any future product candidates, including statements regarding the timing of initiation and completion of the studies and trials;
- our expectations regarding the effectiveness of our products, product candidates and any future product candidates and our expectations regarding the results of any clinical trials and preclinical studies;
- the timing of and our ability to request, obtain and maintain FDA or other regulatory authority approval of, or other action with respect to our products, product candidates and any future product candidates in the United States, Europe, Japan and elsewhere, including the expected timing of, and regulatory and/or other review of, filings for such products, product candidates and any future product candidates;
- our expectations related to the use of proceeds from our financing activities;
- our estimates regarding anticipated operating expenses and capital requirements and our needs for additional financing;

- our plans to pursue development of additional product candidates and technologies in ophthalmology, including development of our products or product candidates for additional indications, and our preclinical retinal programs and other therapeutic opportunities;
- the potential advantages of our products, product candidates and any future product candidates;
- our ability to protect our proprietary technology and enforce our intellectual property rights; and
- our expectations regarding existing and future collaborations, licensing, acquisitions and strategic operations, including our ability to in-license or acquire additional ophthalmic products, product candidates or technologies.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events, competitive dynamics, industry changes and other factors beyond our control, 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 in greater detail 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, 2021, as filed with the Securities and Exchange Commission ("SEC") on February 25, 2022, and other documents we have filed or furnished with the SEC.

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 development 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.

In particular, FDA and European Medicines Agency ("EMA") approval of Rhopressa® and Rocklatan®, and Medicines and Healthcare products Regulatory Agency ("MHRA") authorization of Roclanda® does not guarantee regulatory approval of Rhopressa®, Rocklatan® or Roclanda® in other jurisdictions, and there can be no assurance that we will receive regulatory approval for Rhopressa®, Rocklatan® or Roclanda® in such other jurisdictions. In addition, FDA approval of Rhopressa® and Rocklatan® does not guarantee FDA approval of our product candidates or any future product candidates and there can be no assurance that we will receive FDA approval for our product candidates or any future product candidates. Furthermore, the acceptance of the Investigational New Drug Applications by the FDA for our product candidates does not guarantee FDA approval of such product candidates and the outcomes of later clinical trials for our product candidates may not be sufficient to submit a New Drug Application ("NDA") with the FDA or to receive FDA approval. In addition, the clinical trials discussed in this report are preliminary and the outcome of such clinical trials may not be predictive of the outcome of later clinical trials. Any future clinical trial results may not demonstrate safety and efficacy sufficient to obtain regulatory approval related to the clinical trials findings discussed in this report, and we may suspend or discontinue research programs at any time for any reason.

Any forward-looking statements that we make in this report speak only 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 the 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.

Condensed Consolidated Balance Sheets
(Unaudited)
(in thousands, except share data)

	MARCH 31, 2022	DECEMBER 31, 2021
Assets		
Current assets		
Cash and cash equivalents	$ 56,441	$ 37,187
Short-term investments	138,807	102,614
Accounts receivable, net	63,617	68,828
Inventory	40,190	40,410
Licensing receivable	—	90,000
Prepaid expenses and other current assets	17,911	16,611
Total current assets	316,966	355,650
Long-term investments	3,985	—
Property, plant and equipment, net	51,226	51,472
Operating lease right-of-use assets	21,916	22,669
Other assets	1,453	1,600
Total assets	$ 395,546	$ 431,391
Liabilities and Stockholders' (Deficit) Equity		
Current liabilities		
Accounts payable	$ 7,877	$ 8,285
Accrued expenses and other current liabilities	102,950	112,341
Operating lease liabilities	4,464	4,365
Total current liabilities	115,291	124,991
Convertible notes, net	311,678	234,527
Deferred revenue, non-current	70,000	64,315
Operating lease liabilities, non-current	21,033	21,751
Other non-current liabilities	3,256	3,140
Total liabilities	521,258	448,724
Commitments and contingencies (Note 12)		
Stockholders' deficit		
Preferred stock, $0.001 par value; 15,000,000 shares authorized as of March 31, 2022 and December 31, 2021; none issued and outstanding	—	—
Common stock, $0.001 par value; 150,000,000 shares authorized as of March 31, 2022 and December 31, 2021; 48,635,700 and 48,444,473 shares issued and outstanding as of March 31, 2022 and December 31, 2021, respectively	48	48
Additional paid-in capital	1,016,510	1,136,656
Accumulated other comprehensive loss	(430)	(126)
Accumulated deficit	(1,141,840)	(1,153,911)
Total stockholders' deficit	(125,712)	(17,333)
Total liabilities and stockholders' deficit	$ 395,546	$ 431,391

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

AERIE PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(in thousands, except share and per share data)

	THREE MONTHS ENDED MARCH 31,	
	2022	**2021**
Product revenues, net	$ 29,835	$ 22,970
Total revenues, net	29,835	22,970
Costs and expenses:		
Cost of goods sold	6,780	6,700
Selling, general and administrative	31,524	32,598
Research and development	25,174	17,891
Total costs and expenses	63,478	57,189
Loss from operations	(33,643)	(34,219)
Other expense, net	(1,555)	(7,714)
Loss before income taxes	(35,198)	(41,933)
Income tax expense	693	31
Net loss	$ (35,891)	$ (41,964)
Net loss per common share—basic and diluted	$ (0.76)	$ (0.91)
Weighted average number of common shares outstanding—basic and diluted	47,520,045	46,109,080
Net loss	$ (35,891)	$ (41,964)
Unrealized loss on available-for-sale investments, net	(304)	(12)
Comprehensive loss	$ (36,195)	$ (41,976)

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

AERIE PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Stockholders' (Deficit) Equity
(Unaudited)
(in thousands, except share data)

	COMMON STOCK		ADDITIONAL PAID-IN CAPITAL	ACCUMULATED OTHER COMPREHENSIVE LOSS	ACCUMULATED DEFICIT	TOTAL
	SHARES	AMOUNT				
Balances at December 31, 2020	46,821,644	$ 47	$ 1,103,074	$ (52)	$ (1,079,101)	$ 23,968
Issuance of common stock upon exercise of stock options and warrants	62,016	—	26	—	—	26
Issuance of common stock for restricted stock awards, net	10,162	—	(1,127)	—	—	(1,127)
Stock-based compensation	—	—	8,741	—	—	8,741
Other comprehensive loss	—	—	—	(12)	—	(12)
Net loss	—	—	—	—	(41,964)	(41,964)
Balances at March 31, 2021	46,893,822	$ 47	$ 1,110,714	$ (64)	$ (1,121,065)	$ (10,368)

	COMMON STOCK		ADDITIONAL PAID-IN CAPITAL	ACCUMULATED OTHER COMPREHENSIVE LOSS	ACCUMULATED DEFICIT	TOTAL
	SHARES	AMOUNT				
Balances at December 31, 2021	48,444,473	$ 48	$ 1,136,656	$ (126)	$ (1,153,911)	$ (17,333)
Cumulative effect adjustment from adoption of ASU 2020-06	—	—	(124,666)	—	47,962	(76,704)
Issuance of common stock for restricted stock awards, net	191,227	—	(358)	—	—	(358)
Stock-based compensation	—	—	4,878	—	—	4,878
Other comprehensive loss	—	—	—	(304)	—	(304)
Net loss	—	—	—	—	(35,891)	(35,891)
Balances at March 31, 2022	48,635,700	$ 48	$ 1,016,510	$ (430)	$ (1,141,840)	$ (125,712)

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

AERIE PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands)

	THREE MONTHS ENDED MARCH 31,	
	2022	**2021**
Cash flows from operating activities		
Net loss	$ (35,891)	$ (41,964)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation	1,604	1,499
Amortization and accretion	2,007	7,408
Stock-based compensation	4,632	8,749
Other non-cash	(50)	1,116
Changes in operating assets and liabilities		
Accounts receivable, net	5,211	9,872
Inventory	538	(1,052)
Prepaid, current and other assets	(1,211)	(4,286)
Licensing receivable	90,000	—
Accounts payable, accrued expenses and other current liabilities	(9,517)	(10,297)
Operating lease liabilities	(1,097)	(1,846)
Deferred revenue	5,685	747
Net cash provided by (used in) operating activities	61,911	(30,054)
Cash flows from investing activities		
Purchase of available-for-sale investments	(70,308)	(25,236)
Proceeds from sales and maturities of investments	29,605	28,288
Purchase of property, plant and equipment	(1,597)	(772)
Net cash (used in) provided by investing activities	(42,300)	2,280
Cash flows from financing activities		
Payments related to issuance of stock for stock-based compensation arrangements, net	(357)	(1,101)
Net cash used in financing activities	(357)	(1,101)
Net change in cash and cash equivalents	19,254	(28,875)
Cash and cash equivalents, at beginning of period	37,187	151,570
Cash and cash equivalents, at end of period	$ 56,441	$ 122,695
Non-cash investing and financing activities		
Purchase of property, plant and equipment in accounts payable and accrued expenses and other current liabilities	$ 742	$ 182

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

AERIE PHARMACEUTICALS, INC.

Notes to the Condensed Consolidated Financial Statements
(Unaudited)

1. The Company

Aerie Pharmaceuticals, Inc. ("Aerie"), with its wholly-owned subsidiaries, Aerie Distribution, Inc., Aerie Pharmaceuticals Limited, Aerie Pharmaceuticals Ireland Limited and Avizorex Pharma S.L. ("Aerie Distribution," "Aerie Limited," "Aerie Ireland Limited" and "Avizorex," respectively, together with Aerie, the "Company"), is a pharmaceutical company focused on the discovery, development and commercialization of first-in-class ophthalmic therapies for the treatment of patients with eye diseases and conditions including open-angle glaucoma, dry eye, diabetic macular edema ("DME") and wet age-related macular degeneration ("AMD"). The Company has its principal executive offices in Durham, North Carolina, and operates as one business segment.

U.S. Commercialization of the Glaucoma Franchise

The Company has developed and commercialized two U.S. Food and Drug Administration ("FDA") approved products, Rhopressa® (netarsudil ophthalmic solution) 0.02% ("Rhopressa®") and Rocklatan® (netarsudil/latanoprost ophthalmic solution) 0.02%/0.005% ("Rocklatan®"), which are sold in the United States and comprise its glaucoma franchise. Rhopressa® is a once-daily eye drop designed to reduce elevated intraocular pressure ("IOP") in patients with open-angle glaucoma or ocular hypertension. Rocklatan® is a once-daily fixed-dose combination of Rhopressa® and latanoprost, a commonly prescribed drug for the treatment of patients with open-angle glaucoma or ocular hypertension. The Company is commercializing Rhopressa®, which was launched in the United States in April 2018, and Rocklatan®, which was launched in the United States in May 2019.

In March 2022, the Company commenced a Phase 4 program that was designed to further demonstrate that Rocklatan® is a highly effective single bottle, once daily therapy.

Efforts Outside the United States

In addition to actively promoting Rhopressa® and Rocklatan® in the United States, the Company is also developing business opportunities outside of the United States and has made progress in its efforts to commercialize Rhopressa® and Rocklatan® in Europe, Japan and other regions of the world.

The Company partnered and has collaboration agreements in place with Santen Pharmaceuticals Co., Ltd. ("Santen Pharmaceuticals") and Santen SA ("Santen SA" and, together with Santen Pharmaceuticals, "Santen") to develop and commercialize its products in Japan and South Korea, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam and Taiwan (collectively, "East Asia"), as well as Europe, China, India, the Middle East, Commonwealth of Independent States ("CIS"), Africa, parts of Latin America and the Oceania countries. The initial Collaboration and License Agreement with Santen was executed in October 2020 (the "First Santen Agreement") to advance the Company's clinical development and ultimately commercialize Rhopressa® and Rocklatan® in Japan and East Asia. The second Collaboration and License Agreement with Santen (the "Second Santen Agreement" and, together with the First Santen Agreement, the "Santen Agreements") was executed in December 2021 to develop and commercialize Rhopressa® and Rocklatan® in Europe, China, India, the Middle East, CIS, Africa, parts of Latin America and the Oceania countries. See Note 3 for additional information. In Europe, Rhopressa® and Rocklatan® will be marketed under the names Rhokiinsa® and Roclanda®, respectively.

Rhokiinsa® and Roclanda® were granted a Centralised Marketing Authorisation ("Centralised MA") by the European Commission ("EC") in November 2019 and January 2021, respectively. In April 2021, Roclanda® received marketing authorisation from the Medicines and Healthcare Products Regulatory Agency ("MHRA") in Great Britain.

In Japan, in October 2021, the Company reported positive topline results for its Phase 3 clinical trial of netarsudil ophthalmic solution 0.02% ("netarsudil 0.02%"), the first of three expected Phase 3 clinical trials in Japan. A second, confirmatory Phase 3 study, required for approval in Japan, is currently underway. Santen is taking the lead on next steps in preparation for registration in Japan under the terms of the First Santen Agreement. Clinical trials for Rocklatan® in Japan have not yet begun.

Glaucoma Product Manufacturing

The Company has a sterile fill manufacturing facility in Athlone, Ireland ("Athlone plant"), for the production of its FDA approved products and clinical supplies. In addition, the Athlone plant has also manufactured clinical supplies of Rhopressa® for the Phase 3 clinical trials in Japan as well as registration batches to support product approval in Japan.

Product Candidates in Development

The Company is furthering the development of its product candidates focused on dry eye and retinal diseases as described below.

Dry Eye Program

The Company is developing AR-15512 ophthalmic solution for the treatment of patients with dry eye disease. The active ingredient in AR-15512 is a potent and selective agonist of the TRPM8 ion channel, a cold sensor and osmolarity sensor that regulates tear production and blink rate. In addition, activating the TRPM8 receptor may reduce ocular discomfort by promoting a cooling sensation.

In September 2021, the Company reported topline results of its Phase 2b clinical study, named COMET-1, for AR-15512. The Company completed a dose ranging study evaluating two concentrations of AR-15512 (0.0014% and 0.003%) in a 90-day trial with 369 subjects. The COMET-1 clinical study achieved statistical significance for multiple pre-specified and validated signs and symptoms. The greatest efficacy was demonstrated with the higher concentration 0.003% formulation, which the Company plans to advance to Phase 3 studies. The study did not achieve statistical significance at the pre-determined primary endpoints at Day 28. The Company gained alignment with the FDA in the first quarter of 2022 on the results of the Phase 2b clinical trial and confirmed the design of the Phase 3 registrational trials.

Retina Program

The Company is currently developing two sustained-release implants focused on retinal diseases, AR-1105 and AR-14034 SR. For AR-1105, a dexamethasone steroid implant, the Company completed a Phase 2 clinical trial for patients with macular edema due to retinal vein occlusion (“RVO”) in July 2020 and reported topline results indicating sustained efficacy of up to six months.

The preclinical sustained-release implant AR-14034 SR is being designed to deliver the active ingredient axitinib, a potent small molecule pan vascular endothelial growth factor (“VEGF”) receptor inhibitor. AR-14034 SR has the potential to provide a duration of effect of approximately one year with a once per-year injection. It may potentially be used to treat DME, wet AMD and related diseases of the retina.

Liquidity

The Company’s activities prior to the commercial launch of Rhopressa® had primarily consisted of developing product candidates, raising capital and performing research and development activities. The Company has incurred losses and experienced negative operating cash flows since inception. The Company had previously funded its operations primarily through the sale of equity securities and issuance of convertible notes prior to generating product revenues. In September 2019, the Company issued an aggregate principal amount of $316.25 million of 1.50% convertible senior notes due October 2024 (the “Convertible Notes”). See Note 10 for additional information. Further, the Company entered into the First Santen Agreement and Second Santen Agreement in October 2020 and December 2021, respectively, pursuant to which Santen made upfront payments of $50.0 million and $88.0 million, respectively. In December 2021, the Company also earned a $2.0 million supplemental upfront payment associated with the Second Santen Agreement. Total aggregate upfront payments of $90.0 million associated with the Second Santen Agreement (the “Second Santen Agreement Upfront Payment”) were received in January 2022. See Note 3 for additional information. As of March 31, 2022, the Company had $199.2 million in cash, cash equivalents and investments. The Company believes that its cash, cash equivalents and investments and projected cash flows from revenues, will provide sufficient resources to support its operations, including interest payments for its Convertible Notes, through at least the next twelve months from the date of this filing.

The Company expects to incur ongoing operating losses until such a time when Rhopressa® or Rocklatan® or any current or future product candidates, if approved, generate sufficient cash flows for the Company to achieve profitability. Accordingly, the Company may be required to obtain further funding through debt or equity offerings or other sources. In addition, the Company continues to evaluate collaboration and licensing opportunities related to its product candidates in development. 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 acceptable terms, it may be forced to delay, reduce or eliminate its research and development programs or commercialization and manufacturing efforts.

2. Significant Accounting Policies

Basis of Presentation

The Company's interim condensed 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 condensed 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 condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended December 31, 2021 included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on February 25, 2022. The results for the three months ended March 31, 2022 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 condensed 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 condensed 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 condensed consolidated financial statements and reported amounts of income and expenses during the reporting periods. Significant items subject to such estimates and assumptions include revenue recognition, leases, acquisitions, stock-based compensation and fair value measurements. On March 11, 2020, the World Health Organization declared the coronavirus ("COVID-19") outbreak a pandemic. The COVID-19 pandemic continues to evolve, which the Company considered in its critical and significant accounting estimates as future developments continue to be uncertain, including as a result of new information that may emerge concerning COVID-19 and its variants and the actions taken to contain or treat it, as well as the economic impact on eye-care professionals, patients, third parties and markets. Actual results could differ from the Company's estimates.

Adoption of New Accounting Standards

In August 2020, the Financial Accounting Standards Board ("FASB") issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 2020-06"). This ASU simplifies the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. More specifically, the amendments focus on the guidance for convertible instruments and the derivative scope exception for contracts in an entity's own equity. Under ASU 2020-06, the embedded conversion features are no longer separated from the host contract for convertible instruments with conversion features that are not required to be accounted for as derivatives under Topic 815, or that do not result in substantial premiums accounted for as paid-in capital. Consequently, a convertible debt instrument, such as the Convertible Notes, will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. The new guidance also requires the if-converted method to be applied for all convertible instruments and requires additional disclosures. The guidance became effective for the Company beginning on January 1, 2022, and was applied using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date. As such, financial results reported in prior periods were not adjusted. The impact of adopting ASU 2020-06 on January 1, 2022, was comprised of a $124.7 million decrease to additional paid-in capital, a $76.7 million increase to convertible notes, net to reduce debt discounts and a $48.0 million decrease to accumulated deficit. Upon adoption of ASU 2020-06, the Company's interest expense, recognized as a component of other expense, net in its condensed consolidated statements of operations and comprehensive loss, will decrease which primarily relates to no longer recognizing non-cash interest expense from the discount amortization, partially offset by an increase in amortization of debt issuance costs. See Note 10 for additional information.

Recently Issued Accounting Standards

There have been no new accounting pronouncements issued since the filing of the Annual Report on Form 10-K for the year ended December 31, 2021 that are expected to materially impact the Company's consolidated financial statements.

Net Loss per Common Share

Basic net loss per common share ("Basic EPS") is calculated by dividing the net loss by the weighted average number of shares of common stock outstanding for the period, without consideration for potentially dilutive securities. Diluted net loss per share ("Diluted EPS") gives effect to all dilutive potential shares of common stock outstanding during this period. For Diluted EPS, net loss used in calculating Basic EPS may be adjusted for certain items related to the dilutive securities.

For all periods presented, Aerie's potential common stock equivalents have been excluded from the computation of Diluted EPS as their inclusion would have had an anti-dilutive effect.

The potential common stock equivalents that have been excluded from the computation of Diluted EPS consist of the following:

	THREE MONTHS ENDED MARCH 31,	
	2022	2021
Convertible Notes [1]	12,662,650	—
Outstanding stock options	6,711,485	8,720,368
Non-vested restricted stock awards	1,077,745	714,005
Non-vested restricted stock units	151,282	95,238
Total	20,603,162	9,529,611

[1] Upon adoption of ASU 2020-06 on January 1, 2022, the if-converted method is applied to the Convertible Notes in the calculation of earnings per share. Prior to the adoption of ASU 2020-06, the Company did not include the conversion value of the Convertible Notes in the diluted earnings per share computation.

3. Revenue Recognition

Product Revenues

Net product revenues for the three months ended March 31, 2022 and 2021 were generated from sales of Rhopressa® and Rocklatan®, the Company's glaucoma franchise products, which were commercially launched in the United States in April 2018 and May 2019, respectively. Aerie's customers include a limited number of national and select regional wholesalers (the "distributors"). For the three months ended March 31, 2022, three distributors accounted for 38%, 35% and 26% of total revenues, respectively. For the three months ended March 31, 2021, three distributors accounted for 36%, 30% and 33% of total revenues, respectively. Product affordability for the patient drives consumer acceptance, and this is generally managed through coverage by third-party payers, such as government or private healthcare insurers and pharmacy benefit managers ("Third-party Payers") and such product may be subject to rebates and discounts payable directly to those Third-party Payers.

Product revenues are recorded net of trade discounts, allowances, rebates, chargebacks, estimated returns and other incentives in the condensed consolidated statements of operations and comprehensive loss, discussed below. These reserves are classified as either reductions of accounts receivable or as current liabilities in the condensed consolidated balance sheets. Amounts billed or invoiced are included in accounts receivable, net on the condensed consolidated balance sheets. The Company did not have any contract assets (unbilled receivables) as of March 31, 2022 or December 31, 2021, as customer invoicing generally occurs before or at the time of revenue recognition. The Company did not have any contract liabilities as of March 31, 2022 or December 31, 2021, as the Company did not receive payments in advance of fulfilling its performance obligations to its customers. The Company calculates its net product revenues based on the wholesale acquisition cost that the Company charges its distributors for Rhopressa® and Rocklatan® less provisions for (i) trade discounts and allowances, such as discounts for prompt payment and distributor fees, (ii) estimated rebates to Third-party Payers, estimated payments for Medicare Part D prescription drug program coverage gap (commonly called the "donut hole"), patient co-pay program coupon utilization, chargebacks and other discount programs and (iii) reserves for expected product returns. Provisions for revenue reserves reduced product revenues by $63.8 million and $50.8 million in aggregate for the three months ended March 31, 2022 and 2021, respectively, a significant portion of which related to commercial and Medicare Part D rebates.

Trade Discounts and Allowances: The Company generally provides discounts on sales of Rhopressa® and Rocklatan® to its distributors for prompt payment and pays fees for distribution services and for certain data that distributors provide to the Company. The Company expects its distributors to earn these discounts and fees, and accordingly deducts the full amount of these discounts and fees from its gross product revenues at the time such revenues are recognized.

Rebates, Chargebacks and Other Discounts: The Company contracts with Third-party Payers for coverage and reimbursement of Rhopressa® and Rocklatan®. The Company estimates the rebates, donut hole and chargebacks it expects to be obligated to provide to Third-party Payers and deducts these estimated amounts from its gross product revenue at the time the revenue is recognized. The Company estimates the rebates, donut hole and chargebacks that it expects to be obligated to provide to Third-party Payers based upon (i) the Company's contracts and applicable negotiations with these Third-party Payers, (ii) estimates regarding the payer mix for Rhopressa® and Rocklatan® based on utilization of both third-party and the Company's historical data, (iii) inventory held by distributors and (iv) estimates of inventory held at the retail channel. Other discounts include the Company's co-pay assistance coupon programs for commercially-insured patients meeting certain eligibility requirements. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to pay associated with product that has been recognized as revenue.

Product Returns: The Company estimates the amount of Rhopressa® and Rocklatan® that will be returned and deducts these estimated amounts from its gross revenue at the time the revenue is recognized. The Company currently estimates product returns based on historical information regarding returns of Rhopressa® and Rocklatan® as well as historical industry information regarding rates for comparable pharmaceutical products and product portfolios, the estimated remaining shelf life of Rhopressa® and Rocklatan® shipped to distributors, and contractual agreements with the Company's distributors intended to limit the amount of inventory they maintain. Reporting from the distributors includes distributor sales and inventory held by distributors, which provides the Company with visibility into the distribution channel to determine when the product would be eligible to be returned.

Santen Collaboration and License Agreements

Second Santen Agreement

In December 2021, Aerie Ireland Limited entered into the Second Santen Agreement with Santen which expands the scope of the First Santen Agreement, entered into in October 2020. Pursuant to the Second Santen Agreement, Aerie Ireland Limited granted to Santen the exclusive right to develop and commercialize Rhopressa® and Rocklatan® (the "Licensed Products") in Europe, China, India, the Middle East, CIS, Africa, parts of Latin America and the Oceania countries (such jurisdictions collectively, the "Expanded Territories"). The Company is the sole manufacturer of the Licensed Products for Santen and Santen may manufacture, in certain circumstances, upon mutual agreement of both parties. In addition, Aerie Ireland Limited granted Santen a first right of refusal to commercialize the Licensed Products in Canada.

Under the agreement, Santen made the Second Santen Agreement Upfront payment in January 2022 to Aerie Ireland Limited which was comprised of an $88.0 million upfront payment and a $2.0 million supplemental upfront payment that was earned based on the achievement of an event that occurred in December 2021. Upon the achievement of certain events, Aerie Ireland Limited will earn various development milestones of up to $15.5 million and sales milestones of up to $60.0 million. In addition, Santen will pay Aerie Ireland Limited a royalty in excess of 25% of the Licensed Products' net sales in the Expanded Territories, excluding China and India (and in excess of 20% of the Licensed Products' net sales in China and India), such consideration consisting of the cost of products supplied to Santen from Aerie Ireland Limited and a royalty for the Company's intellectual property. While the royalty rate decreases when the Licensed Products are manufactured by or on behalf of Santen, there is a guaranteed minimum percentage.

The term of the Second Santen Agreement continues on a country-by-country and product-by-product basis until the expiration of the obligation to make payments under the Second Santen Agreement with respect to each Licensed Product in each country or region. The Second Santen Agreement may be terminated by either Aerie Ireland Limited or Santen upon the other party's material breach, bankruptcy or insolvency. Aerie Ireland Limited may also terminate the agreement upon a patent challenge by Santen or on a country-by-country basis upon a breach by Santen of its obligation to develop, obtain marketing approval of and commercialize the Licensed Products in certain of the Expanded Territories. Santen may terminate the Second Santen Agreement in its discretion if Santen reasonably determines that the Licensed Products are not commercially viable in the Expanded Territory (effective upon 180 days' prior written notice). In addition, in the event that patents are issued that may prevent the commercialization of the Licensed Products during the three-year period following marketing authorization of Rhopressa® in China, Santen would have the right to terminate the agreement with respect to China only and require Aerie Ireland Limited to repay $8.0 million of the Second Santen Agreement Upfront Payment. In the event of termination, the Licensed Products in the applicable Expanded Territories will revert to Aerie Ireland Limited.

The Company recognized deferred revenue, non-current as of March 31, 2022 and December 31, 2021 as follows:

(in thousands)	MARCH 31, 2022	DECEMBER 31, 2021
First Santen Agreement:		
Upfront payment [1]	$ 50,000	$ 50,000
Developmental milestones [2]	6,000	—
Santen's portion of shared costs [3]	6,000	6,315
Second Santen Agreement:		
Upfront payment [4]	8,000	8,000
Total	$ 70,000	$ 64,315

[1] While the Company determined that the license was a right to use the Company's intellectual property and as of the effective date of the First Santen Agreement, the Company had provided all necessary information to Santen to benefit from the license and the license term had begun, revenue was not recognized upon satisfaction of the performance obligation due to the uncertainty around potential termination in the event that patents are issued that may prevent the commercialization of the Licensed Products.

The Company will recognize the $50.0 million upfront payment received under the First Santen Agreement, and any other current and potential future development milestones and sales milestones, when it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

[2] In March 2022, Santen made a $6.0 million developmental milestone payment in connection with the First Santen Agreement.

[3] This item represents Santen's portion of shared costs related to conducting the first Rhopressa® Phase 3 clinical trial in Japan, which commenced in the fourth quarter of 2020, as described above.

[4] As of March 31, 2022 and December 31, 2021, the Company recognized $8.0 million of the Second Santen Agreement Upfront Payment as deferred revenue, non-current in its consolidated balance sheet due to the uncertainty around potential termination in China in the event that patents are issued that may prevent the commercialization of the Licensed Products.

4. Investments

Cash, cash equivalents and investments as of March 31, 2022 included the following:

(in thousands)	AMORTIZED COST	GROSS UNREALIZED GAINS	GROSS UNREALIZED LOSSES	FAIR VALUE
Cash and cash equivalents:				
Cash and cash equivalents	$ 56,441	$ —	$ —	$ 56,441
Total cash and cash equivalents	$ 56,441	$ —	$ —	$ 56,441
Investments:				
Certificates of deposit (due within 1 year)	$ 9,044	$ —	$ (14)	$ 9,030
Commercial paper (due within 1 year)	54,456	—	(186)	54,270
Corporate bonds (due within 1 year)	41,747	—	(178)	41,569
Corporate bonds (due within 2 years)	4,020	—	(35)	3,985
U.S. Government and government agencies (due within 1 year)	33,955	—	(17)	33,938
Total investments	$ 143,222	$ —	$ (430)	$ 142,792
Total cash, cash equivalents and investments	$ 199,663	$ —	$ (430)	$ 199,233

Cash, cash equivalents and investments as of December 31, 2021 included the following:

(in thousands)	AMORTIZED COST	GROSS UNREALIZED GAINS	GROSS UNREALIZED LOSSES	FAIR VALUE
Cash and cash equivalents:				
Cash and cash equivalents	$ 37,187	$ —	$ —	$ 37,187
Total cash and cash equivalents	$ 37,187	$ —	$ —	$ 37,187
Investments:				
Certificates of deposit (due within 1 year)	$ 9,047	$ —	$ (9)	$ 9,038
Commercial paper (due within 1 year)	50,975	—	(55)	50,920
Corporate bonds (due within 1 year)	42,718	—	(62)	42,656
Total investments	$ 102,740	$ —	$ (126)	$ 102,614
Total cash, cash equivalents and investments	$ 139,927	$ —	$ (126)	$ 139,801

Interest income earned on the Company's cash, cash equivalents and investments was $0.1 million in each of the three months ended March 31, 2022 and 2021, respectively. Realized gains or losses were immaterial during the three months ended March 31, 2022 and 2021.

As of March 31, 2022 and December 31, 2021, the Company did not hold any equity securities.

5. Fair Value Measurements

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:

	FAIR VALUE MEASUREMENTS AS OF MARCH 31, 2022			
(in thousands)	LEVEL 1	LEVEL 2	LEVEL 3	TOTAL
Cash and cash equivalents:				
Cash and cash equivalents	$ 56,441	$ —	$ —	$ 56,441
Total cash and cash equivalents:	$ 56,441	$ —	$ —	$ 56,441
Investments:				
Certificates of deposit	$ —	$ 9,030	$ —	$ 9,030
Commercial paper	—	54,270	—	54,270
Corporate bonds	—	45,554	—	45,554
U.S. Government and government agencies	—	33,938	—	33,938
Total investments	$ —	$ 142,792	$ —	$ 142,792
Total cash, cash equivalents and investments:	$ 56,441	$ 142,792	$ —	$ 199,233

(in thousands)	FAIR VALUE MEASUREMENTS AS OF DECEMBER 31, 2021			
	LEVEL 1	LEVEL 2	LEVEL 3	TOTAL
Cash and cash equivalents:				
Cash and cash equivalents	$ 37,187	$ —	$ —	$ 37,187
Total cash and cash equivalents:	$ 37,187	$ —	$ —	$ 37,187
Investments:				
Certificates of deposit	$ —	$ 9,038	$ —	$ 9,038
Commercial paper	—	50,920	—	50,920
Corporate bonds	—	42,656	—	42,656
Total investments	$ —	$ 102,614	$ —	$ 102,614
Total cash, cash equivalents and investments:	$ 37,187	$ 102,614	$ —	$ 139,801

The fair value of the Convertible Notes, which differs from their carrying value, is influenced by interest rates, stock price and stock price volatility and is determined by prices observed in market trading. The market for trading of the Convertible Notes is not considered to be an active market and therefore the estimate of fair value is based on Level 2 inputs. The estimated fair value of the Convertible Notes was $284.8 million and $270.4 million at March 31, 2022 and December 31, 2021, respectively.

There were no transfers between the different levels of the fair value hierarchy during the three months ended March 31, 2022 and 2021.

6. Inventory

Inventory consists of the following:

(in thousands)	MARCH 31, 2022	DECEMBER 31, 2021
Raw materials	$ 4,968	$ 5,368
Work-in-process	30,480	30,989
Finished goods	4,742	4,053
Total inventory	$ 40,190	$ 40,410

For the three months ended March 31, 2022 and 2021, $3.9 million and $4.4 million, respectively, of production costs associated with underutilized capacity at the Company’s Athlone plant were recorded to costs of goods sold. The underutilization results from the manufacturing plant having not yet reached full capacity as it commenced operations in early 2020.

7. Property, Plant and Equipment, Net

Property, plant and equipment, net consists of the following:

(in thousands)	MARCH 31, 2022	DECEMBER 31, 2021
Manufacturing equipment	$ 22,485	$ 22,464
Laboratory equipment	9,509	9,182
Furniture and fixtures	1,612	1,569
Software, computer and other equipment	7,857	7,779
Leasehold improvements	31,452	31,175
Construction-in-progress	2,703	2,037
Property, plant and equipment	75,618	74,206
Less: Accumulated depreciation	(24,392)	(22,734)
Property, plant and equipment, net	$ 51,226	$ 51,472

8. Leases

The Company has operating leases for corporate offices, research and development facilities and a fleet of vehicles. The properties primarily relate to the Company's principal executive office and research facility located in Durham, North Carolina, regulatory, commercial support and other administrative activities located in Irvine, California, and clinical, finance and legal operations located in Bedminster, New Jersey. The Durham, North Carolina, facility consists of approximately 61,000 square feet of laboratory and office space under a lease that was renewed in the third quarter of 2021 and expires in June 2029. The Irvine, California, location consists of approximately 27,000 square feet of office space under a lease that was renewed in the third quarter of 2021 and expires in October 2027. The Bedminster, New Jersey, location consists of approximately 34,000 square feet of office space under a lease that expires in October 2029. There are also small offices in Ireland, the United Kingdom and Japan.

The Company is leasing approximately 30,000 square feet of interior floor space for its manufacturing plant in Athlone, Ireland. The Company is reasonably certain it will remain in the lease through the end of its lease term in 2037, however, the Company is permitted to terminate the lease as early as September 2027.

The Company's operating leases have remaining lease terms of approximately 1 year to 15 years, some of which include options to extend the leases.

9. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following:

(in thousands)	MARCH 31, 2022	DECEMBER 31, 2021
Accrued expenses and other current liabilities:		
Accrued compensation and benefits	$ 11,855	$ 15,881
Accrued consulting and professional fees	3,976	5,007
Accrued research and development [1]	3,089	2,262
Accrued revenue reserves [2]	79,213	85,381
Accrued other [3]	4,817	3,810
Total accrued expenses and other current liabilities	$ 102,950	$ 112,341

[1] Comprised primarily of accruals related to fees for investigative sites, contract research organizations and other service providers that assist in conducting preclinical research studies and clinical trials.

[2] Comprised primarily of accruals related to commercial and government rebates as well as returns.

[3] Comprised primarily of accruals related to interest payable as well as other business-related expenses.

10. Debt

Convertible Notes

In September 2019, the Company issued an aggregate principal amount of $316.25 million of Convertible Notes to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended. The Convertible Notes, governed by an indenture between the Company and a trustee, are senior, unsecured obligations and do not include financial and operating covenants nor any restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by Aerie or any of its subsidiaries. Interest on the Convertible Notes is payable semi-annually in cash in arrears at a rate of 1.50% per annum on April 1 and October 1 of each year, which began on April 1, 2020. The Convertible Notes will mature on October 1, 2024 unless they are redeemed, repurchased or converted prior to such date. Prior to April 1, 2024, the Convertible Notes will be convertible at the option of holders only during certain periods and upon satisfaction of certain conditions. On and after April 1, 2024, the Convertible Notes will be convertible at the option of the holders any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Upon conversion, the Convertible Notes may be settled in shares of Aerie common stock, cash or a combination, thereof, at the Company's election. The Company intends to pay cash upon conversion of the Convertible Notes. See Note 2 for additional information.

The Convertible Notes have an initial conversion rate of 40.04 shares of Aerie common stock per $1,000 principal amount of the Convertible Notes, which will be subject to customary anti-dilution adjustments in certain circumstances. This represents an initial effective conversion price of approximately $24.98 per share, which represents a premium of approximately 35% to the $18.50 per share closing price of Aerie common stock on September 4, 2019, the date the Company priced the offering.

The Company may redeem all or any portion of the Convertible Notes, at its option, on or after October 3, 2022, at a cash redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price of Aerie common stock exceeds 130% of the conversion price of $24.98, which amounts to $32.47, then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately before the date the Company provides written notice of redemption; and the trading day immediately before the notice is sent.

Holders of Convertible Notes may require the Company to repurchase their Convertible Notes upon the occurrence of certain events that constitute a fundamental change under the indenture governing the Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

During the three months ended March 31, 2022, the conditions allowing holders of the Convertible Notes to elect to convert had not been met. As of March 31, 2022, the if-converted value of the Convertible Notes did not exceed the principal amount of the Convertible Notes.

The estimated fair value of the liability component of the Convertible Notes at the time of issuance was $187.9 million, and was determined based on a discounted cash flow analysis and a binomial lattice model. The valuation required the use of Level 3 unobservable inputs and subjective assumptions, including but not limited to the stock price volatility and bond yield. The effective interest rate on the liability component was 10.5% for the period from the date of issuance through March 31, 2021. The equity component of the Convertible Notes was recognized at issuance and represents the difference between the principal amount of the Convertible Notes and the fair value of the liability component of the Convertible Notes at issuance. The equity component was approximately $128.4 million at the time of issuance and its fair value is not remeasured as long as it continues to meet the conditions for equity classification.

In connection with the issuance of the Convertible Notes, the Company incurred debt issuance costs of $9.2 million for the three months ended December 31, 2019. In accordance with ASC Topic 470, *Debt*, these costs were allocated to debt and equity components in proportion to the allocation of proceeds. Issuance costs of $5.5 million were recorded as debt issuance costs in the net carrying value of Convertible Notes. The debt issuance costs are amortized on an effective interest basis over the term of the Convertible Notes. The remaining issuance costs of $3.7 million were recorded as additional paid-in capital, net with the equity component and such amounts are not subject to amortization.

Upon the Company’s adoption of ASU 2020-06 on January 1, 2022, as further discussed in Note 2, embedded conversion features are no longer separated from the host contract for convertible instruments with conversion features that are not required to be accounted for as derivatives under Topic 815, or that do not result in substantial premiums accounted for as paid-in capital. Consequently, the Convertible Notes will be accounted for as a single liability measured at its amortized cost. The effective interest rate was 2.1% for the three months ended March 31, 2022.

The following table summarizes the carrying value of the Convertible Notes:

(in thousands)	MARCH 31, 2022	DECEMBER 31, 2021
Gross proceeds	$ 316,250	$ 316,250
Unamortized debt discount	—	(78,395)
Unamortized issuance costs	(4,572)	(3,328)
Carrying value	$ 311,678	$ 234,527

The following table summarizes the interest expense recognized related to the Convertible Notes:

	THREE MONTHS ENDED MARCH 31,	
(in thousands)	2022	2021
Stated interest	$ 1,186	$ 1,186
Amortized debt discount	—	5,482
Amortized issuance costs	447	232
Interest expense	$ 1,633	$ 6,900

Separately, in September 2019, the Company entered into privately negotiated capped call options with financial institutions. The capped call options cover, subject to customary anti-dilution adjustments, the number of shares of Aerie common stock that initially underlie the Convertible Notes. The cap price of the capped call options is $37.00 per share of Aerie common stock, representing a premium of 100% above the closing price of $18.50 per share of Aerie common stock on September 4, 2019, and is subject to certain adjustments under the terms of the capped call options. The capped call options are generally intended to reduce or offset potential dilution to Aerie common stock upon conversion of the Convertible Notes with such reduction and/ or offset, as the case may be, subject to a cap based on the cap price. The Company paid a total of $32.9 million in premiums for the capped call options, which was recorded as additional paid-in capital, using a portion of the gross proceeds from the issuance and sale of the Convertible Notes. The capped call options are excluded from diluted earnings per share because the impact would be anti-dilutive.

11. Stock-Based Compensation

Stock-based compensation expense for options granted, restricted stock awards (“RSAs”), RSAs with non-market performance and service conditions (“PSAs”), restricted stock units (“RSUs”) and stock appreciation rights (“SARs”) is reflected in the condensed consolidated statements of operations and comprehensive loss as follows:

	THREE MONTHS ENDED MARCH 31,	
(in thousands)	2022	2021
Cost of goods sold	$ 162	$ 507
Selling, general and administrative	3,134	6,255
Research and development	1,336	1,987
Total	$ 4,632	$ 8,749

Equity Plans

The Company maintains three equity compensation plans: the 2005 Aerie Pharmaceutical Stock Plan (the “2005 Plan”), the 2013 Omnibus Incentive Plan (the “2013 Equity Plan”), which was amended and restated as the Aerie Pharmaceuticals, Inc. Second Amended and Restated Omnibus Incentive Plan (the “Second Amended and Restated Equity Plan”), as described below, and the Aerie Pharmaceuticals, Inc. Inducement Award Plan (the “Inducement Award Plan”), which was amended and restated as the Aerie Pharmaceuticals, Inc. Second Amended and Restated Inducement Award Plan (the “Second Amended and Restated Inducement Award Plan”), as described below. The 2005 Plan, the Second Amended and Restated Equity Plan and the Second Amended and Restated Inducement Award Plan are referred to collectively as the “Plans.” The 2005 Plan was frozen in 2013 and no additional awards have been or will be made under the 2005 Plan.

In 2018, Aerie's stockholders approved the adoption of the Second Amended and Restated Equity Plan to increase the number of shares issuable under the Plan by 4,500,000. The Second Amended and Restated Equity Plan provides for the granting of up to 10,229,068 equity awards in respect of common stock of Aerie, including equity awards that were previously available for issuance under the 2013 Equity Plan.

In 2016, Aerie's Board of Directors approved the Inducement Award Plan which provides for the granting of up to 418,000 equity awards in respect of common stock of Aerie and subsequently amended and restated the Inducement Award Plan twice in 2017 to increase the equity awards that may be issued by a total of an additional 874,500 shares. In 2019, the Second Amended and Restated Inducement Award Plan was further amended by Aerie's Board of Directors to increase the number of shares issuable under the plan by 100,000 shares. On December 9, 2021, Aerie's Board of Directors approved an increase to the number of shares issuable under the plan for grants made to the Company's new Chief Executive Officer in connection with his hiring, including 602,952 shares for grants made in December 2021 and additional shares for grants made in the first quarter of 2022. On March 11, 2022, Aerie's Board of Directors approved an amendment to the Second Amended and Restated Inducement Award Plan to increase the number of shares that may be issued under the plan to 4,092,500 shares, which includes the 602,952 shares granted to our Chief Executive Officer in December 2021 as well as an additional 2,097,048 shares to cover his previously approved March 2022 grant and other new hire grant projections. Awards granted under the Second Amended and Restated Inducement Award Plan, as amended from time to time are intended to qualify as employment inducement awards under NASDAQ Listing Rule 5635(c)(4).

Options to Purchase Common Stock

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

	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)	AGGREGATE INTRINSIC VALUE (000's)
Options outstanding at December 31, 2021	6,550,610	$ 26.87		
Granted	673,888	8.73		
Canceled	(513,013)	23.91		
Options outstanding at March 31, 2022	6,711,485	$ 25.27	6.4	$ 2,354
Options exercisable at March 31, 2022	4,569,275	$ 30.42	5.1	$ 1,716

As of March 31, 2022, the Company had $18.0 million of unrecognized compensation expense related to options granted under its equity plans. This expense is expected to be recognized over a weighted average period of 2.5 years as of March 31, 2022.

Restricted Stock Awards

The following table summarizes the RSA, including PSA, activity under the Plans:

	NUMBER OF SHARES	WEIGHTED AVERAGE FAIR VALUE PER SHARE
Non-vested RSAs at December 31, 2021	977,244	$ 18.32
Granted	347,814	8.80
Vested	(132,905)	34.07
Canceled	(114,408)	19.43
Non-vested RSAs at March 31, 2022	1,077,745	13.21

As of March 31, 2022, the Company had $12.0 million of unrecognized compensation expense related to unvested RSAs, including PSAs. This expense is expected to be recognized over the weighted average period of 2.8 years as of March 31, 2022.

The vesting of the RSAs is time and service based with terms of 1 to 4 years. In 2017, the Company granted 98,817 PSAs that vested in 2020 upon the satisfaction of certain performance and service conditions. During the three months ended March 31, 2022, the Company granted 218,418 PSAs which vest upon the satisfaction of certain performance and service conditions, none of which have vested.

Restricted Stock Units

The following table summarizes the RSU activity under the Plans:

	NUMBER OF SHARES	WEIGHTED AVERAGE FAIR VALUE PER SHARE
Non-vested RSUs at December 31, 2021	156,873	$ 14.88
Granted	1,989	6.88
Vested	(7,143)	7.00
Canceled	(437)	16.22
Non-vested RSUs at March 31, 2022	151,282	15.14

As of March 31, 2022, the associated unrecognized compensation expense totaled $2.8 million. This expense is expected to be recognized over the weighted average period of 2.8 years as of March 31, 2022.

Stock Appreciation Rights

The following table summarizes the SARs activity under the Plans:

	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)	AGGREGATE INTRINSIC VALUE (000's)
SARs outstanding at December 31, 2021	238,349	$ 27.67		
Granted	3,000	6.97		
Canceled	(13,434)	28.02		
SARs outstanding at March 31, 2022	227,915	$ 27.37	2.8	$ 7
SARs exercisable at March 31, 2022	96,106	$ 39.26	1.9	$ —

Holders of the SARs are entitled under the terms of the Plans to receive cash payments calculated based on the excess of Aerie's common stock price over the exercise price in their award; consequently, these awards are accounted for as liability-classified awards and the Company measures compensation cost based on their estimated fair value at each reporting date, net of actual forfeitures, if any.

12. Commitments and Contingencies

Milestone Payments

In the first quarter of 2022, the Company gained alignment with the FDA on the results of its Phase 2b clinical trial for AR-15512 and confirmed the design of the Phase 3 trials, which the Company currently expects to initiate in the second quarter of 2022. This resulted in the achievement of a regulatory milestone in which the Company paid the former shareholders of Avizorex $8.0 million in the first quarter of 2022.

Litigation

The Company may periodically become subject to legal proceedings and claims arising in connection with its business. As of March 31, 2022, the Company is not a party to any material pending legal or administrative proceedings and, to its knowledge, no such proceedings are threatened or contemplated. The Company does not have contingency reserves established for any litigation liabilities as of March 31, 2022.

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 condensed 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, 2021, as filed with the SEC on February 25, 2022 ("2021 Form 10-K"). This management's 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 2021 Form 10-K and other documents we have filed or furnished with the SEC 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 pharmaceutical company focused on the discovery, development and commercialization of first-in-class ophthalmic therapies for the treatment of patients with eye diseases and conditions including open-angle glaucoma, dry eye, DME and wet AMD.

U.S. Commercialization of the Glaucoma Franchise

Our strategy is to grow the market share of our FDA approved glaucoma franchise products, Rhopressa® and Rocklatan® in the United States. Both Rhopressa® and Rocklatan® are being sold to national and regional U.S. pharmaceutical distributors, and patients have access to them through pharmacies across the United States. We have obtained broad formulary coverage for Rhopressa® and Rocklatan® for the lives covered under commercial plans and Medicare Part D plans. Our commercial team responsible for sales of Rhopressa® and Rocklatan® is targeting select eye-care professionals who treat glaucoma throughout the United States.

In March 2022, we commenced a Phase 4 program that was designed to further demonstrate that Rocklatan® is a highly effective single bottle, once daily therapy. We expect topline data for this Phase 4 Multi-center Open-label Rocklatan® Evaluation ("MORE") study to be available in the first half of 2023.

Rhopressa® is a once-daily eye drop designed to reduce elevated IOP in patients with open-angle glaucoma or ocular hypertension. Rhopressa® is taken in the evening and has shown in preclinical and clinical trials to be effective in reducing IOP, with a favorable safety profile.

The active ingredient in Rhopressa®, netarsudil, is an Aerie-owned Rho kinase ("ROCK") inhibitor. Rhopressa® increases the outflow of aqueous humor through the trabecular meshwork ("TM"), which accounts for approximately 80% of fluid drainage from the healthy eye and is the diseased tissue responsible for elevated IOP in glaucoma. Using this mechanism of action ("MOA"), we believe that Rhopressa® represents the first of a new drug class for reducing IOP in patients with glaucoma in over 20 years.

Rocklatan® is a once-daily fixed-dose combination of Rhopressa® and latanoprost, a commonly prescribed drug for the treatment of patients with open-angle glaucoma or ocular hypertension. Rocklatan® is also taken in the evening, and similar to Rhopressa®, has shown in preclinical and clinical trials to be highly effective in reducing IOP, with a favorable safety profile.

Based on our clinical data, we believe that Rocklatan® has the potential to provide a greater IOP-reducing effect than any glaucoma medication currently marketed in the United States.

Efforts Outside the United States

In addition to growing the market share of Rhopressa® and Rocklatan® in the United States, our strategy also includes developing business opportunities outside of the United States and we continue to make progress in our efforts to commercialize Rhopressa® and Rocklatan® in Europe, Japan and other regions of the world.

We have partnered and have collaboration agreements in place with Santen to develop and commercialize our products in Japan, East Asia, as well as Europe, China, India, the Middle East, CIS, Africa, parts of Latin America and the Oceania countries. The First Santen Agreement was executed in October 2020 to advance our clinical development and ultimately

commercialize Rhopressa® and Rocklatan® in Japan and East Asia. The Second Santen Agreement was executed in December 2021 to develop and commercialize Rhopressa® and Rocklatan® in Europe, China, India, the Middle East, CIS, Africa, parts of Latin America and the Oceania countries.

In Europe, Rhopressa® and Rocklatan® will be marketed under the names Rhokiinsa® and Roclanda®, respectively. Rhokiinsa® and Roclanda® were granted a Centralised MA by the EC in November 2019 and January 2021, respectively. In April 2021, Roclanda® received marketing authorisation from the MHRA in Great Britain.

In Japan, we reported positive topline results for our Phase 3 clinical trial of netarsudil ophthalmic solution 0.02% in October 2021, the first of three expected Phase 3 clinical trials in Japan. The results evaluated netarsudil 0.02% versus ripasudil hydrochloride hydrate ophthalmic solution 0.4% ("ripasudil 0.4%") and showed that netarsudil 0.02% once daily was superior to ripasudil 0.4% twice daily in lowering IOP after four weeks ($p<0.0001$), the primary endpoint of the study. The medications were safe and well tolerated. The most common treatment emergent adverse event was conjunctival hyperemia, which is treatable. In March 2022, Santen made a $6.0 million developmental milestone payment in connection with the conclusion of this Phase 3 clinical trial. A second, confirmatory Phase 3 study, required for approval in Japan, is currently underway. Santen is taking the lead on next steps in preparation for registration in Japan under the terms of the First Santen Agreement. Clinical trials for Rocklatan® have not yet begun.

Glaucoma Product Manufacturing

We have a sterile fill production facility in Athlone, Ireland, for the production of our FDA approved products and clinical supplies, with the intent of having the Athlone plant supply our ophthalmic products in all markets for which we received regulatory approval and are commercialized. The Athlone plant began manufacturing commercial supplies of Rocklatan® in the first quarter of 2020 and Rhopressa® in the third quarter of 2020 for distribution to the United States. Shipments of commercial supply of both Rocklatan® and Rhopressa® from the Athlone plant to the United States commenced in the second half of 2020. In addition, the Athlone plant has manufactured clinical supplies of Rhopressa® for the Phase 3 clinical trials in Japan as well as registration batches to support product approval in Japan. We expect to commence shipments of Roclanda® to Santen pursuant to the Second Santen Agreement in the fourth quarter of 2022.

As the Athlone plant commenced operations in early 2020, it has not reached full capacity. We expect that the Athlone plant will have adequate capacity to produce for the markets included in the Santen Agreements, as needed, which include Europe, Japan, East Asia and certain other regions of the world, if approved for commercial distribution in those markets. The Athlone plant manufactures most of our ongoing needs for Rhopressa® and Rocklatan® in the United States. We may continue to use contract manufacturers to produce commercial supplies of Rhopressa® and Rocklatan® for distribution in the United States, but at reduced levels as a result of the Athlone plant commencing manufacturing operations.

Product Candidates in Development

Our strategy includes enhancing our longer-term commercial potential by identifying and advancing additional product candidates through our internal discovery efforts, our entry into potential research collaborations or in-licensing arrangements or our acquisition of additional ophthalmic products, technologies or product candidates that complement our current product portfolio.

Dry Eye Program

We are developing AR-15512 ophthalmic solution for the treatment of patients with dry eye disease. In September 2021, we reported topline results of our Phase 2b clinical study, named COMET-1, for AR-15512. We completed a dose ranging study evaluating two concentrations of AR-15512 (0.0014% and 0.003%) in a 90-day trial with 369 subjects. The COMET-1 clinical study achieved statistical significance for multiple pre-specified and validated signs and symptoms. The greatest efficacy was demonstrated with the higher concentration 0.003% formulation, which we plan to advance to Phase 3 studies. The study did not achieve statistical significance at the pre-determined primary endpoints at Day 28. We gained alignment with the FDA in the first quarter of 2022 on the results of the Phase 2b clinical study and confirmed the design of the Phase 3 registrational trials, which we currently expect to initiate in the second quarter of 2022. The first Phase 3 registrational trial, named COMET-2, will be a multi-center, vehicle-controlled, double-masked, randomized study that will evaluate a single concentration of AR-15512 (0.003%) compared to the AR-15512 vehicle, administered twice daily for 90 days. COMET-2 is expected to enroll about 460 participants at approximately 20 sites in the United States.

Retina Program

Furthermore, we are currently developing two sustained-release implants focused on retinal diseases, AR-1105 and AR-14034 SR. For AR-1105, we completed a Phase 2 clinical trial for patients with macular edema due to RVO in July 2020 and reported

topline results indicating sustained efficacy of up to six months. We have received advice from regulatory agencies in both Europe and the United States regarding clinical and regulatory pathways for Phase 3 clinical trials. We are currently evaluating Phase 3 development options as well as partnership opportunities. In addition, we are also working to advance our preclinical sustained-release retinal implant, AR-14034 SR, for which we anticipate filing an Investigational New Drug Application ("IND") with the FDA in the second half of 2022.

Pipeline

We own over 4,000 ROCK inhibitor molecules that provide a basis for further research and development opportunities. We discovered and developed the active ingredient in Rhopressa® and Rocklatan® and netarsudil through a rational drug design approach that coupled medicinal chemistry with high content screening of compounds in proprietary cell-based assays. We selected and formulated netarsudil for preclinical *in vivo* testing following a detailed characterization of over 3,000 synthesized ROCK inhibitors, a number that has since grown to approximately 4,000. We evaluate this library on an ongoing basis for additional development opportunities. Early-stage evaluations of these molecules are underway for other ophthalmic indications. We continue to evaluate external business development opportunities to provide access to technologies developed outside of Aerie to complement our internal research and development efforts.

Impact of the COVID-19 Pandemic

On March 11, 2020, the World Health Organization declared the coronavirus ("COVID-19") outbreak a pandemic. As the COVID-19 pandemic continues to evolve, we considered this in our critical and significant accounting estimates as future developments continue to be uncertain, including as a result of new information that may emerge concerning COVID-19 and its variants and the actions taken to contain or treat it, as well as the economic impact on eye-care professionals, patients, third parties and markets. Actual results could differ from our estimates.

The health and safety of our employees, patients, prescribers and community are of utmost importance during this time. We are complying with all requirements and mandates from various agencies and governments and we continue to monitor applicable federal and state regulations, including with respect to vaccination mandates and required weekly testing of unvaccinated employees. We have taken precautionary measures to protect our employees and our stakeholders and adapted company policy to maintain the continuity of our business. We have continued to operate effectively as most of our manufacturing plant personnel are working at the manufacturing plant with precautionary measures in place, while the balance of our workforce has the option to work remotely or to return to the office in accordance with state and local mandates. We may take further actions as government authorities require or recommend or as we determine to be in the best interest of our employees.

Financial Overview

Our cash, cash equivalents and investments totaled $199.2 million as of March 31, 2022. We believe that our cash, cash equivalents and investments and projected cash flows from revenues will provide sufficient resources for our current ongoing needs through at least the next twelve months from the date of this filing, though there may be need for additional financing activity as we continue to grow, in addition to our aggregate principal amount of $316.25 million of Convertible Notes which mature on October 1, 2024. We continue to evaluate our product candidates in development for collaboration and licensing opportunities. See "—Liquidity and Capital Resources" below and Note 10 to our condensed consolidated financial statements included in this report for further discussion.

We have incurred net losses since our inception in June 2005. Until 2018, when we commenced commercial operations, our business activities were primarily limited to developing product candidates, raising capital and performing research and development activities. As of March 31, 2022, we had an accumulated deficit of $1,141.8 million and recognized a net loss of $35.9 million for the three months ended March 31, 2022. For the three months ended March 31, 2021 we recognized a net loss of $42.0 million. Our capital resources and business efforts are largely focused on activities relating to the commercialization of Rhopressa® and Rocklatan®, advancing our product candidates in development, international expansion and operating our Athlone plant.

We expect to incur operating losses until such a time when Rhopressa® or Rocklatan® or any current or future product candidates, if approved, or proceeds in connection with collaboration and licensing arrangements, generate sufficient cash flows for us to achieve profitability. Accordingly, we may be required to obtain further funding through debt or equity offerings 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 may be forced to delay, reduce or eliminate our research and development programs or commercialization or manufacturing efforts.

Product Revenues, Net

Rhopressa® and Rocklatan®, our glaucoma franchise products, were launched in the United States in April 2018 and May 2019, respectively. We commenced generating product revenues from sales of Rhopressa® and Rocklatan® during the second quarter of 2018 and 2019, respectively. Product affordability for the patient drives consumer acceptance, and this is generally managed through coverage by third-party payers, such as government or private healthcare insurers and pharmacy benefit managers ("Third-party Payers") and such product may be subject to rebates and discounts payable directly to those Third-party Payers. Our product revenues are recorded net of provisions relating to estimates for (i) trade discounts and allowances, such as discounts for prompt payment and distributor fees, (ii) estimated rebates to Third-party Payers, estimated payments for Medicare Part D prescription drug program coverage gap (commonly called the "donut hole"), patient co-pay program coupon utilization, chargebacks and other discount programs and (iii) reserves for expected product returns. These estimates reflect current contractual and statutory requirements, known market events and trends, industry data, forecasted customer mix and lagged claims. Actual amounts may ultimately differ from these estimates. If actual results vary, estimates may be adjusted in the period such change in estimate becomes known, which may have an impact on earnings in the period of adjustment.

We will not generate any revenues from any product candidates or future product candidates unless and until we obtain regulatory approval and commercialize such products.

Licensing Revenues

Licensing revenues consist of the upfront license fee and supplemental upfront payment earned from the licensing of our intellectual property. We recognize revenues from license fees when the license is considered a right to use the intellectual property and we have provided all necessary information to the licensee to benefit from the license and the license term has begun. If it is probable that a significant reversal in the amount of cumulative revenue recognized will occur, we record the upfront license fees in deferred revenue, non-current until the uncertainty is resolved.

Cost of Goods Sold

Cost of goods sold consists of direct and indirect costs to procure and manufacture product sold, including third-party manufacturing costs. Prior to receiving FDA approval, these costs for Rhopressa® and Rocklatan® were expensed as pre-approval commercial manufacturing expenses (as defined below). We began capitalizing inventory costs for Rhopressa® and Rocklatan® after receipt of FDA approval. In January 2020 and September 2020, we received FDA approval to produce Rocklatan® and Rhopressa®, respectively, at the Athlone plant for commercial distribution in the United States. Shipments of commercial supply of both Rocklatan® and Rhopressa® from the Athlone plant to the United States commenced in the second half of 2020. Production costs related to underutilized capacity at the Athlone plant, are not included in the cost of inventory but are charged directly to cost of goods sold in the condensed consolidated statements of operations and comprehensive loss in the period incurred. We expect cost of goods sold in 2022 to continue to be unfavorably impacted by production costs due to the underutilization at the Athlone plant as a result of the Athlone plant having become operational in early 2020 and having not yet reached full capacity. We expect the underutilization to continue to have an unfavorable impact on cost of goods sold that will decrease over time as the manufacturing plant reaches full capacity.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of employee-related expenses, including salaries, benefits and stock-based compensation for all officers and employees in general management, sales and marketing, finance and administration. Other significant expenses include selling and marketing expenses, facilities expenses, shipping and handling costs and professional fees for audit, tax, legal and other services.

Research and Development Expenses

We expense research and development costs to operations as incurred. 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 CROs, contract manufacturing organizations and service providers that assist in conducting clinical trials and preclinical studies;
- costs associated with any collaboration arrangements, licenses or acquisitions of preclinical molecules, product candidates or technologies;

- costs associated with preclinical activities and development activities;
- costs associated with regulatory operations; and
- depreciation expense for assets used in research and development activities.

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 clinical trials. We 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.

Other Expense, Net

Other expense, net primarily includes interest expense, interest income, foreign exchange gains and losses and other income and expense. Interest expense consists of interest expense under the Convertible Notes, including the amortization of debt discounts and issuance costs incurred. Interest income primarily consists of interest earned on our cash, cash equivalents and investments. See "—Liquidity and Capital Resources" below and Note 10 to our condensed consolidated financial statements included in this report for further discussion. Foreign exchange gains and losses are primarily due to the remeasurement of our lease liabilities, which are denominated in a foreign currency and held by a subsidiary with a U.S. dollar functional currency. Also included in other income and expense are changes in the fair value of equity securities (sold during the three months ended March 31, 2021) and research and development tax credit refunds.

Income Tax Expense

Income tax expense primarily includes branch taxes of our non-U.S. subsidiaries and withholding taxes related to the $6.0 million developmental milestone made by Santen Pharmaceuticals pursuant to the First Santen Agreement.

Critical Accounting Policies and Use of Estimates

Our management's discussion and analysis of financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States ("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 revenue recognition, leases, acquisitions, stock-based compensation and fair value measurements. 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 critical accounting policies and significant estimates have not materially changed since the date we filed our 2021 Form 10-K. For more information on our critical accounting policies and estimates, refer to our 2021 Form 10-K.

Results of Operations

Comparison of the Three Months Ended March 31, 2022 and 2021

The following table summarizes the results of our operations for the three months ended March 31, 2022 and 2021:

	THREE MONTHS ENDED MARCH 31,		$ CHANGE	% CHANGE
	2022	2021		
	(in thousands, except percentages)			
Product revenues, net	$ 29,835	$ 22,970	$ 6,865	30 %
Total revenues, net	29,835	22,970	6,865	30 %
Costs and expenses:				
Cost of goods sold	6,780	6,700	80	1 %
Selling, general and administrative expenses	31,524	32,598	(1,074)	(3)%
Research and development expenses	25,174	17,891	7,283	41 %
Total costs and expenses	63,478	57,189	6,289	11 %
Loss from operations	(33,643)	(34,219)	576	(2)%
Other expense, net	(1,555)	(7,714)	6,159	(80)%
Loss before income taxes	$ (35,198)	$ (41,933)	$ 6,735	(16)%

Product revenues, net

Product revenues, net were $29.8 million and $23.0 million for the three months ended March 31, 2022 and 2021, respectively, and related to sales of our U.S. glaucoma franchise products, Rhopressa® or Rocklatan®. The year-over-year revenue increase is primarily due to an increase in the number of units shipped to wholesalers and improved margins per bottle.

Cost of goods sold

Cost of goods sold was $6.8 million and $6.7 million for the three months ended March 31, 2022 and 2021, respectively. Our gross margin percentage was 77.3% and 70.8% for the three months ended March 31, 2022 and 2021, respectively. The increase in the gross margin percentage was driven by the increase in product revenues, net as discussed above. Our cost of goods sold and gross margin percentage for the three months ended March 31, 2022 and 2021 were unfavorably impacted by costs due to underutilized capacity at the Athlone plant, which increased the cost of goods sold by $3.9 million and $4.4 million and lowered the gross margin percentage by 13.0% and 19.0%, respectively. We expect the underutilization to continue to have an unfavorable impact on cost of goods sold that will decrease over time as the Athlone plant reaches full capacity.

Selling, general and administrative expenses

Selling, general and administrative expenses were $31.5 million and $32.6 million for the three months ended March 31, 2022 and 2021, respectively. Selling, general and administrative expenses decreased by $1.1 million primarily due to lower stock-based compensation partially offset by higher employee-related and sales and marketing expenses. We expect selling, general and administrative expenses to decrease for the remainder of 2022.

Research and development expenses

Our direct research and development expenses are tracked on a program-by-program basis and consist primarily of costs incurred for the research and development of our preclinical and clinical product candidates, which include but are not limited to: (1) expenses incurred under agreements with contract research organizations, contract manufacturing organizations and service providers that assist in conducting clinical and preclinical studies; (2) costs associated with any collaboration arrangements, licenses or acquisitions of preclinical molecules, product candidates or technologies; and (3) costs associated with our preclinical activities, development activities and regulatory operations. We do not allocate employee-related expenses,

stock-based compensation or facility expenses, including depreciation or other indirect costs, to specific programs because these costs are deployed across multiple programs.

	THREE MONTHS ENDED MARCH 31,		$	%
	2022	2021	CHANGE	CHANGE
	(in thousands, except percentages)			
Direct research and development expenses by program:				
Rhopressa®	$ 135	$ 1,257	$ (1,122)	(89)%
Rocklatan®	132	—	132	*
AR-15512	10,733	4,004	6,729	*
Retina programs [1]	573	194	379	*
Other direct research and development program costs [2]	424	80	344	*
Total direct research and development program costs	11,997	5,535	6,462	*
Employee-related costs	6,851	6,666	185	3 %
Stock-based compensation	1,336	1,987	(651)	(33)%
Other indirect costs [3]	4,990	3,703	1,287	35 %
Research and development expenses	$ 25,174	$ 17,891	$ 7,283	41 %

*Percentage not meaningful

[1] Consists of AR-1105, AR-13503 SR and AR-14034 SR in 2021 and 2022.

[2] Other direct research development program costs primarily include AR-6121.

[3] Consists primarily of other indirect costs incurred for the research and development of preclinical and clinical product candidates, including expenses associated with our research facilities such as lab supplies, depreciation and other research facility related costs.

Research and development expenses were $25.2 million and $17.9 million for the three months ended March 31, 2022 and 2021, respectively. Research and development expenses increased by $7.3 million primarily due to an increase of $6.7 million in expenses associated with AR-15512. In September 2021, we reported topline results on safety and efficacy for COMET-1, a Phase 2b clinical trial in which we completed a dose ranging study evaluating two concentrations of AR-15512 (0.0014% and 0.003%). In January 2022, the Company gained alignment with the FDA on the results of its Phase 2b clinical trial and confirmed the design of the Phase 3 trials. This resulted in the achievement of a regulatory milestone in which the Company paid the former shareholders of Avizorex $8.0 million. We expect to initiate Phase 3 clinical trials for AR-15512 in the second quarter of 2022, and therefore expect an increase in these costs through the end of the year.

The increase was offset by a $1.1 million decrease in expenses for Rhopressa® for the three months ended March 31, 2022 compared to the three months ended March 31, 2021. Furthermore, expenses for Rhopressa® in the three months ended March 31, 2021 consisted of ongoing costs for the Rhopressa® Phase 3 clinical trial in Japan. Santen's portion of shared costs related to conducting the first Rhopressa® Phase 3 clinical trial in Japan were recorded as deferred revenue, non-current on the condensed consolidated balance sheets.

Costs related to the development of our retina programs were relatively flat for the three months ended March 31, 2022 compared to the three months ended March 31, 2021.In addition, we are also working to advance our preclinical sustained-release retinal implant, AR-14034 SR, for which we anticipate filing an IND with the FDA in the second half of 2022.

Other expense, net

Other expense, net consists of the following:

	THREE MONTHS ENDED MARCH 31,		$ CHANGE
	2022	2021	
	(in thousands)		
Interest income	$ 55	$ 51	$ 4
Interest expense	(1,633)	(6,901)	5,268
Other income (expense)	23	(864)	887
Other expense, net	$ (1,555)	$ (7,714)	$ 6,159

Other expense, net changed by $6.2 million for the three months ended March 31, 2022 compared to the three months ended March 31, 2021.

This change was primarily due to an decrease of $5.3 million in interest expense due to the impact of adopting Accounting Standards Update 2020-06 on January 1, 2022 which accounts for convertible debt instruments, such as the Convertible Notes, as a single liability measured at its amortized cost, partially offset by a change of $0.9 million in other income (expense) during the three months ended March 31, 2022 as compared to the three months ended March 31, 2021. The change in other income (expense) primarily consists of $1.0 million in realized loss on equity securities in the prior period. See Notes 2 and 10 to our condensed consolidated financial statements for additional information on the Convertible Notes.

Liquidity and Capital Resources

Since our inception, we have funded operations primarily through the sale of equity securities and the issuance of convertible notes. In addition, we generate cash flow from product revenues related to sales of Rhopressa® and Rocklatan® in the United States. Further, we entered into the Second Santen Agreement in December 2021 which included the Second Santen Agreement Upfront Payment, consisting of (a) $88.0 million which we received in January 2022 and (b) a supplemental upfront payment of $2.0 million. This expands the scope of the First Santen Agreement pursuant to which Santen made an upfront payment of $50.0 million in the fourth quarter of 2020.

We have incurred losses and experienced negative operating cash flows since our inception and anticipate that we will continue to incur losses until such a time when our current products and any future products, if commercialized, generate adequate revenues to render us profitable. We will not generate any revenue from any product candidates or future product candidates unless and until we obtain regulatory approval and commercialize such products.

Sources of Liquidity

Our product revenue, net amounted to $29.8 million for the three months ended March 31, 2022, which relate to sales of our glaucoma franchise products, Rhopressa® and Rocklatan®. Accounts receivable, net amounted to $63.6 million as of March 31, 2022.

As of March 31, 2022, our principal sources of liquidity were our cash, cash equivalents and investments, which totaled approximately $199.2 million. In January 2022, we received an aggregate $90.0 million associated with the Second Santen Agreement Upfront Payment. See Note 3 to our condensed consolidated financial statements included in this report for additional information. We believe that our cash, cash equivalents and investments and projected cash flows from revenues will provide sufficient resources for our current ongoing needs through at least the next twelve months. See "—*Operating Capital Requirements*."

Cash Flows

The following table summarizes our sources and uses of cash:

	THREE MONTHS ENDED MARCH 31,	
	2022	2021
	(in thousands)	
Net cash (used in) provided by:		
Operating activities	$ 61,911	$ (30,054)
Investing activities	(42,300)	2,280
Financing activities	(357)	(1,101)
Net change in cash and cash equivalents	$ 19,254	$ (28,875)

Operating Activities

During the three months ended March 31, 2022, net cash provided by operating activities of $61.9 million related to a net loss of $35.9 million, adjusted for non-cash items of $8.2 million primarily related to amortization and accretion, stock-based compensation expense and depreciation, partially offset by a net cash inflow of $89.6 million related to changes in operating assets and liabilities. During the three months March 31, 2021, net cash used in operating activities of $30.1 million related to a net loss of $42.0 million, adjusted for non-cash items of $18.8 million primarily related to stock-based compensation expense, amortization and accretion and depreciation, offset by a net cash outflow of $6.9 million related to changes in operating assets and liabilities.

The increase in net cash provided by operating activities during the three months ended March 31, 2022 as compared to the three months March 31, 2021 was primarily due to the receipt of the $90.0 million Second Santen Agreement Upfront Payment from Santen in connection with the Second Santen Agreement and higher net cash collections generated from product revenues.

Investing Activities

During the three months ended March 31, 2022, net cash used in investing activities of $42.3 million related to purchases of available-for-sale investments of $70.3 million and purchases of property, plant and equipment of $1.6 million primarily related to the manufacturing plant in Athlone, Ireland partially offset by sales and maturities of available-for-sale investments of $29.6 million. During the three months ended March 31, 2021, net cash provided by investing activities of $2.3 million related to sales and maturities of available-for-sale investments of $28.3 million, offset by purchases of available-for-sale investments of $25.2 million and purchases of property, plant and equipment of $0.8 million primarily related to the Athlone plant.

Financing Activities

During the three months ended March 31, 2022, net cash used in financing activities was $0.4 million and primarily related to tax payments made on employees' behalf through withholding of shares on restricted stock grants. During the three months ended March 31, 2021, net cash used in financing activities of $1.1 million primarily related to tax payments made on employees' behalf through withholding of shares on restricted stock grants.

Operating Capital Requirements

We expect to incur ongoing operating losses until such a time when Rhopressa®, Rocklatan®, Rhokiinsa® or Roclanda® or any product candidates or future product candidates, if approved, generate sufficient cash flows for Aerie to achieve profitability.

Our principal liquidity requirements are for: working capital; operating expenses, including for commercialization and manufacturing activities; expenses associated with developing our pipeline opportunities, including pursuing strategic growth opportunities; costs associated with executing our global expansion strategy, including clinical and potential commercialization activities outside the United States; contractual obligations; and capital expenditures.

We believe that our cash, cash equivalents and investments and projected cash flows from revenues, will provide sufficient resources to support our operations, including interest payments for our Convertible Notes, through at least the next twelve months.

Our future funding requirements will depend on many factors, including, but not limited to the following:

- commercial performance of Rhopressa®, Rocklatan®, Rhokiinsa® or Roclanda® or any current or future product candidates, if approved;
- costs of commercialization activities for Rhopressa®, Rocklatan®, Rhokiinsa® or Roclanda® and any current or future product candidates, if approved;
- costs of building inventory to support sales growth and other associated working capital needs;
- costs, timing and outcome of seeking regulatory approval;
- timing and costs of our ongoing and future clinical trials and preclinical studies including those related to our global expansion;
- costs of any follow-on development or products, including the exploration and/or development of any additional indications or additional opportunities for new ophthalmic product candidates, delivery alternatives and new therapeutic areas;
- terms and timing of any acquisitions, collaborations, or other arrangements;
- costs related to the Convertible Notes; and
- costs related to filing and prosecuting patent applications, maintaining and protecting our intellectual property rights and defending against intellectual property related claims.

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. Accordingly, we may be required to obtain further funding through debt or equity offerings or other sources. If such funding is required, we cannot guarantee that it will be available to us on favorable terms, if at all.

Outstanding Indebtedness

In September 2019, we issued an aggregate principal amount of $316.25 million of Convertible Notes.

The Convertible Notes are senior, unsecured obligations with interest payable semi-annually in cash in arrears at a rate of 1.50% per annum on April 1 and October 1 of each year, which began on April 1, 2020. The Convertible Notes will mature on October 1, 2024 unless they are redeemed, repurchased or converted prior to such date. Prior to April 1, 2024, the Convertible Notes will be convertible at the option of holders only during certain periods and upon satisfaction of certain conditions. On and after April 1, 2024, the Convertible Notes will be convertible at the option of the holders any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Upon conversion, the Convertible Notes may be settled in shares of our common stock, cash or a combination, thereof, at our election. We currently intend to settle the principal and interest amounts of the Convertible Notes in cash.

See Note 10 to our condensed consolidated financial statements included in this report for additional information.

Contractual Obligations and Commitments

There have been no material changes to our contractual obligations and commitments as included in our 2021 Form 10-K.

Off-Balance Sheet Arrangements

None.

Recent Accounting Pronouncements

For a discussion of recently issued accounting standards, see Note 2 to our condensed consolidated financial statements included in this report.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We have market risk exposure to interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. Our cash, cash equivalents and investments totaled $199.2 million and $139.8 million as of March 31, 2022 and

December 31, 2021, respectively. Given the short-term nature of our cash, cash equivalents and investments, we do not believe that a change in market interest rates would have a material impact on our financial condition or results of operations. We do not currently engage in any hedging activities against changes in interest rates.

We face market risks attributable to fluctuations in foreign currency exchange rates and exposure on the remeasurement of foreign currency-denominated monetary assets or liabilities into U.S. dollars. In particular, our operations and subsidiary in Ireland may enter into certain obligations or transactions in Euros or other foreign currencies but has a U.S. dollar functional currency. We do not currently have a foreign currency hedging program. To date and during the three months ended March 31, 2022, foreign currency exposure and foreign currency financial instruments have not been material.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal 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, our principal executive officer and principal financial officer concluded that, as of March 31, 2022, the disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports we file or 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 principal executive officer and principal 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 were no changes in our internal control over financial reporting during the quarter ended March 31, 2022 that have materially affected, or are 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. As of March 31, 2022, we are not a party to any material pending legal or administrative proceedings and, to our knowledge, no such proceedings are threatened or contemplated.

Item 1A. Risk Factors

You should consider carefully the risks set forth under “Risk Factors” in our 2021 Form 10-K, and other documents that we have filed or furnished with the SEC. There have been no material changes to these risk factors.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

None.

Item 6. Exhibits

10.1*†#	Employment Agreement, dated as of March 15, 2022, by and between Aerie Pharmaceuticals, Inc. and Peter Lang.
10.2*#	Renewal to the Manufacture and Supply Agreement, dated as of January 3, 2022, by and between Cayman Chemical Company, Incorporated and Aerie Distribution, Incorporated.
10.3*†	Aerie Pharmaceuticals, Inc. Nonqualified Deferred Compensation Plan and Adoption Agreement.
31.1*	Certification of Principal 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 Principal 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 Principal 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 Principal 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.
104***	Cover Page Interactive Data File

† Exhibit is a management contract or compensatory plan or arrangement.

Portions of this exhibit (indicated by asterisks) have been redacted in accordance with Item 601(b)(10)(iv) of Regulation S-K.

* Filed herewith.

** Furnished herewith.

*** Attached as Exhibit 101 to this report are the following formatted in XBRL (Extensible Business Reporting Language):

(i) Condensed Consolidated Balance Sheets at March 31, 2022 and December 31, 2021 (unaudited), (ii) Condensed Consolidated Statements of Operations and Comprehensive Loss for the three months ended March 31, 2022 and 2021 (unaudited), (iii) Condensed Consolidated Statements of Stockholders' (Deficit) Equity for the three months ended March 31, 2022 and 2021 (unaudited), (iv) Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2022 and 2021 (unaudited) and (v) Notes to Condensed Consolidated Financial Statements (unaudited).

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: May 6, 2022

/s/ PETER LANG

Peter Lang
Chief Financial Officer
(Principal Financial Officer)

/s/ JEFFREY M. CALABRESE, CPA

Jeffrey M. Calabrese, CPA
Vice President, Finance
(Principal Accounting Officer)

The XXXXXXXXXXXX denotes information that has been redacted.

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "**Agreement**") made this 18th day of March 2022 (the "**Effective Date**") is by and between **Aerie Pharmaceuticals, Inc**., a Delaware corporation with principal executive offices at 4301 Emperor Blvd. Suite 400 Durham, NC 27703 (the "**Company**"), and **Peter Lang** residing at XXXXXXXXXXXXXX ("**Executive**").

W I T N E S S E T H:

WHEREAS, the Company desires to employ Executive as its Chief Financial Officer

WHEREAS, Executive desires to accept such employment and to serve the Company in such capacity, upon the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Employment. The Company agrees to employ Executive, and Executive agrees to be employed by the Company, upon the terms and subject to the conditions of this Agreement.

2. Term. Subject to Sections 8 and 9 hereof, the Company agrees to employ Executive, and Executive agrees to be employed by the Company, in each case pursuant to this Agreement, for a period commencing on the Effective Date and ending on the third anniversary of the Effective Date (the "**Initial Term**"). This Agreement will renew automatically for successive one (1) year periods (each, a "**Renewal Period**") unless either party gives notice of non-renewal at least 90 days prior to the end of the Initial Term or the then-current Renewal Period, as applicable (the Initial Term and any Renewal Period are collectively referred to as the "**Term**"). Each additional Renewal Period shall be added to the end of the next scheduled expiration date of the Initial Term or Renewal Period, as applicable, as of the first day after the last day on which notice may be given pursuant to the preceding sentence.

3. Duties; Place of Performance; Etc.

(a) Executive shall serve as Chief Financial Officer of the Company and shall report to the Chief Executive Officer of the Company (the "**CEO**"). Subject to the direction of the CEO and the Board of Directors (the "**Board**"), as applicable, Executive shall have such powers and perform such duties as are reasonably determined by the CEO and the Board and could change based on business needs. The position will be generally consistent with the role of a chief financial officer, as further defined in the job description.

(b) Executive shall devote substantially all of his business time, attention and energies to the business and affairs of the Company and shall use his best efforts to advance the interests of the Company and shall not during the Term be actively engaged in any other business

activity, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, which will interfere with the performance by Executive of his duties hereunder or Executive's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company. Following execution of this Agreement, should Executive be, or desire to become, engaged as a consultant, owner, director officer or advisor of any other venture, Executive must obtain the prior written consent of the Board, which consent may be withheld in the Board's sole discretion.

(c) The duties to be performed by Executive hereunder shall be primarily performed at the offices of the Company or such other place as the CEO may authorize; *provided*, *however*, that Executive understands that his duties will require periodic travel, which may be substantial at times.

4. Compensation. As full compensation for the performance by Executive of his duties under this Agreement, the Company shall pay Executive as follows:

(a) Base Salary. The Company shall pay Executive an annual base salary (the "**Base Salary**") equal to $450,000, payable in accordance with the Company's normal payroll practices. Executive's Base Salary may be increased at the discretion of the Board but may not be decreased by the Board, or the Compensation Committee of the Board (the "**Compensation Committee**") except as a proportional reduction, as to the salaries of all other executives of the Company at the level of Senior Vice President and above as part of an overall reduction in salaries decided by the Board, Compensation Committee or CEO, as applicable, in good faith as being in the best interests of the Company and its stockholders, and will only be so reduced during such time as all such other executive salaries remain so reduced.

(b) Performance Bonus.

(i) During the Term, Executive shall also be eligible to receive an annual cash performance bonus (the "**Performance Bonus**") based on a target equal of 50% of Executive's Base Salary. The actual amount of such Performance Bonus shall be determined by the Board or the Compensation Committee, and shall be based on the achievement of specific performance objectives to be established by the CEO and approved by the Board or Compensation Committee, on an annual basis (the "**Performance Goals**").

(ii) During the Term of this Agreement, Executive and the CEO shall meet no later than the end of each year to mutually determine Executive's performance objectives for the subsequent calendar year, which objectives shall be approved by the Board, or the Compensation Committee. If Executive and the CEO are unable to agree upon such objectives for the relevant year despite mutual good faith efforts to do so, then the objectives will be determined in the good faith discretion by the CEO no later than January 15th and will be communicated promptly to Executive in writing after being so determined and will be deemed to have been accepted by Executive.

(iii) Any Performance Bonus payable to Executive pursuant to this Section 4(b) shall be paid to Executive on or before March 15th of the subsequent calendar year, subject to continued employment through the date of payment.

(c) Withholding. The Company shall withhold all applicable federal, state, and local taxes and social security and such other amounts as may be required by law from all amounts payable to Executive under this Section 4.

(d) Equity Grants. During the Term hereof, Executive will be eligible to receive equity incentive awards, which may be in the form of stock options, restricted stock grants or other equity incentive awards, as follows:

(i) Stock Options. As soon as practicable after the Effective Date, the Company will grant to Executive an option (the "**Initial Option**") pursuant to the Company's Inducement Award Plan (the "**Inducement Plan**") to purchase shares of common stock of the Company (the "**Initial Option Shares**"). Subject to the approval of the Compensation Committee, the exercise price per share of Executive's Initial Option will be calculated in a manner consistent with the how the exercise price was calculated for stock options granted to other executive officers (other than the Chief Executive Officer) as part of the Company's annual equity program in March 2022, with such calculation for the Initial Option being based on the date that the Initial Option is granted. The Initial Option shall vest over time, subject to Executive's continued employment, as more fully described in Section 1(d)(iv) below. The final terms of the Initial Option shall be set forth in an individual option award agreement to be provided to Executive at the time of grant and in the Inducement Plan, provided that the Initial Option and all subsequent options shall provide a cashless exercise option (at Executive's option) wherein Executive will have no obligation to pay nor outlay any cash in order to exercise any such option or satisfy any resulting tax liability, subject to all applicable securities laws.

(ii) Restricted Stock. As soon as practicable after the Effective Date, the Company will grant to Executive shares of restricted common stock of the Company (the "**Restricted Stock**") pursuant to the Inducement Plan. The Restricted Stock shall vest, subject to certain time or performance vesting conditions, as more fully described in Section 1(d)(iv). The final terms of the Restricted Stock shall be set forth in an individual restricted stock award agreement to be provided to Executive at the time of grant and in the Inducement Plan.

(iii) Additional Equity Grants. During the Term hereof, Executive will be eligible to receive equity incentive awards, which may be in the form of stock options, restricted stock grants, performance shares or other equity incentive awards under or outside of the Company's Amended and Restated Omnibus Incentive Plan and under any successor equity incentive plans of the Company, as the Board in its sole discretion determines to be appropriate.

The recommendation to authorize the equity awards in connection with the commencement of your employment, as described in Sections 2(d)(i) and (ii) above, with an approximate target value of $1,400,000, is subject to Board approval and will be granted as soon as practicable following your start date; provided that if your start date is prior to the date on which 2022 annual long-term equity awards are granted by the Company to other individuals who report

directly to the CEO, then the grant date for your awards will be the same as the grant date used for the such other individuals' awards. The grant date is anticipated to occur in March 2022. Subject to approval by the Board, the target value will be delivered as follows: 50% in stock options, 25% in restricted stock, and 25% in performance-vested stock. The award will be subject to the provisions of the Company's Inducement Award Plan and specific stock agreements with you. The Initial Option Shares will be subject to vesting provisions in which ¼ of the total options will vest upon the first anniversary of grant with the balance vesting at a rate of 1/36 of the total options each month thereafter. The restricted stock will vest in four equal installments upon the first four anniversaries of grant. The performance-vested stock will vest based on the achievement of performance-based conditions over a performance period, to be determined by the Board prior to the Effective Date of this Agreement. All vesting is also contingent on continued service through each vesting date. Details of this plan will be provided to you upon grant. Beginning with the 2023 annual grant cycle, future equity awards, as described in Section 2(d)(iii) above, will be in the discretion of the Compensation Committee taking into consideration, among other factors, the Executive's role and contributions to the Company and analysis of relevant market conditions and benchmarking.

(e) Expenses. The Company shall reimburse Executive for all normal, usual, and necessary expenses incurred by Executive in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of Executive's expenditures and otherwise in accordance with any travel and expense reimbursement policy as may from time to time be adopted by the Company.

(f) Insurance.

(i) Executive will be designated as a named insured on any directors' and officers' liability insurance the Company may have.

(ii) The Company will provide Executive, at the Company's expense, with a life insurance benefit plan with terms and coverage appropriate for Executive's position with the Company, which policy amount shall be equal to no less than one year's Base Salary in effect at the time the policy was acquired.

(g) Executive Benefits. Executive will receive the Company's standard employee benefits package (including health and disability insurance with ninety-five percent (95%) of the cost paid by the Company, participation in the Company's 401(k) plan subject to the terms and conditions thereof) as such package and policies are in effect from time to time, and as such benefits package may be adjusted by the Board in good faith during the Term hereof, as applicable to all employees, which benefits package can be increased, but cannot be decreased unless such decrease is effected in connection with, and is proportional to, an overall reduction in the relevant benefits to all executive officers, and will only be so reduced during such time as all such other relevant executive officer benefits remain so reduced.

(h) Vacation. Executive shall, during the Term, be entitled to four (4) weeks of vacation per annum, in addition to nationally recognized holidays and sick days provided as part of the Company's benefit programs.

5. Confidential Information and Inventions.

(a) Executive recognizes and acknowledges that in the course of his duties he is likely to continue to receive confidential or proprietary information owned by the Company, its Affiliates or third parties with whom the Company or any such Affiliates has an obligation of confidentiality. Accordingly, during and after the Term, Executive agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its Affiliates. "**Confidential and Proprietary Information**" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any Affiliate or client of the Company. Additionally, information that, by its nature and content, would be readily recognized by a reasonable person to be proprietary to the Company shall also be deemed Confidential and Proprietary Information. Executive expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. Executive agrees not to:

(i) use any such Confidential and Proprietary Information for personal use or for others; and

(ii) permanently remove any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of Executive's duties to the Company; *provided*, *however*, that Executive shall not be prevented from using or disclosing any Confidential and Proprietary Information:

(A) that Executive can demonstrate was known to him prior to the commencement of his services with the Company.

(B) that is now, or becomes in the future, available to persons who are not required, by contract or otherwise, to treat such information as confidential unless such persons acquired the Confidential and Proprietary Information through acts or omissions of Executive; or

(C) that Executive is compelled to disclose pursuant to the order of a court or other governmental or legal body having jurisdiction over such matter,

provided that (1) Executive shall give Company sufficient advance written notice of such required disclosure to permit it to seek a protective order or other similar order with respect to such Confidential and Proprietary Information, and (2) thereafter Executive shall disclose only the minimum Confidential and Proprietary Information required to be disclosed in order to comply, whether or not a protective order or other similar order is obtained by the Company. The Confidential and Proprietary Information that is disclosed pursuant to this paragraph shall remain Confidential and Proprietary Information for all other purposes.

Notwithstanding the foregoing, nothing herein shall preclude Executive's right to communicate, cooperate or file a complaint with any U.S. federal, state or local governmental or law enforcement branch, agency or entity (collectively, a "**Governmental Entity**") with respect to possible violations of any U.S. federal, state or local law or regulation, or otherwise make disclosures to any Governmental Entity, in each case, that are protected under the whistleblower or similar provisions of any such law or regulation; *provided* that in each case such communications and disclosures are consistent with applicable law. In addition, Executive acknowledges that Executive has received notice of the immunity from liability to which Executive is entitled for the disclosure of confidential information or a trade secret to the government or in a court filing as provided by Federal law, as set forth in Exhibit A to this Agreement.

(b) Executive agrees to immediately return to the Company all Company material and reproductions thereof (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) in his possession upon request and in any event immediately upon termination of employment.

(c) Except with prior written authorization by the Company, Executive agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical, or business information of any other party to whom the Company or any of its Affiliates owes a legal duty of confidence, at any time during or after his employment with the Company.

(d) Executive agrees that all inventions, discoveries, improvements and patentable or copyrightable works, relating to the Company's business ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. Executive hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; *provided*, *however*, that the Board may in its sole discretion agree to waive the Company's rights pursuant to this Section 5(d) with respect to any Invention that is not directly or indirectly related to the Company's business. Executive further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time

enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end Executive will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(e) Executive acknowledges that while performing the services under this Agreement Executive or other employees, agents or advisors of the Company or its Affiliates in the course of their services on behalf of the Company, may locate, identify and/or evaluate molecules, compounds, products and product candidates having commercial potential in the specific segments of the pharmaceutical or biotechnology research and development industries in which the Company is then operating (the "**Corporate Opportunities**"). Executive understands, acknowledges, and agrees that Executive shall not pursue any such Corporate Opportunity for himself or for others unless on behalf of the Company or unless such Corporate Opportunity is first offered to the Company and the Board rejects such Corporate Opportunity. Notwithstanding the foregoing, nothing in this Agreement shall be construed as a limitation of Executive's fiduciary duties as an officer and executive of the Company.

(f) The provisions of this Section 5 shall survive any termination of this Agreement.

6. Non-Solicitation; Non-Disparagement.

(a) During the Term and for a period of 12 months thereafter, Executive shall not, directly or indirectly, without the prior written consent of the Company engage in any Prohibited Solicitation. For purposes of this Agreement, a "**Prohibited Solicitation**" shall mean Executive's (i) directly or indirectly hiring, contacting, inducing or soliciting (or assisting any Person to hire, contact, induce or solicit) for employment any person who is, or within six (6) months prior to the date of such hiring, contacting, inducing or soliciting was, an employee of the Company or any of its Affiliates, or (ii) directly or indirectly inducing or soliciting (or assisting any Person to induce or solicit) any customer, client or vendor of, or other person having a business relationship with, the Company or any of its Affiliates to terminate its relationship or otherwise cease doing business in whole or in part with the Company or any of its Affiliates, or directly or indirectly interfering with (or assist any Person to interfere with) any relationship between the Company or any of its Affiliates and any of their respective customers, clients, or vendors.

(b) During the Term and at all times thereafter, (i) Executive agrees he shall not, directly or indirectly, make or encourage any other individual to make any public or private comments, orally or in written form (including, without limitation by e-mail or other electronic transmission), whether or not true, that would "disparage" the Company, or any of its officers, directors, managers, or significant stockholders and (ii) the Company agrees not to issue any public statement that would "disparage" Executive, and shall advise its officers and directors not

to make any such statement on the Company's behalf. "Disparaging" statements are those which impugn the character, capabilities, reputation or integrity of the aforesaid individuals or entity or which accuse the aforesaid individuals or entity of acting in violation of any law or governmental regulation or of condoning any such action, or otherwise acting in an unprofessional, dishonest, disreputable, improper, incompetent, or negligent manner, but shall not include truthful statements required by due legal process. Notwithstanding the foregoing, nothing in this Agreement shall preclude the parties hereto or their successors from making truthful statements in the proper performance of their jobs or that are required by applicable law, regulation or legal process, and the parties shall not violate this provision in making truthful statements in response to disparaging statements made by the other party.

(c) In the event that Executive materially breaches any provisions of Section 5 or this Section 6, then, in addition to any other rights that the Company may have, the Company shall be entitled to seek injunctive relief to enforce the restrictions contained in such Sections, which injunctive relief shall be in addition to any other rights or remedies available to the Company under the law or in equity.

(d) The right and remedy enumerated in Section 6(c) shall be independent of and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 6, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 6 are held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company's right to the relief provided in this Section 6 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(e) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 5 or this Section 6, Executive shall not urge as a defense that there is an adequate remedy at law, nor shall the Company be prevented from seeking any other remedies which may be available. Executive agrees that he shall not raise in any proceeding brought to enforce the provisions of Section 5 or this Section 6 that the covenants contained in such Sections limit his ability to earn a living.

(f) The provisions of this Section 6 shall survive any termination of this Agreement.

7. Representations and Warranties by Executive. Executive hereby represents and warrants to the Company as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by Executive of his duties and other obligations hereunder violate or will violate any statute or law

or conflict with or constitute a default or breach of any covenant or obligation, including without limitation any non-competition restrictions, under any prior employment agreement, contract, or other instrument to which Executive is a party or by which he is bound (whether immediately, upon the giving of notice or lapse of time or both).

(b) Executive has the full right, power, and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid, and binding obligation of Executive enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for Executive to execute and deliver this Agreement or perform his duties and other obligations hereunder.

(c) Executive represents and warrants to the Company that he has not brought and shall not bring with him to the Company, or use in the performance of his responsibilities for the Company, any materials or documents of a former employer which are not generally available to the public or which did not belong to Executive prior to his employment with the Company, unless Executive has obtained written authorization from the former employer or other owner for their possession and use and provided the Company with a copy thereof.

8. Termination. Executive's employment with the Company shall be at-will, and either party may terminate the employment at any time for any reason or no reason at all (subject to applicable notice requirements); *provided*, *however*, that under certain circumstances, Executive may be entitled to receive payments and other benefits from the Company following termination as described in Section 9.

Notwithstanding the foregoing, should Executive voluntarily terminate his employment, Executive, shall provide the Company with no less than 30 days' prior written notice, which may be waived or shortened by the Company; provided that Company pays Executive all Base Salary, bonus, and other remuneration (including but not limited to continued vesting of all equity awards during such period) in the ordinary course of business through the originally noticed termination date.

9. Severance.

(a) In the event that Executive's employment is terminated by the Company without Cause, or by Executive for Good Reason (each as hereinafter defined), or as a result of any non-renewal of this Agreement or the Term, then, subject to Section 9(d) and Section 10:

(i) the Company shall pay Executive's accrued but unpaid Base Salary through the date of termination at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as the basis for a resignation for Good Reason), accrued but unused vacation, all then unpaid bonuses from the prior calendar year through the date of termination, and reimburse Executive for any unreimbursed business expenses incurred prior to the date of termination;

(ii) the Company shall continue to pay Executive's Base Salary at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as the basis for a resignation for Good Reason or any reduction in Base Salary within ninety (90) days prior to and including the date of any a termination by the Company without Cause) for a period of 6 months following the date of termination in accordance with the Company's ordinary payroll practice;

(iii) to the extent permitted by applicable healthcare laws and provided that Executive makes a timely election to continue coverage, the Company shall pay directly to the insurance provider the premium for COBRA continuation coverage for Executive and Executive's dependents, less the amount payable by an active employee for such coverage, for a period of 6 months or until he obtains new employment, whichever comes first (the benefits described in this Section 9(a)(iii) shall be referred to as the "**Continued Benefits**"). Notwithstanding the foregoing, in the event that applicable healthcare laws do not permit continuation of coverage, then the Company shall reimburse Executive for the costs of obtaining coverage in an amount not to exceed the coverage amounts paid or payable by Executive immediately prior to the date of termination; and

(iv) the vesting applicable to all equity awards granted during Executive's employment with the Company shall cease ninety (90) days after the date of termination, and Executive shall have a period of ninety (90) days following the expiration of such post- termination vesting period to exercise any and all vested equity awards that require exercise, after which time all equity awards shall expire; *provided, however,* that no such equity award that is an option shall be exercisable after the expiration of its maximum term pursuant to the terms thereof. Notwithstanding the generality of the foregoing, with respect to the Initial Option, if the Executive's employment is terminated by the Company in connection with the a nonrenewal of the Initial Term, the vesting applicable to the Initial Option will continue for one (1) year following the date of termination, and the Executive shall have a period of ninety (90) days following expiration of such post-termination vesting period to exercise the vested portion of the Initial Option, after which time any unexercised portion of the Initial Option shall expire.

(b) In the event that Executive's employment is terminated by the Company for Cause, or by Executive other than for Good Reason, then:

(i) the Company shall pay Executive's accrued but unpaid Base Salary through the date of termination, at the rate in effect at the time of termination, accrued but unused vacation, and reimburse Executive for any unreimbursed business expenses incurred prior to the date of termination;

(ii) Executive shall not be entitled to receive any payments or Continued Benefits described in this Section 9; and

(iii) the vesting applicable to all Equity Awards shall cease immediately and Executive shall have a period of 90 days to exercise any and all vested Equity Awards, after which time all Equity Awards shall expire; *provided, however*, that no such Equity Award that is

an option shall be exercisable after the expiration of its maximum term pursuant to the terms thereof.

(c) If a Change in Control occurs and (1) if the Executive's employment with the Company is terminated within the ninety (90) days immediately prior to the date on which the Change in Control occurs, where such termination of employment (x) was at the request or suggestion of a counterparty involved in the contemplated Change in Control transaction, or (y) otherwise arose in connection with or in anticipation of the Change in Control; (2) the successor corporation (or a parent or subsidiary of the successor corporation) does not offer Executive employment on terms comparable to or better than Executive's then existing terms of employment with the Company and in connection with the occurrence of the Change in Control, Executive terminates employment; or (3) Executive's employment is terminated by such successor corporation without Cause or by Executive for Good Reason, or in the case of a nonrenewal of this Agreement or the Term, within one-year after the occurrence of the Change in Control, then:

(i) the Company shall pay Executive's accrued but unpaid Base Salary through the date of termination, at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as basis for a resignation for Good Reason), accrued but unused vacation, and reimburse Executive for any unreimbursed business expenses incurred prior to the date of termination;

(ii) the Company shall continue to pay Executive's Base Salary at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as the basis for a resignation for Good Reason or any reduction in Base Salary within ninety (90) days prior to and including a termination by the Company without Cause) for a period of 12 months following the date of termination in accordance with the Company's ordinary payroll practice;

(iii) the Company shall pay Executive a Performance Bonus in an amount equal to the greater of (1) the target bonus for the applicable calendar year; and (2) the average of the Performance Bonus received by Executive for the two years immediately preceding termination;

(iv) the Company shall provide the Continued Benefits to Executive for a period of 12 months following the date of termination or until he obtains new employment, whichever comes first; and

(v) All unvested Equity Awards shall immediately vest in full and remain exercisable, if applicable, for a period of 90 calendar days following the date of such termination; *provided, however*, that no such Equity Award that is an option shall be exercisable after the expiration of its maximum term pursuant to the terms thereof. In order to give effect to the foregoing provision, notwithstanding anything to the contrary set forth in any agreement governing an Equity Award regarding immediate forfeiture of unvested shares upon termination of service or the duration of post-termination of service exercise periods, following any termination of Executive's employment, none of Executive's equity incentive awards shall

terminate with respect to any vested or unvested portion subject to such Equity Award before 90 days following such termination.

(b) This Section 9 sets forth the only obligations of the Company with respect to the termination of Executive's employment with the Company, and Executive acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in this Section 9. Further, notwithstanding anything to the contrary contained herein, the Company shall have no obligation to pay, and Executive shall have no right to receive, any compensation, benefits or other consideration provided for in this Section 9 (other than any accrued but unpaid Base Salary through the date of termination and any reimbursement of unreimbursed expenses incurred prior to the date of termination) (the "**Payments**") unless Executive executes an agreement in a form satisfactory to the Company (the "**Release Agreement**") releasing the Company from any and all liability in connection with Executive's employment or the termination thereof that becomes effective no later than 60 days following Executive's termination (the "**Release Deadline**"). Except as required by Section 10, the Payments will commence on the first payroll period following the Release Agreement becoming effective; *provided*, that (i) if the Payments (or any portion thereof) constitute "deferred compensation" within the meaning of Section 409A (as defined in Section 10) and (ii) the period commencing on the date of termination and ending on the Release Deadline spans two calendar years, then the Payments (or such portion thereof that constitute "deferred compensation") will commence on the later of the Release Agreement becoming effective and the first payroll date of the Company in the second calendar year. Any portion of the Payments that is delayed due to the application of the preceding sentence shall be made on the date that the Payments commence.

(c) Effective as of the date of any termination of Executive's employment, unless otherwise agreed to by Executive and the Board, upon termination of Executive's employment hereunder for any reason, Executive shall be deemed to have resigned from all offices held at the Company or any subsidiary or other Affiliate of the Company at the date of such termination, including without limitation the position of Chief Financial Officer or position of director of any subsidiary or Affiliate of the Company, as applicable.

(d) The Company shall withhold all applicable federal, state, and local taxes and social security and such other amounts as may be required by law from all amounts payable to Executive under this Section 9.

(e) The provisions of this Section 9 shall survive any termination of this Agreement.

(f) For purposes of this Agreement, "**Cause**" shall include any of the following:

(i) Executive's willful failure to perform the material duties or obligations hereunder, or willful misconduct by Executive in respect of such duties or obligations, including, without limitation, willful failure, disregard or refusal by Executive to abide by specific, objective and lawful directions received by him in writing constituting an action of the CEO or the Board, which willful failure, disregard or refusal is not cured by Executive within 30 days following written notice from the Company.

(ii) any willful, intentional or grossly negligent act by Executive having the reasonably foreseeable effect of actually and substantially injuring, whether financial or otherwise, the business or reputation of the Company which, if capable of being cured, is not cured by Executive within 30 days following written notice from the Company;

(iii) Executive's indictment of, or plea of nolo contender to, any felony;

(iv) Executive being convicted of a misdemeanor involving fraud, theft, breach of trust or similar acts, that causes, or could reasonably be expected to cause, substantial harm to business or reputation of the Company;

(v) the determination by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company, that Executive engaged in some form of harassment prohibited by law (including, without limitation, age, sex or race discrimination); provided, however, that Cause shall not exist under this clause (v) unless the Company gives written notice to Executive where such notice describes with particularity the alleged act(s) at issue and the Board provides Executive with a summary of its findings;

(vi) any conduct on the part of Executive that constitutes a breach of his fiduciary duties to the Company;

(vii) any misappropriation or embezzlement of the property of the Company or its affiliates (whether or not a misdemeanor or felony) by Executive; or

(viii) a material breach by Executive of this Agreement.

(g) For purposes of this Agreement, "**Good Reason**" shall mean:

(i) any material diminution by the Company of Executive's title, duties, reporting or Base Salary, other than as a proportional reduction, consistent with the reductions in the scope and or salaries of all other executive officers of the Company at the level of Vice President and above as part of an overall reduction in salaries of executive officers of the Company, which proportional reduction shall remain in effect only for such time as all such other executive salaries remain so reduced; for avoidance of doubt, should the company decide to sell, partner, or out license technologies or assets in development or marketed in defined geographies or discontinue specific operations that is deemed to be in the interest of shareholders, this will not constitute a reduction of scope in the Executive's duties, or

(ii) a material breach by the Company of this Agreement and/or any other agreement between Company and/or any of its Affiliates, and Executive.

Notwithstanding the foregoing, should Executive wish to terminate this Agreement for Good Reason, he must provide the Company with written notice of such Good Reason within 30 days of the occurrence of such event and reasonably cooperate with the Company in remedying the condition causing Good Reason for a period of not more than 60 days (the **"Cure Period"**). If,

following the Cure Period, the condition causing Good Reason remains uncured, a termination of employment by Executive for Good Reason shall be effective on the day following the expiration of such cure period. "Good Reason" does not include Company decisions to out license ex-US markets for pipeline products or decisions to sell a division (e.g., manufacturing plant) for sound business reasons.

(h) For purposes of this Agreement, "**Change in Control**" shall have the meaning set forth in the Plan.

10. Section 409A. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Agreement that constitute "deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**") and the regulations and other guidance thereunder and any state law of similar effect (collectively, "**Section 409A**") and that are payable in connection with Executive's termination of employment shall not commence unless and until Executive has also incurred a "separation from service" within the meaning of Section 409A, unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A. If Executive is, upon a separation from service, a "specified employee" within the meaning of Section 409A, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the payment of any deferred compensation shall not commence until the earlier to occur of: (i) the date that is six months and one day after Executive's separation from service, or (ii) the date of Executive's death. Any payments that are delayed due to the application of the preceding sentence shall be made on the date that payments commence. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

11. Section 280G. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any of the payments and benefits provided for under this Agreement or any other agreement or arrangement between Executive and the Company (collectively, the **"Payments"**) constitute a **"parachute payment"** within the meaning of Section 280G of the Code and (ii) but for this Section 11, would be subject to the excise tax imposed by Section 4999 of the Code, then the Payments shall be payable either (i) in full or (ii) as to such lesser amount which would result in no portion of such Payments being subject to excise tax under Section 4999 of the Code; whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in Executive's receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless Executive and the Company otherwise agree in writing, any determination required under this Section 11 shall be made in writing by the Company's independent public accountants (the **"Accountants"**), whose reasonable determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 11, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Sections 280G and 4999 of the Code. Executive and the Company shall furnish to the Accountants such information and documents as the

Accountants may reasonably request in order to make a determination under this Section 11. If a reduction in Payments is necessary so that no portion of the Payments is subject to the excise tax under Section 4999 of the Code, reduction shall occur in the manner that results in the greatest economic benefit to Executive. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata. If this Section 11 is applied to reduce an amount payable to Executive, and the Internal Revenue Service successfully asserts that, despite the reduction, Executive has nonetheless received payments which are in excess of the maximum amount that could have been paid to him without being subjected to any excise tax, then, unless it would be unlawful for the Company make such a loan or similar extension of credit to Executive, Executive may repay such excess amount to the Company though such amount constitutes a loan to Executive made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under section 1274(d) of the Code in respect of such loan).

12. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without giving effect to its principles of conflicts of laws.

(b) Executive will be subject to such indemnification as is provided under the Company's Bylaws.

(c) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 5 or 6 hereof), or regarding the interpretation thereof, shall be exclusively decided by binding arbitration conducted in North Carolina in accordance with the rules of the American Arbitration Association (the "**AAA**") then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. Each of the parties agrees that service of process in such arbitration proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in clause (h) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the Arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors, and assigns.

(e) This Agreement and Executive's rights and obligations hereunder, may not be assigned by Executive. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer, or other disposition of all or substantially all of its business or assets provided the assignee entity which succeeds to the Company expressly assumes the Company's obligations hereunder and complies with the terms of this Agreement.

(f) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(g) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(h) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five (5) days after the date of deposit in the United States mail. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this clause (h).

(i) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements, and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(j) As used in this Agreement, "**Affiliate**" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(k) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(l) This Agreement may be executed in wet ink or electronically, and in any number of counterparts, each of which (whether transmitted physically, by facsimile, or electronically) shall constitute an original, but all of which together shall constitute one and the same instrument.

(m) Notwithstanding anything in this Agreement to the contrary, any payments made to Executive herein shall be subject to any recoupment or claw back policy adopted by the Company from time to time and to any requirement of applicable law, regulation or listing standard that requires the Company to recoup or claw back any compensation so paid.

[Signature page follows.]

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

AERIE PHARMACEUTICALS, INC.

By: /s/ Raj Kannan
Name: Raj Kannan, CEO

Date: April 4, 2022

EXECUTIVE

By: /s/ Peter Lang
Name: Peter Lang

Date: March 15, 2022

Note: All employment and employee's obligations under this Agreement are contingent on a completed background check, application, drug screen and proof of COVID-19 vaccination.

[Signature Page - Lang EA]

EXHIBIT A

18 U.S.C. 1833(b) provides:

(1) IMMUNITY. —An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—

(A) is made—

(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT. -An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—

(A) files any document containing the trade secret under seal; and

(C) does not disclose the trade secret, except pursuant to court order.

The XXXCERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [xxx] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Renewal to the Manufacture and Supply Agreement

This Renewal to the Manufacture and Supply Agreement (hereinafter "Renewal") is entered into and made effective as of the 3rd day of January 2022 (the "Effective Date"), by and between the "Parties":

Cayman Chemical Company, Incorporated, a Colorado Corporation licensed to do business in Michigan, whose registered office is located at 1180 E. Ellsworth Road, Ann Arbor, Michigan, 48108, USA (hereinafter referred to as "**Cayman**");

and

Aerie Distribution, Incorporated, a corporation organized under the laws of Delaware, USA, and an Affiliate of Aerie Pharmaceuticals, Incorporated, having a place of business at 4301 Emperor Blvd., Suite 400B, Durham, NC 27703, USA (hereinafter referred to as "**Aerie**"),

RECITALS

WHEREAS, the Parties entered into a Manufacture and Supply Agreement with an effective date of 01 January 2018, (hereinafter "Agreement"); and

WHEREAS, Article 7.1 of the Agreement states that "following the Initial Term, Aerie may, at its option, renew the Agreement for up to two additional one (1) year periods by giving Cayman written notice of such election not less than sixty (60) days prior to the expiration of the Initial Term";

NOW, THEREFORE, in consideration of the above premises, the Parties hereto agree to renew the Agreement as follows:

AGREEMENT

A. In accordance with Article 7.1 of the Agreement, Aerie hereby provides notice to Cayman to renew the Agreement in its entirety for two (2) additional one (1) year periods (the "Renewal Term"). Cayman agrees to such Renewal Term. The Agreement shall therefore continue in full force until December 31, 2024 (the "Term").

B. The chart, labelled "Minimum Purchase Requirements" as listed in Exhibit B shall be modified to include the following minimum purchase quantities during the Renewal Term:

Year	Minimum Quantity	Price per Kilogram[1,2,3,4]
2023	[xxx] kg	Up to Minimum Quantity for applicable Year: [xxx]/kg In excess of Minimum Quantity for applicable Year: [xxx]/kg
2024	[xxx] kg	

[1] *Invoiced amounts will be reflective of the quantity purchased to the nearest hundredth of a kilogram.*
[2] *Aerie will be credited [xxx] per each Aerie purchased [xxx].*
[3] *If [xxx] is used Aerie will be credited [xxx].*
[4] *If [xxx] is used Aerie will be credited [xxx].*

C. Except as expressly stated herein, all other terms and conditions of the Agreement shall remain in full force and effect.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Renewal to the Manufacture and Supply Agreement.

Cayman Chemical Company, Inc. **Aerie Distribution, Inc.**

By: /s/ Shannon Stacey By: /s/ Raj Kannan
Shannon Stacey Raj Kannan
VP Quality and Regulatory Affairs CEO

Date: March 15, 2022 Date: March 14, 2022

Aerie Distribution, Inc.

By: /s/ John LaRocca

John LaRocca
General Counsel

Date: March 14, 2022

NOLAN FINANCIAL
FORM NONQUALIFIED DEFERRED COMPENSATION PLAN

ADOPTION AGREEMENT

NONQUALIFIED DEFERRED COMPENSATION PLAN

The undersigned Company acting on behalf of itself and each Participating Employer, having been duly advised by its own counsel as to the legal and tax consequences of adopting this Nonqualified Deferred Compensation Plan (the "Plan") and having determined that adoption of this unfunded, nonqualified deferred compensation plan will enable the Company to attract and retain key personnel, **HEREBY ADOPTS** the this Adoption Agreement and the attached base Plan document (referred to together herein as the "Plan"), subject to the following terms, conditions and elections, all of which are integral parts of the Plan adopted hereby:

Company Name: Aerie Pharmaceuticals, Inc.

Company Address: 4301 Emperor Blvd., Suite 400 Durham, NC 27703

Plan Name: Nonqualified Deferred Compensation Plan

Effective Date of the Plan: 02/01/2022

Participating Employers: _____

Record Keeper Name: The Nolan Financial Group

Record Keeper Address: 6720-B Rockledge Drive, Suite 140, Bethesda, MD 2081

Capitalized terms used in this Adoption Agreement that are defined in the Plan document attached hereto and not separately defined herein shall have the respective defined meanings set forth in the attached Plan document.

The Company acting on behalf of itself and each Participating Employer hereby elects, for purposes of this Plan, as follows *(insert check mark or "X" for each desired election and fill in appropriate blanks)*:

I. Pay Types from which **Annual Deferral Amounts** may be deferred by Participants are as follows:

Pay Type	Maximum Percentage/Dollar	Description Notes (if necessary)
☒ Base Salary	80%	
☐ Bonus – Short Term (non-performance based)		
☐ Bonus – Long Term (non-performance based)		
☒ Bonus – Short Term (performance based)	80%	Annual
☐ Bonus – Long Term (performance based)		
☐ Commissions		
☐ Director Fees		
☐ Restricted Equity Units		
☐ Other		

II. Annual Company Matching Amounts: The Company will credit Annual Company Matching Amounts:

☐ Yes ☒ No

a. **Matching Contribution Formula:** *(select (i) or (ii) below)*

(i) ☐ **Percent of Participant deferrals formula**, subject to a specified limit, as follows:

(a) ☐ **Matching Contribution Rate**: _____% of *(specify Pay Type names):*

_____

_____

_____

(b) ☐ **Matching Contribution Limit**: _____ % of each applicable Pay Type

(ii) ☐ **Other matching formula**: _____

III. Discretionary Contributions. The Company initially elects to credit Annual Company Discretionary Amounts for selected Participants. The amounts to be calculated in one of the following manners *(select one)*:

a. ☐ No Discretionary Contributions
b. ☒ Permissible but amount discretionary
c. ☐ Annual contribution amount or formula:

_____

d. ☐ Other:

_____

IV. Vesting.

a. The following **Vesting Schedule** shall apply to all Annual Company Matching Amounts, as follows *(select one)*:

☐ Immediate vesting (100%) as amounts are credited
☒ Cliff vesting: 100% at the end of ____ years (commencing as specified below)
☐ Incremental annual vesting, as follows *(complete chart below)*:

Years Completed	% of Contribution Vested
Year 0	0%
Year 1	0%
Year 2	0%
Year 3	0%
Year 4	100%
Year 5	%
Year 6	%
Year 7	%
Year 8	%
Year 9	%
Year 10	%

EXAMPLE (TBD based on specs below):

b. The **Vesting Commencement Date** shall be determined as follows *(select one)*:

☐ Years of participation – based on plan participation date
☐ Years of service – based on date of hire
☐ Age – based on date of birth
☒ Class year - (all employer contributions for the same deferral year vest at the same time regardless of crediting date)

c. The **Vesting Increase Timing** shall be determined as follows *(select one):*

☐ On the last day of the vesting year
☒ On the first day of the vesting year (the anniversary of the Commencement Date)
☐ On specific date each year: _____

d. The **Vesting Acceleration Events** that will automatically vest 100% shall be determined as follows *(select all that apply):*

☒ Retirement eligibility
☒ Disability
☒ Death
☒ Change in Control
☒ Involuntary termination without Cause or for Good Reason
☐ Other _____

e. **Rehires:** The below indicated date shall be used for the purposes of determining the Vesting Commencement Date of a former Participant who is rehired following a Termination of Employment, and who is selected for participation in accordance with the terms of the Plan:

☒ Original Date of Hire
☐ Most Recent Date of Hire
☐ Other _____

f. Company Discretionary Amounts Vesting Schedule:

☐ Shall follow the same schedule as Annual Company Matching Amounts (above)
☒ Shall follow same scheduled as Annual Company Matching Amounts unless the Employer specifies a custom vesting schedule for the particular discretionary contribution at the time of contribution

V. Retirement Eligibility Date *(select all that apply)*:

☒ Age __62___
☒ Age __55_ plus __10__ years of cumulative service
☐ Age _____ plus ____ years of plan participation
☐ Age _____ plus ____ years of cumulative service and _____ years of plan participation
☐ Other:

VI. Distributions.

a. ☒ In-Service Distributions- Specified Calendar Year

(i) May include employer contributions (only if no vesting limitations) ☒ Yes ☐ No

(ii) Type of election is *(select one):*

☒ Class year - each year's balance may have a different distribution election
☐ User-created accounts (max number of accounts: _____) each year's balance is directed to one or more date-specific accounts.

(iii) Available Forms of Distribution *(select all that apply)*:

☒ Lump Sum
☒ Annual installments for any whole number of years up to __5___
☐Other: _____

(iv) The Minimum Deferral Period for vested balances, is _2_ years* measured from the beginning of the Plan Year For example: when enrolling for the _2022_ plan year, the earliest allowable In-Service Distribution year is _2024_ (yyyy) (**recommend no earlier than time at which balances are 100% vested. Unvested portions at the time of the scheduled payments would be paid out upon Separation from Service.)*

(v) In-Service Distributions will be trumped by:

☒ All other distribution events (default)
☐ Retirement
☐ Termination
☐ Disability
☐ Death
☐ Change in Control

b. ☒ **Retirement Distribution** – commencing on termination of service after retirement eligibility date

(i) Type of election applies to *(select one):*

☐ All years
☒ Class year

(ii) Forms of Distribution *(select all that apply*):

☒ Lump Sum
☒ Annual installments for any whole number of years up to _10_
☐ Other: _____

c. ☒ **Termination Distribution** (or **Separation Distribution** if not using Retirement vs. Termination)

(i) Type of election applies to *(select one):*

☐ All years
☒ Class year

(ii) Forms of Distribution *(select all that apply*):

☒ Lump Sum *(recommended)*
☐ Annual installments for any whole number of years up to __
☐ Other: _____

d. ☒ **Disability Distribution**

(i) Type of election applies to *(select one):*
☐ In accordance with the participant Retirement election***,*** *or*
☒ All years *(recommended)*
☐ Class year (not recommended if user-created accounts is selected for In-service distributions)

(ii) Forms of Distribution (if separate from Retirement election, select all that apply):

☒ Lump Sum
☐ Annual installments for any whole number of years up to _____
☐ Other: _____

e. ☒ **Death Benefit Distribution** *(pre-commencement vs. post-commencement)*

(i) Form of Distribution pre-commencement of separation distribution

☐ In accordance with Participant's separation elections, or

(if separate form or election for death, select all that apply):
☒ Lump Sum ***(recommended)***
☐ Annual installments for any whole number of years up to _____
☐ Other: _____

(ii) Form of Distribution post-commencement of separation distribution

☒ Continue in accordance with Participant's elections ***(recommended),*** or

(if separate form or election, select all that apply):
☐ Lump Sum
☐ Annual installments for any whole number of years up to _____
☐ Other: _____

f. ☐ **Additional Supplemental Death Benefit** *(may require consent for life insurance)*

☒ None
☐ An amount to be determined by the Committee
☐ Specified amount: _____

g. ☒ **Change in Control Distribution**

(i) Distribution Election is *(select one):*

☐ None
☐ Mandatory
☒ Optional (declinable) ***(recommended)***

(ii) Type of election applies to All deferred amounts

(iii) Forms of Distribution *(select all that apply)*:

☒ Lump Sum ***(recommended form if offered)***
☐ Annual installments for any whole number of years up to _____
☐ Other: _____

(iv) Shall apply if,

☒ The participants incurs a Separation from Service within 12 months following a Change in Control ***(recommended)***
☐ In the event of a Change in Control, regardless of the participant's employment or contract status with the Company

h. ☒ **Default Distribution** *(if none selected then the Default Distribution election for all events will be Lump Sum at Separation from Service)*

(i) Forms of Distribution *(select one*):

☒ Lump Sum ***(recommended)***
☐ Annual installments for any whole number of years up to _____
☐ Other: _____

(ii) Time of Distribution:
☒ Separation from Service ***(recommended)***
☐ Other: _____

i. Small Accounts Payment
(NOTE: this is in addition to the default deminimis provision in the base Plan that allows the Company to pay the Participant's vested Account Balance at any time if it does not exceed the then applicable limit of Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in the Plan.)

☒ None **(recommended)**
☐ Notwithstanding any payment election made by the Participant, if at the time any distribution becomes due and the vested balance of all installments associated with that distribution does not exceed $_____ then the balance will be paid in a single lump sum, subject to compliance with Code Section 409A.

j. The **Plan's Identification Date** for purposes of determining Specified Employee status is December 31 unless a different date is specified: _____ *(for public companies only)*

k. Installment Date: Lump sum payments shall be made or installment payments shall begin following an event triggering payment, within the Section 409A Discretionary Payment Period and subject to any delay required under Section 409A:

☐ As soon as practicable following the event triggering payment
☐ January of the Plan Year commencing after the event triggering payment
☒ Other: For a participant's Termination or Retirement, a Participant's initial installment date shall be the first business day of the month that is at least 6 full months following their Termination/Retirement.

Subsequent annual installments shall be paid on:

☒ The anniversary of the first Installment Date
☐ January of each subsequent Plan Year

Scheduled Distribution payments shall be made in January of the scheduled payment year unless an alternative month is specified here _____

VII. Cause: If the definition for "Cause" is different than that specified in the Plan, specify the alternative definition that shall apply for purpose of this Plan: *(if blank, base Plan definition will apply)*:

_____

_____

VIII. Good Reason: If the definition for "Good Reason" is different than that specified in the Plan, specify the alternative definition that shall apply for purpose of this Plan: *(if blank, base Plan definition will apply)*:

_____

_____

IX. Governing Law: The Plan will generally be governed by federal law but the governing state law, to the extent not preempted by federal law, and in any case subject to the choice of law rules of any court before which any suit or proceeding affecting this Plan may be heard, shall be the laws of the following state *(specify state)*:

_____

(if none specified, the state under which laws the Company was formed).

X. Amendments to base Plan Language: (if require changes to specific Plan provisions)

_____
_____

_____

IN WITNESS WHEREOF, the Company, on behalf of itself and each Participating Employer, has caused its duly authorized representative to execute this Adoption Agreement, under seal, as of the Effective Date set forth above, intending that the Company shall be bound hereby, and that each Participant, Committee Member and Record Keeper may rely hereon.

COMPANY: Aerie Pharmaceuticals, Inc.

By: /s/ John LaRocca

Name: John LaRocca

Title: General Counsel

NONQUALIFIED DEFERRED COMPENSATION PLAN

The Company on behalf of itself and its Participating Affiliates, by execution of the attached Adoption Agreement adopts this Nonqualified Deferred Compensation Plan as of the Effective Date stated therein, for the purposes of attracting high quality executives and promoting in its key executives increased efficiency and an interest in the successful operation of the Company. The Plan, comprised of the Adoption Agreement and this base Plan document, is intended to, and shall be interpreted to, comply in all respects with Code Section 409A and those provisions of the ERISA applicable to an unfunded plan maintained primarily to provide deferred compensation benefits for a select group of management or highly compensated employees. Unless otherwise indicated in a particular context, capitalized or otherwise defined terms used herein shall have the meaning given to such terms in the Adoption Agreement or in the following Article 1.

ARTICLE 1.
DEFINITIONS

1.1 "**Account**" means, with respect to any Participant, a bookkeeping entry used as a measurement and determination of the amounts to be paid to a Participant, or designated Beneficiary, pursuant to this Plan and subject to such limits, rules and procedures as the Committee from time to time may adopt under this Plan. The Committee and the Record Keeper may establish and use sub-accounts and other record keeping entries with respect to any Participant's Account, including without limitation any Deferral Account, Equity Unit Account, Company Matching Account and Company Discretionary Account applicable to such Participant.

1.2 "**Account Balance**" means, with respect to any Participant at any particular time, the sum at such time of such Participant's (i) Deferral Account balance, (ii) Company Matching Account balance; (iii) Company Discretionary Account balance; and (iv) Equity Unit Account balance. The Account Balance shall be a bookkeeping entry only and shall be utilized solely as a measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.

1.3 "**Adoption Agreement**" means the agreement pursuant to which the Company has adopted this Plan, which Adoption Agreement is incorporated herein by reference, including without limitation any terms defined therein. Adoption Agreements may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose.

1.4 "**Affiliate**" means a corporation, partnership, limited liability company or other entity that is required to be considered, together with the Company, as a single employer under Section 414(b) of the Code (employees of controlled group of Companies) or Section 414(c) of the Code (employees of partnerships or limited liability companies under common control). For purposes of determining a controlled group of Companies under Section 414(b), the language "at least 50 percent" shall be used instead of "at least 80 percent" each place it appears in Section 1563(a)(1), (2), and (3) of the Code. For purposes of determining trades or businesses that are under common control for purposes of Section 414(c) of the Code, "at least 50 percent" shall be used instead of "at least 80 percent" each place it appears in Treas. Reg. §1.414(c)-2. An entity shall not be considered an "Affiliate" for any period of time prior to satisfying the controlled group or common control tests described above.

1.5 "**Annual Company Discretionary Amount**" means the contribution amount, if any, for any one Plan Year that is determined for a Participant in accordance with Section 3.5.

1.6 "**Annual Company Matching Amount**" means the contribution amount, if any, for any one Plan Year that is determined for a Participant in accordance with Section 3.4.

1.7 "**Annual Deferral Amount**" means that portion of a Participant's Pay Type(s) that a Participant elects to have deferred, and is deferred, in accordance with Article 3, for any one Plan Year. In the event of a Participant's Retirement, Disability, death or a Termination of Employment prior to the end of a Plan Year, such year's Annual Deferral Amount shall be the actual amount deferred in such Plan Year prior to such event.

1.8 "**Base Salary**" means base salary earned with respect to services performed and payable in cash, exclusive of any of the following: Bonuses, Commissions, overtime, incentive payments and other performance-based forms of compensation, director and other special fees, expense allowances and reimbursements, severance, Restricted Equity Units, and any other forms of compensation, earnings or payments that are not regular in frequency and form (before reductions for, contributions to or deferrals under this Plan or any other profit sharing, 401(k), pension, deferred compensation or benefit plan sponsored by the Company or any Affiliate).

1.9 "**Beneficiary**" means one or more persons, trusts, estates, or other entities, designated in accordance with Article 8 that are entitled to receive benefits under this Plan upon the death of a Participant.

1.10 "**Beneficiary Designation Form**" means the form established from time to time by the Committee that a Participant completes, signs and returns to the Company to designate one or more Beneficiaries. Beneficiary Designation Forms may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose

1.11 "**Board of Directors**" shall mean the Board of Directors, Managers, Trustees or other group having the legal authority to act as the governing body of the Company.

1.12 "**Bonus**" means any compensation relating to services performed that is granted or awarded apart from Base Salary and Commissions and that is identified by the applicable Company or Affiliate as a "bonus" (before reductions for, contributions to or deferrals under this Plan or any other profit sharing, 401(k), pension, deferred compensation or benefit plan sponsored by the Company or any Affiliate).

1.13 "**Calendar Year**" means the annual period measured from January 1 to December 31.

1.14 "**Cause**", unless otherwise defined in the Adoption Agreement, means: (a) with respect to each Participant who has an employment agreement containing a definition of "cause" or "for cause", said definition as set forth in his or her employment agreement; and (b) with respect to all other Participants, willfully engaging in misconduct which is demonstrably and materially injurious to the Company or any Affiliate, unless the act or omission giving rise to such misconduct is done, or omitted to be done, by a Participant in good faith and with a reasonable reason to believe that such action or omission was in the best interest of the Company and its Affiliates.

1.15 "**Change in Control**" means, with respect to the applicable Participating Employer, a change in the ownership or effective control of the Participating Employer, or in the ownership of a substantial portion of the assets of the Participating Employer. Unless otherwise specified in the Adoption Agreement, shall be defined as follows with respect to a corporate Participating Employer:

(a) For purposes of this Section, a change in the ownership of the Participating Employer occurs on the date on which any one person, or more than one person acting as a group, acquires ownership of

stock of the Participating Employer that, together with stock held by such person or group constitutes more than 50% of the total fair market value or total voting power of the stock of the Participating Employer.

(b) A change in the effective control of the Participating Employer occurs on the date on which either: (i) a person, or more than one person acting as a group, acquires ownership of stock of the Participating Employer possessing 30% or more of the total voting power of the stock of the Participating Employer, taking into account all such stock acquired during the 12-month period ending on the date of the most recent acquisition, or (ii) a majority of the members of the Participating Employer's Board of Directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of such Board of Directors prior to the date of the appointment or election, but only if no other corporation is a majority shareholder of the Participating Employer.

(c) A change in the ownership of a substantial portion of assets occurs on the date on which any one person, or more than one person acting as a group, other than a person or group of persons that is related to the Participating Employer, acquires assets from the Participating Employer that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Participating Employer immediately prior to such acquisition or acquisitions, taking into account all such assets acquired during the 12-month period ending on the date of the most recent acquisition.

An event constitutes a Change in Control with respect to a Participant only if the Participant's relationship to the affected Participating Employer satisfies the requirements of Treasury Regulation § 1.409A-3(i)(5)(ii).

In the case of a Participating Employer that is a partnership or limited liability company, to the extent permitted under Code Section 409A, a Change in Control may also occur in the event of changes in ownership of such entity and/or change in the ownership of a substantial portion of the assets of such entity, and the provisions set forth above respecting such changes relative to a corporation shall be applied by analogy.

To qualify as a Change in Control event, the occurrence of the event must be objectively determinable and any requirement that any other person or group, such as a plan administrator or compensation committee, certify the occurrence of a Change in Control must be strictly ministerial and not involve any discretionary authority. If the Adoption Agreement provides for a payment on a Change in Control, such payment shall only be made if the event specified in the Adoption Agreement also qualifies as a change in control event within the meaning of Code Section 409A (Treas. Reg. section 1.409A-3(i)(5)).

It is the Company's responsibility to determine whether a Change in Control has occurred and to advise the Committee and the Record Keeper accordingly.

1.16 "**Change in Control Distribution**" shall have the meaning set forth in Section 6.4

1.17 "**Claimant**" shall have the same meaning set forth in Section 10.1.

1.18 "**Code**" means the Internal Revenue Code of 1986, as the same may be amended from time to time.

1.19 "**Commissions**"

(a) Sales Commission Compensation. A Participant earning sales commission compensation (as defined in Treas. Reg. section 1.409A-2(a)(12)) is treated as providing the services to which such compensation relates only in the Company's taxable Year in which the customer remits payment to the

Company or, if applied consistently to all similarly situated Participants, the Company's taxable Year in which the sale occurs.

(b) Investment Commission Compensation. A Participant earning investment commission compensation (as defined in Treas. Reg. section 1.409A02(a)(12)) is treated as providing the services to which such compensation relates over the 12 months preceding the date as of which the overall value of the assets or asset accounts is determined for purposes of the calculation of the investment commission compensation.

It is the Company's responsibility to determine whether a Pay Type qualifies as Commissions in accordance with the foregoing requirements with respect to any Participant and to advise the Record Keeper accordingly.

1.20 "**Committee**" means the person(s) designated as Committee members or such other persons as the Company's Board of Directors from time to time may designate to serve as members of the Committee hereunder. In the absence of any Committee, or should the Committee be unable or unwilling to serve, the Company shall perform the duties of the Committee under this Plan.

1.21 "**Company**" means the entity identified as the "Company" in the Adoption Agreement pursuant to which this Plan has been adopted and may include the applicable Participating Employer as the context requires.

1.22 "**Company Discretionary Account**" means, with respect to any Participant (but subject in the case of each Participant to Section 3.7), an Account consisting of the sum of (i) all of the Participant's Annual Company Discretionary Amounts, plus (ii) Notional Investment Adjustments in value credited or debited thereon in accordance with Article 4 of this Plan, less (iii) all distributions from such account.

1.23 "**Company Matching Account**" means, with respect to any Participant (but subject in the case of each Participant to Section 3.7), an Account consisting of the sum of (i) all of the Participant's Annual Company Matching Amounts, plus (ii) Notional Investment Adjustments in value credited or debited thereon in accordance with Article 4 of this Plan, less (iii) all distributions from such account.

1.24 "**Day**" means a calendar day or any part thereof.

1.25 "**Deferral Account**" means an Account consisting of the sum of (i) all of a Participant's Annual Deferral Amounts, plus (ii) Notional Investment Adjustments in value credited or debited thereon in accordance with Article 4 of this Plan, less (iii) all distributions from such account.

1.26 "**Deferral Election Form**" means notice filed by a Participant with the Record Keeper specifying the amount of the Participant's Pay Type(s) to be deferred, and the time and form of distribution payments as defined in the Adoption Agreement. Deferral Election Forms may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose.

1.27 "**Disability" or "Disabled**" shall mean the Participant is: (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant's employer. The Adoption Agreement may also provide that a Participant will

be deemed to be Disabled if determined to be totally disabled by the Social Security Administration or Railroad Retirement Board. The determination of Disability shall be made by the Committee. The Committee may require that the Participant submit to an examination by the Company or its agent to determine the existence of a Disability.

1.28 "**Disability Benefit**" means the benefit set forth in Section 6.3.

1.29 "**Eligible Employee**" means any employee of the Company or other Participating Employer who is selected to participate herein in accordance with the provisions of Article 2 hereof, and is one of a select group of management or highly compensated employees. Eligible Employee may also include selected Independent Contractors as determined in the complete and sole discretion of the Committee.

1.30 "**Employee**" means any individual who is employed by or providing services to the Employer. Employee means "service provider" as used in Treas. Reg. section 1.409A-1(f).

1.31 "**Employer**" or "**Participating Employer**" means the Company or Affiliate who is the legal employer of the Employee or service recipient in the case of an independent contractor.

1.32 "**Equity Unit Account**" shall mean the Account established for Restricted Equity Unit deferrals to be credited with any deferred Restricted Equity Units and shall be credited at the time specified by the Committee.

1.33 "**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

1.34 "**First Plan Year**" means the period beginning on the Effective Date set forth in the Adoption Agreement and ending on December 31 immediately following the Effective Date.

1.35 "**Good Reason**", unless otherwise defined in the Adoption Agreement, means: (a) with respect to each Participant who has an employment agreement containing a definition of "good reason" or "for good reason", said definition as set forth in his or her employment agreement; and (b) with respect to all other Participants, the Company's material breach of any agreement between the Company and the Participant.

1.36 "**Hardship Distribution**" means any distribution or waiver of deferral granted by the Committee pursuant to Article 7.

1.37 "**Identification Date**" for the purpose of identifying Specified Employees means each December 31 or such other date as defined in the Adoption Agreement.

1.38 "**Installment Date**" shall mean the date by which a lump sum payment under the Plan shall be made or the date by which installment payments under the Plan shall commence and shall, in all events, include only a qualifying distribution date, event or schedule under Section 409A. The Installment Date for payments commencing upon Separation from Service shall, unless otherwise specified in the Adoption Agreement, begin in the January of the Plan Year following such Separation from Service and each anniversary of such date in each succeeding Plan Year during the period in which such installments are required to be made. In the case of death, the Committee shall be provided with documentation reasonably necessary to establish the fact of the Participant's death and payment shall be made as soon as practicable following death within the discretionary payment period permitted under Section 409A. Unless otherwise specified in the Adoption Agreement, the Installment Date of a Scheduled Distribution shall be January of the Plan Year specified by the Participant for such distribution. Notwithstanding the foregoing, the Installment

Date shall not be before the earliest date on which benefits may be distributed under Section 409A without the imposition of additional Section 409A taxes, as determined by the Committee and the Committee shall have discretion regarding the timing of payments to pay within the Section 409A Discretionary Payment Period. In the event that the Participant is a "key employee" (as defined in Code Section 416(i) without regard to paragraph (5) thereof) of the Company, to the extent required by Section 409A, the Installment Date shall be no earlier than the earlier of (i) the first day of the seventh (7th) calendar month commencing after the Participant's Separation from Service, or (ii) the Participant's death. Any payments delayed by reason of the preceding sentence shall be caught up and paid in a single lump sum on the first day such payments are permissible consistent with the application of Section 409A.

1.39 "**Independent Contractor**" means a non-employee director or an independent contractor for whom deferred amounts will be subject to 409A as provided in Treas. Reg. section 1.409A-1(f)(2).

1.40 "**In-Service Distribution**" means a distribution made pursuant to Section 6.5.

1.41 "**Matching Contribution Limit**" means, with respect to each Pay Type, the Maximum Contribution Limit set forth for such Pay Type in the Adoption Agreement, to be used and calculated as a limit on Annual Company Matching Amounts pursuant to Section 3.4.

1.42 "**Matching Contribution Rate**" means, with respect to each Pay Type, the respective percentage rate, if any, set forth in the Adoption Agreement for such Pay Type, which rate shall be used to calculate Annual Company Matching Amounts pursuant to Section 3.4, subject to the Matching Contribution Limit, if any, applicable to such Pay Type.

1.43 "**Notional Investment**" means any security, fund, account, sub-account, index, formula or other instrument, asset, measure or method from time to time designated by the Committee as a means to calculate the amount of any Notional Investment Adjustment.

1.44 "**Notional Investment Adjustment**" means earnings, gains, losses and any other adjustments made with respect to any Annual Deferral Amount, Annual Company Matching Amount or Annual Company Discretionary Amount, which adjustments are made based on the performance of a Notional Investment pursuant to Article 4.

1.45 "**Notional Investment Election Form**" means notice filed with the Record Keeper by or on behalf of a Participant (or his or her Beneficiaries, as provided below) specifying the allocation of the Participant's Annual Deferral Amount and how the Participant's Annual Deferral Amount, Annual Company Matching Amount and Annual Company Discretionary Amount, if any, are to be allocated under the Plan among the Notional Investments provided under the Plan. Notional Investment Election Forms may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose. Upon the death of a Participant, for so long as such Participant's Beneficiaries retain an interest in such Participant's Account hereunder, such Beneficiaries may file Notional Investment Election Forms with respect to such Account in accordance with such policies and procedures as the Committee from time to time may specify for such purpose.

1.46 "**Participant**" means any Eligible Employee (i) who is selected to participate in the Plan, (ii) who elects to participate in the Plan, (iii) who signs a Participation Agreement, a Deferral Election Form, a Notional Investment Election Form, (iv) whose signed Participation Agreement, Deferral Election Form, and Notional Investment Election Form are accepted by the Committee, and (v) who commences participation in the Plan. A spouse or former spouse (or beneficiary) of a Participant shall not be treated as a Participant in the Plan, even if he or she has an interest in the Participant's benefits under the Plan as a result of applicable law or property settlements resulting from legal separation or divorce.

1.47 "**Participation Agreement**" means the form established from time to time by the Committee, that a Participant completes, signs and returns to the Company to become a Participant in this Plan. Participation Agreements may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose.

1.48 "**Pay Type**" means the forms of compensation selected in the Adoption Agreement as eligible for deferral and for inclusion in the calculation of Annual Deferral Amounts under the Plan. References to one or more "Pay Types" with respect to any particular Calendar Year means said forms of compensation relating to services performed during such Calendar Year, whether or not paid in such Calendar Year or included on a Federal Income Tax Form W-2 for such Calendar Year (except and to the extent otherwise required under any applicable Section 409A Requirements). The Committee from time to time may adopt and amend such rules and procedures as it deems appropriate to more particularly define or classify any particular Pay Type for further clarification in the administration of this Plan.

1.49 "**Permissible Change Election**" means an election to change the time or form of payment of any benefit under the Plan that:

(a) does not take effect until at least 12 months after the date on which such election to delay or change is made;

(b) is made at least 12 months prior to the date previously scheduled for the payment affected thereby;

(c) postpones the payment affected thereby for a period of not less than 5 years from the date when such payment otherwise would have been made; provided, however, that this restriction shall not apply in the case of a payment on account of a Disability, death or an Unforeseeable Emergency; and

(d) does not accelerate the scheduled time for payment of any distribution, except as permitted under Section 409A Requirements.

For purposes of the foregoing, unless otherwise provided in the Adoption Agreement or otherwise required under applicable Section 409A Requirements, any distribution that a Participant elects to receive in a series of installments shall be treated as being a single payment on the date of the first installment of such series.

1.50 "**Plan**" means this Plan, as adopted by the Adoption Agreement.

1.51 "**Plan Year**" means each Calendar Year except that the first Plan Year shall commence on the Effective Date of the Plan specified in the Adoption Agreement and end on December 31 of the same Calendar Year.

1.52 "**Pre-Commencement Death Benefit**" means the death benefit payable under Section 6.6.1.

1.53 "**Post-Commencement Death Benefit**" means the death benefit payable under Section 6.6.2.

1.54 "**Record Keeper**" means the party designated as the Record Keeper, as such designation may be amended from time to time in the discretion of the Committee. In the absence of any such designation, or should the Record Keeper be unable or unwilling to serve, the Company shall perform the duties of the Record Keeper under this Plan.

1.55 "**Restricted Equity Units**" shall mean restricted equity unit awards of a right to receive common stock or other equity units of the Company at a specified date in the future made by an Employer to an Eligible Employee under an equity compensation arrangement sponsored by the Company, or such other similar equity participation awards, as are specified as eligible for deferral under the Plan from time to time by the Committee, in its discretion and in compliance with all applicable laws.

1.56 "**Retirement**" means the Termination of Employment of a Participant by retiring on or after such Participant's Retirement Eligibility Date.

1.57 "**Retirement Benefit**" means the benefit set forth in Section 6.1.

1.58 "**Retirement Eligibility Date**" means the date when the Participant attains the definition designated in the Adoption Agreement.

1.59 "**Section 409A**" means Section 409A of the Code, as the same may be amended from time to time, and any successor statute thereto. References to Section 409A or any requirement under Section 409A, as the same may be interpreted, construed or applied to this Plan at any particular time, shall be deemed to mean and include, to the extent then applicable and then in force and effect (but not to the extent overruled, limited or superseded), published guidance, regulations, notices, rulings and similar announcements issued by the Internal Revenue Service or by the Secretary of the Treasury under or interpreting Section 409A, decisions by any court of competent jurisdiction involving a Participant or a beneficiary and any closing agreement made under Section 7121 of the Code that is approved by the Internal Revenue Service and involves a Participant, all as determined by the Committee in good faith, which determination may (but shall not be required to) be made in reliance on the advice of such tax counsel or other tax professional(s) with whom the Committee from time to time may elect to consult with respect to any such matter.

1.60 "**Section 409A Discretionary Payment Period**" means with respect to any designated payment date, the period during which payments will be treated as having been made upon such designated payment date under Treasury Regulation § 1.409A-3(d), providing for payments to be treated as timely if made no earlier than thirty (30) days prior to such designated payment date and no later than the end of the Calendar Year in which such designated payment date occurs, or if later, by the 15th day of the third calendar month following such designated payment date.

1.61 "**Section 409A Requirement**" means any requirement under Section 409A, the failure of which would result in the imposition or accrual of interest or additional taxes under Section 409A on or with respect to any income intended to be deferred under the Plan.

1.62 "**Specified Employee**" means, at any time when stock of the Company (or other Participating Employer as applicable) is publicly traded on an established securities market or otherwise (as determined in accordance with Section 409A Requirements), those service providers who are "specified employees" within the meaning of Section 409A. The determination shall be made consistent with all Section 409A Requirements as follows: (a) a key employee of the Company (within the meaning of Code Section 409A(a)(2)(B)) any stock of which is publicly traded on an established securities market or otherwise will be considered a key employee if the service provider meets the requirements of Code Section 416(i)(1)(A)(i),(ii) or (iii) (applied in accordance with the regulations thereunder and disregarding Code Section 416(i)(5)) at any time during the 12-month period ending on an Identification Date specified in the Adoption Agreement; (b) if

a person is a key employee as of an Identification Date, the person is treated as a Specified Employee for the 12-month period beginning on the first day of the fourth month following the Identification Date; (c) if no alternative Identification Date is designated in the Adoption Agreement, the Identification Date shall be December 31. Whether any stock of the Company is publicly traded on an established securities market or otherwise must be determined as of the date of the Participant's Separation from Service. The application of rules regarding "Specified Employees" to spinoffs and mergers and nonresident alien employees shall be determined pursuant to applicable guidance. It is the Company's responsibility to elect which rules under Section 409A shall apply when determining who is a Specified Employee, to annually determine who are the Specified Employees, and to timely provide a list of Specified Employees to the Record Keeper.

1.63 "**Termination Benefit**" means the benefit set forth in Section 6.2.

1.64 "**Termination**", "**Termination of Employment**" **or "Separation from Service"** shall be interpreted consistently with all Section 409A Requirements according to the following specifications:

(a) Employee. Any absence from service that ends the employment of an individual with the employer shall be deemed to be a Termination of Employment. However, the employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence (such as temporary employment by the government) if the period of such leave does not exceed six months, or if longer, so long as the individual's right to reemployment with the Company is provided whether by statute or by contract. If the period of leave exceeds six months and the individual's right to reemployment is not provided either by statue or by contract, the employment relationship is deemed to terminate on the first date immediately following such six month period. The determination of whether an Employee has a Termination of Employment shall be determined pursuant to Treas. Reg. section 1.409A-1(h). Unless the Adoption Agreement specifies an alternative percentage (between 20% and 50%), Termination of Employment shall occur once an Employee's services decrease to 20% or less of the average level of bona fide services compared to services performed over the preceding 36 month period.

(b) Independent Contractor. An independent contractor is considered to have a Termination or Separation from Service upon (i) retirement as a director, or (ii) the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed if the expiration constitutes a good-faith and complete termination of the contractual relationship.

It is the Company's responsibility to determine whether there is a Termination of Employment/Separation from Service in accordance with Section 409A with respect to any Participant and to advise the Record Keeper accordingly.

1.65 "**Unforeseeable Emergency**" means, with respect to any particular Participant, (i) a severe financial hardship of such Participant resulting from an illness or accident suffered by such Participant, by such Participant's spouse or by a dependent (within the meaning of Section 152 of the Code without regard to Section 152(b)(1), (b)(2) and (d)(1)(B) of the Code) of such Participant; (ii) a Participant's loss of property due to casualty; or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. It is the Company's responsibility to determine whether there is an Unforeseeable Emergency in accordance with Section 409A with respect to any Participant and to advise the Record Keeper accordingly.

It is intended that the Plan shall conform with all applicable Section 409A Requirements. Accordingly, in interpreting, construing or applying any of the foregoing definitions or any of the terms, conditions or provisions of the Plan, the same shall be construed in such manner as shall meet and comply with Section 409A Requirements then applicable thereto, and in the event of any inconsistency with any Section 409A Requirements, the same shall be reformed so as to meet such Section 409A Requirements to the

fullest extent then permitted without penalty (and without imposition or accrual of interest or additional taxes) under Section 409A.

ARTICLE 2.
ELIGIBILITY AND PARTICIPATION

2.1 Eligibility. Participation in the Plan shall be limited to any Eligible Employee, as determined by the Committee in its sole discretion. Any action so taken with respect to any particular Participant or group of Participants shall not imply a right on the part of any other Participant or group of Participants to enroll for or receive additional benefits or amounts of benefits. The Committee may terminate the right of any existing Participant to file additional Deferral Election Forms under this Plan, and shall terminate any such right for a Participant who ceases to be one of a select group of management or highly compensated employees, or otherwise ceases to meet any of the requirements applicable to participation in this Plan.

2.2 Enrollment. As a condition to participate, each Eligible Employee shall complete, execute and return to the Record Keeper a Participation Agreement, a Deferral Election and a Notional Investment Election after he or she is selected to participate in the Plan. The Committee may establish from time to time such other enrollment requirements as it determines in its sole discretion are necessary, convenient or appropriate to carry out any of the purposes or intent of the Plan or to better assure the Plan's compliance with Section 409A Requirements. Eligible Employees also shall submit to the Record Keeper a Beneficiary Designation Form. The enrollment period shall generally occur prior to the beginning of the applicable Plan Year, but the Committee may establish a special enrollment period ending no later than thirty (30) days after an Eligible Employee first becomes eligible to participate in the Plan to allow deferrals by such Eligible Employee of eligible amounts earned during the balance of such Plan Year (as long as such Eligible Employee is not already a participant in another plan or arrangement which is aggregated with this Plan for purposes of Code Section 409A). Eligibility for mid-year enrollment of rehired or newly Eligible Employees who have previously participated in the Plan shall be permitted only in compliance with all requirements of Code Section 409A, and as determined in the complete and sole discretion of the Committee.

2.3 Eligibility. An Eligible Employee shall commence participation in the Plan at the time specified by the Committee following the completion of the applicable enrollment period, assuming all enrollment requirements have been completed, including timely submission of all required enrollment documents to the Record Keeper; provided, however, that if an Eligible Employee is a former employee that has been rehired following a Termination of Employment or is a participant in another nonqualified deferred compensation plan aggregated with this Plan for purposes of Code Section 409A, such employee may not commence participation in the Plan until the first day of the following Plan Year. If an Eligible Employee fails to meet all such requirements within the period required in accordance with Section 2.2, that Eligible Employee shall not be eligible to participate in the Plan until the first day of the Plan Year following the delivery to and acceptance by the Committee (or its designee) of the required documents.

ARTICLE 3.
CONTRIBUTIONS AND CREDITS

3.1 Deferral Amount. For each Plan Year, a Participant may elect to defer amounts of those Pay Types designated in the Adoption Agreement, using a Deferral Election Form. Any deferral election shall be subject to such limits, rules and procedures from time to time established by the Committee prior to the applicable Plan Year. The Committee, among other matters, may establish one or more minimum and/or maximum limits on how much of any particular Pay Type that a Participant may elect to defer for such Participant's Annual Deferral Amount in any Plan Year. In no event will the Annual Deferral Amount or the Matching Contribution Amount (if any) for any Pay Type, or for all Pay Types combined, for any particular Participant exceed the maximum amounts permitted under any applicable law.

3.2 Election To Defer.

3.2.1 First Plan Year. When a Participant first enrolls to participate in the Plan, the Participant shall make an irrevocable deferral election by completing a Deferral Election Form for the remainder of the Plan Year in which the Participant first enrolls, along with such other elections as the Committee deems necessary or desirable under the Plan. For these elections to be valid, the Election Form must be completed and signed by the Participant, timely delivered to the Record Keeper in accordance with Section 2.2 above and accepted by the Committee or its designee. Any election under this paragraph shall apply only on a prospective basis, and only with respect to compensation for services to be performed after the date when the election is made and final. To the extent that Bonus is included within the Pay Types available for deferrals under this Plan, such elections may include a pro-rata portion of the then-current Plan Year's Bonus, based on the number of days remaining in the applicable Bonus performance period after such election irrevocably takes effect, divided by the total number of days in said performance period. Despite the foregoing, if a Participant already is a participant under any other nonqualified account balance plan aggregated with this Plan under Code Section 409A or is otherwise not eligible to commence participation until the following Plan Year, then such Participant's first Deferral Election Form under this Plan shall contain elections only with respect to Plan Years after the date when such Deferral Election Form is filed, in the same manner as contemplated for subsequent Plan Years in Section 3.2.2 below.

3.2.2 Subsequent Plan Years. For each succeeding Plan Year, an irrevocable deferral election shall be made by completing a new Deferral Election Form for that Plan Year, and such other elections as the Committee deems necessary or desirable under the Plan, which elections shall be made by timely filing with the Committee or its designee, in accordance with its and the Committee's rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made.

3.2.3 Performance-Based Compensation. Despite the foregoing, in the case of any Performance-Based Compensation based on services performed over a period of at least 12 consecutive months, such election may be made no later than 6 months before the end of such performance period. Amounts to be treated as "Performance-Based Compensation" under this Plan must meet the following criteria at the time the election is made:

(i) The performance period is at least 12 months in length;

(ii) Such compensation has not become readily ascertainable. Compensation is readily ascertainable when the amount is first both calculable and substantially certain to be paid. The performance-based compensation is bifurcated between the portion that is readily ascertainable and the amount that is not readily ascertainable. Accordingly, in general any minimum amount that is both calculable and substantially certain to be paid will be treated as readily ascertainable;

(iii) The compensation must be contingent on the satisfaction of pre-established organizational or individual performance criteria (established no later than 90 days after the beginning of the Service Period);

The term Performance-Based Compensation includes payments based upon subjective performance criteria, provided that the subjective performance criteria are bona fide and relate to the performance of the Eligible Employee, a group of employees that includes the Eligible Employee, or a business unit for which the Eligible Employee provides services (which may include the entire organization), and the determination that any subjective performance criteria have been met is not made by the Eligible Employee or a family member of the Eligible Employee (as defined in Section 267(c)(4) of the Code applied as if the family of an individual includes the spouse or any member of the family), or a person under the effective control of the Eligible

Employee or such a family member, and no amount of the compensation of the person making such determination is effectively controlled in whole or in part by the Eligible Employee or such a family member.

It is the Company's responsibility to determine whether a Pay Type qualifies as Performance-Based Compensation in accordance with the foregoing requirements with respect to any Participant and to advise the Record Keeper accordingly.

3.2.4 Changes. Deferral Election Forms filed prior to their applicable filing deadline hereunder may be changed, until such filing deadline occurs, by filing an updated or amended Deferral Election Form in accordance with the foregoing requirements.

3.3 Withholding Of Annual Deferral Amounts. for each plan year, the base salary portion of the annual deferral amount shall be withheld from each regularly scheduled Base Salary payroll in approximately equal amounts, as adjusted from time to time for increases and decreases in Base Salary, unless otherwise determined in the complete and sole discretion of the Committee. Deferrals of all other Pay Types that are included in the Annual Deferral Amount shall be withheld at the time each such Pay Type is or otherwise would be paid to the Participant, as determined in the complete and sole discretion of the Committee, whether or not this occurs during the Plan Year itself, subject to compliance with all applicable Section 409A Requirements. Compensation payable after the last day of the Plan Year solely for services performed during the payroll period containing the last day of the plan Year (the final payroll period) is treated as compensation for services performed in the subsequent Plan Year in which the payment is made. This subsection does not apply to any Compensation paid during such period for services performed during any period other than such final payroll period, such as a payment of an annual bonus.

3.4 Annual Company Matching Amount. If the Company shall elect in the Adoption Agreement to make Annual Company Matching Amounts, then in each Plan Year, for so long as a Participant remains actively employed by the Company or other Participating Employer and continues to be a Participant in this Plan, the Company shall credit to such Participant's Account an Annual Company Matching Amount, such amount to be calculated in the manner and on the Match Crediting Dates set forth in the Adoption Agreement, up to (and not exceeding) in each Plan Year the Company Contribution Limit, if any, applicable thereto. Annual Company Matching Amounts shall be credited in each instance as of the applicable Match Crediting Date designated in the Adoption Agreement, such amounts to be determined by the Company as soon as practicable, but not later than 60 days after each applicable Match Crediting Date.

3.5 Annual Company Discretionary Amounts. The Company, in its discretion, may credit additional amounts to the Company Discretionary Account of any Participant or group of Participants. No such contribution to a Participant or group of Participants shall imply any right on the part of other Participants to receive a similar contribution, nor are such contributions required to be uniform with respect to the Participants for whom they are made.

3.6 FICA/FUTA and Other Taxes. For each Plan Year in which a Participant elects an Annual Deferral Amount, the Participant's Employer shall ratably withhold, from that portion of the Participant's wages, salary, bonus or other compensation that is not being deferred, the Participant's share of taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act ("FICA/FUTA Taxes") and any other taxes on deferred amounts which may be required or appropriate. If necessary, the Committee shall reduce the Annual Deferral Amount in order to comply with this paragraph. In addition, as balances with Company Matching Accounts and Company Discretionary Accounts, if any, become vested pursuant to Article 5, to the extent that such amounts are subject to FICA/FUTA Taxes or any other taxes, the Participant's Employer shall withhold from the Participant's wages, salary, bonus or other compensation for the year in which such vesting occurs the Participant's share of FICA/FUTA taxes and such other taxes on the amounts that have vested in such year, all to the extent necessary and appropriate to satisfy such tax

obligations. If necessary, the Committee shall reduce the Annual Deferral Amount for the year in which FICA/FUTA or other taxes are due or the Participant's Account, if other payments or deferrals are insufficient, in order to comply with this paragraph.

3.7 For Cause Terminations. Despite anything to the contrary in this Plan, if the Committee in good faith determines that a Participant has caused or incurred a Termination of Employment for Cause, then such Participant's Company Discretionary Account and such Participant's Company Matching Account (including both vested and unvested balances thereof) automatically shall be forfeited in their entirety, subject to compliance with all applicable laws.

ARTICLE 4.
ALLOCATION OF FUNDS

4.1 Crediting/Debiting of Account Balances. In accordance with, and subject to, the rules and procedures that are established from time to time by the Committee, in its sole discretion, amounts, other than Restricted Equity Units, shall be credited or debited to a Participant's Account in accordance with the following:

4.2 Notional Investment Calculations. The Committee shall designate in its sole discretion one or more Notional Investments to be used to calculate Notional Investment Adjustments to be credited or debited to Participants' Accounts, as if each Participant were making an actual investment in Notional Investments with his or her Account Balance. Notional Investments shall be used to calculate bookkeeping entries in each Participant's respective Account and shall be utilized solely as a means to calculate and adjust Account Balances pursuant to this Plan. The Committee from time to time may delete, modify, substitute or otherwise change any Notional Investment under the Plan for any reason with respect to any future Account Balance calculations, and the Committee may impose such limits, rules and procedures governing the frequency, timing, methods and other matters pertaining to the calculation of Notional Investment Adjustments, and the use, effectiveness and application thereof, as the Committee from time to time may deem to be necessary, convenient or appropriate for purposes of administering the Plan.

4.3 Election of Notional Investments. If the Committee shall approve more than one Notional Investment to be used with respect to any Plan Year, then each Participant shall elect, on a Notional Investment Election Form duly filed with the Record Keeper for such Plan Year, one or more Notional Investment(s) to be used to calculate the Notional Investment Adjustments to be credited or debited, as the case may be, to his or her Account under this Article 4. Each Participant shall specify, on each Notional Investment Election Form, the portions of his or her Account to be allocated to one or more Notional Investments, as if the Participant was making an actual investment in that Notional Investment with that portion of his or her Account Balance. Notional Investment Election Forms may be completed and/or signed using such online systems and other electronic means as the Committee or Record Keeper from time to time may designate for such purpose. The Committee may impose such limits, rules and procedures governing the frequency of permitted changes, timing of effectiveness, minimum and maximum amounts (if any) and other matters pertaining to Notional Investment Election Forms, and the use, effectiveness and application thereof, as the Committee from time to time may deem to be necessary, convenient or appropriate for purposes of administering the Plan, including the designation of a default option in the event a Participant fails to make a valid election.

4.4 Crediting or Debiting Method. The Participant's Account, other than Equity Unit Accounts, will be credited or debited, as the case may be, with the increase or decrease in the performance of each Notional Investment selected by the Participant, as though the portion of the Participant's Account Balance then was actually invested in the Notional Investments selected by the Participant, in the percentages (if more than one Notional Investment is available under this Plan) then applicable to each portion of the Participant's Account. The value of each Notional Investment shall be calculated under the Plan as of the close of business on the business day when the published or calculated value of such Notional Investment becomes effective generally, but not more frequently than once per business day. The Committee from time to time may specify such times, frequencies, methods, rules and procedures for calculating the value of any particular Notional Investment (for example, specifying that interest on money market funds shall be calculated and credited on a monthly basis).

4.5 No Actual Investment. Notwithstanding any other provision of this Plan that may be interpreted to the contrary, each Notional Investment is to be used for measurement purposes only. A Participant's election of any Notional Investment(s), the allocation of any portion of his or her Account thereto and the use of any Notional Investment(s) to calculate any Notional Investment Adjustment in value to be credited or debited to his or her Account shall not be considered or construed in any manner as an actual investment of his or her Account in any such Notional Investment. In the event that the Company, in its own discretion, decides to invest funds in any or all of the Notional Investments, no Participant shall have any rights or interests in or to any such investment. Without limiting the foregoing, a Participant's Account Balance shall at all times be a bookkeeping entry only, and shall not represent any actual investment made on his or her behalf by the Company. The Participant at all times shall remain an unsecured creditor of the Company.

4.6 Crediting of Equity Unit Accounts. Equity Unit Accounts may be established under the Plan in the complete and sole discretion of the Committee and shall be subject to such additional terms and conditions as may be specified by the Committee from time to time. No amounts credited to an Equity Units Account may be diversified into another form of investment after such amounts have been credited to the Account. Amounts credited to an Equity Unit Account that remain notionally invested in the form of Company securities may be distributed in the form of common securities of the Company or, in cash equal to the fair market value of the common securities of the Company as of the date of distribution, in the complete and sole discretion of the Committee, or subject to the terms and limitations of the applicable Restricted Equity Unit plan and award agreement. Notwithstanding any other provisions of the Plan, no securities shall be issued to a Participant in connection with a distribution under the Plan unless, and until, such Participant has executed such documentation as may be required by the Committee and agreed to comply with all applicable securities laws. The Committee shall administer any Equity Unit Account consistent with the terms of the applicable Restricted Equity Unit plan and agreement. The Committee shall have the discretion to make adjustments in the number of securities, or convert or allow a Participant to elect to convert securities, if any, payable with respect to Restricted Equity Units credited to an Equity Unit Account to an alternative form of investment under the Plan after any applicable vesting and/or holding period, as appropriate to accomplish the intent of the Plan and applicable Restricted Equity Unit plan and award agreement, all as may be directed by the Committee, in its complete and sole discretion. Prior to any distribution of securities, Participants shall have no rights as equity holders with respect to amounts or units credited to an Equity Unit Account, except that the deferral documentation may provide that the Participant shall be entitled to receive additional credits to an Equity Unit Account in the amount of any cash or stock dividends payable on securities of the Company equal in number to the vested Restricted Equity Units credited to such Equity Unit Account. Any dividends payable on vested Restricted Equity Units credited to an Equity Unit Account (i) may be denominated in equity units and result in a credit of additional notional equity units to the applicable Equity Unit Account, or (ii) may be credited to a cash subaccount and thereafter credited with notional earnings as directed by the Committee. Pursuant to Code Section 409A, any dividend

equivalents shall be considered current earnings on the Equity Unit Account and shall be credited to the appropriate Account as of the date dividends are paid to equity holders of the Company and distributed at the same time and in the same form elected for the applicable Equity Unit Account.

ARTICLE 5.
VESTING

5.1 Vesting of Benefits. The Participant's Account Balance attributable to his or her Deferral Accounts, and Notional Investment Adjustments thereto, shall always be 100% vested. Subject to Section 3.7, credits to each Participant's Company Matching Accounts, and Notional Investment Adjustments thereto, and credits to each Participant's Company Discretionary Accounts, and Notional Investment Adjustments thereto, shall be vested in accordance with the provisions set forth in the Adoption Agreement. Amounts credited to the Participant's Equity Unit Accounts shall vest in accordance with the schedule included in the award agreement or determined and provided to the Participant at the time of contribution by the Committee. Except as otherwise approved by the Committee and/or required under Section 409A Requirements, the date indicated in the Adoption Agreement shall be used for the purposes of determining the Vesting Commencement Date of a former Participant who is rehired following a Termination of Employment.

ARTICLE 6.
DISTRIBUTION OF BENEFITS

6.1 Retirement Benefit. If a Participant shall remain (other than for intervening authorized leaves of absence) an active employee of the Company or any Affiliate until such Participant's Retirement Date, then upon such Participant's Retirement, the Company shall pay to such Participant a Retirement Benefit in an amount equal to such Participant's vested Account Balance, to be calculated and paid as more particularly provided in Section 6.7 below, subject to the terms and conditions of this Plan.

6.2 Termination Benefit. In the event of the Participant's Termination of Employment, either voluntarily or involuntarily, for any reason other than Disability, Retirement or death, the Company shall pay to the Participant a Termination Benefit in an amount equal to such Participant's vested Account Balance, to be calculated and paid as more particularly provided in Section 6.7 below, subject to the terms and conditions of this Plan.

6.3 Disability Benefit. If a Participant shall remain (other than for intervening authorized leaves of absence) an active employee of the Company or any Affiliate until such Participant's Disability, then upon such Participant's Disability, the Company shall pay to such Participant a Disability Benefit in an amount equal to such Participant's vested Account Balance, to be paid as more particularly provided in Section 6.7 below, subject to the terms and conditions of this Plan and the Adoption Agreement. In the event of a Participant's Disability, to the extent permitted under applicable Section 409A Requirements, all deferrals following the date of Disability will cease. The Committee may require, as a condition to any right or action under this paragraph, that the Participant be examined by a duly licensed physician selected by the Company to determine or confirm the existence of such Participant's Disability.

6.4 Change in Control Distribution. If the Adoption Agreement allows for Change in Control Distributions under this Plan, then, in the event of a Change in Control, the Company shall pay to the Participant a Change in Control Distribution as specified in the Adoption Agreement in an amount equal to such Participant's vested Account Balance, to be calculated and paid as more particularly provided in Section 6.7 below, subject to the terms and conditions of this Plan as specified in the Adoption Agreement.

6.5 In-Service Distributions. If the Adoption Agreement allows for In-Service Distributions under this Plan, then a Participant may allocate in the Deferral Election Form a portion of his or her Account

Balance to be paid as a scheduled In-Service Distribution, such payment to be made in a lump sum or annual installments as set forth in the Adoption Agreement. The amount to be calculated and paid as more particularly provided in Section 6.7 below, subject to the terms and conditions of this Plan. Despite the foregoing, if another distribution event occurs that would result in the payment of any benefit prior to an In-Service Distribution as specified in the Adoption Agreement, then such other form of benefit shall be paid in lieu of such In-Service Distribution. A Participant may elect to delay the scheduled time for payment of an In-Service Distribution under this paragraph, but only if such election constitutes a Permissible Change Election. If any amount of the Account Balance that has been designated for an In-Service Distribution shall be unvested at the time an In-Service Distribution is scheduled to occur, such unvested amount instead shall remain in such Participant's Account, to be included, when and if it vests, with other amounts payable by reason of the Participant's Separation from Service.

6.6 Death Benefit.

6.6.1 Pre-Commencement Death Benefit. If a Participant dies prior to the commencement of his or her Separation from Service payment, then the Company shall pay the Participant's vested Account Balance as a Pre-Commencement Death Benefit to such Participant's Beneficiary, such payments to be made in accordance with Section 6.7, subject to the terms and conditions of this Plan as specified in the Adoption Agreement.

6.6.2 Post Commencement Death Benefit. If a Participant dies after the commencement of his or her Separation from Service payment, the Company shall pay the Participant's vested Account Balance as a Post-Commencement Death Benefit to such Participant's Beneficiary, such payments to be made in accordance with Section 6.7, subject to the terms and conditions of this Plan as specified in the Adoption Agreement.

6.6.3 Supplemental Death Benefit. If specified in the Adoption Agreement, in the event that a Participant dies while actively employed by the Company or an Affiliate, in addition to the Participant's vested Account Balance, the Company may pay an extra amount (a "Supplemental Death Benefit") to such Participant's Beneficiary, provided, however, that (a) the Company subsequently may elect to amend, revoke or eliminate any such Supplemental Death Benefit at any time in its discretion prior to the Participant's death, by giving notice of such subsequent election to such Participant, (b) the Company shall have no obligation to specify any Supplemental Death Benefit with respect to any Participant, regardless of whether the Company has elected to specify any Supplemental Death Benefit with respect to any other Participant or group of participants, and (c) no Supplemental Death Benefit shall be paid with respect to a Participant if such Participant's death occurs as a result of suicide during the twenty-four (24) calendar months beginning with the calendar month following commencement of a Participant's enrollment in this Plan or if such Participant has made a material misrepresentation in any form or document provided by the Participant to or for the benefit of the Company or in connection with the administration of this Plan. The Committee may impose such conditions on its approval of any Supplemental Death Benefit as the Committee from time to time may elect, including without limitation requirements that the Participant consent to the Company's purchase and ownership of insurance on his or her life (and to the naming of the Company and/or its designees as a beneficiary on any such policy), that the Participant complete an application for life insurance and submit to medical examinations relating to the underwriting of any such insurance policy, and that any such policy be underwritten and issued on terms satisfactory to the Committee. In the event that the service of the Participant is terminated by the applicable Employer for any reason other than his or her death, any right to a Supplemental Death Benefit shall thereupon terminate, and neither the Company nor the Participating Employer shall have any further obligation under this Section.

6.7 Payments. A Participant's vested Account Balance shall be distributed in one or more annual installments as set forth in the Participant's Deferral Election Form, in accordance with definitions and

subject to limitations set forth in the Adoption Agreement. The amount shall be calculated by taking the amount of the Participant's vested Account Balance divided by the total number of installments (in the case of a lump sum distribution, divided by one). This amount to be valued as of the end of the day (the "Valuation Date") that is the date of the event giving rise to the distribution or such other date as reasonably determined by the Committee; provided, however, that in the case of a Specified Employee's Separation from Service, to the extent required by Section 409A, the Valuation Date of the first payment shall be extended to take into account any required delay in payment. Payments shall commence on the Installment Date. If there shall be more than one installment to be paid, then each subsequent installment shall be calculated by taking the Participant's Account Balance as of the close of business on the subsequent installment payment date, and dividing such amount by the number of installments then remaining. The final installment payment shall be equal to the remaining Account Balance of the Participant. In no event shall the amount of any lump sum or installment payment to a Participant exceed the remaining vested Account Balance of such Participant. For purposes of the foregoing, unless otherwise provided in the Adoption Agreement or otherwise required under applicable Section 409A Requirements, any distribution that a Participant elects to receive in a series of installments shall be treated as being a single payment on the date of the first installment of such series. The timing of payment hereunder shall in all events comply with all Section 409A Requirements. All designated payment events shall be interpreted so as to be limited to permissible payment events under Code Section 409A. Any discretion exercised by the Committee with respect to the timing of payments hereunder shall come with the Section 409A Discretionary Payment Period.

6.8 Tax Withholding And Reporting. The Company shall have the right to deduct any required withholding taxes from any payment made under this Plan.

6.9 No Acceleration; Changes; Certain Delays. The time or schedule for payment of any distribution under the Plan may not be accelerated, except as set forth in this Plan and as permitted under applicable Section 409A Requirements. No election may be made to change the time or form of payment of any distribution under this Plan, or any installment thereof, except for a Permissible Change Election. Despite the foregoing, to the extent consistent with applicable Section 409A Requirements, the Committee may elect to delay payment of any benefit hereunder if such benefit would be fully or partially non-deductible under Section 162(m) of the Code, would violate securities laws, or if there is a bona fide payment dispute (but only if the applicable Participant or Beneficiary is diligently attempting to collect the applicable benefit and does not control the Company or the Committee, or control the Company's or the Committee's decisions with respect thereto); and to the extent permitted under Section 409A Requirements, the time or schedule of payment of a benefit hereunder may be accelerated:

6.9.1 to the extent that such benefit (or this Plan as it pertains thereto in the case of any particular Participant) fails to meet Section 409A Requirements, but only in an amount equal to the amount required to be included in income as a result of the failure to comply with Section 409A Requirements;

6.9.2 for payment to an individual other than a Participant, to the extent necessary to fulfill a domestic relations order as provided in Section 11.6;

6.9.3 to pay Federal Insurance Contributions Act tax imposed under Section 3101, 3121(a) and 3121(v)(2) of the Code, where applicable, on compensation deferred under this Plan (hereinafter, the "FICA Amount"), or to pay the income tax at source on wages imposed under Section 3401 of the Code or the corresponding withholding provisions of applicable state, local or foreign tax laws as a result of the payment of the FICA Amount, and to pay additional income tax at source on wages attributable to the pyramiding Section 3401 wages and taxes, but not in excess of the FICA Amount and the income tax withholding related to such FICA Amount; or

6.9.4 as more particularly provided in Section 6.10, Article 7 or Section 11.8.

6.10 Deminimis Amounts. Notwithstanding any other provisions of this Plan to the contrary, the company may distribute a Participant's vested Account Balance in a lump sum at any time if the balance does not exceed the then current limit (as indexed) under Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in this Plan and all other similar plans in compliance with all Section 409A Requirements.

ARTICLE 7.
UNFORESEEABLE EMERGENCIES

7.1 Application for Hardship Distribution or Deferral Election Termination. In the event that any Participant incurs an Unforeseeable Emergency, if consistent with applicable Section 409A Requirements, such Participant may apply to the Committee for a Hardship Distribution in the form of (i) cancellation of existing Annual Deferral Amount elections for Pay Types not yet earned by such Participant, and (ii) to the extent cancellation of all such elections is insufficient to satisfy the needs resulting from such Unforeseeable Emergency, an accelerated payment ("Hardship Distribution") of some or all of such Participant's vested Account Balance. The Committee shall consider the circumstances of each such case, and the best interests of the Participant and his or her family, and shall have the right, in its sole discretion, to allow such application, in full or in part, or to refuse to make a Hardship Distribution. In the event that any Participant receives a distribution from a plan due to an unforeseeable emergency or a hardship pursuant to Treasury Regulation § 1.401(k)-1(d)(3) (or successor regulation thereto, to the extent recognized for these purposes under Section 409A Requirements), such Participant's existing Annual Deferral Amount elections for Pay Types not yet earned by such Participant shall be cancelled for the remainder of the Plan Year.

7.2 Amount of Distribution. In no event shall the amount of any Hardship Distribution payment exceed the lesser of: (a) the Participant's vested Account Balance, or (b) the amount determined by the Committee to be necessary to alleviate the hardship, including any taxes payable by the Participant as a result of receiving such Hardship Distribution, and which is not reasonably available from other resources of the Participant, including reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets (unless liquidation of such assets would cause severe financial hardship) or by cessation of deferrals under this Plan or other nonqualified plans in which such Participant participates, all in a manner consistent with any applicable Section 409A Requirements.

7.3 Rules Adopted By Committee. The Committee shall have the authority to adopt additional rules and procedures relating to Hardship Distributions. The request to take a Hardship Distribution shall be made by filing a form provided by and filed with the Committee and shall be accompanied by appropriate documentation evidencing the existence and extent of the hardship consistent with Section 409A Requirements.

ARTICLE 8.
BENEFICIARY DESIGNATION

8.1 Beneficiary. Each Participant shall have the right, at any time, to designate his or her Beneficiary(ies) (both primary as well as contingent) to receive any benefit under this Plan after the Participant's death. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of the Company in which the Participant participates.

8.2 Beneficiary Designation; Change. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form and returning it to the Record Keeper. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with

the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time. The Committee and the Record Keeper shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee prior to his or her death.

8.3 No Beneficiary Designation. If a Participant fails to designate a Beneficiary as provided above, or if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the executor or personal representative of the Participant's estate.

8.4 Doubt as to Beneficiary. If the Record Keeper has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its discretion, to cause the Company to withhold such payments until this matter is resolved to the Committee's satisfaction.

8.5 Facility of Payment. If a distribution is to be made to a minor, or to a person who is otherwise incompetent, then the Committee may, in its discretion, make such distribution (i) to the legal guardian, or if none, to a parent of a minor payee with whom the payee maintains his or her residence, or (ii) to the conservator or committee or, if none, to the person having custody of an incompetent payee. Any such distribution shall fully discharge the Committee, the Record Keeper, the Company and the Plan from further liability on account thereof.

8.6 Discharge of Obligation. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge the Company and the Committee from all further obligations under the Plan with respect to the Participant, and that Participant's Participation Agreement shall terminate upon such full payment of benefits.

ARTICLE 9.
MANAGEMENT AND ADMINISTRATION OF THIS PLAN

9.1 The Committee. The Committee shall be responsible for the management, operation and administration of the Plan, and for processing claims under Article 10 of this Plan. The Committee shall administer the Plan in accordance with its terms and shall have the discretion, power and authority to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination shall be conclusive and binding upon all persons. The Committee shall have all powers necessary or appropriate to accomplish its duties under the Plan. The Committee from time to time may employ others to render advice with regard to its responsibilities under this Plan and to perform services under this Plan, including the services contemplated to be performed by the Record Keeper. The Committee may also allocate its responsibilities to others and may exercise any other powers necessary for the discharge of its duties.

9.2 The Record Keeper. Except to the extent provided to the contrary in a separate written agreement, the Record Keeper shall solely be responsible for keeping records of Account Balances, and for receiving and processing data pertaining to elections and transactions affecting Account Balances pursuant to the Plan.

9.3 Information From Company. The Company and each Affiliate shall supply full and timely information to the Committee and the Record Keeper on all matters as may be required properly to administer the Plan. The Committee and the Record Keeper may rely upon the correctness of all such information as is so supplied and shall have no duty or responsibility to verify such information. The Committee and the Record Keeper shall also be entitled to rely conclusively upon all tables, valuations, certifications, opinions

and reports furnished by any actuary, accountant, controller, counsel or other person employed or engaged by or on behalf of the Company or the Committee with respect to the Plan.

9.4 Indemnification. The Company, to the fullest extent permitted by applicable law, shall indemnify and hold harmless the members of the Committee, the Record Keeper and their respective employees, officers, directors, partners, agents, affiliates and representatives, from and against any and all claims, losses, liabilities, costs, damages and expenses (including without limitation reasonable attorneys' fees) arising from any action or failure to act with respect to this Plan on account of such party's services hereunder, except in the case of gross negligence or willful misconduct.

9.5 Section 409A Compliance. The Company intends that this Plan will be established, construed, administered and applied in compliance with all Section 409A Requirements, but in light of uncertainty with respect to such requirements and limits, the Company reserves the right to unilaterally interpret or amend the Plan and/or any Participation Agreement or Deferral Election Form without the consent of the Participants and to take any actions that may be appropriate to comply with the Section 409A Requirements.

ARTICLE 10.
CLAIMS PROCEDURES

10.1 Presentation of Claim. A Participant or a Participant's Beneficiary after a Participant's death (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination under this Article with respect to the amounts distributable to such Claimant. The claim must state with particularity the determination desired by the Claimant. If the claim relates to disability benefits, the Committee shall ensure that all claims and appeals for disability benefits are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision.

10.2 Notification of Decision. The Committee shall consider a Claimant's claim within a reasonable time, but no later than ninety (90) days after receiving the claim. If the Committee determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the end of the initial period. Notwithstanding the forgoing, if the claim relates to a Disability determination the decision shall be rendered within forty-five (45) days which may be extended up to an additional thirty (30) days if due to matters beyond the control of the Plan, the Committee needs additional time to process a claim, which may be further extended up to an additional thirty (30) days if due to matters beyond the control of the Plan, the Committee needs additional time to process a claim. The extension notice shall indicate the special circumstances requiring an extension of time, the date by which the Committee expects to render the benefit determination, the standards on which entitlement to a disability benefit is based, the unresolved issues that prevent a decision on the claim and the additional information needed from the Claimant to resolve those issues, and the Claimant shall be afforded at least forty-five (45) days within which to provide the specified information. The Committee shall notify the Claimant in writing either that the Claimant's request has been allowed in full or denied in part or in full. In the case of an adverse benefit determination with respect to Disability benefits, on the basis of the Committee's independent determination of the Participant's disability status, the Committee will provide a notification in a culturally and linguistically appropriate manner (as described in Department of Labor Regulation Section 2560.503-1(o)). If the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, such notice must set forth in a manner calculated to be understood by the Claimant, and it must contain:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) specific reference(s) to pertinent provisions of this Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;

(iv) notice that the Claimant has a right to request a review of the claim denial and an explanation of the claim review procedure and the time limits applicable to such procedures set forth in Section 10.3 below;

(v) a statement of the Claimant's right to bring a civil action under ERISA §502(a) (or arbitration if applicable under the terms of the Plan and permitted by ERISA) following an adverse benefit determination on review, and a description of any time limit that applies under the Plan for bringing such an action; and

(vi) in addition, with respect to a claim that related to Disability benefits:

(a) a discussion of the decision, including an explanation or basis for disagreeing with or not following:

(1) the views presented by the Claimant of health care professionals treating the Claimant and vocational professionals who evaluated the Claimant;

(2) the views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(3) a disability determination regarding the Claimant presented by the Claimant made by the Social Security Administration.

(b) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request;

(c) either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist; and

(d) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by Department of Labor Regulation Section 2560.503-1(m)(8).

10.3 Review of a Denied Claim. On or before sixty (60) days after receiving a notice from the Committee that a claim has been denied, in whole or in part, (180 days in the case of a Disability claim) a Claimant (or the Claimant's duly authorized representative) may file with the Company a written request for a review of the denial of the claim. The Claimant (or the Claimant's duly authorized representative):

10.3.1 may, upon request and free of charge, have reasonable access to, and copies of, all documents, records and other information relevant to the claim for benefits;

10.3.2 may submit written comments or other documents; and/or

10.3.3 may request a hearing, which the Company, in its sole discretion, may grant.

10.3.4 If the initial claim is for disability benefits, and the claim requires an independent determination by the Committee of a Participant's Disability status, and the Committee denies the claim, in whole or in part, the Claimant shall have the opportunity for a full and fair review by the Committee of the denial, as follows:

(i) Prior to such review of the denied claim, the Claimant shall be given, free of charge, any new or additional evidence considered, relied upon, or generated by the Plan, insurer, or other person making the benefit determination in connection with the claim, or any new or additional rationale, as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is required to be provided, to give the Claimant a reasonable opportunity to respond prior to that date.

(ii) The Committee shall respond in writing to such Claimant within forty-five (45) days after receiving the request for review. If the Committee determines that special circumstances require additional time for processing the claim, the Committee can extend the response period by an additional forty-five (45) days by notifying the Claimant in writing, prior to the end of the initial 45-day period that an additional period is required. The notice of extension must set forth the special circumstances and the date by which the Committee expects to render its decision.

(iii) The Claimant shall be given the opportunity to submit issues and written comments to the Committee, as well as to review and receive, without charge, all relevant (as defined in applicable ERISA regulations) documents, records and other information relating to the claim. The reviewer shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim regardless of whether the information was submitted or considered in the initial benefit determination.

(iv) In considering the review, the Committee shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. Additional considerations shall be required in the case of a claim for disability benefits. For example, the claim will be reviewed by an individual or committee who did not make the initial determination that is subject of the appeal, nor by a subordinate of the individual who made the determination, and the review shall be made without deference to the initial adverse benefit determination. If the initial adverse benefit determination was based in whole or in part on a medical judgment, the Committee will consult with a health care professional with appropriate training and experience in the field of medicine involving the medical judgment. The health care professional who is consulted on appeal will not be the same individual who was consulted during the initial determination or the subordinate of such individual. If the Committee obtained the advice of medical or vocational experts in making the initial adverse benefits determination.

10.4 Decision on Review. The review committee appointed by the Company shall render a decision on review promptly, and no later than sixty (60) days after the Company receives the Claimant's written request for a review of the denial of the claim (45 days in the case of a Disability claim). If the Company determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial sixty (60) day period. In no event shall such extension exceed a period of sixty (60) days from the end of the initial period (45 days in the case of a Disability claim). The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Company expects to render the benefit determination. In rendering its decision, the Company shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. In the case of an adverse benefit determination with respect to disability benefits, on the basis of the Committee's independent determination of the Participant's disability status, the Committee will provide a notification in a culturally and linguistically appropriate manner (as described in Department of Labor Regulation Section 2560.503-1(o)). The decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

10.4.1 specific reasons for the decision;

10.4.2 specific reference(s) to the pertinent provisions of this Plan upon which the decision was based;

10.4.3 a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the Claimant's claim for benefits.

10.4.4 a statement describing any voluntary appeal procedures offered by the Plan and the Claimant's right to obtain the information about such procedures;

10.4.5 a statement of the Claimant's right to bring a civil action under ERISA Section 502(a) (or arbitration where applicable under the terms of the Plan and permitted under ERISA) which shall describe any applicable contractual limitations period that applies to the Claimant's right to bring such an action, including the calendar date on which the contractual limitations period expires for the claim; and

10.4.6 a discussion of the decision, including an explanation of the basis for disagreeing with or not following:

(i) the views presented by the Claimant of health care professionals treating the Claimant and vocational professionals who evaluated the Claimant;

(ii) the views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(iii) a disability determination regarding the Claimant presented by the Claimant made by the Social Security Administration.

10.4.7 If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

10.4.8 Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist.

10.5 Failure of Plan to Follow Procedures. In the case of a claim for Disability benefits, if the Plan fails to strictly adhere to all the requirements of this claims procedure with respect to a disability claim, the Claimant is deemed to have exhausted the administrative remedies available under the Plan, and shall be entitled to pursue any available remedies under ERISA Section 502(a) on the basis that the Plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim, except where the violation was: (a) de minimis; (b) non-prejudicial; (c) attributable to good cause or matters beyond the Plan's control; (d) in the context of an ongoing good-faith exchange of information; and (e) not reflective of a pattern or practice of noncompliance. The Claimant may request a written explanation of the violation from the Plan, and the Plan must provide such explanation within ten (10) days, including a specific description of its basis, if any, for asserting that the violation should not cause the administrative remedies to be deemed exhausted. If a court rejects the Claimant's request for immediate review on the basis that the Plan met the standards for the exception, the claim shall be considered as re-filed on appeal upon the Plan's receipt of the decision of the court. Within a reasonable time after the receipt of the decision, the Plan shall provide the claimant with notice of the resubmission.

ARTICLE 11.
MISCELLANEOUS

11.1 Trust. Except as set forth below, nothing contained in this Plan, nor any action taken pursuant to its provisions by any person, shall create, or be construed to create, a trust of any kind, or a fiduciary relationship between the Company and any other person. Despite the foregoing, if the Company elects to establish a grantor trust for the purpose of holding any assets intended to fund the payment of any benefits under this Plan, the Company shall have no obligation to make any contributions or deposits into such trust and all assets of such trust shall remain subject to the claims of the Company's creditors generally in the event of any insolvency or bankruptcy of the Company, and except as permitted under applicable Section 409A Requirements, no such assets shall be located outside of the United States of America. No trust or restriction shall be imposed on any assets intended to fund the payment of any benefits under this Plan as a result of any change in Company's financial health. The creation of any trust shall not relieve the Company of its obligations under this Plan.

11.2 No Right To Company Assets; Unsecured Claim. Payments to any Participant or Beneficiary hereunder shall be made from assets which shall continue, for all purposes, to be part of the general, unrestricted assets of the Company. No person shall have any interest in any such asset by virtue of any provision of this Plan. The Company's obligation hereunder shall be an unfunded and unsecured promise to pay money in the future. To the extent that any person acquires a right to receive payments from the Company under the provisions hereof, such right shall be no greater than the right of any unsecured general creditor of the Company; no such person shall have or acquire any legal or equitable right, interest or claim in or to any property or assets of the Company. In the event that, in its discretion, the Company purchases an insurance policy or policies insuring the life of a Participant or any other property, to allow the Company to recover or meet the cost of providing benefits, in whole or in part, hereunder, no Participant or Beneficiary shall have any rights whatsoever therein or in the proceeds therefrom. The Company shall be the sole owner and beneficiary of any such insurance policy or property and shall possess and may exercise all incidents of ownership therein.

11.3 Captions. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

11.4 Furnishing Information. Each Participant and his or her Beneficiary(ies) shall cooperate with the Committee and the Record Keeper by furnishing any and all information requested by the Committee or the Record Keeper and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

11.5 No Contract Of Employment. Nothing contained herein shall be construed to be a contract of employment for any term of years, nor as conferring upon any Participant the right to continue to be employed by the Company or any Affiliate in his or her present capacity or in any capacity. It is expressly understood that this Plan relates to the payment of deferred compensation for each Participant's services, and is not intended to be an employment contract.

11.6 Benefits Not Transferable. No Participant or Beneficiary under this Plan shall have any power or right to transfer, assign, anticipate, hypothecate or otherwise encumber any part or all of the amounts payable hereunder. No such amounts shall be subject to seizure by any creditor of any such Participant or Beneficiary, by a proceeding at law or in equity, nor shall such amounts be transferable by operation of law in the event of bankruptcy, insolvency or death of the Participant or Beneficiary. Any such attempted assignment shall be void.

The interest in the benefits hereunder of a spouse of a Participant who predeceases the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

Notwithstanding the foregoing, to the extent necessary to comply with the terms of a "domestic relations order" (as defined in Section 414(p)(1)(B) of the Code) the Committee may cause all or a portion of a Participant's Account Balance to be segregated into a sub-Account for the benefit of the Participant's spouse, child or other dependent identified in such order as the alternative payee and give such alternative payee (or their legal representative if such alternative payee is incompetent or a minor), as applicable (i) the same Notional Investment alternatives as are available to the Participant under the Plan with respect to such sub-Account until distributed, and (ii) the same distribution form and timing options as are available to the Participant under the Plan or an immediate lump sum payment, all as directed by the domestic relations order and subject to compliance with Code Section 409A Requirements.

11.7 Successors. The provisions of this Plan shall bind and inure to the benefit of the Participant's employer and its successors and assigns and the Participant and the Participant's designated Beneficiaries.

11.8 Amendment and Termination. To the extent permitted under Section 409A Requirements, this Plan may be amended or terminated by the Company at any time, without notice to or consent of any person, pursuant to resolutions adopted by the Company. Any such amendment or termination shall take effect as of the date specified therein and, to the extent permitted by law and Section 409A Requirements, may have retroactive effect. However, no such amendment or termination shall reduce the vested balance then credited to the Participant's Account Balance under Section 4. The Company and each participating Employer reserve the right to terminate its participation in this Plan. Except as otherwise provided below, the termination of the Plan shall not affect the distribution provisions in effect for the Accounts maintained under the Plan, and all amounts deferred prior to the date of any such Plan termination shall continue to become due and payable in accordance with the distribution provisions in effect immediately prior to such Plan termination. Payment of the Account Balances may be accelerated upon Plan termination and liquidation of the Plan only in compliance with all Section 409A Requirements as then in effect. Section 409A regulations currently permit acceleration of distributions under the following circumstances:

11.8.1 Dissolution/Bankruptcy. The Plan may be terminated and liquidated within 12 months of a corporate dissolution taxed under Code section 331, or with the approval of a bankruptcy court pursuant to 11 U.S.C. 503(b)(1)(A), provided that the amounts deferred under the Plan are included in the Participants' gross incomes in the latest of:

(i) The calendar year in which the plan termination and liquidation occurs

(ii) The calendar year in which the amount is no longer subject to a substantial risk of forfeiture; or

(iii) The first calendar year in which the payment is administratively practicable.

11.8.2 Change in Control. The Plan may be terminated and liquidated pursuant to irrevocable action taken by the Company within the 30 days preceding or the 12 months following a change in control event (as defined in Treas. Reg. section 1.409A-3(i)(5)). For purposes of this subsection, an arrangement will be treated as terminated only if all substantially similar agreements, methods, programs, and other arrangements sponsored by the Company immediately after the time of the change in control event with respect to which deferrals of compensation are treated as having been deferred under a single plan under Treas. Reg. section1.409A-1(c)(2) are terminated and liquidated with respect to each participant that experienced the change in control event, so that under the terms of the termination and liquidation all such participants are required to receive all amounts of compensation deferred under the terminated agreements, methods, programs, and other arrangements within 12 months of the date the Company irrevocably takes all necessary action to terminate and liquidate the agreements, methods, programs, and other arrangements.

11.8.3 Termination of All Plans. The Plan may be terminated and liquidated at any time provided that:

(i) The termination and liquidation does not occur proximate to a downturn in the financial health of the Company or applicable Participating Employer;

(ii) All agreements, methods, programs, and other arrangements sponsored by the Company that would be aggregated with any terminated and liquidated agreements, methods, programs, and other arrangement under Treas. Reg. section 1.409A-1(c) if the same Participant had deferrals of compensation under all of the agreements, methods, programs, and other arrangements that are terminated and liquidated;

(iii) No payments are made other than payments that would be payable under the terms of the plans if the termination and liquidation had not occurred are made within 12 months of the termination date;

(iv) All payments are made within 24 months of the date the Company takes all necessary action to irrevocably terminate and liquidate the plan; and

(v) The Company does not adopt a new arrangement that would be aggregated with the plan under Section 1.409A-1(c) of the Treasury Regulations provision for the deferral of compensation at any time within 3 years following the date of termination of the Plan.

11.9 Notice. Either the Committee or the Record Keeper may specify that any election, form, designation, agreement or communication by a Participant under the Plan shall be made or submitted online at a site on the World Wide Web designated for such purpose, or by other reasonable electronic means. Subject to the foregoing, any notice, consent or demand required or permitted to be given under the provisions of this

Plan shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed, it shall be sent by United States certified mail, postage prepaid, addressed, if to the Company or the Committee, to the Company Address set forth in the Adoption Agreement, and if to the Record Keeper, to the Record Keeper Address set forth in the Adoption Agreement, and if to any Participant, to such Participant's address most recently submitted by him or her to the Record Keeper (and in the absence of such submission, as most recently appearing on the records of the Company). The date of such mailing shall be deemed the date of notice, consent or demand. Any person may change the address to which notice is to be sent by giving notice of the change of address in the manner aforesaid.

11.10 Governing Law. The Plan and the right and obligations of all persons hereunder shall be governed by and construed in accordance with the laws of the state set forth in the Adoption Agreement, other than its laws regarding choice of law, to the extent that such state law is not preempted by federal law.

Exhibit 31.1

CERTIFICATION

I, Raj Kannan, 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: May 6, 2022

/s/ RAJ KANNAN

Raj Kannan
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Peter Lang, 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: May 6, 2022

/s/ PETER LANG

Peter Lang
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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 March 31, 2022 (the "Report"), the undersigned, Raj Kannan, Chief Executive 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: May 6, 2022

/s/ RAJ KANNAN
Raj Kannan
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

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 March 31, 2022 (the "Report"), the undersigned, Peter Lang, 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: May 6, 2022

/s/ PETER LANG

Peter Lang
Chief Financial Officer
(Principal Financial Officer)