

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **October 30, 2023**

Ocuphire Pharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

001-34079
(Commission File Number)

11-3516358
(I.R.S. Employer Identification No.)

37000 Grand River Avenue, Suite 120 Farmington Hills, MI 48335

(Address of principal executive offices and zip code)

248-957-9024
(Registrant's telephone number including area code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of Each Class	Trading Symbol	Name of Exchange on Which Registered
Common Stock, par value \$0.0001 per share	OCUP	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers

Appointment of Chief Executive Officer

On October 30, 2023, the Board of Directors (the “**Board**”) of Ocuphire Pharma, Inc. (the “**Company**”) appointed Dr. George Magrath, age 39, as the Company’s Chief Executive Officer, effective as of November 1, 2023.

Dr. Magrath was chief executive officer of Lexitas Pharmaceutical Services, Inc., a position he has served in from February 2021 through September 30, 2023. Immediately thereafter he served as a consultant to Lexitas Pharmaceuticals Services, Inc. from September 2023 through October 2023. Prior to serving in these roles, he served with the same Company as its chief medical officer from August 2020 to January 2021. Dr. Magrath previously served as medical director at Hovione Pharmaceuticals, LLC from August 2015 to August 2020. Dr. Magrath served on the board of directors of Lexitas Pharmaceutical Services from August 2021 through September 2023 and as a scientific advisory board member of Line 6 Biotechnology, Inc. from March 2022 to October 2023 and ONO Pharmaceutical Co., Ltd. from November 2019 to January 2023. He is a board observer of Implicit Bioscience (since 2022) and on the advisory board of Foundation Fighting Blindness Translational Research Acceleration Program (since 2022). Dr. Magrath earned his M.B.A. from The Citadel, his M.D. from Medical University of South Carolina, his M.S. in Applied Economics from Johns Hopkins University and his B.S. in Biological Chemistry from Clemson University.

On October 31, 2023, the Company and Dr. Magrath entered into an employment agreement (the “**Employment Agreement**”). The Employment Agreement has an initial term (the “**Initial Term**”) of two (2) years beginning on November 1, 2023 and automatically renews for an additional one-year period at the end of the Initial Term and each anniversary thereafter (a “**Renewal Term**”), provided that the Board does not notify Dr. Magrath of its intention not to renew at least 60 days prior to the expiration of the Initial Term or any Renewal Term.

The Employment Agreement entitles Dr. Magrath to an annual base salary of \$575,000, reviewed annually. Dr. Magrath is also eligible for annual incentive compensation targeted at 55% of his base salary. Pursuant to the terms of the Employment Agreement, Dr. Magrath was granted, effective as of his first day of employment with the Company (the “**Grant Date**”), a nonstatutory stock option to purchase 600,000 shares of the Company’s common stock (“**Stock Option Award**”) and 400,000 restricted stock units (“**RSU Award**”) pursuant to the terms of the Company’s form of Stock Option Grant Notice and form award agreement and form of RSU Award Grant Notice and form award agreement, respectively (the Stock Option Award and RSU Award, collectively, the “**Inducement Awards**”) under the Company’s 2021 Inducement Plan (the “**Inducement Plan**”). The Stock Option Award vests as to 25% of the shares underlying the Stock Option Award on the first anniversary of the Grant Date and, the remaining shares subject to the Stock Option Award, shall vest and become exercisable in equal monthly installments on the last day of each full month over the thirty-six (36) months following the first anniversary of the Grant Date. The RSU Award vests as to 25% of the shares underlying the RSU Award in four equal annual consecutive installments commencing on the first anniversary of the Grant Date, and the remaining shares subject to the RSU Award shall vest and become exercisable on each consecutive anniversary of the Grant Date so that all shares subject to the RSU Award will be vested on the fourth-year anniversary of the Grant Date. If Dr. Magrath is employed by the Company, and the Company consummates a Change in Control (as defined in the Employment Agreement) and the Inducement Awards are not assumed, continued or substituted by the surviving corporation or acquiring corporation (or the surviving or acquiring corporation’s parent company) in such Change in Control in the manner contemplated by the Inducement Plan, then 100% of the unvested portion of the applicable Inducement Award shall fully vest immediately prior to the effectiveness of such Change in Control.

In the event of Dr. Magrath’s death during the employment period or a termination due to disability, Dr. Magrath, his beneficiaries or legal representatives shall be entitled to receive any annual base salary earned, but unpaid, for services rendered to the Company on or prior to the date on which the employment period ends, unreimbursed expenses and certain other benefits provided for in the Employment Agreement (the “**Unconditional Entitlements**”). In the event of termination for cause by the Company or the termination of employment as a result of resignation without good reason, Dr. Magrath shall be provided the Unconditional Entitlements.

In the event of a resignation by Dr. Magrath for good reason or the exercise by the Company of its right to terminate Dr. Magrath other than for cause, death or disability, Dr. Magrath will receive the Unconditional Entitlements and, subject to Dr. Magrath signing and delivering to the Company and not revoking a general release of claims in favor of the Company and certain related parties, the Company shall pay a severance amount to Dr. Magrath equal to one hundred percent (100%) of Dr. Magrath's then-current base salary (the "**Severance Amount**") and pay for Dr. Magrath's continued health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (known as COBRA) for a period of twelve (12) months (the "**Conditional Benefits**").

In the event of a resignation by Dr. Magrath for good reason, the exercise by the Company of its right to terminate Dr. Magrath other than for cause, death or disability, in each case, within twelve (12) months following or three (3) months prior to the effective date of a Change in Control, Dr. Magrath will receive the following: (i) the Unconditional Entitlements and the Conditional Benefits less the Severance Amount; (ii) an amount equal to the product of 1.0 times the sum of Dr. Magrath's annual base salary and target annual cash bonus, less the Non-Compete Amount as defined in the Employment Agreement (if applicable); and (iii) accelerated vesting of all equity awards that were assumed, continued or substituted by the surviving or acquiring corporation in the Change in Control and remain subject to time-based vesting conditions, if any.

In addition, the Company and Dr. Magrath entered into a Confidentiality and an Employee Proprietary Information and Invention Assignment Agreement that applies during the term of Dr. Magrath's employment and thereafter.

Dr. Magrath was also appointed as a member of the Board, effective as of November 1, 2023. As a result of his appointment as Chief Executive Officer, Dr. Magrath is not considered independent and will not serve on any committees of the Board.

The foregoing description of the Employment Agreement is qualified in its entirety by reference to the complete text of the Employment Agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K, and incorporated herein by reference. Additionally, a copy of the Form of Restricted Stock Unit Award Grant Notice and Form of Award Agreement is attached as Exhibit 10.2 to this Current Report on Form 8-K, and incorporated herein by reference.

Termination of Richard Rodgers as Interim President and Chief Executive Officer

As disclosed in the Current Report on Form 8-K filed by the Company on April 21, 2023, the Company appointed Richard Rodgers to serve as Interim President and Chief Executive Officer of the Company on April 19, 2023. In connection with the appointment of Dr. Magrath as the Chief Executive Officer of the Company as described above, on November 1, 2023, Mr. Rodgers ceased to serve as Interim President and Chief Executive Officer of the Company as of such date. The departure of Mr. Rodgers was not related to any disagreement with the Company on any matter relating to its operations, policies or practices. Mr. Rodgers will remain a member of the Board.

Item 7.01 Regulation FD Disclosure.

On November 1, 2023, the Company issued a press release announcing the appointment of Dr. Magrath as Chief Executive Officer of the Company. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated into this Item 7.01 by reference.

The information in this Current Report on Form 8-K and Exhibit 99.1 attached hereto is intended to be furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing.

Item 8.01 Other Events.

Inducement Plan Increase

On October 30, 2023, the Board adopted the First Amendment (the "**First Amendment**") to the Company's Inducement Plan, increasing the aggregate number of shares of common stock that may be issued pursuant to equity incentive awards under the Inducement Plan by 2,000,000 shares for a total of 2,325,258 shares of common stock that may be issued pursuant to equity incentive awards under the Inducement Plan. The Company believes that the increase in the shares reserved under the Inducement Plan is necessary to allow it to attract qualified employees.

The foregoing description of the terms of the First Amendment is qualified in its entirety by reference to the actual terms of the First Amendment, which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Committee Composition

Effective as of November 15, 2023, the composition of the committees of the Board shall be as follows:

Name	Audit Committee	Compensation Committee	Nominating and Corporate Governance Committee
Cam Gallagher (Chairman of the Board)		X*	X
Sean Ainsworth	X	X	
Susan Benton		X	X
James Manuso	X		X*
Jay Pepose			
Richard Rodgers	X*	X	
* Committee Chairperson			

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Employment Agreement entered into on October 31, 2023 by and between Ocuphire Pharma, Inc. and George Magrath.
10.2	Form of Restricted Stock Unit Award and Form of Award Agreement.
10.3	First Amendment to 2021 Inducement Plan.
99.1	Press release issued by Ocuphire Pharma, Inc. on November 1, 2023, furnished herewith.
104	Cover Page Interactive Data File (embedded within Inline XBRL document).

SIGNATURES

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

OCUPHIRE PHARMA, INC.

Date: November 1, 2023

By: /s/ George Magrath
George Magrath
Chief Executive Officer

Employment Agreement

THIS EMPLOYMENT AGREEMENT (this "**Agreement**") by and between **Ocuphire Pharma, Inc.**, a Delaware corporation (the "**Company**"), and **George Magrath** (the "**Executive**") is entered into by the Company and the Executive and made effective as of November 1, 2023 (the "**Effective Date**").

Recitals

Whereas, the Board of Directors of the Company (the "**Board**") has determined that it is in the best interests of the Company and the Company's stockholders to employ the Executive commencing on the Effective Date;

Whereas, the Company and the Executive desire to enter into this Agreement to embody the terms of the Executive's continued relationship with the Company following the Effective Date; and

Whereas, this Agreement shall represent the entire understanding and agreement between the parties with respect to the Executive's employment with the Company.

Agreement

Now, Therefore, in consideration of the foregoing, and for other good and valuable consideration, including the respective covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment Period. On the Effective Date, the Company hereby agrees to employ the Executive, and the Executive hereby agrees to be employed by the Company, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of the Effective Date (the "**Initial Term**"). The term of this Agreement will automatically be renewed for a term of one (1) year (each, a "**Renewal Term**") at the end of the Initial Term and at the end of each Renewal Term thereafter, provided that the Board does not provide written notice to the Executive of its intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. For purposes of this Agreement, "**Employment Period**" includes the Initial Term and any Renewal Term(s) thereafter, subject to earlier termination in accordance with Section 3 of this Agreement.

2. Terms of Employment.**(a) Position and Duties.**

(i) During the Employment Period, the Executive shall serve as the Chief Executive Officer of the Company, and in such other position or positions with the Company and its subsidiaries as are consistent with the Executive's position as Chief Executive Officer of the Company, and shall have such duties and responsibilities as are assigned to the Executive by the Board consistent with the Executive's position as Chief Executive Officer of the Company. The Executive shall continue to serve as a member of the Board during the Employment Period, subject to continued election by the stockholders of the Company. The Executive shall report to the Board. The Executive shall work remotely from both the Executive's home office and as reasonably requested from time to time at the Company's principal executive offices and such other locations as needed or reasonably requested from time to time by the Board.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours and on a full-time basis to the business and affairs of the Company, to discharge the responsibilities assigned to the Executive hereunder, and to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) be employed by the Company or any of its subsidiaries or Affiliates (as defined below); (B) serve on civic or charitable boards, committees, or advisory boards; (C) deliver lectures, fulfill speaking engagements or teach at educational institutions; (D) manage personal investments; (E) serve on the boards of directors of not-for-profit organizations; (F) serve on the boards of directors of the corporate entities on which the Executive currently serves as of the Effective Date, so long as such entities are not Competitors (as defined below) and such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement; provided, however, that any subsequent for profit board appointments shall be approved in advance by the Board or the Compensation Committee of the Board; or (G) practice medicine at one or more medical facilities for no more than eight (8) hours per week in the aggregate, which shall include no more than eight (8) hours per month to be dedicated to AsclepiX Therapeutics, upon prior written notice to the Company.

(b) Compensation.

(i) **Base Salary.** During the Employment Period, the Executive shall receive an annual base salary (the "**Annual Base Salary**") of \$575,000 subject to applicable withholding taxes, which shall be paid in accordance with the Company's normal payroll practices for senior executive officers of the Company as in effect from time to time. During the Employment Period, commencing with the review of base salaries in connection with the Company's compensation program for the 2025 fiscal year, the Annual Base Salary shall be reviewed at least annually by the Board or the Compensation Committee of the Board (the "**Compensation Committee**"). Any increase in the Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. The term "Annual Base Salary" as utilized in this Agreement shall refer to the Annual Base Salary as so increased or adjusted.

(ii) **Annual Bonus.** In addition to the Annual Base Salary, for each fiscal year ending during the Employment Period, the Executive shall be eligible for an annual cash bonus (the "**Annual Bonus**"), as determined by the Compensation Committee or the Board (in their sole and absolute discretion) based on the Company and the Executive achieving performance goals and objectives for such calendar year as reasonably determined by the Compensation Committee, which value shall be up to fifty-five percent (55%) of the Annual Base Salary actually paid to the Executive in such fiscal year and as determined in accordance with the policies and practices generally applicable to other senior executive officers of the Company. The Annual Bonus, if any, will be subject to all applicable payroll deductions and withholdings. No amount of any Annual Bonus is guaranteed at any time, and, except as otherwise stated in Section 5(a)(i), the Executive must be an employee of the Company in good standing through the date the Annual Bonus is paid to be eligible to receive an Annual Bonus. Each such Annual Bonus awarded to the Executive shall be paid sometime during the first seventy-five (75) days of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect, in compliance with Treasury Regulation 1.409A-2(a), to defer the receipt of such Annual Bonus. For the avoidance of doubt, any Annual Bonus earned by the Executive during the calendar year of 2023 shall be prorated by the number of days (or other measurement of time) during which the Executive was employed by the Company in the calendar year of 2023.

(iii) **Initial Equity Award.** Subject to the terms of the Company's 2021 Inducement Plan (the "**Inducement Plan**") and the form of Stock Option Grant Notice and award agreement issued thereunder, promptly following the Effective Date and approval by the Board, the Company will issue the Executive a Nonstatutory Stock Option (as defined in the Inducement Plan) to purchase 600,000 shares of the Company's common stock (the "**Stock Option Award**") and 400,000 Restricted Stock Units (as defined in the Inducement Plan) (the "**Restricted Stock Unit Award**" and together with the Stock Option Award, the "**Initial Inducement Award(s)**"). The Initial Inducement Awards shall include the following additional terms: (1) the exercise price per share shall be equal to the Fair Market Value (as defined in the Inducement Plan) of a share of the Company's common stock on the date of grant of the Initial Inducement Awards; (2) subject to the Executive's continued employment with the Company and the terms and conditions of the Inducement Plan, the Stock Option Award shall vest as follows, 25% of the Stock Option Award shall vest on the first anniversary of the Effective Date and the remainder of the Stock Option Award, shall vest in equal monthly installments on the last day of each full month over the thirty-six (36) months following the first anniversary of the Effective Date, subject to the Executive's continuous service with the Company or an Affiliate through such vesting dates and the Restricted Stock Unit Award shall vest as follows, four (4) equal consecutive annual installments of 25% of the Restricted Stock Unit Award, commencing on the first anniversary of the Effective Date and continuing on each consecutive anniversary of the Effective Date so that all Restricted Stock Units will be vested on the fourth-year anniversary of the Effective Date, subject to the Executive's continuous service with the Company or an Affiliate through such vesting dates; and (3) in the event that during the Employment Period the Company consummates a Change in Control (as defined below) and the Initial Inducement Awards are not assumed, continued or substituted by the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) in such Change in Control in the manner contemplated by Section 9(c)(i) and (ii) of the Inducement Plan, then 100% of the unvested portion of each Initial Inducement Award shall fully vest and become exercisable immediately prior to the effectiveness of such Change in Control, subject to the Executive's continued employment with the Company as of each such date and as further provided in the terms and conditions of this Agreement, the applicable Initial Inducement Award and the Inducement Plan.

(iv) **Long-Term Incentive Compensation.** During the Employment Period, the Executive shall be entitled to participate in any equity incentive, performance share, performance unit or other equity based long-term incentive compensation plan, program or arrangement (the "**Plans**") generally made available to senior executive officers of the Company, on substantially the same terms and conditions as generally apply to such other officers, except that the size of the awards made to the Executive shall reflect the Executive's position with the Company and based on the performance criteria established by the Compensation Committee or the Board, as the case may be.

(v) **Clawback Rights.** All compensation paid or awarded to Executive by the Company is subject to the terms and conditions of the Company's Compensation Recovery Policy, as may be amended from time to time, a copy of which has been provided to Executive.

(vi) **Welfare Benefit Plans.** During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its Affiliates (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) made available to other senior executive officers of the Company. Notwithstanding the foregoing, the Company may amend or discontinue any such welfare benefit plans, practices, policies and programs at any time in its sole discretion.

(vii) **Expenses.** During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable and documented out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the plans, practices, policies and programs of the Company.

(viii) **Vacation.** During the Employment Period, the Executive shall be entitled to take vacation in accordance with the Company's applicable vacation policy as in effect from time to time for its senior executive officers. The Executive shall also be entitled to all paid holidays given by the Company to its senior executive officers in accordance with the plans, practices, policies and programs of the Company.

3. Termination of Employment.

(a) Notwithstanding Section 1, the Employment Period shall end upon the earliest to occur of: (i) the Executive's death; (ii) a Termination due to Disability (as defined below); (iii) a Termination for Cause (as defined below); (iv) the Termination Date (as defined below) specified in connection with any exercise by the Company of its Termination Right (as defined below); (v) a Termination for Good Reason (as defined below) by the Executive; (vi) the termination of this Agreement by Executive pursuant to Section 3(b); or (vii) expiration of the Employment Period. Upon termination of the Executive's employment with the Company for any reason, the Executive will be deemed to have automatically resigned and does hereby resign, effective as of the Termination Date, from any and all positions that the Executive holds as an officer, director, manager and/or member of any governing body (or a committee thereof), in any case, of the Company or any of its Affiliates.

(b) This Agreement may be terminated by the Executive at any time upon sixty (60) days prior written notice to the Company or upon such shorter period as may be agreed upon between the Executive and the Board. Notwithstanding any other provision of this Agreement, in the event of a termination by the Executive other than a Termination for Good Reason, the Company shall be obligated only to continue to pay the Executive's salary and provide other benefits provided by this Agreement up to the date of the termination.

(c) **Benefits Payable Under Termination.**

(i) In the event of the Executive's death during the Employment Period or a Termination due to Disability, the Executive or the Executive's beneficiaries or legal representatives shall be provided the Unconditional Entitlements (as defined below), and any additional benefits that are or become payable under any Company plan, policy, practice or program or any contract or agreement with the Company by reason of the Executive's death or Termination due to Disability.

(ii) In the event of the Executive's Termination for Cause or termination by the Executive other than a Termination for Good Reason, the Executive shall be provided the Unconditional Entitlements.

(iii) In the event of a Termination for Good Reason by the Executive or the exercise by the Company of the Company's Termination Right, the Executive shall be provided the Unconditional Entitlements and, subject to the Executive signing and delivering to the Company and not subsequently revoking before the sixtieth (60th) day following the Termination Date, a separation and release agreement containing a general release of claims in favor of the Company in a form presented by the Company (the "**Release**"), the Company shall provide the Executive the Conditional Benefits (as defined below). Any and all amounts payable and benefits or additional rights provided to the Executive upon a termination of the Executive's employment pursuant to this Section 3(e)(iii) (other than the Unconditional Entitlements) or the expiration of the Employment Period shall only be payable or provided if: (A) the Executive signs and delivers the Release and the Release becomes irrevocable and can no longer be revoked by the Executive under its terms prior to the sixtieth (60th) day following the Termination Date; (B) the Executive returns to the Company all property of the Company that the Company requests in writing that the Executive return; (C) the Executive complies with the Executive's post-termination obligations under this Agreement and the Invention Assignment Agreement (as defined below); and (D) the Executive is in continued compliance with the terms and conditions of the Release, including without limitation any non-disparagement and confidentiality provisions contained therein.

(d) **Unconditional Entitlements.** For purposes of this Agreement, the "**Unconditional Entitlements**" to which the Executive may become entitled under Section 3(c) are as follows:

(i) **Earned Amounts.** The Earned Compensation (as defined below) shall be paid within thirty (30) days following the termination of the Executive's employment hereunder.

(ii) **Benefits.** All benefits payable to the Executive under any employee benefit plans (including, without limitation any pension plans or 401(k) plans) of the Company or any of its Affiliates applicable to the Executive at the time of termination of the Executive's employment with the Company and all amounts and benefits (other than the Conditional Benefits) which are vested or which the Executive is otherwise entitled to receive under the terms of or in accordance with any plan, policy, practice or program of, or any contract or agreement with, the Company, at or subsequent to the Termination Date without regard to the performance by the Executive of further services or the resolution of a contingency, shall be paid or provided in accordance with and subject to the terms and provisions of such plans, it being understood that all such benefits shall be determined on the basis of the actual date of termination of the Executive's employment with the Company.

(iii) **Indemnities.** Any right which the Executive may have to claim a defense and/or indemnity for liabilities to or claims asserted by third parties in connection with the Executive's activities as an officer, director or employee of the Company shall be unaffected by the Executive's termination of employment (other than the Executive's Termination for Cause) and shall remain in effect in accordance with the terms of the Indemnification Agreement (as defined below).

(iv) **Medical Coverage.** The Executive shall be entitled to such continuation of health care coverage as is required under, and in accordance with, applicable law or otherwise provided in accordance with the Company's policies. The Executive shall be notified in writing of the Executive's rights to continue such coverage after the termination of the Executive's employment pursuant to this Section 3(d)(iv), provided that the Executive timely complies with the conditions to continue such coverage. The Executive understands and acknowledges that the Executive is responsible to make all payments required for any such continued health care coverage that the Executive may choose to receive (except to the extent additional rights are provided upon Executive's qualifying to receive Conditional Benefits).

(v) **Business Expenses.** The Executive shall be entitled to reimbursement, in accordance with the Company's policies regarding expense reimbursement as in effect from time to time, for all business expenses incurred by the Executive prior to the Termination Date.

(vi) **Stock Options/Equity Awards.** The Executive's rights with respect to any stock option, restricted stock or other equity award granted to the Executive by the Company shall be governed by the terms and provisions of the Inducement Plan (or its successor plan), the applicable Original Stock Option Award Documents or Original Award Documents (each as defined below).

(e) **Conditional Benefits.** For purposes of this Agreement, the "**Conditional Benefits**" to which the Executive may become entitled are as follows:

(i) **Severance Amount.** The Severance Amount (as defined below) will be subject to all applicable withholdings and will be payable by the Company to the Executive in six (6) equal monthly installments beginning on the first regular payroll date following the date that the Release becomes effective and irrevocable or, if any component of the Severance Amount is subject to Section 409A (as defined below), beginning on the first regular Company payroll date after the sixtieth (60th) day following the Termination Date.

(ii) **COBRA.** If the Executive timely elects continued health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") and the Company's group health plans following the Termination Date, then, to the extent such premium payments are not already part of the Unconditional Entitlements, the Company shall pay 100% of the COBRA premiums necessary to continue the Executive's and the Executive's covered dependents' health insurance coverage in effect for the Executive (and the Executive's covered dependents) on the Termination Date until the earliest of: (A) twelve (12) months following the Termination Date; (B) the date when the Executive becomes eligible for substantially equivalent health insurance coverage in connection with new employment; or (C) the date the Executive ceases to be eligible for COBRA continuation coverage for any reason, including plan termination (such period from the Termination Date through the earlier of (A)-(C) (the "**COBRA Payment Period**"). Notwithstanding the foregoing, if at any time the Company determines that its payment of COBRA premiums on the Executive's behalf could result in a violation of applicable law or the imposition of penalties or taxes, or is not available for other reasons, then in lieu of paying COBRA premiums pursuant to this Section 3(e)(ii), the Company shall pay the Executive on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the premium for such month, subject to applicable tax withholding, for the remainder of the COBRA Payment Period. Nothing in this Agreement shall deprive the Executive of the Executive's rights under COBRA for benefits under plans and policies arising under the Executive's employment by the Company.

(iii) **Additional Distribution Rules.** Notwithstanding any other payment date or schedule provided in this Agreement to the contrary, if the Executive is deemed on the Termination Date of the Executive's employment to be a "specified employee" within the meaning of that term under Section 409A of the Code and the regulations thereunder ("**Section 409A**"), then each of the following shall apply:

(A) With regard to any payment that is considered "nonqualified deferred compensation" under Section 409A and payable on account of a "separation from service" (within the meaning of Section 409A and as provided in Section 3(h) of this Agreement), such payment shall not be made prior to the date which is the earlier of (1) the expiration of the six (6)-month period measured from the date of the Executive's "separation from service," and (2) the date of the Executive's death (the "**Delay Period**") to the extent required under Section 409A. Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 3(e)(iii)(A) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to the Executive in a lump sum, and all remaining payments due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein; and

(B) To the extent that benefits to be provided during the Delay Period are considered "nonqualified deferred compensation" under Section 409A provided on account of a "separation from service," the Executive shall pay the cost of such benefits during the Delay Period, and the Company shall reimburse the Executive, to the extent that such costs would otherwise have been paid or reimbursed by the Company or to the extent that such benefits would otherwise have been provided by the Company at no cost to the Executive, for the Company's share of the cost of such benefits upon expiration of the Delay Period, and any remaining benefits shall be paid, reimbursed or provided by the Company in accordance with the procedures specified herein.

The foregoing provisions of this Section 3(e)(iii)(A) and (B) shall not apply to any payments or benefits that are excluded from the definition of “nonqualified deferred compensation” under Section 409A, including, without limitation, payments excluded from the definition of “nonqualified deferred compensation” on account of being separation pay due to an involuntary separation from service under Treasury Regulation 1.409A-1(b)(9)(iii) or on account of being a “short-term deferral” under Treasury Regulation 1.409A-1(b)(4).

(f) **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

(i) **“Affiliate”** means any corporation, partnership, limited liability company, trust or other entity which directly, or indirectly through one or more intermediaries, controls, is under common control with, or is controlled by, the Company.

(ii) **“Change in Control”** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(A) any Exchange Act Person (as defined below) becomes the Owner (as defined below), directly or indirectly, of securities of the Company representing more than 50% of the combined Voting Power (as defined below) of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (1) in connection with the issuance of securities of the Company as part of a joint venture or strategic partnership to which the Company is party; (2) on account of the acquisition of securities of the Company directly from the Company; (3) on account of the acquisition of securities of the Company by an investor, any Affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities; (4) on account of the acquisition of securities of the Company by (y) any individual who is, on the Effective Date, either an executive officer or a member of the Board and/or any entity in which an executive officer or member of the Board has a direct or indirect interest (whether in the form of voting rights or participation in profits or capital contributions) of more than 50% or (z) any entity (or its Affiliates) that owns at least 9.9% of the combined Voting Power of the Company’s outstanding securities as of the Effective Date (collectively, the **“Incumbent Entities”**); (5) on account of the Incumbent Entities continuing to hold shares that come to represent more than 50% of the combined Voting Power of the Company’s then outstanding securities as a result of the conversion of any class of the Company’s securities into another class of the Company’s securities having a different number of votes per share pursuant to the conversion provisions set forth in the Company’s Amended and Restated Certificate of Incorporation, as amended; or (6) solely because the level of Ownership (as defined below) held by any Exchange Act Person (the **“Subject Person”**) exceeds the designated percentage threshold of the outstanding Voting Securities (as defined below) as a result of a repurchase or other acquisition of Voting Securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional Voting Securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding Voting Securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to have occurred;

(B) a merger, consolidation or similar transaction involving (directly or indirectly) the Company is consummated and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own (as defined below), directly or indirectly, either (1) outstanding Voting Securities representing more than 50% of the combined outstanding Voting Power of the surviving entity in such merger, consolidation or similar transaction or (2) more than 50% of the combined outstanding Voting Power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding Voting Securities of the Company immediately prior to such transaction; *provided, however*, that a merger, consolidation or similar transaction will not constitute a Change in Control under this prong of the definition if the outstanding Voting Securities representing more than 50% of the combined Voting Power of the surviving entity or its parent are owned by the Incumbent Entities;

(C) a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its subsidiaries is consummated, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its subsidiaries to an entity, more than 50% of the combined Voting Power of the Voting Securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding Voting Securities of the Company immediately prior to such sale, lease, license or other disposition; *provided, however*, that a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its subsidiaries will not constitute a Change in Control under this prong of the definition if the outstanding Voting Securities representing more than 50% of the combined Voting Power of the acquiring entity or its parent are owned by the Incumbent Entities; or

(D) individuals who, on the Effective Date, are members of the Board (the “*Incumbent Board*”) cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of this Agreement, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing definition, the term Change in Control will not include: (i) a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company; moreover, in the case of any payment or benefit that constitutes nonqualified deferred compensation under Section 409A, if necessary in order to ensure that the Executive does not incur liability for additional tax under Section 409A, a transaction (or series of related transactions) shall constitute a Change in Control only if, in addition to satisfying the foregoing definition, such transaction (or series of related transactions) also satisfies the definition of a “change in control event” under Treasury Regulation 1.409A-3(i)(5); or (ii) a Change in Control triggered as a result the exercise or conversion of the Company’s securities outstanding as of the Effective Date.

(iii) **“Code”** means the Internal Revenue Code of 1986, as amended and the rules and regulations promulgated thereunder.

(iv) **“Earned Compensation”** means any Annual Base Salary earned, but unpaid, for services rendered to the Company on or prior to the Termination Date (but excluding any salary and interest accrued thereon payment of which has been deferred).

(v) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(vi) **“Exchange Act Person”** means any natural person, entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (A) the Company or any subsidiary of the Company; (B) any employee benefit plan of the Company or any subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any subsidiary of the Company; (C) an underwriter temporarily holding securities pursuant to a registered public offering of such securities; (D) an entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (E) any natural person, entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined Voting Power of the Company’s then outstanding securities.

(vii) **“Non-Compete Amount”** means, if a Change in Control occurs and if during the twelve (12) month period following the Change in Control the Executive is terminated without Cause (other than because of the Executive’s death or Disability) or the Executive terminates the Executive’s employment for Good Reason, the amount mutually agreed upon by the Company and the Executive in exchange for the Executive’s covenant not to engage in or otherwise compete against the business engaged in by the Company, directly or indirectly, whether as an employee, consultant, independent contractor, partner, shareholder, investor or in any other capacity, for a one-year period following termination of the Executive’s employment with the Company.

(viii) **“Original Award Documents”** means, with respect to any restricted stock or other equity award, the terms and provisions of the applicable award agreement, the Inducement Plan, pursuant to which such equity award was granted, each as in effect on the Termination Date.

(ix) **“Original Stock Option Award Documents”** means, with respect to any stock option, the terms and provisions of the applicable award agreement, the Inducement Plan, pursuant to which such stock option was granted, each as in effect on the Termination Date.

(x) **“Own,” “Owned,” “Owner,” “Ownership”** means a person or entity will be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(xi) **“Person”** shall have the same meaning as ascribed to such term in Section 3(a)(9) of the Exchange Act, as supplemented by Section 13(d)(3) of the Exchange Act, and shall include any group (within the meaning of Rule 13d-5(b) under the Exchange Act); provided that Person shall not include (A) the Company or any of its Affiliates, or (B) any employee benefit plan (including an employee stock ownership plan or employee stock purchase plan) sponsored by the Company or any of its Affiliates.

(xii) **“Severance Amount”** means an amount equal to one (1) times the sum of the Annual Base Salary as in effect as of the Termination Date less the Non-Compete Amount (if applicable).

(xiii) **“Termination Date”** means the earlier to occur of (A) the date the Company specifies in writing to the Executive in connection with the exercise of its Termination Right; (B) the date on which the Employment Period expires as a result of the Company’s decision not to renew this Agreement beyond the Initial Term or at the end of the Renewal Term; or (C) the date the Executive specifies in writing to the Company in connection with any notice to effect a Termination for Good Reason. Notwithstanding the foregoing, a termination of employment will not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” (within the meaning of Section 409A), and notwithstanding anything contained herein to the contrary, the date on which such separation from service takes place will be the Termination Date.

(xiv) **“Termination due to Disability”** means a termination of the Executive’s employment by the Company because the Executive has been incapable, after reasonable accommodation, of substantially fulfilling the positions, duties, responsibilities and obligations set forth in this Agreement because of physical, mental or emotional incapacity resulting from injury, sickness or disease for a period of (A) six (6) consecutive months or (B) an aggregate of nine (9) months (whether or not consecutive) in any twelve (12) month period. Any question as to the existence, extent or potentiality of the Executive’s disability shall be determined by a qualified physician selected by the Company with the consent of the Executive, which consent shall not be unreasonably withheld. The Executive or the Executive’s legal representatives or any adult member of the Executive’s immediate family shall have the right to present to such physician such information and arguments as to the Executive’s disability as he, she or they deem appropriate, including the opinion of the Executive’s personal physician.

(xv) **“Termination for Cause”** means a termination of the Executive’s employment by the Company due to (A) an act or acts of dishonesty undertaken by the Executive and intended to result in substantial gain or personal enrichment to the Executive at the expense of the Company; (B) unlawful conduct or gross misconduct that is willful and deliberate on the Executive’s part in the performance of the Executive’s employment duties and that, in either event, is injurious to the Company; (C) the conviction of the Executive of, or the Executive’s entry of a no contest or *nolo contendere* plea to, a felony; (D) breach by the Executive of the Executive’s fiduciary obligations as an officer or director of the Company; (E) a persistent failure by the Executive to perform the duties and responsibilities of the Executive’s employment hereunder, which failure is willful and deliberate on the Executive’s part and is not remedied by the Executive within thirty (30) days after the Executive’s receipt of written notice from the Company of such failure; or (F) material breach of any terms and conditions of this Agreement by Executive, which breach has not been cured by the Executive within ten (10) days after written notice thereof to Executive from the Company. For the purposes of this Section 3(f)(xiii), any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

(xvi) **“Termination for Good Reason”** means a termination of the Executive’s employment by the Executive within thirty (30) days of the Company’s failure to cure, in accordance with the procedures set forth below, any of the following events: (A) a reduction in Executive’s Annual Base Salary as in effect immediately prior to such reduction by more than 10% without Executive’s written consent, unless such reduction is made pursuant to an across the board reduction applicable to all senior executives of the Company; (B) the removal of the Executive by the Company from the position of Chief Executive Officer of the Company; (C) a material reduction in the Executive’s duties and responsibilities as in effect immediately prior to such reduction; or (D) a material breach of any material provision of this Agreement by the Company to which the Executive shall have delivered a written notice to the Board within forty-five (45) days of the Executive’s having actual knowledge of the occurrence of one of such events stating that the Executive intends to commence a Termination for Good Reason and specifying the factual basis for such termination, and such event, if capable of being cured, shall not have been cured within twenty-one (21) days of the receipt of such notice. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Good Reason if the Executive shall have consented in writing to the occurrence of the event giving rise to the claim of Termination for Good Reason.

(xvii) **“Termination Right”** means the right of the Company, in its sole, absolute and unfettered discretion, to terminate the Executive’s employment under this Agreement or not to renew this Agreement beyond the Initial Term or at the end of the Renewal Term for any reason or no reason whatsoever. For the avoidance of doubt, any Termination for Cause effected by the Company shall not constitute the exercise of its Termination Right.

(xviii) **“Voting Power”** means such number of Voting Securities as shall enable the holders thereof to cast all the votes which could be cast in an annual election of directors of a company.

(xix) **“Voting Securities”** means all securities entitling the holders thereof to vote in an annual election of directors of a company.

(g) **Conflict with Plans.** As permitted under the terms of the applicable Inducement Plan, Original Stock Option Award Documents or Original Award Documents, the Company and the Executive agree that the definitions of Termination for Cause or Termination for Good Reason set forth in this Section 3 shall apply in place of any similar definition or comparable concept applicable under any Inducement Plan, Original Stock Option Award Documents or Original Award Documents.

(h) **Section 409A.** It is intended that payments and benefits under this Agreement either be excluded from or comply with the requirements of Section 409A and the guidance issued thereunder and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted consistent with such intent. In the event that any provision of this Agreement is subject to but fails to comply with Section 409A, the Company may revise the terms of the provision to correct such noncompliance to the extent permitted under any guidance, procedure or other method promulgated by the Internal Revenue Service now or in the future or otherwise available that provides for such correction as a means to avoid or mitigate any taxes, interest or penalties that would otherwise be incurred by the Executive on account of such noncompliance; *provided, however*, that in no event whatsoever shall the Company be liable for any additional tax, interest or penalty imposed upon or other detriment suffered by the Executive under Section 409A or damages for failing to comply with Section 409A. Solely for purposes of determining the time and form of payments due the Executive under this Agreement (including any payments due under Sections 3(c) or 5) or otherwise in connection with the Executive's termination of employment with the Company, the Executive shall not be deemed to have incurred a termination of employment unless and until the Executive shall incur a "separation from service" within the meaning of Section 409A. The parties agree, as permitted in accordance with the final regulations thereunder, a "separation from service" shall occur when the Executive and the Company reasonably anticipate that the Executive's level of bona fide services for the Company (whether as an employee or an independent contractor) will permanently decrease to no more than forty (40) percent of the average level of bona fide services performed by the Executive for the Company over the immediately preceding thirty-six (36) months (or the period of Executive's employment if Executive has been employed with the Company less than thirty-six (36) months at the time of the Executive's termination). The determination of whether and when a separation from service has occurred shall be made in accordance with this subparagraph and in a manner consistent with Treasury Regulation 1.409A-1(h). All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the Executive's lifetime (or during a shorter period of time specified in this Agreement); (ii) the amount of expenses eligible for reimbursement (and the in-kind benefits to be provided) during a calendar year may not affect the expenses eligible for reimbursement (and the in-kind benefits to be provided) in any other calendar year; (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred; and (iv) the right to reimbursement (or in-kind benefits) is not subject to set off or liquidation or exchange for any other benefit. For purposes of Section 409A, the Executive's right to any installment payments under this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within ninety (90) days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

4. Executive Remedy. The Executive acknowledges and agrees that the payments and rights provided under Section 3 of this Agreement are fair and reasonable, and are the Executive's sole and exclusive remedy, in lieu of all other remedies at law or in equity, for termination of the Executive's employment by the Company upon exercise of its Termination Right pursuant to this Agreement or upon a Termination for Good Reason.

5. Additional Payments Following a Change in Control.

(a) If within the twelve (12) months following or three (3) months prior to the effective date of a Change in Control: (i) the Executive effects a Termination for Good Reason; or (ii) the Company terminates the Executive's employment in connection with any exercise by the Company of its Termination Right, in lieu of the payments and rights that may otherwise be provided under Section 3 of this Agreement, subject to the Executive signing and delivering to the Company and not subsequently revoking before the sixtieth (60th) day following the Termination Date, the Release:

(i) the Company shall pay to the Executive, in a lump sum in cash within thirty (30) days after the Termination Date, the amount equal to the product of 1.0 times the sum of (y) the Annual Base Salary as in effect as of the Termination Date, and (z) the target Annual Bonus for the Executive as in effect as of the Termination Date, less the Non-Compete Amount (if applicable), and

(ii) all of the Executive's remaining stock options, restricted stock or other equity awards that were issued by the Company and assumed, continued or substituted by the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) in a transaction that constitutes a Change in Control and remain subject to time vesting conditions on the Termination Date shall fully vest on the Termination Date and become immediately exercisable in accordance with the terms of the applicable Original Stock Option Award Documents and Original Award Documents, and

(iii) the Company shall provide the Executive the Unconditional Entitlements and the Conditional Benefits minus the Severance Amount.

(b) If any payment or benefit the Executive will or may receive from the Company or otherwise (a "**280G Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this Section 5, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then any such 280G Payment provided pursuant to this Agreement (a "**Payment**") shall be equal to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state, and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive's receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the "**Reduction Method**") that results in the greatest economic benefit for the Executive. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "**Pro Rata Reduction Method**").

(c) Notwithstanding any provision of this Section 5 to the contrary, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (i) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for the Executive as determined on an after-tax basis; (ii) as a second priority, Payments that are contingent on future events (e.g., being terminated without Cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (iii) as a third priority, Payments that are “deferred compensation” within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(d) Unless the Executive and the Company agree on an alternative accounting firm or law firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the Change in Control transaction shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity, or group effecting the Change in Control transaction, the Company shall appoint a nationally-recognized accounting or law firm to make the determinations required by this Section 5. The Company shall bear all expenses with respect to the determinations by such accounting or law firm required to be made hereunder. The Company shall use commercially reasonable efforts to cause the accounting or law firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to the Executive and the Company within fifteen (15) calendar days after the date on which Executive’s right to a 280G Payment becomes reasonably likely to occur (if requested at that time by the Executive or the Company) or such other time as requested by the Executive or the Company.

(e) If the Executive receives a Payment for which the Reduced Amount was determined pursuant to clause (x) of Section 5(b) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, the Executive agrees to promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) of Section 5(b)) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) of Section 5(b), the Executive shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

6. Confidentiality; Restrictive Covenants.

(a) **Confidentiality.** Without the prior written consent of the Company, except (y) as reasonably necessary in the course of carrying out the Executive's duties hereunder or (z) to the extent required by an order of a court having competent jurisdiction or under subpoena from an appropriate government agency, the Executive shall not disclose any Confidential Information (as defined below) unless such Confidential Information has been previously disclosed to the public by the Company or has otherwise become available to the public (other than by reason of the Executive's breach of this Section 6(a)). The term "**Confidential Information**" shall include, but shall not be limited to: (i) trade secrets, inventions, mask works, ideas, processes, formulas, compositions of matter, models, methods, software in source or object code versions, data and databases, programs, drawings, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and any other proprietary technology, whether or not patentable or protectable by copyright, and all intellectual property rights therein; (ii) information regarding research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting business of the Company, suppliers and supplier information, and purchasing; (iii) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other non-public information relating to customers and potential customers; (iv) information regarding any of the Company's business partners and their services, including names, representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other non-public information relating to business partners; (v) information regarding personnel, employee lists, compensation, and employee skills; and (vi) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Effective as of the Executive's termination of employment with the Company or at any point prior on request of the Company, the Executive shall immediately return to the Company all of the Confidential Information, including copies, reproductions and summaries thereof, in the Executive's possession and shall erase all such Confidential Information from all media in the Executive's possession, and, if the Company so requests, shall certify in writing that the Executive has done so. All of the Confidential Information is and shall remain the property of the Company and its Affiliates.

(b) **Company Property.** Promptly following the Executive's termination of employment or as otherwise requested by the Company, the Executive shall return to the Company all property of the Company, and all copies thereof in the Executive's possession or under the Executive's control, except that the Executive may retain the Executive's personal notes, diaries, rolodexes, mobile devices, calendars and electronic calendars, and correspondence of a personal nature.

(c) **Nonsolicitation.** The Executive agrees that, while the Executive is employed by the Company and during the one (1)-year period following the Executive's termination of employment with the Company (the "**Restricted Period**"), the Executive shall not directly or indirectly (i) solicit any individual who is, on the Termination Date (or was, during the six (6)-month period prior to the Termination Date), employed by the Company or its Affiliates to terminate or refrain from renewing or extending such employment or to become employed by or become a consultant to any other individual or entity other than the Company or its Affiliates or (ii) induce or attempt to induce any customer or investor (in each case, whether former, current or prospective), supplier, licensee or other business relation of the Company or any of its Affiliates to cease doing business with the Company or such Affiliate, or in any way interfere with the relationship between any such customer, investor, supplier, licensee or business relation, on the one hand, and the Company or any of its Affiliates, on the other hand. Any payments owed to Executive at time of separation as described herein shall be contingent upon Executive's compliance with the post-employment nonsolicitation provisions.

(d) **Noncompetition.** The Executive agrees that, during the Restricted Period, the Executive shall not be employed by, serve as a consultant to, or otherwise assist or directly or indirectly provide services to a Competitor (as defined below). For purposes of this paragraph, services provided by others shall be deemed to have been provided by the Executive to Competitor if the Executive had material supervisory responsibilities with respect to the provision of such services. The term "**Competitor**" means any enterprise (including a person, firm, business, division, or other unit, whether or not incorporated) that is engaged or actively preparing to engage in any business in which the Company is engaged or in which the Company has actively planned to engage immediately prior to the termination of the Executive's employment with the Company. In the event the Executive obtains other employment during the Executive's employment with the Company or within twelve (12) months immediately following the Termination Date, the Executive agrees to provide written notification to the Company as to the name and address of the Executive's new employer, the position that the Executive expects to hold, and a general description of the Executive's duties and responsibilities, at least three (3) business days prior to starting such employment. In the event the Company determines that the Executive has breached a fiduciary duty owed to the Company or misappropriated the Company's physical or electronic property, the Executive agrees that the Restricted Period will be extended to a period of 24 months after the Termination Date.

(e) **Equitable Remedies.** The Executive acknowledges that the Company would be irreparably injured by a violation of this Section 6 and the Executive agrees that the Company, in addition to any other remedies available to it for such breach or threatened breach, on meeting the standards required by law, shall be entitled to a preliminary injunction, temporary restraining order, or other equivalent relief, restraining the Executive from any actual or threatened breach of this Section 6. If a bond is required to be posted in order for the Company to secure an injunction or other equitable remedy, the parties agree that said bond need not be more than a nominal sum.

(b) **Employee Proprietary Information and Inventions Assignment.** The terms of that certain Employee Proprietary Information and Inventions Assignment Agreement between the Executive and the Company dated as of the Effective Date (the "**Invention Assignment Agreement**") are hereby incorporated by reference. To the extent that there are any conflicts between the terms and conditions of the Invention Assignment Agreement and this Agreement, the terms and conditions of this Agreement shall control. All non-conflicting terms of the Invention Assignment Agreement are hereby expressly preserved.

(c) **Severability; Blue Pencil.** The Executive acknowledges and agrees that the Executive has had the opportunity to seek advice of counsel in connection with this Agreement and the restrictive covenants contained herein are reasonable in geographical scope, temporal duration and in all other respects. If it is determined that any provision of this Section 6 is invalid or unenforceable, the remainder of the provisions of this Section 6 shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court or other decision-maker of competent jurisdiction determines that any of the covenants in this Section 6 is unenforceable because of the duration or geographic scope of such provision, then after such determination becomes final and unappealable, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable, and in its reduced form, such provision shall be enforced.

7. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any party acting in the form of a receiver or trustee capacity.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

8. Miscellaneous.

(a) This Agreement shall be construed, and the rights and obligations of the parties hereunder determined, in accordance with the substantive laws of the State of Michigan, without regard to its conflict-of-laws principles. For the purposes of any suit, action or proceeding based upon, arising out of or relating to this Agreement or the negotiation, execution or performance hereof, the parties hereby expressly submit to the jurisdiction of all federal and state courts sitting within the confines of the Federal Eastern District of Michigan (the "*Venue Area*") and consent that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service in accordance with Section 8(b). The parties agree that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. Each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding based upon, arising out of or relating to this Agreement or the negotiation, execution or performance hereof, brought in any federal or state court sitting within the confines of the Venue Area and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) Any notices required hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by electronic mail or confirmed facsimile if sent during normal business hours of the recipient, and if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally-recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the Company at its primary office location and to the Executive at Executive's address as listed on the Company payroll or (if notice is given prior to the Executive's termination of employment) to the Executive's Company-issued email address, or at such other address as the Company or the Executive may designate by ten (10) days' advance written notice to the other.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company hereby agrees to indemnify the Executive and hold the Executive harmless to the extent provided under the Amended and Restated Certificate of Incorporation of the Company, the Second Amended and Restated Bylaws of the Company and the Indemnification Agreement entered by and between the Company and the Executive (the "**Indemnification Agreement**") against and in respect of any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees), losses, and damages resulting from the Executive's good faith performance of the Executive's duties and obligations with the Company. This obligation shall survive the termination of the Executive's employment with the Company.

(e) From and after the Effective Date, the Company shall cover the Executive under directors' and officers' liability insurance both during and, while potential liability exists, after the Employment Period in the same amount and to the same extent as the Company covers its other executive officers and directors.

(f) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes that the Company determines are required to be withheld pursuant to any applicable law or regulation.

(g) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision of right or any other provision or right of this Agreement.

(h) This Agreement, the Invention Assignment Agreement, the Indemnification Agreement, the Original Award Documents, the Original Stock Option Award Documents and all agreements, documents, instruments, schedules, exhibits or certificates prepared in connection herewith or therewith as of the Effective Date represent the entire understanding and agreement between the parties with respect to the subject matter hereof, supersede all prior understandings, agreements or negotiations between such parties, whether written or oral, and may be amended, supplemented or changed only by an agreement in writing which makes specific reference to this Agreement or the agreement or document delivered pursuant hereto, as the case may be, and which is signed by the party against whom enforcement of any such amendment, supplement or modification is sought. If any of the terms and conditions of this Agreement conflict with the terms and conditions of the Original Award Documents and the Original Stock Option Award Documents, the terms and conditions of this Agreement shall control. All non-conflicting terms of the Original Award Documents and the Original Stock Option Award Documents are hereby expressly preserved.

(i) This Agreement may be executed in one or more counterparts and by facsimile or electronic delivery, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via .pdf format shall be deemed to be their original signatures for all purposes. The words “execution,” “signed,” “signature,” and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Michigan Uniform Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an “**Electronic Delivery**”), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

[Signatures on Following Page]

In Witness Whereof, the Company and the Executive have executed this Agreement as of the date first above written.

The Executive:

/s/ George Magrath
George Magrath

The Company:

Ocuphire Pharma, Inc.

By: /s/ Cam Gallagher
Name: Cam Gallagher
Title: Chairman of the Board of Directors

SIGNATURE PAGE TO
EMPLOYMENT AGREEMENT

Ocuphire Pharma, Inc.
RSU Award Grant Notice
(2021 Inducement Plan)

Ocuphire Pharma, Inc. (the “Company”) has awarded to you (the “Participant”) the number of restricted stock units specified and on the terms set forth below (the “RSU Award”). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company’s 2021 Inducement Plan (the “Plan”) and the RSU Award Agreement (the “Agreement”), all of which are incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement, as applicable.

Participant: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Restricted Stock Units: _____

Vesting Schedule: [_____]. Notwithstanding the foregoing, except as set forth below, vesting shall terminate upon the Participant’s termination of Continuous Service, as described in Section 6 of the Agreement.

Issuance Schedule: One share of Common Stock will be issued for each restricted stock unit which vests at the time set forth in Section 6 of the Agreement.

Participant Acknowledgments: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

The RSU Award is governed by this Award Grant Notice (this “Grant Notice”), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the “RSU Award Agreement”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.

You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the Prospectus. In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.

The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

By accepting this Award, Participant consents to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

THE COMPANY:

PARTICIPANT:

OCUPHIRE PHARMA, INC.

By: _____
Name: _____
Title: _____
Date: _____

Date: _____

Attachments: RSU Award Agreement, 2021 Inducement Plan

Signature Page to
RSU Award Grant Notice – 2021 Inducement Plan

Ocuphire Pharma, Inc.
2021 Inducement Plan

RSU Award Agreement

As reflected by your RSU Award Grant Notice (the "**Grant Notice**"), Ocuphire Pharma, Inc. (the "**Company**") has granted you a RSU Award under its 2021 Inducement Plan (the "**Plan**") for the number of restricted stock units as indicated in your Grant Notice (the "**RSU Award**"). The terms of your RSU Award as specified in this RSU Award Agreement for your RSU Award (this "**Agreement**") and the Grant Notice constitute your "**RSU Award Agreement**". Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

1. Governing Plan Document. Your RSU Award is subject to all the provisions of the Plan. Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. Grant of the RSU Award. This RSU Award represents your right to be issued on a future date the number of shares of the Company's Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice subject to your satisfaction of the vesting conditions set forth therein (the "**Restricted Stock Units**"). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 3 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

3. Dividends. You shall receive no benefit or adjustment to your RSU Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your RSU Award after such shares have been delivered to you.

4. Responsibility for Taxes.

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the "**Service Recipient**") with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items associated with the grant or vesting of the RSU Award or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable or deemed applicable to you (the "**Tax Liability**"), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this RSU Award, including, but not limited to, the grant or vesting of the RSU Award, the issuance of Common Stock pursuant to such vesting, the subsequent sale of shares of Common Stock, and the payment of any dividends on the shares; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSU Award to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by one or a combination of the following methods: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company and/or the Service Recipient; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award; *provided*, however, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company's Compensation Committee; (iv) permitting or requiring you to enter into a "same day sale" commitment, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "*FINRA Dealer*"), pursuant to this authorization and without further consent, whereby you irrevocably elect to sell a portion of the shares of Common Stock to be delivered in connection with your Restricted Stock Units to satisfy the Tax Liability and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Tax Liability directly to the Company or the Service Recipient; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay or reimburse the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company and/or the Service Recipient (as applicable), you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

(c) The Company and/or the Service Recipient may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s). In the event of over-withholding, you may receive a refund of any over-withheld amount in cash from the Company or the Service Recipient (with no entitlement to the Common Stock equivalent), or if not refunded, you may seek a refund from the local tax authorities. In the event of under-withholding, you may be required to pay any Tax Liability directly to the applicable tax authority or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the vested portion of the RSU Award, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.

(d) You acknowledge that you may not participate in the Plan and the Company shall have no obligation to issue or deliver shares of Common Stock until you have fully satisfied any applicable Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to issue or deliver to you any Common Stock in respect of the RSU Award.

5. Date of Issuance.

(a) The issuance of shares in respect of the Restricted Stock Units is intended to comply with U.S. Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the Tax Liability withholding obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each vested Restricted Stock Unit on the applicable vesting date. Each issuance date determined by this paragraph is referred to as an **“Original Issuance Date.”**

(b) If the Original Issuance Date falls on a date that is not a business day, delivery shall instead occur on the next following business day. In addition, if:

(i) the Original Issuance Date does not occur (1) during an “open window period” applicable to you, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a **“10b5-1 Arrangement”**)), and

(ii) either (1) a Tax Liability withholding obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Tax Liability withholding obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a “same day sale” commitment with a broker-dealer (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Tax Liability in cash, then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Common Stock in the open public market, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with U.S. Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a “substantial risk of forfeiture” within the meaning of U.S. Treasury Regulations Section 1.409A-1(d).

6. Nature of Grant. In accepting the RSU Award, you acknowledge, understand and agree that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;
- (b) the grant of the RSU Award is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;
- (c) all decisions with respect to future RSU Awards or other grants, if any, will be at the sole discretion of the Company;
- (d) the RSU Award and your participation in the Plan shall not create a right to employment or other service relationship with the Company;
- (e) the RSU Award and your participation in the Plan shall not be interpreted as forming or amending an employment or service contract with the Company or the Service Recipient, and shall not interfere with the ability of the Company or the Service Recipient, as applicable, to terminate your Continuous Service (if any);
- (f) you are voluntarily participating in the Plan;
- (g) the RSU Award and the shares of the Common Stock subject to the RSU Award, and the income from and value of same, are not intended to replace any pension rights or compensation;
- (h) the RSU Award and the shares of the Common Stock subject to the RSU Award, and the income from and value of same, are not part of normal or expected compensation for purposes of, including but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments;
- (i) unless otherwise agreed with the Company in writing, the RSU Award and the shares of the Common Stock subject to the RSU Award, and the income from and value of same, are not granted as consideration for, or in connection with, the service you may provide as a director of an Affiliate;
- (j) the future value of the underlying shares of the Common Stock is unknown, indeterminable and cannot be predicted with certainty;
- (k) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSU Award resulting from the termination of your Continuous Service (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where you are providing service or the terms of your employment or other service agreement, if any);

(l) for purposes of the RSU Award, your Continuous Service will be considered terminated as of the date you are no longer actively providing services to the Company or any Affiliate (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where you are providing service or the terms of your employment or other service agreement, if any), and such date will not be extended by any notice period (e.g., your period of Continuous Service would not include any contractual notice period or any period of “garden leave” or similar period mandated under employment laws in the jurisdiction where you are providing service or the terms of your employment or other service agreement, if any); the Compensation Committee shall have the exclusive discretion to determine when you are no longer actively providing services for purposes of your RSU Award (including whether you may still be considered to be providing services while on a leave of absence); and

(m) neither the Company nor the Service Recipient shall be liable for any foreign exchange rate fluctuation between your local currency and the United States Dollar that may affect the value of the Restricted Stock Units or of any amounts due to you pursuant to the settlement of the RSU Award or the subsequent sale of any shares of the Common Stock acquired upon settlement.

7. **Transferability.** Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution.

8. **Corporate Transaction.** Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

9. **No Liability for Taxes.** As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to any Tax Liability arising from the RSU Award and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

10. **No Advice Regarding Grant.** The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the Plan, or your acquisition or sale of the underlying shares of Common Stock. You should consult with your own personal tax, legal and financial advisors regarding your participation in the Plan before taking any action related to the Plan.

11. **Governing Law and Venue.** The RSU Award and the provisions of this Agreement are governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the conflict of law principles that would result in any application of any law other than the law of the State of Delaware. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby submit to and consent to the sole and exclusive jurisdiction of the courts of the State of Delaware, and no other courts, where this grant is made and/or to be performed.

12. Severability. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

13. Compliance with Law. Notwithstanding any other provision of the Plan or this Agreement, unless there is an exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock, the Company shall not be required to deliver any shares issuable upon settlement of the Restricted Stock Units prior to the completion of any registration or qualification of the shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission (the “SEC”) or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. You understand that the Company is under no obligation to register or qualify the shares with the SEC or any state or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares. Further, you agree that the Company shall have unilateral authority to amend the Agreement without your consent to the extent necessary to comply with securities or other laws applicable to issuance of shares of Common Stock.

14. Language. You acknowledge that you are proficient in the English language, or have consulted with an advisor who is proficient in the English language, so as to enable you to understand the provisions of this Agreement and the Plan. If you have received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

15. Electronic Delivery and Participation. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and agree to participate in the Plan through an online or electronic system established and maintained by the Company or a third party designated by the Company.

16. Severability. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

17. Imposition of Other Requirement. The Company reserves the right to impose other requirements on your participation in the Plan, on the RSU and on any shares of Common Stock acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

18. Waiver. You acknowledge that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by you or any other participant.

19. Insider Trading/Market Abuse. You acknowledge that, depending on your or your broker's country or where the Company shares are listed, you may be subject to insider trading restrictions and/or market abuse laws which may affect your ability to accept, acquire, sell or otherwise dispose of shares of the Common Stock, rights to shares (e.g., Restricted Stock Units) or rights linked to the value of shares (e.g., phantom awards, futures) during such times you are considered to have "inside information" regarding the Company as defined in the laws or regulations in the applicable jurisdictions). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders you placed before you possessed inside information. Furthermore, you could be prohibited from (i) disclosing the inside information to any third party (other than on a "need to know" basis) and (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Keep in mind third parties includes fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable insider trading policy of the Company. You are responsible for complying with any restrictions and should speak to your personal advisor on this matter.

20. Exchange Control, Foreign Asset/Account and/or Tax Reporting. Depending upon the country to which laws you are subject, you may have certain foreign asset/account and/or tax reporting requirements that may affect your ability to acquire or hold shares of Common Stock under the Plan or cash received from participating in the Plan (including from any dividends or sale proceeds arising from the sale of shares of Common Stock) in a brokerage or bank account outside your country of residence. Your country may require that you report such accounts, assets or transactions to the applicable authorities in your country. You also may be required to repatriate cash received from participating in the Plan to your country within a certain period of time after receipt. You are responsible for knowledge of and compliance with any such regulations and should speak with your personal tax, legal and financial advisors regarding same.

21. Other Documents. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Insider Trading Policy.

22. Questions. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

* * * *

This Agreement will be deemed to be signed by the Company and the Participant upon the signing or electronic acceptance by the Participant of the Restricted Stock Unit Grant Notice to which it is attached.

**FIRST AMENDMENT TO
OCUPHIRE PHARMA, INC.
2021 INDUCEMENT PLAN**

The Ocuphire Pharma, Inc. 2021 Inducement Plan (the “*Plan*”) is hereby amended in the following respects, effective November 1, 2023, in accordance with Section 2(b)(vi) of the Plan.

The first sentence of Section 3(a) of the Plan is deleted in its entirety and replaced with the following sentence:

“Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed 2,325,258 shares (the “*Share Reserve*”).”



Ocuphire Pharma Announces Appointment of George Magrath, M.D., M.B.A., M.S., as Chief Executive Officer and Director

Dr. Magrath Brings Proven Executive Leadership, Medical and Clinical Expertise in Ophthalmic Drug Development

FARMINGTON HILLS, Mich., November 1, 2023 (GLOBE NEWSWIRE) – Ocuphire Pharma, Inc. (Nasdaq: OCUP), a clinical-stage ophthalmic biopharmaceutical company focused on developing and commercializing small-molecule therapies for the treatment of retinal and refractive eye disorders, today announced the appointment of George Magrath, M.D., M.B.A., M.S., as Chief Executive Officer and member of the Board of Directors, effective today.

Dr. Magrath succeeds Rick Rodgers, M.B.A., Interim Chief Executive Officer and President since April 2023. Mr. Rodgers will remain on the company’s Board of Directors.

“We are thrilled to have Dr. Magrath, a highly accomplished pharmaceutical executive with extensive business, financial, and medical expertise, join Ocuphire as Chief Executive Officer,” said Cam Gallagher, Chairman of Ocuphire Pharma’s Board of Directors. “With a successful track record in strategy, P&L performance, and value creation, and as a board-certified ophthalmologist with experience in drug development, Dr. Magrath is ideally suited to establish Ocuphire as a leading company in retina. On behalf of the board, I would like to welcome George and also to thank Rick Rodgers for his leadership as Interim Chief Executive Officer.”

“It’s unique that innovative and impactful science comes together with such a talented team at a true value inflection point,” stated Dr. Magrath. “I am excited to lead Ocuphire as we advance the clinical development of our lead retina asset, APX3330, targeting the progression of diabetic retinopathy with an elegant mechanism of action and impressive Phase 2 results to create a promising potential therapy for our patients. Additionally, we look forward to continuing the partnership with Viatris on the development of phentolamine ophthalmic solution 0.75% (POS) in refractive indications.”

Dr. Magrath was most recently the Chief Executive Officer of Lexitas Pharmaceutical Services, Inc, where he led the company through significant growth, broadened its business lines, and increased revenue substantially. He successfully led Lexitas through the acquisition and integration process with QHP Capital, creating a premier ophthalmology contract research organization and generating significant value for investors. Prior to Lexitas, Dr. Magrath served as Medical Director to Hovione Pharmaceuticals, LLC, responsible for developing and advancing the company's proprietary drugs in dermatology, ophthalmology and respiratory. He has served on many industry advisory boards and has authored numerous peer-reviewed publications. Dr. Magrath received his medical degree from the Medical University of South Carolina, M.B.A. from The Citadel - The Military College of South Carolina, M.S. in Applied Economics from Johns Hopkins University, and B.S. in Biological Chemistry from Clemson University.

About Ocuphire Pharma

Ocuphire Pharma, Inc. is a clinical-stage ophthalmic biopharmaceutical company focused on developing and commercializing small-molecule therapies for the treatment of retinal and refractive eye disorders.

Ocuphire's lead retinal product candidate, APX3330, is a first-in-class small-molecule inhibitor of Ref-1 (reduction oxidation effector factor-1 protein). Ref-1 is a regulator of transcription factors such as HIF-1a and NF-kB. Inhibiting REF-1 reduces levels of vascular endothelial growth factor ("VEGF") and inflammatory cytokines which are known to play key roles in ocular angiogenesis and inflammation. Through inhibition of Ref-1, APX3330 normalizes the levels of VEGF to physiologic levels, unlike biologics that deplete VEGF below the levels required for normal function. APX3330 is an oral tablet to be administered twice per day for the treatment of diabetic retinopathy ("DR") and diabetic macular edema ("DME"). A phase 2 study in subjects with DR or DME has recently been completed, and an End-of-Phase 2 meeting is confirmed with the U.S. Food and Drug Administration ("FDA") in Q4 2023.

DR affects approximately 10 million people with diabetes and is projected to impact over 14 million Americans by 2050. DR is classified as Non-Proliferative Diabetic Retinopathy ("NPDR"), the early stage of the disease in which symptoms may be mild or nonexistent or Proliferative Diabetic Retinopathy ("PDR") which is the more advanced stage of diabetic eye disease that can be highly symptomatic with loss of vision. Approximately 80% of DR patients have NPDR that will progress to PDR if left untreated. Despite the risk for visual loss associated with this disease, over 90% of NPDR patients currently receive no course of treatment apart from observation by their eye care specialist until they develop sight-threatening complications. This is due to the treatment burden of the frequent eye injections required with currently approved therapies for this disease. APX3330 as an oral tablet has the potential to be an early, non-invasive treatment for the 8 million NPDR patients in the US. Treatment with APX3330 is expected to delay or prevent progression of NPDR, thereby reducing the need for expensive intravitreal injections with anti-VEGF therapies and reducing the likelihood of vision loss due to DR.

Ocuphire has also in-licensed APX2009 and APX2014, which are second-generation analogs of APX3330. The unique dual mechanism of action of these Ref-1 inhibitors of reducing angiogenesis and inflammation could potentially be beneficial in treating other retinal diseases such as age-related macular degeneration, and geographic atrophy. Ocuphire is currently evaluating local delivery routes in addition to the systemic (oral) route as part of its pipeline expansion in retinal therapies.

Ocuphire has a partnership with Viartis, Inc. to develop and commercialize Phentolamine Ophthalmic Solution 0.75% (“POS”). POS is a non-selective alpha-1 and alpha-2 adrenergic antagonist designed to reduce pupil size by uniquely blocking the alpha-1 receptors found on the iris dilator muscle without affecting the ciliary muscle. In September 2023, the FDA approved POS under the name RYZUMVI™ (phentolamine ophthalmic solution) 0.75% to treat pharmacologically-induced mydriasis produced by adrenergic agonists (e.g., phenylephrine) or parasympatholytic agents (e.g., tropicamide). POS is also in Phase 3 clinical development for the treatment of presbyopia and dim light (night) vision disturbances.

For more information, visit www.ocuphire.com.

Forward Looking Statements

Statements contained in this press release regarding matters that are not historical facts are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include, but are not limited to, statements concerning the End-of-Phase 2 meeting with the FDA to confirm Phase 3 registration endpoints and study parameters. These forward-looking statements are based upon Ocuphire’s current expectations and involve assumptions that may never materialize or may prove to be incorrect. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of various risks and uncertainties, including, without limitation: (i) the success and timing of regulatory submissions and pre-clinical and clinical trials, including enrollment and data readouts; (ii) regulatory requirements or developments; (iii) changes to clinical trial designs and regulatory pathways; (iv) changes in capital resource requirements; (v) risks related to the inability of Ocuphire to obtain sufficient additional capital to continue to advance its product candidates and its preclinical programs; (vi) legislative, regulatory, political and economic developments, (vii) changes in market opportunities, (viii) the effects of COVID-19 on clinical programs and business operations, (ix) risks that the phentolamine ophthalmic solution partnership may not facilitate the commercialization or market acceptance of Ocuphire’s product candidates; (x) the success and timing of commercialization of any of Ocuphire’s product candidates and (xi) the maintenance of Ocuphire’s intellectual property rights. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors detailed in documents that have been and may be filed by Ocuphire from time to time with the SEC. All forward-looking statements contained in this press release speak only as of the date on which they were made. Ocuphire undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they were made.

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