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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

ELEDON PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-1000967
(I.R.S. Employer
Identification No.)

1990 MacArthur Blvd., Suite 550
Irvine, California
(Address of Principal Executive Offices)

92612
(Zip Code)

Novus Therapeutics, Inc. 2020 Long Term Incentive Plan
Novus Therapeutics, Inc. Non-Qualified Stock Option Inducement Award Agreement
Anelixis Therapeutics, Inc. 2017 Equity Incentive Plan
(Full title of the plan)

David-Alexandre C. Gros
Chief Executive Officer
Eledon Pharmaceuticals, Inc.
1990 MacArthur Blvd., Suite 550
Irvine, California 92612
(949) 238-8090

(Name, address, and telephone number, including area code, of agent for service)

Copy to:

Ryan A. Murr
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
Telephone: (415) 393-8373
Facsimile: (415) 374-8430

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
Non-accelerated filer

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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share	4,860,000(2)	\$11.45(3)	\$55,647,000(3)	\$6,071
Common Stock, \$0.001 par value per share	160,000(4)	\$13.94(5)	\$2,230,400(5)	\$243
Common Stock, \$0.001 par value per share	1,015,452(4)	\$9.00(5)	\$9,139,070(5)	\$997
Common Stock, \$0.001 par value per share	436,467(4)	\$9.00(5)	\$3,928,203(5)	\$429
Common Stock, \$0.001 par value per share	428,500(6)	\$11.45(3)	\$4,906,325(3)	\$535
Common Stock, \$0.001 par value per share	1,346,391(7)	\$7.58(8)	\$10,205,644(8)	\$1,113
Total	8,246,810			\$9,388

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Represents shares of common stock, par value \$0.001 per share (the "Common Stock") authorized for issuance under the Novus Therapeutics, Inc. 2020 Long Term Incentive Plan (the "2020 Plan").
- (3) This estimate is made pursuant to Rule 457(h) and Rule 457(c) under the Securities Act solely for the purpose of determining the registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant's Common Stock, as reported on the Nasdaq Capital Market on April 8, 2021.
- (4) Represents the following numbers of shares of Common Stock potentially issuable upon the exercise of options granted to each of the following individuals, in each case, as an inducement award made pursuant to Nasdaq Listing Rule 5635(c)(4): (i) 160,000 to Paul Little; (ii) 1,015,452 to David-Alexandre C. Gros; and (iii) 436,467 to Steven Perrin.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price are based upon the weighted average exercise price for shares subject to outstanding stock options previously granted as an inducement award pursuant to Nasdaq Listing Rule 5635(c)(4).
- (6) Represents shares of Common Stock reserved and available for future issuance upon the grant and subsequent exercise of stock options granted as inducement awards pursuant to Nasdaq Listing Rule 5635(c)(4).
- (7) Represents shares of Common Stock issuable in connection with stock options awarded under the Anelixis Therapeutics, Inc. 2017 Equity Incentive Plan (the "2017 Plan") that were assumed by and converted into stock options of the Company on September 14, 2020 in connection with the Company's acquisition of Anelixis Therapeutics, Inc. (collectively, the "Assumed Stock Options").
- (8) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price are based upon the weighted average exercise price of the Assumed Stock Options.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Eledon Pharmaceuticals, Inc. (f/k/a Novus Therapeutics, Inc.) (the “Registrant” or the “Company”) to register a total of 8,246,810 shares of Common Stock consisting of (i) 4,860,000 shares of Common Stock issuable pursuant to the 2020 Long Term Incentive Plan (the “2020 Plan”), (ii) 1,611,919 shares issuable pursuant to previously announced stand-alone stock option awards granted as an inducement award for newly hired employees made pursuant to Nasdaq Listing Rule 5635(c)(4), (iii) 428,500 shares reserved for issuance as stand-alone stock option awards to be granted as future inducement awards for newly hired employees and (iv) 1,346,391 shares of Common Stock potentially issuable upon the exercise of stock options assumed by the Company on September 14, 2020 in connection with the Company’s acquisition of Anelixis Therapeutics, Inc.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents need not be filed with the Securities and Exchange Commission (the “Commission”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and in accordance therewith files reports, proxy statements and other information with the Commission. The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

- Annual Report on [Form 10-K](#) for the year ended December 31, 2020 filed with the SEC on March 30, 2021;
- Current Reports on Form 8-K filed with the SEC on [January 5, 2021](#), [January 7, 2021](#), and [March 15, 2021](#); and
- the description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on [September 12, 2014](#), as amended on [June 23, 2017](#), as well as any subsequent amendments or reports filed for the purpose of updating such description.

In addition, all documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date hereof and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and made part hereof from their respective dates of filing. Notwithstanding the foregoing, unless specifically stated to the contrary in such filing, none of the information that the Registrant discloses under Items 2.02 or 7.01 of any Current Report on Form 8-K that it may from time to time furnish to the Commission will be incorporated by reference into, or otherwise be included in or deemed to be a part of, this Registration Statement.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement. Subject to the foregoing, all information in this Registration Statement is so qualified in its entirety by the information appearing in the documents incorporated herein by reference.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our certificate of incorporation provides that none of our directors shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as director, notwithstanding any provision of law imposing such liability, except to the extent that the Delaware General Corporation Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director or officer of us or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise to the fullest extent permitted by the Delaware General Corporation Law. Our certificate of incorporation provides that expenses must be advanced to these indemnitees under certain circumstances.

We have entered into indemnification agreements with each of our directors and officers. Each indemnification agreement provides that we will, among other things, indemnify our directors and executive officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

In addition, we maintain standard policies of insurance under which coverage is provided to our directors and officers against losses arising from claims made by reason of breach of duty or other wrongful act, and to us with respect to payments which may be made by us to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law. In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act against certain liabilities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed as part of this registration statement:

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>				<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	
3.1	Restated Certificate of Incorporation of Novus Therapeutics, Inc., a Delaware corporation, dated September 22, 2014	8-K	001-36620	3.1	September 26, 2014	
3.2	Certificate of Amendment to Certificate of Incorporation of Novus Therapeutics, Inc. (effecting, among other things a reverse stock-split), filed with the Secretary of the State of Delaware on May 9, 2017	8-K	001-36620	3.1	May 15, 2017	
3.3	Certificate of Amendment to Certificate of Incorporation of Novus Therapeutics, Inc. (effecting, among other things a change in the corporation's name to "Novus Therapeutics, Inc."), filed with the Secretary of the State of Delaware on May 9, 2017	8-K	001-36620	3.2	May 15, 2017	
3.4	Certificate of Amendment to the Restated Certificate of Incorporation of Novus Therapeutics, Inc., (effecting, among other things a reverse stock-split) effective as of October 5, 2020	8-K	001-36620	3.1	October 6, 2020	
4.5	Form of Common Stock Certificate	8-A/A	001-36620	4.1	June 23, 2017	
5.1	Opinion of Gibson, Dunn & Crutcher LLP, counsel to the Registrant					X
23.1	Consent of Independent Registered Public Accounting Firm					X
23.3	Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1)					
24.1	Power of attorney (included on the signature pages of this registration statement)					
99.1	Novus Therapeutics, Inc. 2020 Long Term Incentive Plan	10-K	001-36620	10.11	March 31, 2021	
99.2	Form of Novus Therapeutics, Inc. Non-Qualified Stock Option Inducement Award Agreement	S-8	333-232428	99.3	June 28, 2019	
99.3	Anelixis Therapeutics, Inc. 2017 Equity Incentive Plan					X

Item 9. Undertakings.

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act.

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) herein do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on April 9, 2021.

ELEDON PHARMACEUTICALS, INC.

By: /s/ David-Alexandre C. Gros, M.D.

David-Alexandre C. Gros, M.D.

Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David Alexandre C. Gros, M.D. and Paul Little, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and any registration statement relating to the offering covered by this Registration Statement and filed pursuant to Rule 462 under the Securities Act, and to file the same, with exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully so or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David-Alexandre C. Gros, M.D.</u> David-Alexandre C. Gros, M.D.	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	April 9, 2021
<u>/s/ Paul Little</u> Paul Little	Chief Financial Officer <i>(Principal Financial Officer)</i>	April 9, 2021
<u>/s/ Jon S. Kuwahara</u> Jon S. Kuwahara	Senior Vice President Finance & Administration <i>(Principal Accounting Officer)</i>	April 9, 2021
<u>/s/ Keith A. Katkin</u> Keith A. Katkin	Chairman of the Board of Directors	April 9, 2021
<u>/s/ Gary A. Lyons</u> Gary A. Lyons	Director	April 9, 2021
<u>/s/ John S. McBride</u> John S. McBride	Director	April 9, 2021
<u>/s/ Walter Ogier</u> Walter Ogier	Director	April 9, 2021
<u>/s/ June Lee, M.D.</u> June Lee, M.D.	Director	April 9, 2021
<u>/s/ Steven Perrin</u> Steven Perrin	President, Director	April 9, 2021

April 9, 2021

Eledon Pharmaceuticals, Inc.
19900 MacArthur Blvd., Suite 550
Irvine, California 92612

Re: Eledon Pharmaceuticals, Inc. Registration Statement on Form S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement"), of Eledon Pharmaceuticals, Inc., a Delaware corporation (the "Company") filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to 8,246,810 shares of Common Stock consisting of (i) 4,860,000 shares of Common Stock issuable pursuant to 2020 Long Term Incentive Plan (the "2020 Plan"), (ii) 1,611,919 shares issuable pursuant to previously announced stand-alone stock option awards granted as inducement awards for newly hired employees (the "Outstanding Inducement Grant Awards"), (iii) 428,500 shares that may be issued as stand-alone stock option awards to be granted as future inducement awards for newly hired employees under the form of Non-Qualified Stock Option Inducement Award Agreement (the "Inducement Award Agreement") and (iv) 1,346,391 shares of Common Stock potentially issuable upon the exercise of stock options assumed by the Company on September 14, 2020 in connection with the Company's acquisition of Anelixis Therapeutics, Inc. (the "Assumed Option Awards," and together with the 2020 Plan, the Outstanding Inducement Grant Awards, and the Inducement Award Agreement, the "Plans").

We have examined the Plans and the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary as the basis for the opinions set forth below. We have also made such other investigations as we have deemed relevant and necessary or appropriate in connection with the opinion hereinafter set forth. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Plans that would expand, modify or otherwise affect the terms of the Plans or the respective rights or obligations of the participants thereunder. Finally, we have assumed the accuracy of all other information provided to us by the Company during the course of our investigations, on which we have relied in issuing the opinion expressed below.

Based upon the foregoing examination and in reliance thereon, and subject to the assumptions stated and in reliance on statements of fact contained in the documents that we have examined, we are of the opinion that the shares of Common Stock issuable under the Plans, when issued and sold in accordance with the terms of the respective Plans and against payment therefor, will be validly issued, fully paid and non-assessable.

We render no opinion herein as to matters involving the laws of any jurisdiction other than the Delaware General Corporation Law (the "DGCL"). We are not admitted to practice in the State of Delaware; however, we are generally familiar with the DGCL as currently in effect and have made such inquiries as we consider necessary to render the opinions above. This opinion is limited to the effect of the current state of the law of the DGCL and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such law or the interpretations thereof or such facts.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Eledon Pharmaceuticals, Inc. of our report dated March 30, 2021, relating to the consolidated financial statements of Eledon Pharmaceuticals, Inc. appearing in the Annual Report on Form 10-K of Eledon Pharmaceuticals, Inc. for the year ended December 31, 2020.

/s/ KMJ Corbin & Company LLP

Irvine, California

April 9, 2021

**ANELIXIS THERAPEUTICS, INC.
2017 EQUITY INCENTIVE PLAN**

1. DEFINED TERMS

Exhibit A, which is incorporated by reference, defines the terms used in the Plan and sets forth certain operational rules related to those terms.

2. PURPOSE

The Plan has been established to advance the interests of the Company by providing for the grant to Participants of Stock-based and other incentive Awards.

3. ADMINISTRATION

The Administrator has discretionary authority, subject only to the express provisions of the Plan, to interpret the Plan; determine eligibility for and grant Awards; determine, modify or waive the terms and conditions of any Award; prescribe forms, rules and procedures; and otherwise do all things necessary to carry out the purposes of the Plan. Determinations of the Administrator made under the Plan will be conclusive and will bind all parties.

4. LIMITS ON AWARDS UNDER THE PLAN

(a) Number of Shares. A maximum of 800,000 shares of Stock may be delivered in satisfaction of Awards under the Plan (and all of which may be delivered upon the exercise of ISOs). The number of shares of Stock delivered in satisfaction of Awards, for purposes of the preceding sentence, will be determined net of shares of Stock withheld by the Company in payment of the exercise price of an Award or in satisfaction of tax withholding requirements with respect to an Award and, for the avoidance of doubt, without including any shares of Stock underlying Awards that are settled in cash, that otherwise expire or become unexercisable without having been exercised, or that are forfeited to or repurchased by the Company for cash. To the extent consistent with the requirements of Section 422, to the extent applicable, Stock issued under awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition will not reduce the number of shares available for Awards under the Plan. No fractional shares of Stock will be delivered under the Plan.

(b) Type of Shares. Stock delivered by the Company under the Plan may be authorized but unissued Stock or previously issued Stock acquired by the Company.

5. ELIGIBILITY AND PARTICIPATION

The Administrator will select Participants from among those key Employees and directors of, and consultants and advisors to, the Company and its subsidiaries who, in the opinion of the Administrator, are in a position to make a significant contribution to the success of the Company and its subsidiaries. Eligibility for ISOs is limited to employees of the Company or of a "parent corporation" or "subsidiary corporation" of the Company as those terms are defined in Section 424 of the Code. Eligibility for Stock Options other than ISOs is limited to individuals described in the first sentence of this Section 5 who are providing direct services on the date of grant of the Stock Option to the Company or to a subsidiary of the Company that would be described in the first sentence of Section 1.409A-1(b)(5)(iii)(E) of the Treasury Regulations.

6. RULES APPLICABLE TO AWARDS

(a) All Awards.

(1) **Award Provisions.** The Administrator will determine the terms of all Awards, subject to the limitations provided herein. By accepting (or under, such rules as the Administrator may prescribe, being deemed to have accepted) an Award, the Participant shall be deemed to have agreed to the terms of the Award and the Plan. Notwithstanding any provision of the Plan to the contrary, awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition may contain terms and conditions that are inconsistent with the terms and conditions specified herein, as determined by the Administrator.

(2) **Term of Plan.** No Awards may be made after the day that immediately precedes the tenth anniversary of the date of the Plan's adoption, but previously granted Awards may continue beyond that date in accordance with their terms.

(3) **Transferability of Awards.** Neither ISOs nor, except as the Administrator otherwise expressly provides in accordance with the second sentence of this Section 6(a)(3), other Awards may be transferred, sold, assigned, pledged, or otherwise encumbered by the person to whom they are granted, either voluntarily or by operation of law, other than by will or by the laws of descent and distribution, and during a Participant's lifetime ISOs (and, except as the Administrator otherwise expressly provides in accordance with the second sentence of this Section 6(a)(3), other Awards requiring exercise) may be exercised only by the Participant. The Administrator may permit Awards other than ISOs to be transferred by gift, subject to the terms of this Section 6(a)(3), to the extent applicable, and such other limitations as the Administrator may impose. In no event will transfers to a person or entity that, directly or indirectly, provides services or financial or other support to a competitor of the Company be permitted.

(4) **Transferability of Stock.** A Participant shall not assign, encumber or dispose of any interest he or she holds in any shares of Stock received upon the exercise, conversion, vesting, or settlement of an Award except in compliance with the provisions below and applicable securities laws.

(A) **Right of First Refusal.** Before a Holder may sell or otherwise transfer (including by gift or operation of law) any shares of Stock, the Company or its assignee(s) shall have a right of first refusal to purchase the Stock on the following terms and conditions:

(i) The Holder shall deliver to the Company a written notice stating: (A) the Holder's bona fide intention to sell or otherwise transfer such Stock; (B) the name of each Proposed Transferee; (C) the number of shares of Stock to be transferred to each Proposed Transferee; and (D) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Stock at the same price (the "Offered Price") and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) At any time within 30 days after receipt of the Right of First Refusal Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Stock proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) immediately below.

(iii) The Purchase Price for the Stock purchased by the Company or its assignee(s) under this Section 6(a)(4)(A) shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Administrator in good faith.

(iv) Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness, or by any combination thereof within 30 days after receipt of the Right of First Refusal Notice.

(v) If all of the Stock proposed in the Right of First Refusal Notice to be transferred to a given Proposed Transferee is not purchased by the Company and/or its assignee(s) as provided in this Section 6(a)(4)(A), then the Holder may sell or otherwise transfer such Stock to that Proposed Transferee at the Offered Price or at a higher price; *provided*, that such sale or other transfer is consummated within 60 days after the date of the Right of First Refusal Notice; *and, provided further*, that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Plan shall continue to apply to the Stock in the hands of such Proposed Transferee. If the Stock described in the Right of First Refusal Notice is not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Right of First Refusal Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Stock held by the Holder may be sold or otherwise transferred.

(vi) Anything to the contrary contained in this Section 6(a)(4)(A) notwithstanding, a Participant's transfer of any portion or all of the Stock during the Participant's lifetime or on the Participant's death by will or intestacy or pursuant to this Section 6(a)(4)(A)(vi) to the Participant's Immediate Family or a trust for the benefit of the Participant or the Participant's Immediate Family will be exempt from the Right of First Refusal and the other provisions of Sections 6(a)(4)(A)(i)-(v). In such case, the transferee or other recipient shall receive and hold the Stock so transferred subject to the provisions of the Plan and the applicable Award agreement, and there shall be no further transfer of such Stock except in accordance with the terms of the Plan.

(B) **Involuntary Transfer.** In the event of any transfer of shares of Stock by operation of law or other involuntary transfer (including divorce or death, but excluding in the event of death a transfer to Immediate Family as set forth in Section 6(a)(4)(A)(vi) above) of all or a portion of the Stock by the Holder, the Company shall have the right to purchase all of the Stock transferred at the fair market value of the Stock on the date of transfer, as determined by the Administrator in good faith. Upon such a transfer, the person acquiring the Stock shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Stock shall be provided to the Company for a period of 30 days following receipt by the Company of written notice by the person acquiring the Stock. The Company shall notify the Participant or his or her executor of the price so determined within 30 days after receipt by it of written notice of the transfer or proposed transfer of Stock.

(C) **Assignment.** The right of the Company to purchase any part of the Stock may be assigned by the Board, in whole or in part, to any stockholder or stockholders of the Company or other Persons.

(D) **Restrictions Binding on Transferees.** All transferees of Stock or any interest therein will receive and hold such Stock or interest subject to the provisions of the Plan and the applicable Award agreement. In the event of any purchase by the Company hereunder where the Stock or interest are held by a transferee, the transferee shall be obligated, if requested by the Company, to transfer the Stock or interest to the Participant for consideration equal to the amount to be paid by the Company hereunder. Any sale or transfer of the Stock shall be void unless the provisions of the Plan and the applicable Award agreement are satisfied.

(E) **Termination of Rights.** The Right of First Refusal and the Company's right to repurchase the Stock in the event of an involuntary transfer pursuant to Section 6(a)(4)(B) above will terminate upon the first sale of common stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act.

(F) **Lock-up Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such offering of the Company's securities, each Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time from the effective date of such registration as may be requested by the Company or such managing underwriters, not to exceed 180 days (or such longer period as may be requested by the Company or such underwriters to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto), and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering.

(5) Vesting, etc. The Administrator may determine the time or times at which an Award will vest or become exercisable and the terms on which an Award requiring exercise will remain exercisable. Without limiting the foregoing, the Administrator may at any time accelerate the vesting or exercisability of an Award, regardless of any adverse or potentially adverse tax or other consequences resulting from such acceleration. Unless the Administrator expressly provides otherwise, including in an Award agreement, the following rules will apply if a Participant's Employment ceases:

(A) Immediately upon the cessation of the Participant's Employment, each Award requiring exercise that is then held by the Participant or by the Participant's permitted transferees, if any, will cease to be exercisable and will terminate, except to the extent otherwise provided in (B), (C), or (D) below, and all other Awards that are then held by the Participant or by the Participant's permitted transferees, if any, to the extent not already vested will be forfeited.

(B) Subject to (C), (D) and (E) below, all Stock Options and SARs held by the Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment, to the extent then exercisable, will remain exercisable for the lesser of (i) 30 days following the date of Employment cessation and

(ii) the period ending on the latest date on which such Stock Option or SAR could have been exercised without regard to this Section 6(a)(5), and will thereupon immediately terminate.

(C) All Stock Options and SARs held by a Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment by reason of the Participant's death or Disability, to the extent then exercisable, will remain exercisable for the lesser of (i) the one-year period ending on the first anniversary of the date of Employment cessation and (ii) the period ending on the latest date on which such Stock Option or SAR could have been exercised without regard to this Section 6(a)(5), and will thereupon immediately terminate.

(D) All Stock Options and SARs held by a Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment by reason of the Company's termination of the Participant's Employment other than for Cause, or by reason of the Participant's death or Disability, to the extent then exercisable, will remain exercisable for the lesser of (i) the 90 days following the date of Employment cessation and (ii) the period ending on the latest date on which such Stock Option or SAR could have been exercised without regard to this Section 6(a)(5), and will thereupon immediately terminate.

(E) All Stock Options and SARs (whether or not vested) held by a Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment will immediately terminate upon such cessation if the Administrator has determined in its sole discretion that such cessation of Employment has resulted in connection with an act or failure to act constituting Cause (or such Participant's Employment could have been terminated for Cause (without regard to the lapsing of any required notice or cure periods in connection therewith) at the time such Participant terminated Employment).

(6) Restrictive Covenants. The Administrator may cancel, rescind, withhold or otherwise limit or restrict any Award at any time if the Participant is not in compliance in all material respects with all applicable provisions of the Award agreement and the Plan, or if the Participant breaches any Restrictive Covenants.

(7) Taxes. The delivery, vesting and retention of Stock under an Award are conditioned upon full satisfaction by the Participant of all tax withholding requirements (and such other tax obligations, if any, including any social security contributions, as the Administrator may determine) with respect to the Award. The Administrator will prescribe such rules for the payment of withholding or other taxes as it deems necessary. The Administrator may, but need not, hold back shares of Stock from an Award or permit a Participant to tender previously owned shares of Stock in satisfaction of its requirements (but not in excess of the minimum withholding required by law or such greater amount that would not result in adverse accounting consequences to the Company). The Administrator may require the Participant to enter into any tax election it deems necessary in connection with any Award.

(8) Dividend Equivalents, etc. The Administrator may provide for the payment of amounts (on terms and subject to conditions established by the Administrator) in lieu of cash dividends or other cash distributions with respect to Stock subject to an Award whether or not the holder of such Award is otherwise entitled to share in the actual dividend or distribution in respect of such Award. Any entitlement to dividend equivalents or similar entitlements shall be established and administered either consistent with an exemption from, or in compliance with, the requirements of Section 409A. In addition, any amounts payable in respect of Restricted Stock or Restricted Stock Units may be subject to such limits or restrictions as the Administrator may impose.

(9) Rights Limited. Nothing in the Plan will be construed as giving any person the right to continued employment or service with the Company or its Affiliates, or any rights as a stockholder except as to shares of Stock actually issued under the Plan. The loss of existing or potential profit in Awards will not constitute an element of damages in the event of termination of Employment for any reason, even if the termination is in violation of an obligation of the Company or any Affiliate to the Participant.

(10) Coordination with Other Plans. Awards under the Plan may be granted in tandem with, or in satisfaction of or substitution for, other Awards under the Plan or awards made under other compensatory plans or programs of the Company or its subsidiaries. For example, but without limiting the generality of the foregoing, awards under other compensatory plans or programs of the Company or its subsidiaries may be settled in Stock (including, without limitation, Unrestricted Stock) if the Administrator so determines, in which case the shares delivered will be treated as awarded under the Plan (and will reduce the number of shares thereafter available under the Plan in accordance with the rules set forth in Section 4).

(11) Section 409A. Each Award may contain such terms as the Administrator determines, and shall be construed and administered, such that the Award either (i) qualifies for an exemption from the requirements of Section 409A, or (ii) satisfies such requirements.

(12) Certain Requirements of Corporate Law. Awards shall be granted and administered consistent with the requirements of applicable law relating to the issuance of stock and the consideration to be received therefor, and with the applicable requirements of the stock exchanges or other trading systems on which the Stock is listed or entered for trading, in each case as determined by the Administrator.

(13) Fair Market Value. In determining the fair market value of any share of Stock under the Plan, the Administrator shall make the determination in good faith, consistent with the rules of Section 422 and Section 409A to the extent applicable.

(14) Additional Requirements. The Administrator may, in its sole discretion, provide in any agreement evidencing the grant of an Award, that such Award (i) will be subject to the terms of any stockholders' agreement of the Company, restrictive covenants agreement or any other similar agreement as the Administrator deems appropriate (including, without limitation any voting agreement or right-of-first-refusal agreement) and (ii) will not be granted to a Participant and no Stock will be delivered to a Participant, in either case, until the Participant has executed such agreements described in this Section 6(a)(14).

(15) Restrictive Legends and Stop-Transfer Orders.

(A) **Legends.** The certificate or certificates representing shares of Stock received in connection with an Award shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

(i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE SOLD OR TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (OR ANY OTHER APPLICABLE LAW), OR AN EXEMPTION THEREFROM.

(ii) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF A PLAN OR OTHER APPLICABLE AGREEMENT BETWEEN THE CORPORATION AND THE STOCKHOLDER, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE CORPORATION.

(iii) Any legend required to be placed thereon by the securities laws of any state to the extent such laws are applicable to the shares of Stock represented by the certificate, instrument, or book entry so legended.

(B) **Stop-Transfer Notices.** Each Holder agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate

“stop transfer” instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(C) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any shares of Stock that have been sold or otherwise transferred in violation of any of the provisions of the Plan or any Award agreement or (ii) to treat as owner of such shares of Stock or to accord the right to vote, if any, or pay dividends to any purchaser or other transferee to whom such shares of Stock shall have been so transferred.

(D) **Removal of Legend.** When all of the following events have occurred, the shares of Stock then held by any Holder will no longer be subject to the legend referred to above: (i) the termination of the Right of First Refusal and (ii) the expiration or termination of the lock-up provisions of Section 6(a)(4)(F) (and of any agreement entered pursuant to Section 6(a)(4)(F)). After such time, and upon a Holder’s request, a new certificate or certificates representing the shares of Stock shall be issued without the legend referred to above and delivered to the Holder.

(b) Awards Requiring Exercise.

(1) **Time And Manner Of Exercise.** Unless the Administrator expressly provides otherwise, an Award requiring exercise by the holder will not be deemed to have been exercised until the Administrator receives a notice of exercise (in form acceptable to the Administrator), which may be an electronic notice, signed (including electronic signature in form acceptable to the Administrator) by the appropriate person and accompanied by any payment required under the Award. If the Award is exercised by any person other than the Participant, the Administrator may require satisfactory evidence that the person exercising the Award has the right to do so.

(2) **Exercise Price.** The exercise price (or the base value from which appreciation is to be measured) of each Award requiring exercise will be 100% (in the case of an ISO granted to a ten-percent shareholder within the meaning of subsection (b)(6) of Section 422, 110%) of the fair market value of the Stock subject to the Award, determined as of the date of grant, or such higher amount as the Administrator may determine in connection with the grant.

(3) **Payment Of Exercise Price.** Where the exercise of an Award is to be accompanied by payment, payment of the exercise price shall be (i) by cash or check acceptable to the Administrator, or, (ii) if so permitted by the Administrator and if legally permissible, (x) by the Administrator’s holding back shares of Stock otherwise deliverable upon exercise having a fair market value equal to the aggregate exercise price for the portion of the Stock Option being exercised, (y) through the delivery of unrestricted shares of Stock that have a fair market value equal to the exercise price, subject to such minimum holding period requirements, if any, as the Administrator may prescribe or (z) at such time, if any, as the Stock is publicly traded, through a broker-assisted exercise program acceptable to the Administrator, (iii) by other means acceptable to the Administrator or (iv) by any combination of the foregoing forms of payment. No Award requiring exercise or portion thereof may be exercised unless, at the time of exercise, the fair market value of the shares of Stock subject to such Award or portion thereof exceeds the exercise price for the Award or such portion. The delivery of shares of Stock as payment of the exercise price under clause (ii) above may be accomplished either by actual delivery or by constructive delivery through attestation of ownership, subject to such rules as the Administrator may prescribe.

(4) **Maximum Term.** Awards requiring exercise will have a maximum term not to exceed ten (10) years from the date of grant (five (5) years from the date of grant in the case of an ISO granted to a ten-percent shareholder described in Section 6(b)(2) above).

7. EFFECT OF CERTAIN TRANSACTIONS

(a) **Mergers, etc.** Except as otherwise provided in an Award, the Administrator shall, in its sole discretion, determine the effect of a Covered Transaction on Awards, which determination may include, but is not limited to, taking the following actions:

(1) **Assumption or Substitution.** If the Covered Transaction is one in which there is an acquiring or surviving entity, the Administrator may provide for the assumption or continuation of some or all outstanding Awards or for the grant of new awards in substitution therefor by the acquiror or survivor or an affiliate of the acquiror or survivor.

(2) **Cash-Out of Awards.** If the Covered Transaction is one in which holders of Stock will receive upon consummation a payment (whether cash, non-cash or a combination of the foregoing), then subject to Section 7(a)(5) below the Administrator may provide for payment (a "cash-out"), with respect to some or all Awards or any portion thereof, equal in the case of each affected Award or portion thereof to the excess, if any, of (A) the fair market value of one share of Stock (as determined by the Administrator in its reasonable discretion) times the number of shares of Stock subject to the Award or such portion, over (B) the aggregate exercise or purchase price, if any, under the Award or such portion (in the case of an SAR, the aggregate base value above which appreciation is measured), in each case on such payment terms (which need not be the same as the terms of payment to holders of Stock) and other terms, and subject to such conditions, as the Administrator determines; *provided*, that the Administrator may not exercise its discretion under this Section 7(a)(2) with respect to an Award or portion thereof providing for "nonqualified deferred compensation" subject to Section 409A in a manner that would constitute an extension or acceleration of, or other change in, payment terms if such change would be inconsistent with the applicable requirements of Section 409A.

(3) **Acceleration of Certain Awards.** If the Covered Transaction (whether or not there is an acquiring or surviving entity) is one in which there is no assumption, continuation, substitution or cash-out, then subject to Section 7(a)(5) below the Administrator may provide that each Award requiring exercise will become fully exercisable, and the delivery of any shares of Stock remaining deliverable under each outstanding Award of Stock Units (including Restricted Stock Units and Performance Awards to the extent consisting of Stock Units) will be accelerated and such shares will be delivered, prior to the Covered Transaction, in each case on a basis that gives the holder of the Award a reasonable opportunity, as determined by the Administrator, following exercise of the Award or the delivery of the shares, as the case may be, to participate as a stockholder in the Covered Transaction; *provided*, that to the extent acceleration pursuant to this Section 7(a)(3) of an Award subject to Section 409A would cause the Award to fail to satisfy the requirements of Section 409A, the Award may not be accelerated and the Administrator in lieu thereof shall take such steps as are necessary to ensure that payment of the Award is made in a medium other than Stock and on terms that as nearly as possible, but taking into account adjustments required or permitted by this Section 7, replicate the prior terms of the Award.

(4) Termination of Awards Upon Consummation of Covered Transaction. Each Award will terminate upon consummation of the Covered Transaction, other than the following: (i) Awards assumed pursuant to Section 7(a)(1) above; (ii) Awards converted pursuant to the proviso in Section 7(a)(3) above into an ongoing right to receive payment other than in Stock; and (iii) outstanding shares of Restricted Stock (which will be treated in the same manner as other shares of Stock, subject to Section 7(a)(5) below).

(5) Additional Limitations. Any share of Stock and any cash or other property delivered pursuant to Section 7(a)(2) or Section 7(a)(3) above with respect to an Award may, in the discretion of the Administrator, contain such restrictions, if any, as the Administrator deems appropriate to reflect any performance or other vesting conditions to which the Award was subject and that did not lapse (and were not satisfied) in connection with the Covered Transaction. For purposes of the immediately preceding sentence, a cash-out under Section 7(a)(2) above or the acceleration of exercisability of an Award under Section 7(a)(3) above shall not, in and of itself, be treated as the lapsing (or satisfaction) of a performance or other vesting condition. In the case of Restricted Stock that does not vest in connection with the Covered Transaction, the Administrator may require that any amounts delivered, exchanged or otherwise paid in respect of such Stock in connection with the Covered Transaction be placed in escrow or otherwise made subject to such restrictions as the Administrator deems appropriate to carry out the intent of the Plan.

(b) Changes in and Distributions With Respect to Stock.

(1) Basic Adjustment Provisions. In the event of a stock dividend, stock split or combination of shares (including a reverse stock split), recapitalization or other change in the Company's capital structure that constitutes an equity restructuring within the meaning of FASB ASC 718, the Administrator shall make appropriate adjustments to the maximum number of shares specified in Section 4(a) that may be delivered under the Plan and shall also make appropriate adjustments to the number and kind of shares of stock or securities subject to Awards then outstanding or subsequently granted, any exercise prices relating to Awards and any other provision of Awards affected by such change.

(2) Certain Other Adjustments. The Administrator may also make adjustments of the type described in Section 7(b)(1) above to take into account distributions to stockholders other than those provided for in Section 7(a) and 7(b)(1), or any other event, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the Plan and to preserve the value of Awards made hereunder, having due regard for the qualification of ISOs under Section 422 and the requirements of Section 409A, where applicable.

(3) Continuing Application of Plan Terms. References in the Plan to shares of Stock will be construed to include any stock or securities resulting from an adjustment pursuant to this Section 7.

8. LEGAL CONDITIONS ON DELIVERY OF STOCK

The Company will not be obligated to deliver any shares of Stock pursuant to the Plan or remove any restriction from shares of Stock previously delivered under the Plan until: (i) the Company is satisfied that all legal matters in connection with the issuance and delivery of such shares have been addressed and resolved; (ii) if the outstanding Stock is at the time of delivery listed on any stock exchange or national market system, the shares to be delivered have been listed or authorized to be listed on such exchange or system upon official notice of issuance; and (iii) all conditions of the Award have been satisfied or waived. If the sale of Stock has not been registered under the Securities Act, the Company may require, as a condition to exercise of the Award, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of the Securities Act or any applicable state or foreign securities laws. The Company may require that certificates evidencing Stock issued under the Plan bear an appropriate legend reflecting any restriction on transfer applicable to such Stock, and the Company may hold the certificates pending lapse of the applicable restrictions.

9. AMENDMENT AND TERMINATION

The Administrator may at any time or times amend the Plan or any outstanding Award for any purpose which may at the time be permitted by law, and may at any time terminate the Plan as to any future grants of Awards; *provided*, that except as otherwise expressly provided in the Plan the Administrator may not, without the Participant's consent, alter the terms of an Award so as to affect materially and adversely the Participant's rights under the Award, unless the Administrator expressly reserved the right to do so at the time the Award was granted. In furtherance of the foregoing, the Administrator may, without stockholder approval, amend any outstanding Award requiring exercise to provide an exercise price (or base value, in the case of an SAR) per share that is lower than the then-current exercise price or base value per share of such outstanding Award (but not lower than the exercise price or base value at which a new Award of the same type could be granted on the date of such amendment). The Board may also, without stockholder approval, cancel any outstanding award (whether or not granted under the Plan) and grant in substitution therefor new Awards under the Plan covering the same or a different number of shares of Stock, including, in the case of a Award requiring exercise, a new Award having an exercise price (or base value, in the case of an SAR) per share that is lower than the then-current exercise price or base value per share of such outstanding Award (but not lower than the exercise price or base value at which a new Award of the same type could be granted on the date of such amendment), subject to the requirements of Section 6(b)(2) above. Any amendments to the Plan will be conditioned upon stockholder approval only to the extent, if any, such approval is required by law (including the Code), as determined by the Administrator.

10. OTHER COMPENSATION ARRANGEMENTS

The existence of the Plan or the grant of any Award will not in any way affect the Company's right to Award a person bonuses or other compensation in addition to Awards under the Plan.

11. MISCELLANEOUS

(a) Waiver of Jury Trial. By accepting an Award under the Plan, each Participant waives any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under the Plan and any Award, or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in connection therewith, and agrees that any such action, proceedings or counterclaim shall be tried before a court and not before a jury. By accepting an Award under the Plan, each Participant certifies that no officer, representative, or attorney of the Company has represented, expressly or otherwise, that the Company would not, in the event of any action, proceeding or counterclaim, seek to enforce the foregoing waivers.

(b) Limitation of Liability. Notwithstanding anything to the contrary in the Plan, neither the Company, nor any Affiliate, nor the Administrator, nor any person acting on behalf of the Company, any Affiliate, or the Administrator, will be liable to any Participant or to the estate or beneficiary of any Participant or to any other holder of an Award by reason of any acceleration of income, or any additional tax (including any interest and penalties), asserted by reason of the failure of an Award to satisfy the requirements of Section 422 or Section 409A or by reason of Section 4999 of the Code, or otherwise asserted with respect to the Award.

12. ESTABLISHMENT OF SUB-PLANS

The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board will establish such sub-plans by adopting supplements to the Plan setting forth (i) such limitations on the Administrator's discretion under the Plan as the Board deems necessary or desirable and (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board deems necessary or desirable. All supplements adopted by the Board will be deemed to be part of the Plan, but each supplement will apply only to Participants within the affected jurisdiction and the Company will not be required to provide copies of any supplement to Participants in any jurisdiction that is not affected.

13. GOVERNING LAW

(a) Certain Requirements of Corporate Law. Awards will be granted and administered consistent with the requirements of applicable laws of the State of Delaware relating to the issuance of stock and the consideration to be received therefor.

(b) Other Matters. Except as otherwise provided by the express terms of an Award agreement or under a sub-plan described in Section 12 or as provided in Section 13(a), the provisions of the Plan and of Awards under the Plan and all claims or disputes arising out of or based upon the Plan or any Award under the Plan or relating to the subject matter hereof or thereof will be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice- or conflict-of-laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

(c) Jurisdiction. By accepting an Award, each Participant will be deemed to (a) have submitted irrevocably and unconditionally to the jurisdiction of the federal and state courts located within the geographic boundaries of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon the Plan or any Award; (b) agree not to commence any suit, action or other proceeding arising out of or based upon the Plan or an Award, except in the federal and state courts located within the geographic boundaries of the United States District Court for the District of Delaware; and (c) waive, and agree not to assert, by way of motion as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that the Plan or an Award or the subject matter thereof may not be enforced in or by such court.

EXHIBIT A

Definition of Terms

The following terms, when used in the Plan, will have the meanings and be subject to the provisions set forth below:

“Administrator”: The Board, except that the Board may delegate its authority under the Plan to a committee of the Board (or one or more members of the Board), in which case references herein to the Board will refer to such committee (or members of the Board). The Board may delegate (i) to one or more of its members such of its duties, powers and responsibilities as it may determine; (ii) to one or more officers of the Company the power to grant rights or options to the extent permitted by applicable law; and (iii) to such Employees or other persons as it determines such ministerial tasks as it deems appropriate. In the event of any delegation described in the preceding sentence, the term “Administrator” will include the person or persons so delegated to the extent of such delegation.

“Affiliate”: With respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Award”: Any or a combination of the following:

- (i) Stock Options;
- (ii) SARs;
- (iii) Restricted Stock;
- (iv) Unrestricted Stock;
- (v) Stock Units, including Restricted Stock Units;
- (vi) Performance Awards; or
- (vii) Awards (other than Awards described in (i) through (vi) above) that are convertible into or otherwise based on Stock.

“Board”: The Board of Directors of the Company.

“Cause”: In the case of any Participant who is party to an employment agreement with the Company or any of its subsidiaries that contains a definition of “Cause,” the definition set forth in such agreement will apply with respect to such Participant under the Plan for so long as such agreement is in effect. In the case of any other Participant, “Cause” will mean, as determined by the Administrator in its reasonable judgment, (i) such Participant’s material failure to perform, or substantial negligence in the performance of, such Participant’s duties and responsibilities to the Company or any of its subsidiaries; (ii) such Participant’s commission of a felony or of any crime involving moral turpitude; (iii) such Participant’s commission of theft, fraud, embezzlement or any material act of dishonesty involving the Company or any of its subsidiaries; (iv) such Participant’s breach of any Restrictive Covenants or material breach of any other terms of any agreement between the Company or any of its subsidiaries and such Participant; or (v) other misconduct by such Participant that is or could be expected to be materially harmful to the business, interests or reputation of the Company or any of its subsidiaries.

“Code”: The U.S. Internal Revenue Code of 1986 as from time to time amended and in effect, or any successor statute as from time to time in effect.

“Company”: Anelixis Therapeutics, Inc., a Delaware corporation.

“Covered Transaction”: Any of (i) a consolidation, merger, or similar transaction or series of related transactions, including a sale or other disposition of stock, in which the Company is not the surviving corporation or which results in the acquisition of all or substantially all of the Company’s then outstanding common stock by a single person or entity or by a group of persons and/or entities acting in concert, (ii) a sale or transfer of all or substantially all the Company’s assets, or (iii) a dissolution or liquidation of the Company. Where a Covered Transaction involves a tender offer that is reasonably expected to be followed by a merger described in clause (i) (as determined by the Administrator), the Covered Transaction will be deemed to have occurred upon consummation of the tender offer.

“Disability”: In the case of any Participant who is a party to an employment agreement with the Company or any of its subsidiaries that contains a definition of “Disability,” the definition set forth in such agreement will apply with respect to such Participant under the Plan for so long as such agreement is in effect. In the case of any other Participant, “Disability” will mean (i) a disability that would entitle a Participant to long-term disability benefits under the Company’s long-term disability plan in which the Participant participates or (ii) if such Participant is not a participant in any such plan, such Participant’s inability to perform substantially all of his or her duties and responsibilities to the Company or any of its subsidiaries for a period of any ninety (90) days during any period of three hundred sixty-five (365) consecutive days as a result of any illness, injury, accident or condition of either a physical or psychological nature, as determined by the Administrator in its reasonable judgment. Notwithstanding the foregoing, in any case in which a benefit that constitutes or includes “nonqualified deferred compensation” subject to Section 409A would be payable by reason of Disability, the term “Disability” will mean a disability described in Section 1.409A-3(i)(4)(i)(A) of the Treasury Regulations.

“Employee”: Any person who is employed by the Company or by a subsidiary of the Company.

“Employment”: A Participant’s employment or other service relationship with the Company and its subsidiaries. Employment will be deemed to continue, unless the Administrator expressly provides otherwise, so long as the Participant is employed by, or otherwise is providing services in a capacity described in Section 5 to the Company or one of its subsidiaries. If a Participant’s employment or other service relationship is with a subsidiary and that entity ceases to be a subsidiary of the Company, the Participant’s Employment will be deemed to have terminated when the entity ceases to be a subsidiary of the Company unless the Participant transfers Employment to the Company or one of its remaining subsidiaries. Notwithstanding the foregoing, in construing the provisions of any Award relating to the payment of “nonqualified deferred compensation” (subject to Section 409A) upon a termination or cessation of Employment, references to termination or cessation of employment, separation from service, retirement or similar or correlative terms shall be construed to require a “separation from service” (as that term is defined in Section 1.409A-1(h) of the Treasury Regulations, after giving effect to the presumptions contained therein) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of the Treasury Regulations. The Company may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election shall be deemed a part of the Plan.

“Holder”: A Participant who holds shares of Stock receivable upon the exercise, conversion, vesting, or settlement of an Award or his or her permitted transferee.

“Immediate Family”: Any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, or any person sharing the Participant’s household (other than a tenant or an employee).

“ISO”: A Stock Option intended to be an “incentive stock option” within the meaning of Section 422. Each Stock Option granted pursuant to the Plan will be treated as providing by its terms that it is to be a non-incentive Stock Option unless, as of the date of grant, it is expressly designated as an ISO.

“Offered Price”: The price at which a Holder offers to sell shares of Stock to the Company or its assignee(s) in connection with a Right of First Refusal offering.

“Participant”: A person who is granted an Award under the Plan.

“Performance Award”: An Award subject to specified criteria, other than the mere continuation of Employment or the mere passage of time, the satisfaction of which is a condition for the grant, exercisability, vesting or full enjoyment of the Award.

“Person”: An individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

“Plan”: The Anelixis Therapeutics, Inc. 2017 Equity Incentive Plan as from time to time amended and in effect.

“Purchase Price”: The price paid by the Company or its assignee(s) for shares of Stock in connection with any exercise of the Right of First Refusal.

“Proposed Transferee”: A Person to whom a Holder proposes to sell or otherwise transfer Stock as set forth in the Right of First Refusal Notice.

“Restricted Stock”: Stock subject to restrictions requiring that it be redelivered or offered for sale to the Company if specified conditions are not satisfied.

“Restricted Stock Unit”: A Stock Unit that is, or as to which the delivery of Stock or cash in lieu of Stock is, subject to the satisfaction of specified performance or other vesting conditions.

“Restrictive Covenants”: Any non-competition, non-solicitation, no hire, non-disclosure, invention assignment or other restrictive covenants in any agreement between the Participant and the Company or any of its subsidiaries.

“Right of First Refusal”: The right of first refusal of the Company and its assignee(s) described in Section 6(a)(4)(A).

“Right of First Refusal Notice”: The written notice required to be provided by a Holder to the Company in connection with the Right of First Refusal offering as described in Section 6(a)(4)(A)(i).

“Sale Transaction”: Any of (i) a consolidation, merger, or similar transaction or series of related transactions, including a sale or other disposition of stock, in which the Company is not the surviving corporation or which results in the acquisition of all or substantially all of the Company’s then outstanding common stock by a single person or entity or by a group of persons and/or entities acting in concert; except any consolidation or merger involving the Company in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting entity or (2) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving or resulting entity; or (ii) a sale or transfer of all or substantially all the Company’s assets. Where a Sale Transaction involves a tender offer that is reasonably expected to be followed by a merger described in clause (i) (as determined by the Administrator), the Sale Transaction will be deemed to have occurred upon consummation of the tender offer.

“SAR”: A right entitling the holder upon exercise to receive an amount (payable in cash or in shares of Stock of equivalent value) equal to the excess of the fair market value of the shares of Stock subject to the right over the base value from which appreciation under the SAR is to be measured.

“Section 409A”: Section 409A of the Code.

“Section 422”: Section 422 of the Code.

“Securities Act”: Securities Act of 1933, as amended.

“Stock”: Non-Voting Common Stock of the Company, par value \$0.00001 per share.

“Stock Option”: An option entitling the holder to acquire shares of Stock upon payment of the exercise price.

“Stock Unit”: An unfunded and unsecured promise, denominated in shares of Stock, to deliver Stock or cash measured by the value of Stock in the future.

“Unrestricted Stock”: Stock not subject to any restrictions under the terms of the Award.