
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 31, 2021

OR

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

For the transition period from _____ to _____

Commission File Number: 000-30319

INNOVIVA, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

94-3265960

(I.R.S. Employer
Identification No.)

**1350 Old Bayshore Highway Suite 400
Burlingame, CA 94010**

(Address of Principal Executive Offices)

(650) 238-9600

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	INVA	The NASDAQ Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The number of shares of registrant's common stock outstanding on April 19, 2021 was 101,408,012.

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

[Item 1. Financial Statements](#)

Consolidated Balance Sheets as of March 31, 2021 (Unaudited) and December 31, 2020	3
Unaudited Consolidated Statements of Income for the Three Months ended March 31, 2021 and 2020	4
Unaudited Consolidated Statements of Comprehensive Income for the Three Months ended March 31, 2021 and 2020	5
Unaudited Consolidated Statements of Stockholders' Equity for the Three Months ended March 31, 2021 and 2020	6
Unaudited Consolidated Statements of Cash Flows for the Three Months ended March 31, 2021 and 2020	7
Notes to Unaudited Consolidated Financial Statements	8

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	19
---	----

Item 3. Quantitative and Qualitative Disclosures About Market Risk	24
--	----

Item 4. Controls and Procedures	25
---	----

PART II. OTHER INFORMATION

Item 1. Legal Proceedings	25
---	----

Item 1A. Risk Factors	26
---------------------------------------	----

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	26
---	----

Item 3. Defaults Upon Senior Securities	26
---	----

Item 4. Mine Safety Disclosure	26
--	----

Item 5. Other Information	26
---	----

Item 6. Exhibits	27
----------------------------------	----

Signatures	28
----------------------------	----

Exhibits

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

INNOVIVA, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)

	March 31, 2021 (unaudited)	December 31, 2020 *
Assets		
Current assets:		
Cash and cash equivalents	\$ 282,890	\$ 246,487
Related party receivables from collaborative arrangements	88,974	93,931
Prepaid expenses and other current assets	1,069	1,640
Total current assets	372,933	342,058
Property and equipment, net	24	28
Equity and long-term investments	519,325	438,258
Capitalized fees paid to a related party, net	121,797	125,253
Deferred tax assets, net	74,023	93,759
Other assets	188	214
Total assets	<u>\$ 1,088,290</u>	<u>\$ 999,570</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 14	\$ 66
Accrued personnel-related expenses	652	490
Accrued interest payable	1,668	4,152
Other accrued liabilities	1,470	1,402
Total current liabilities	3,804	6,110
Long-term debt, net of discount and issuance costs	387,728	385,517
Other long-term liabilities	77	106
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock: \$0.01 par value, 230 shares authorized, no shares issued and outstanding	—	—
Common stock: \$0.01 par value, 200,000 shares authorized, 101,408 and 101,392 issued and outstanding as of March 31, 2021 and December 31, 2020, respectively	1,014	1,014
Additional paid-in capital	1,261,326	1,260,900
Accumulated deficit	(627,879)	(722,002)
Total Innoviva stockholders' equity	634,461	539,912
Noncontrolling interest	62,220	67,925
Total stockholders' equity	696,681	607,837
Total liabilities and stockholders' equity	<u>\$ 1,088,290</u>	<u>\$ 999,570</u>

* Consolidated balance sheet as of December 31, 2020 has been derived from audited consolidated financial statements.

See accompanying notes to consolidated financial statements.

INNOVIVA, INC.
CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share data)
(Unaudited)

	Three Months Ended March 31,	
	2021	2020
Royalty revenue from a related party, net of amortization of capitalized fees paid to a related party of \$3,456 in three months ended March 31, 2021 and 2020	\$ 85,518	\$ 78,678
Operating expenses:		
Research and development	49	—
General and administrative	5,986	2,563
Total operating expenses	6,035	2,563
Income from operations	79,483	76,115
Other income (expense), net	(433)	68
Interest income	30	1,302
Interest expense	(4,694)	(4,516)
Changes in fair values of equity and long-term investments, net	55,045	21,915
Income before income taxes	129,431	94,884
Income tax expense, net	19,736	15,932
Net income	109,695	78,952
Net income attributable to noncontrolling interest	15,572	13,515
Net income attributable to Innoviva stockholders	<u>\$ 94,123</u>	<u>\$ 65,437</u>
Basic net income per share attributable to Innoviva stockholders	<u>\$ 0.93</u>	<u>\$ 0.65</u>
Diluted net income per share attributable to Innoviva stockholders	<u>\$ 0.84</u>	<u>\$ 0.59</u>
Shares used to compute Innoviva basic and diluted net income per share:		
Shares used to compute basic net income per share	<u>101,365</u>	<u>101,235</u>
Shares used to compute diluted net income per share	<u>113,624</u>	<u>113,509</u>

See accompanying notes to consolidated financial statements.

INNOVIVA, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Three Months Ended March 31,	
	2021	2020
Net income	\$ 109,695	\$ 78,952
Unrealized gain on marketable securities, net	—	6
Comprehensive income	109,695	78,958
Comprehensive income attributable to noncontrolling interest	15,572	13,515
Comprehensive income attributable to Innoviva stockholders	<u>\$ 94,123</u>	<u>\$ 65,443</u>

See accompanying notes to consolidated financial statements.

INNOVIVA, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Three Months ended March 31, 2021						
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Noncontrolling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance as of December 31, 2020	101,392	\$ 1,014	\$ 1,260,900	\$ —	\$ (722,002)	\$ 67,925	\$ 607,837
Distributions to noncontrolling interest	—	—	—	—	—	(21,285)	(21,285)
Equity activity of noncontrolling interest from a consolidated variable interest entity	—	—	—	—	—	8	8
Exercise of stock options, and issuance of common stock units and stock awards, net of repurchase of shares to satisfy tax withholding	16	—	(25)	—	—	—	(25)
Stock-based compensation	—	—	451	—	—	—	451
Net income	—	—	—	—	94,123	15,572	109,695
Balance as of March 31, 2021	<u>101,408</u>	<u>\$ 1,014</u>	<u>\$ 1,261,326</u>	<u>\$ —</u>	<u>\$ (627,879)</u>	<u>\$ 62,220</u>	<u>\$ 696,681</u>

	Three Months ended March 31, 2020						
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Noncontrolling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance as of December 31, 2019	101,288	\$ 1,013	\$ 1,258,859	\$ 27	\$ (946,404)	\$ 28,621	\$ 342,116
Distributions to noncontrolling interest	—	—	—	—	—	(15,810)	(15,810)
Exercise of stock options, and issuance of common stock units and stock awards, net of repurchase of shares to satisfy tax withholding	32	—	170	—	—	—	170
Stock-based compensation	—	—	435	—	—	—	435
Net income	—	—	—	—	65,437	13,515	78,952
Other comprehensive income	—	—	—	6	—	—	6
Balance as of March 31, 2020	<u>101,320</u>	<u>\$ 1,013</u>	<u>\$ 1,259,464</u>	<u>\$ 33</u>	<u>\$ (880,967)</u>	<u>\$ 26,326</u>	<u>\$ 405,869</u>

See accompanying notes to consolidated financial statements.

INNOVIVA, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Three Months Ended March 31,	
	2021	2020
Cash flows from operating activities		
Net income	\$ 109,695	\$ 78,952
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	19,736	15,932
Depreciation and amortization	3,460	3,463
Stock-based compensation	451	435
Amortization of debt discount and issuance costs	2,211	2,032
Amortization of discount on short-term investments	—	(272)
Amortization of lease guarantee	—	(81)
Changes in fair values of equity and long-term investments, net	(54,673)	(21,915)
Other non-cash items	8	—
Changes in operating assets and liabilities:		
Receivables from collaborative arrangements	4,957	(2,707)
Prepaid expenses and other current assets	571	140
Accounts payable	(52)	112
Accrued personnel-related expenses and other accrued liabilities	227	(126)
Accrued interest payable	(2,484)	(2,484)
Net cash provided by operating activities	<u>84,107</u>	<u>73,481</u>
Cash flows from investing activities		
Maturities of marketable securities	—	54,000
Purchases of marketable securities	—	(12,943)
Purchases of equity and long-term investments	(26,394)	(25,000)
Purchases of property and equipment	—	(13)
Net cash provided by (used in) investing activities	<u>(26,394)</u>	<u>16,044</u>
Cash flows from financing activities		
Repurchase of shares to satisfy tax withholding	(25)	(55)
Proceeds from issuances of common stock, net	—	225
Distributions to noncontrolling interest	(21,285)	(15,810)
Net cash used in financing activities	<u>(21,310)</u>	<u>(15,640)</u>
Net increase in cash and cash equivalents	36,403	73,885
Cash and cash equivalents at beginning of period	246,487	278,096
Cash and cash equivalents at end of period	<u>\$ 282,890</u>	<u>\$ 351,981</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 4,967	\$ 4,967

See accompanying notes to consolidated financial statements.

INNOVIVA, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Description of Operations and Summary of Significant Accounting Policies

Description of Operations

Innoviva Inc. (referred to as "Innoviva", the "Company", or "we" and other similar pronouns) is a company with a portfolio of royalties and other healthcare assets. Our royalty portfolio contains respiratory assets partnered with Glaxo Group Limited ("GSK"), including RELVAR[®]/BREO[®] ELLIPTA[®] (fluticasone furoate/ vilanterol, "FF/VI"), ANORO[®] ELLIPTA[®] (umeclidinium bromide/ vilanterol, "UMEC/VI") and TRELEGY[®] ELLIPTA[®] (the combination FF/UMEC/VI). Under the Long-Acting Beta2 Agonist ("LABA") Collaboration Agreement, Innoviva is entitled to receive royalties from GSK on sales of RELVAR[®]/BREO[®] ELLIPTA[®] as follows: 15% on the first \$3.0 billion of annual global net sales and 5% for all annual global net sales above \$3.0 billion; and royalties from the sales of ANORO[®] ELLIPTA[®], which tier upward at a range from 6.5% to 10%. Innoviva is also entitled to 15% of royalty payments made by GSK under its agreements originally entered into with us, and since assigned to Theravance Respiratory Company, LLC ("TRC"), including TRELEGY[®] ELLIPTA[®] and any other product or combination of products that may be discovered or developed in the future under the LABA Collaboration Agreement and the Strategic Alliance Agreement with GSK (referred to herein as the "GSK Agreements"), which have been assigned to TRC other than RELVAR[®]/BREO[®] ELLIPTA[®] and ANORO[®] ELLIPTA[®].

Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") for interim financial information. Accordingly, they do not include all of the information and notes required by US GAAP for complete financial statements. In our opinion, the unaudited consolidated financial statements have been prepared on the same basis as audited consolidated financial statements and include all adjustments, consisting of only normal recurring adjustments, necessary for the fair presentation of our financial position, results of operations, comprehensive income and cash flows. The interim results are not necessarily indicative of the results of operations to be expected for the year ending December 31, 2021 or any other period.

The accompanying unaudited consolidated financial statements include the accounts of Innoviva, our wholly-owned subsidiaries and certain variable interest entities for which we are the primary beneficiary. All intercompany balances and transactions have been eliminated in consolidation. For consolidated entities where we own or are exposed to less than 100% of the economics, we record net income (loss) attributable to noncontrolling interest in our unaudited consolidated statements of income equal to the percentage of the economic or ownership interest retained in such entities by the respective noncontrolling parties. The accompanying unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2020 filed with the Securities and Exchange Commission ("SEC") on February 25, 2021 ("2020 Form 10-K").

Variable Interest Entities

We evaluate our ownership, contractual and other interest in entities to determine if they are variable interest entities ("VIE"), whether we have a variable interest in those entities and the nature and extent of those interests. Based on our evaluation, if we determine we are the primary beneficiary of a VIE, we consolidate the entity in our financial statements.

Equity Investments

We invest from time to time in equity securities of private or public companies. If we determine that we have control over these companies under either voting or VIE models, we include them in our consolidated financial statements. If we determine that we do not have control over these companies under either voting or VIE models, we then determine if we have an ability to exercise significant influence via voting interests, board representation or other business relationships.

We may account for the equity investments where we exercise significant influence using either an equity method of accounting or at fair value by electing the fair value option under Accounting Standards Codification ("ASC") Topic 825, *Financial Instruments*. If the fair value option is applied to an investment that would otherwise be accounted for under the equity method, we apply it to all our financial interests in the same entity (equity and debt, including guarantees) that are eligible items. All gains and losses from fair value changes, unrealized and realized, are presented as changes in fair values of equity and long-term investments, net on the consolidated statements of income.

If we conclude that we do not have an ability to exercise significant influence over an investee, we may elect to account for an equity security without a readily determinable fair value using the measurement alternative described in ASC Topic 825. This measurement alternative allows us to measure the equity investment at its cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

Accounting Pronouncement Adopted by the Company

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The pronouncement is effective for fiscal years, and for interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. We adopted Topic 740 effective January 1, 2021. The adoption did not have a material impact on our consolidated financial statements.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*. This ASU improves the codification by ensuring that all guidance that requires or provides an option for an entity to provide information in the notes to financial statements is codified in the disclosure section of the codification. The ASU also clarifies various topics in the codification so that entities can apply guidance more consistently. The ASU is effective for fiscal years beginning after December 15, 2020. We adopted ASU 2020-10 effective January 1, 2021. The adoption did not have a material impact on our consolidated financial statements.

Recently Issued Accounting Standards or Updates Not Yet Adopted

In August 2020, the FASB issued ASU 2020-06, *Debt-Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which is intended to simplify the accounting for convertible instruments by removing certain separation models in Subtopic 470-20 for convertible instruments. The ASU is effective for fiscal years beginning after December 15, 2021, and for interim periods within those fiscal years with early adoption permitted. We are currently in the process of evaluating the effects of the provisions of ASU 2020-06 on our consolidated financial statements.

2. Net Income Per Share

Basic net income per share attributable to Innoviva stockholders is computed by dividing net income attributable to Innoviva stockholders by the weighted-average number of shares of common stock outstanding. Diluted net income per share attributable to Innoviva stockholders is computed by dividing net income attributable to Innoviva stockholders by the weighted-average number of shares of common stock and dilutive potential common stock equivalents then outstanding. Dilutive potential common stock equivalents include the assumed exercise, vesting and issuance of employee stock awards using the treasury stock method, as well as common stock issuable upon assumed conversion of our convertible subordinated notes due 2023 (the "2023 Notes") using the if converted method.

[Table of Contents](#)

Our convertible senior notes due 2025 (the “2025 Notes”) are convertible, based on the applicable conversion rate, into cash, shares of our common stock or a combination thereof, at our election. Our current intent is to settle the principal amount of the 2025 Notes in cash upon conversion. The impact of the assumed conversion premium to diluted net income per share is computed using the treasury stock method. As the average market price per share of our common stock as reported on The Nasdaq Global Select Market was lower than the initial conversion price of \$17.26 per share, there was no dilutive effect of the assumed conversion premium for the three months ended March 31, 2021 and 2020, respectively.

The following table shows the computation of basic and diluted net income per share for the three months ended March 31, 2021 and 2020:

(In thousands except per share data)	Three Months Ended March 31,	
	2021	2020
Numerator:		
Net income attributable to Innoviva stockholders, basic	\$ 94,123	\$ 65,437
Add: interest expense on 2023 Notes	1,204	1,180
Net income attributable to Innoviva stockholders, diluted	<u>\$ 95,327</u>	<u>\$ 66,617</u>
Denominator:		
Weighted-average shares used to compute basic net income per share attributable to Innoviva stockholders	101,365	101,235
Dilutive effect of 2023 Notes	12,189	12,189
Dilutive effect of options and awards granted under equity incentive plan and employee stock purchase plan	70	85
Weighted-average shares used to compute diluted net income per share attributable to Innoviva stockholders	<u>113,624</u>	<u>113,509</u>
Net income per share attributable to Innoviva stockholders		
Basic	<u>\$ 0.93</u>	<u>\$ 0.65</u>
Diluted	<u>\$ 0.84</u>	<u>\$ 0.59</u>

Anti-Dilutive Securities

The following common stock equivalents were not included in the computation of diluted net income per share because their effect was anti-dilutive:

(In thousands)	Three Months Ended March 31,	
	2021	2020
Outstanding options and awards granted under equity incentive plan and employee stock purchase plan	\$ 1,159	\$ 1,094

3. Revenue Recognition and Collaborative Arrangements

Net Revenue from Collaborative Arrangements

Net revenue recognized under our GSK Agreements was as follows:

(In thousands)	Three Months Ended March 31,	
	2021	2020
Royalties from a related party - RELVAR/BREO	\$ 56,390	\$ 56,149
Royalties from a related party - ANORO	10,500	9,850
Royalties from a related party - TRELEGY	22,084	16,135
Total royalties from a related party	88,974	82,134
Less: amortization of capitalized fees paid to a related party	(3,456)	(3,456)
Royalty revenue from GSK	<u>\$ 85,518</u>	<u>\$ 78,678</u>

4. Consolidated Entities

We consolidate the financial results of TRC and Pulmoquine Therapeutics, Inc. (“Pulmoquine”), which we have determined to be VIEs. As we have the power to direct the economically significant activities of these entities and the obligation to absorb losses of, or the right to receive benefits from them, we are the primary beneficiary of the entities. We also consolidate the financial results of ISP Fund LP (the “Partnership”), our partnership with Sarissa Capital Management LP (“Sarissa Capital”), as we have determined that the Partnership is a VIE and we are its primary beneficiary.

Theravance Respiratory Company, LLC

The primary source of revenue for TRC is the royalties generated from the net sales of TRELEGY® ELLIPTA® by GSK. As of March 31, 2021, TRC held equity investments in InCarda Therapeutics, Inc. (“InCarda”) and ImaginAb, Inc. (“ImaginAb”). Refer to Note 5, “Financial Instruments and Fair Value Measurements,” for more information.

The summarized financial information for TRC is presented as follows:

Balance sheets

(In thousands)	March 31, 2021	December 31, 2020
Assets		
Cash and cash equivalents	\$ 28,444	\$ 38,081
Receivables from collaborative arrangements	22,084	24,946
Prepaid expenses and other current assets	1	—
Equity and long-term investments	22,869	16,959
Total assets	<u>73,398</u>	<u>79,986</u>
Liabilities and LLC Members' Equity		
Current liabilities	640	508
LLC members' equity	72,758	79,478
Total liabilities and LLC members' equity	<u>\$ 73,398</u>	<u>\$ 79,986</u>

Income statements

(In thousands)	Three Months Ended March 31,	
	2021	2020
Royalty revenue from a related party	\$ 22,084	\$ 16,135
Operating expenses	3,281	271
Income from operations	18,803	15,864
Other income (expense), net	—	36
Changes in fair values of equity and long-term investments	(483)	—
Net income	<u>\$ 18,320</u>	<u>\$ 15,900</u>

Pulmoquine Therapeutics, Inc.

In April 2020, we purchased 5,808,550 shares of Series A preferred stock of Pulmoquine for \$5.0 million in cash and held a majority voting interest. Pulmoquine is a biotechnology company focused on the research and development of an aerosolized formulation of hydroxychloroquine to treat respiratory infections. As of March 31, 2021, Pulmoquine’s total assets, mainly attributable to cash and cash equivalents, were \$3.3 million. Pulmoquine does not currently generate revenue. Total operating expense was de minimis for the three months ended March 31, 2021.

ISP Fund LP

In December 2020, Innoviva Strategic Partners LLC, our wholly owned subsidiary (“Strategic Partners”), contributed \$300.0 million to ISP Fund LP (the “Partnership”) for investing in “long” positions in the healthcare, pharmaceutical and biotechnology sectors and became a limited partner. The general partner of the Partnership (“General Partner”) is an affiliate of Sarissa Capital.

As of March 31, 2021, we held 100% of the economic interest of the Partnership. As of March 31, 2021, total assets of the Partnership were \$304.7 million, of which all were attributable to equity and long-term investments. During the three months ended March 31, 2021, the Partnership incurred \$0.4 million investment-related expenses, net of investment-related income and recorded an unrealized gain of \$5.8 million from the changes of fair value as changes in fair values of equity and long-term investments, net on the consolidated statements of income.

5. Financial Instruments and Fair Value Measurements

Equity Investment in Armata

During the first quarter of 2020, Innoviva acquired 8,710,800 shares of common stock and an equal number of warrants of Armata Pharmaceuticals, Inc. (“Armata”) for \$25.0 million in cash. Armata is a clinical stage biotechnology company focused on precisely targeted bacteriophage therapeutics for antibiotic-resistant infections.

On January 26, 2021, Innoviva Strategic Opportunities LLC (“ISO”), our wholly owned subsidiary, entered into a securities purchase agreement with Armata to acquire 6,153,847 shares of Armata common stock and warrants to purchase 6,153,847 additional shares of Armata common stock for approximately \$20.0 million. The investment was closed in two tranches on January 26, 2021 and March 17, 2021. The investment continues to support Armata’s ongoing advancement of its bacteriophage development programs. The additional investment in the first quarter of 2021 increased Innoviva and ISO’s combined ownership to 59.6%. Armata entered into a voting agreement with the Company and ISO, pursuant to which the Company and ISO agreed not to vote or take any action by written consent with respect to any common shares held by the Company and ISO that represent, in the aggregate, more than 49.5% of the total number of shares of Armata’s common stock issued and outstanding as of the record date for voting on the matters related to election or removal of Armata’s board members. Currently, three of the eight members of Armata’s board of directors are also members of the board of directors of Innoviva.

The investment in Armata provides Innoviva and ISO the ability to have significant influence, but not control over Armata’s operations. Based on our evaluation, we determined that Armata is a VIE, but Innoviva and ISO are not the primary beneficiary of the VIE. We continue to elect the fair value option to account for both Armata’s common stock and warrants. The fair value of Armata’s common stock is measured based on its closing market price. The warrants purchased in 2020 and 2021 have an exercise price of \$2.87 and \$3.25 per share, respectively, are exercisable immediately within five years from the issuance date of the warrants and include a cashless exercise option. We use the Black-Scholes-Merton pricing model to estimate the fair value of these warrants with the following input assumptions: Armata’s closing market price on the valuation date, the risk-free interest rate computed based on the U.S. Treasury yield, the remaining contractual term as the expected term, and the expected stock price volatility calculated based on the historical volatility of the common stock of Armata and its peer companies.

As of March 31, 2021, the fair values of Armata’s common stock and warrants were estimated at \$71.1 million and \$54.2 million, respectively. As of December 31, 2020, the fair values of Armata’s common stock and warrants were estimated at \$26.0 million and \$18.0 million, respectively. The total fair value of both financial instruments in the amount of \$125.3 million and \$44.0 million was recorded as equity and long-term investments on the consolidated balance sheets as of March 31, 2021 and December 31, 2020, respectively. The changes in the fair values in the amount of \$61.2 million and \$21.9 million for the three months ended March 31, 2021 and 2020, respectively, were recorded as changes in fair value of equity and long-term investments, net on the consolidated statements of income.

Equity Investment in Entasis

During the second quarter of 2020, we purchased 14,000,000 shares of common stock as well as warrants to purchase 14,000,000 additional shares of common stock of Entasis Therapeutics, Inc. (“Entasis”) for approximately \$35.0 million in cash. Entasis is a clinical-stage biotechnology company focused on the discovery and development of novel antibacterial products.

During the third quarter of 2020, we purchased 4,672,897 shares of Entasis common stock as well as warrants to purchase 4,672,897 additional shares of its common stock for approximately \$12.5 million in cash. Innoviva has a right to designate two members to Entasis' board. As of March 31, 2021 and the date hereof, no Innoviva designees are serving on Entasis' six-member board. As of March 31, 2021, we owned approximately 51.0% of Entasis's common stock.

The investment in Entasis provides Innoviva the ability to have significant influence, but not control over Entasis' operations. Based on our evaluation, we determined that Entasis is a VIE, but Innoviva is not the primary beneficiary of the VIE. We elected the fair value option to account for both Entasis's common stock and warrants at fair value. The fair value of Entasis's common stock is measured based on its closing market price at each balance sheet date. The warrants have an exercise price of \$2.50 per share for those warrants acquired in the second quarter of 2020 and an exercise price of \$2.675 per share for the warrants acquired in the third quarter of 2020. The warrants are exercisable immediately within five years from the issuance date of the warrants and include a cashless exercise option. We use the Black-Scholes-Merton pricing model to estimate the fair value of these warrants.

As of March 31, 2021, the fair values of Entasis's common stock and warrants were estimated at \$40.0 million and \$26.6 million, respectively. As of December 31, 2020, the fair values of Entasis's common stock and warrants were estimated at \$46.1 million and \$31.9 million, respectively. The total fair value of both financial instruments in the amount of \$66.6 million and \$78.0 million was recorded as equity and long-term investments on the consolidated balance sheets as of March 31, 2021 and December 31, 2020, respectively. We recorded \$11.5 million unrealized loss from the changes of fair value as changes in fair values of equity and long-term investments, net on the consolidated statements of income for the three months ended March 31, 2021.

Equity Investment in InCarda

In October, 2020, TRC purchased 20,469,432 shares of Series C preferred stock and warrants to purchase 5,117,358 additional shares of Series C preferred stock of InCarda Therapeutics, Inc. for \$15.0 million. \$0.8 million was incurred for investment due diligence costs and recorded as part of the equity investment on the consolidated balance sheets. InCarda is a privately held biopharmaceutical company focused on developing inhaled therapies for cardiovascular diseases. As of March 31, 2021 and as of the date hereof, one of InCarda's eight board members is designated by TRC. As of March 31, 2021, TRC held 13.0% of InCarda's outstanding equity.

The investment in InCarda does not provide TRC the ability to control or have significant influence over InCarda's operations. Based on our evaluation, we determined that InCarda is a VIE, but TRC is not the primary beneficiary of the VIE. We account for our investment in the Series C preferred shares in InCarda using the measurement alternative. Under the measurement alternative, the equity investment is initially recorded at its allocated cost, but the carrying value may be adjusted through earnings upon an impairment or when there is an observable price change involving the same or a similar investment with the same issuer. The warrants are recorded at fair value and subject to remeasurement at each balance sheet date. The warrants are exercisable immediately with an exercise price of \$0.7328 per share and expire on October 6, 2021, one year from the issuance date. We use the Black-Scholes-Merton pricing model to estimate the fair value of the warrants with the following input assumptions: the exercise price of the warrants, the risk-free interest rate computed based on the U.S. Treasury yield, the remaining contractual term as the expected term, and the expected stock price volatility calculated based on the historical volatility of the common stock of its peer companies.

As of March 31, 2021 and December 31, 2020, the fair value of InCarda's warrants was estimated at \$0.7 million and \$1.1 million, respectively, and recorded as equity and long-term investments on the consolidated balance sheets. We recorded \$0.5 million unrealized loss from the changes of fair value as changes in fair values of equity and long-term investments, net on the consolidated statements of income for the three months ended March 31, 2021. There was no impairment or other change to the value of InCarda's Series C preferred stock of \$15.8 million as of March 31, 2021.

Equity Investment in ImaginAb

On March 18, 2021, TRC entered into a securities purchase agreement with ImaginAb, Inc. to purchase 4,051,724 shares of ImaginAb Series C preferred stock for \$4.7 million. On the same day, TRC also entered into a securities purchase agreement with one of ImaginAb's common stockholders to purchase 4,097,157 shares of ImaginAb common stock for \$1.3 million. ImaginAb is a privately held biotechnology company focused on clinically managing cancer and autoimmune diseases via molecular imaging. \$0.4 million was incurred for investment due diligence costs and execution and recorded as part of the equity investment on the consolidated balance sheets. As of the date hereof, one of ImaginAb's seven board members is designated by TRC. As of March 31, 2021, TRC held 13.0% of ImaginAb equity ownership.

The investment in ImaginAb does not provide TRC the ability to control or have significant influence over ImaginAb's operations. Based on our evaluation, we determined that ImaginAb is a VIE, but TRC is not the primary beneficiary of the VIE. Because ImaginAb's equity securities are not publicly traded and do not have a readily determinable fair value, we have accounted for our investment in ImaginAb's Series C preferred stock and common stock using the measurement alternative. Under the measurement alternative, the equity investment is initially recorded at its allocated cost, but the carrying value may be adjusted through earnings upon an impairment or when there is an observable price change involving the same or a similar investment with the same issuer. As of March 31, 2021, \$6.4 million was recorded as equity and long-term investments on the consolidated balance sheets.

Available-for-Sale Securities

The estimated fair value of available-for-sale securities is based on quoted market prices for these or similar investments that were based on prices obtained from a commercial pricing service. Available-for-sale securities are summarized below:

(In thousands)	March 31, 2021			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds ⁽¹⁾	\$ 248,932	\$ —	\$ —	\$ 248,932
Total	\$ 248,932	\$ —	\$ —	\$ 248,932

(1) Money market funds were included in cash and cash equivalents on the consolidated balance sheets.

(In thousands)	December 31, 2020			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds ⁽¹⁾	\$ 204,808	\$ —	\$ —	\$ 204,808
Total	\$ 204,808	\$ —	\$ —	\$ 204,808

(1) Money market funds were included in cash and cash equivalents on the consolidated balance sheets.

There was no credit loss to the money market funds as of March 31, 2021.

Fair Value Measurements

Our available-for-sale securities and equity investments are measured at fair value on a recurring basis and our debt is carried at amortized cost basis. The estimated fair values were as follows:

Types of Instruments (In thousands)	Estimated Fair Value Measurements as of March 31, 2021 Using:			
	Quoted Price in Active Markets for Identical Assets	Significant Other Observable Inputs	Significant Unobservable Inputs	Total
	Level 1	Level 2	Level 3	
Assets				
Money market funds	\$ 248,932	\$ —	\$ —	\$ 248,932
Investments held by ISP Fund LP ⁽¹⁾	304,696	—	—	304,696
Equity investment - Armata Common Stock	71,053	—	—	71,053
Equity investment - Armata Warrants	—	54,166	—	54,166
Equity investment - Entasis Common Stock	39,960	—	—	39,960
Equity investment - Entasis Warrants	—	26,580	—	26,580
Equity investment - InCarda Warrants	—	—	664	664
Total assets measured at estimated fair value	\$ 664,641	\$ 80,746	\$ 664	\$ 746,051
Debt				
2023 Notes	\$ —	\$ 242,336	\$ —	\$ 242,336
2025 Notes	—	203,513	—	203,513
Total fair value of debt	\$ —	\$ 445,849	\$ —	\$ 445,849

⁽¹⁾ The investments, which consisted of equity investments of \$130.5 million and money market funds of \$174.2 million, held by ISP Fund LP were subject to a 36-month lock-up period from our initial contribution date, December 11, 2020.

Types of Instruments (In thousands)	Estimated Fair Value Measurements as of December 31, 2020 Using:			
	Quoted Price in Active Markets for Identical Assets	Significant Other Observable Inputs	Significant Unobservable Inputs	Total
	Level 1	Level 2	Level 3	
Assets				
Money market funds	\$ 204,808	\$ —	\$ —	\$ 204,808
Investments held by ISP Fund LP ⁽¹⁾	299,288	—	—	299,288
Equity investment - Armata Common Stock	25,958	—	—	25,958
Equity investment - Armata Warrants	—	18,049	—	18,049
Equity investment - Entasis Common Stock	46,122	—	—	46,122
Equity investment - Entasis Warrants	—	31,882	—	31,882
Equity investment - InCarda Warrants	—	—	1,147	1,147
Total assets measured at estimated fair value	\$ 576,176	\$ 49,931	\$ 1,147	\$ 627,254
Debt				
2023 Notes	\$ —	\$ 239,779	\$ —	\$ 239,779
2025 Notes	—	206,135	—	206,135
Total fair value of debt	\$ —	\$ 445,914	\$ —	\$ 445,914

⁽¹⁾ The investments, which consisted of equity investments of \$14.5 million and money market funds of \$284.8 million, held by ISP Fund LP were subject to a 36-month lock-up period from our initial contribution date, December 11, 2020.

The fair values of our equity investments in Armata and Entasis's common stock and those investments held by ISP Fund LP are based on the quoted prices in active markets and are classified as Level 1 financial instruments. The fair values of the warrants of Armata and Entasis classified within Level 2 are based upon observable inputs that may include benchmark yields, reported trades, broker/dealer quotes, issuer spreads, two-sided markets, benchmark securities, bids, offers, and reference data including market research publications.

[Table of Contents](#)

The fair value of InCarda's warrants is classified as Level 3 financial instruments as InCarda's securities are not publicly traded and the assumptions used in the valuation model are based on significant unobservable and observable inputs including those of publicly traded peer companies.

The fair values of our 2023 Notes and our 2025 Notes are based on recent trading prices of the respective instruments.

6. Stock-Based Compensation

Stock-Based Compensation Expense

Stock-based compensation expense was included in the consolidated statements of income as follows:

(In thousands)	Three Months Ended March 31,	
	2021	2020
General and administrative	\$ 451	\$ 435

Valuation Assumptions

Black-Scholes-Merton assumptions used in calculating the estimated value of our stock options on the date of grant were as follows:

	Three Months Ended March 31, 2021
Risk-free interest rate	1.1 %
Expected term (in years)	6.11
Volatility	45.6 %
Dividend yield	0.0 %
Weighted-average estimated fair value of stock options granted	\$ 5.42

There were no grants of stock options during the three months ended March 31, 2020.

7. Debt

Our debt consists of:

(In thousands)	March 31, 2021	December 31, 2020
2023 Notes	\$ 240,984	\$ 240,984
2025 Notes	192,500	192,500
Total debt	433,484	433,484
Unamortized debt discount and issuance costs	(45,756)	(47,967)
Net long-term debt	\$ 387,728	\$ 385,517

Convertible Senior Notes Due 2025

In accordance with accounting guidance for debt with conversion and other options, we separately account for the liability and equity components of the 2025 Notes by allocating the proceeds between the liability component and the embedded conversion option ("equity component") due to our ability to settle the conversion obligation of the 2025 Notes in cash, common stock or a combination of cash and common stock, at our option. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature using the income approach. The allocation was performed in a manner that reflected our non-convertible debt borrowing rate for similar debt. The equity component of the 2025 Notes was recognized as a debt discount and represents the difference between the proceeds from the issuance of the 2025 Notes and the fair value of the liability of the 2025 Notes on the date of issuance. The excess of the principal amount of the liability component over its carrying amount ("debt discount") is amortized to interest expense using the effective interest method over the term of the 2025 Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

[Table of Contents](#)

Our outstanding 2025 Notes balances consisted of the following:

<u>(In thousands)</u>	<u>March 31,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
Liability component		
Principal	\$ 192,500	\$ 192,500
Debt discount and issuance costs, net	(44,697)	(46,766)
Net carrying amount	\$ 147,803	\$ 145,734
Equity component, net	\$ 65,361	\$ 65,361

The following table sets forth total interest expense recognized related to the 2025 Notes for the three months ended March 31, 2021 and 2020:

<u>(In thousands)</u>	<u>Three Months Ended March 31,</u>	
	<u>2021</u>	<u>2020</u>
Contractual interest expense	\$ 1,203	\$ 1,203
Amortization of debt issuance costs	159	145
Amortization of debt discount	1,911	1,749
Total interest and amortization expense	\$ 3,273	\$ 3,097

Debt Maturities

The aggregate scheduled maturities of our long-term debt as of March 31, 2021 were as follows:

<u>(In thousands)</u>		
Years ending December 31:		
2021 to 2022	\$	—
2023		240,984
2024		—
2025		192,500
Total	\$	433,484

8. Commitments and Contingencies

Operating Lease

Future minimum operating lease payments on our corporate headquarters as of March 31, 2021 were as follows:

<u>(In thousands)</u>		
Years ending December 31:		
Remainder of 2021	\$	92
2022		109
2023		—
Thereafter		—
Total	\$	201

Legal Proceedings

From time to time, the Company is involved in legal proceedings in the ordinary course of its business. Currently, we believe that no litigation or arbitration, either individually or in the aggregate, to which we are presently a party is likely to have a material adverse effect on our operating results or financial position.

9. Income Taxes

Provisional income tax expense for the three months ended March 31, 2021 and 2020 was \$19.7 million and \$15.9 million, respectively. The Company's effective income tax rate for the three months ended March 31, 2021 was 15.2%, compared to 16.8% for the same period in 2020. The income tax expense for the three months ended March 31, 2021 and 2020 was determined based upon estimates of the Company's effective income tax rates in various jurisdictions. Our effective income tax rate for the three months ended March 31, 2021 was lower than the U.S. federal statutory income tax rate of 21% due primarily to non-deductible expenses and noncontrolling interest.

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

Forward-Looking Statements

The information in this Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended ("Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements involve substantial risks, uncertainties, and assumptions. All statements contained herein that are not of historical fact, including, without limitation, statements regarding our strategy, future operations, future financial position, future revenue, projected costs, prospects, plans, intentions, expectations, goals and objectives, may be forward-looking statements. The words "anticipates," "believes," "could," "designed," "estimates," "expects," "goal," "intends," "may," "objective," "plans," "projects," "pursue," "will," "would" and similar expressions (including the negatives thereof) are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions, expectations or objectives disclosed in our forward-looking statements and the assumptions underlying our forward-looking statements may prove incorrect. Therefore, you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions, expectations and objectives disclosed in the forward-looking statements that we make. All written and verbal forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Important factors that we believe could cause actual results or events to differ materially from our forward-looking statements include, but are not limited to, risks related to: lower than expected future royalty revenue from respiratory products partnered with GSK; the commercialization of RELVAR[®]/BREO[®] ELLIPTA[®], ANORO[®] ELLIPTA[®] and TRELEGY[®] ELLIPTA[®] in the jurisdictions in which these products have been approved; substantial competition from products discovered, developed, launched and commercialized both by GSK and by other pharmaceutical companies; the strategies, plans and objectives of the Company (related to the Company's growth strategy and corporate development initiatives beyond the Company's existing portfolio); the timing, manner and amount of capital deployment, including potential capital returns to stockholders; risks related to the Company's growth strategy; projections of revenue, expenses and other financial items and risks discussed in "Risk Factors" in Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2020 filed with the Securities and Exchange Commission ("SEC") on February 25, 2021, ("2020 Form 10-K") and Item 1A of Part II of our Quarterly Reports on Form 10-Q and below in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Item 2 of Part I. All forward-looking statements in this Quarterly Report on Form 10-Q are based on current expectations as of the date hereof and we do not assume any obligation to update any forward-looking statements on account of new information, future events or otherwise, except as required by law.

We encourage you to read our consolidated financial statements contained in this Quarterly Report on Form 10-Q. We also encourage you to read Item 1A of Part I of our 2020 Form 10-K and Item 1A of Part II of our Quarterly Reports on Form 10-Q entitled "Risk Factors," which contain a more complete discussion of the risks and uncertainties associated with our business. In addition to the risks described above and in Item 1A of Part I of our 2020 Form 10-K and Item 1A of Part II of this report, other unknown or unpredictable factors also could affect our results. Therefore, the information in this report should be read together with other reports and documents that we file with the SEC from time to time, including on Form 10-K, Form 10-Q and Form 8-K, which may supplement, modify, supersede or update those risk factors. As a result of these factors, we cannot assure you that the forward-looking statements in this report will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all.

OVERVIEW

Executive Summary

Innoviva, Inc. (“Innoviva”, the “Company”, the “Registrant” or “we” and other similar pronouns) is a company with a portfolio of royalties and other healthcare assets. Our royalty portfolio contains respiratory assets partnered with Glaxo Group Limited (“GSK”), including RELVAR[®]/BREO[®] ELLIPTA[®] (fluticasone furoate/ vilanterol, “FF/VI”), ANORO[®] ELLIPTA[®] (umeclidinium bromide/ vilanterol, “UMEC/VI”) and TRELEGY[®] ELLIPTA[®] (the combination FF/UMEC/VI). Under the Long-Acting Beta2 Agonist (“LABA”) Collaboration Agreement, Innoviva is entitled to receive royalties from GSK on sales of RELVAR[®]/BREO[®] ELLIPTA[®] as follows: 15% on the first \$3.0 billion of annual global net sales and 5% for all annual global net sales above \$3.0 billion; and royalties from the sales of ANORO[®] ELLIPTA[®], which tier upward at a range from 6.5% to 10%. Innoviva is also entitled to 15% of royalty payments made by GSK under its agreements originally entered into with us, and since assigned to Theravance Respiratory Company, LLC (“TRC”), including TRELEGY[®] ELLIPTA[®] and any other product or combination of products that may be discovered or developed in the future under the LABA Collaboration Agreement and the Strategic Alliance Agreement with GSK (referred to herein as the “GSK Agreements”), which have been assigned to TRC other than RELVAR[®]/BREO[®] ELLIPTA[®] and ANORO[®] ELLIPTA[®].

Our company structure and organization are tailored to our focused activities of managing our respiratory assets partnered with GSK, optimizing our operations and augmenting capital allocation. Our revenues consist of royalties from our respiratory partnership agreements with GSK.

Recent Highlights

- GSK Net Sales:
 - First quarter 2021 net sales of RELVAR[®]/BREO[®] ELLIPTA[®] by GSK were \$375.9 million, up slightly from \$374.3 million in the same quarter of 2020, with \$154.6 million in net sales from the U.S. market and \$221.3 million from non-U.S. markets.
 - First quarter 2021 net sales of ANORO[®] ELLIPTA[®] by GSK were \$161.5 million, up 7% from \$151.6 million in the same quarter of 2020, with \$88.4 million net sales from the U.S. market and \$73.1 million from non-U.S. markets.
 - First quarter 2021 net sales of TRELEGY[®] ELLIPTA[®] by GSK were \$339.8 million, up 37% from \$248.2 million in the same quarter of 2020, with \$237.5 million in net sales from the U.S. market and \$102.3 million in net sales from non-U.S. markets.
- Capital Allocation:
 - During the first quarter of 2021, the Company’s wholly owned subsidiary, Innoviva Strategic Opportunities LLC, invested \$20.0 million to acquire 6.2 million shares of Armata’s common stock and warrants to purchase up to an additional 6.2 million shares of the common stock at \$3.25 per share. With this additional investment, Innoviva collectively owned approximately 59.6% of Armata’s common stock as of March 31, 2021.
- New Director:
 - On March 9, 2021, the Company appointed Deborah L. Birx, M.D., to its Board of Directors, where she serves as an independent director. Dr. Birx is a world renowned medical expert and leader who most recently served as the response coordinator of the White House Coronavirus Task Force. Dr. Birx’s career highlights also include having served as Ambassador-at-Large, when she assumed the role of the Coordinator of the United States Government Activities to Combat HIV/AIDS and U.S. Special Representative for Global Health Diplomacy. Dr. Birx also served as the U.S. Global AIDS Coordinator where she oversaw the President’s Emergency Plan for AIDS Relief (PEPFAR) at the Centers for Disease Control and Prevention and as the Director of the U.S. Military HIV Research Program (USMHRP) at the Walter Reed Army Institute of Research.

Collaborative Arrangements with GSK

LABA Collaboration

In November 2002, we entered into the LABA collaboration with GSK to develop and commercialize once-daily LABA products for the treatment of chronic obstructive pulmonary disorder (“COPD”) and asthma (the “LABA Collaboration Agreement”). For the treatment of COPD, the collaboration has developed three combination products:

- RELVAR[®]/BREO[®] ELLIPTA[®] (“FF/VI”) (BREO[®] ELLIPTA[®] is the proprietary name in the U.S. and Canada and RELVAR[®] ELLIPTA[®] is the proprietary name outside the U.S. and Canada), a once-daily combination medicine consisting of a LABA, vilanterol (VI), and an inhaled corticosteroid (“ICS”), fluticasone furoate (“FF”),
- ANORO[®] ELLIPTA[®] (“UMEC/VI”), a once-daily medicine combining a long-acting muscarinic antagonist (“LAMA”), umeclidinium bromide (“UMEC”), with a LABA, vilanterol (VI), and
- TRELEGY[®] ELLIPTA[®] (the combination FF/UMEC/VI), a once-daily combination medicine consisting of an ICS, LAMA and LABA.

As a result of the launch and approval of RELVAR[®]/BREO[®] ELLIPTA[®] and ANORO[®] ELLIPTA[®] in the U.S., Japan and Europe, in accordance with the LABA Collaboration Agreement, we paid milestone fees to GSK totaling \$220.0 million during the year ended December 31, 2014. The milestone fees paid to GSK were recognized as capitalized fees paid to a related party, which are being amortized over their estimated useful lives commencing upon the commercial launch of the products.

Critical Accounting Policies and Estimates

Our management’s discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

As part of our capital allocation strategies, we invest from time to time in equity securities of private or public companies. We also enter into strategic partnerships in order to accelerate the execution of our strategy and enhance returns on our capital. If we determine that we have control over these companies or partnerships, we consolidate the financial statements of these companies or partnerships. If we determine that we do not have control over these companies or partnerships under either voting or VIE models, we then determine if we have an ability to exercise significant influence via voting interests, board representation or other business relationships.

We may account for the equity investments where we exercise significant influence using either an equity method of accounting or at fair value by electing the fair value option under Accounting Standards Codification (“ASC”) Topic 825, *Financial Instruments*. If the fair value option is applied to an investment that would otherwise be accounted for under the equity method, we apply it to all our financial interests in the same entity (equity and debt, including guarantees) that are eligible items. All gains and losses from fair value changes, unrealized and realized, are presented as changes in fair values of equity and long-term investments, net on the consolidated statements of income.

If we conclude that we do not have an ability to exercise significant influence over an investee, we may elect to account for an equity security without a readily determinable fair value using the measurement alternative as prescribed by ASC Topic 825. This measurement alternative allows us to measure the equity investment at its cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

There were no significant changes to our critical accounting policies and estimates. Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2020 filed with the SEC on February 25, 2021 provides a more complete discussion of our critical accounting policies and estimates.

Results of Operations

Net Revenue

Total net revenue, as compared to the prior year period, was as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
Royalties from a related party - RELVAR/BREO	\$ 56,390	\$ 56,149	\$ 241	0 %
Royalties from a related party - ANORO	10,500	9,850	650	7 %
Royalties from a related party - TRELEGY	22,084	16,135	5,949	37 %
Total royalties from a related party	88,974	82,134	6,840	8 %
Less: amortization of capitalized fees paid to a related party	(3,456)	(3,456)	—	0 %
Royalty revenue from GSK	\$ 85,518	\$ 78,678	\$ 6,840	9 %

Total net revenue increased to \$85.5 million for the three months ended March 31, 2021, compared to \$78.7 million for the same period a year ago primarily due to favorable adjustments and the growth in prescriptions for our respiratory products.

Research & Development

Research and development (“R&D”) expenses attributable to Pulmoquine’s product development efforts were de minimis for the three months ended March 31, 2021. We did not incur any R&D expenses during the three months ended March 31, 2020.

General & Administrative

General and administrative expenses, as compared to the prior year period, were as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
General and administrative	\$ 5,986	\$ 2,563	\$ 3,423	*

*Not Meaningful

General and administrative expenses for the three months ended March 31, 2021 increased compared to the same period in 2020 mainly due to \$3.1 million legal and related expenses incurred for the arbitration initiated by Theravance Biopharma against the Company and TRC. These arbitration related legal fees were recognized in TRC’s statement of income.

Other Income, net and Interest Income

Other income, net and interest income, as compared to the prior year period, were as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
Other income (expense), net	\$ (433)	\$ 68	\$ (501)	*
Interest income	\$ 30	\$ 1,302	\$ (1,272)	(98)%

*Not Meaningful

Interest income decreased for the three months ended March 31, 2021 compared to the same period a year ago primarily due to lower interest rates impacted by the COVID-19 pandemic.

Interest Expense

Interest expense, as compared to the prior year period, was as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
Interest expense	\$ 4,694	\$ 4,516	\$ (178)	4 %

Interest expense includes the amortization of debt discount and issuance costs for our convertible notes. The increase in interest expense was mainly due to more debt discount and issuance costs being recognized through amortization.

Changes in Fair Values of Equity and Long-Term Investments

Changes in fair values of equity and long-term investments, as compared to the prior year period, were as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
Changes in fair values of equity and long-term investments	\$ 55,045	\$ 21,915	\$ 33,130	*

*Not Meaningful

The changes in fair values of \$55.0 million for the quarter ended March 31, 2021 reflect the net unrealized gain in the stock and warrants of our investments in Armata, Entasis, and InCarda, and those equity investments managed by ISP Fund LP. The changes in fair value of \$21.9 million for the quarter ended March 31, 2020 reflect the net changes in our initial investment in Armata.

Provision for Income Taxes

The provisional income tax expense for the three months ended March 31, 2021 was \$19.7 million with an effective income tax rate of 15.2%, compared to \$15.9 million with an effective interest rate of 16.8% in the same period a year ago.

Net Income Attributable to Noncontrolling Interest

Net income attributable to noncontrolling interest, as compared to the prior period, was as follows:

(In thousands)	Three Months Ended March 31,		Change	
	2021	2020	\$	%
Net income attributable to noncontrolling interest	\$ 15,572	\$ 13,515	\$ 2,057	15 %

This represents the 85% share of net income in Theravance Respiratory Company, LLC for Theravance Biopharma for the three months ended March 31, 2021 and 2020. The increase was primarily due to the increase in the growth in prescriptions and market share for TRELEGY® ELLIPTA®.

Liquidity and Capital Resources

Liquidity

Since our inception, we have financed our operations primarily through private placements and public offerings of equity and debt securities and payments received under collaborative arrangements. For the three months ended March 31, 2021, we generated gross royalty revenues from GSK of \$89.0 million. Net cash and cash equivalents, short term investments and marketable securities totaled \$282.9 million, and receivables from GSK totaled \$89.0 million as of March 31, 2021.

Adequacy of Cash Resources to Meet Future Needs

We believe that cash from projected future royalty revenues and our cash, cash equivalents and marketable securities will be sufficient to meet our anticipated debt service and operating needs for at least the next 12 months based upon current operating plans and financial forecasts. If our current operating plans and financial forecasts change, we may require additional funding sooner in the form of public or private equity offerings or debt financings. Furthermore, if in our view favorable financing opportunities arise, we may seek additional funding at any time. However, future financing may not be available in amounts or on terms acceptable to us, if at all. This could leave us without adequate financial resources to fund our operations as currently planned. In addition, from time to time we may restructure or reduce our debt, including through tender offers, redemptions, amendments, repurchases or otherwise, all allowable with the terms of our debt agreements.

Cash Flows

Cash flows, as compared to the prior year period, were as follows:

(In thousands)	Three Months Ended March 31,		Change
	2021	2020	
Net cash provided by operating activities	\$ 84,107	\$ 73,481	\$ 10,626
Net cash provided by (used in) investing activities	(26,394)	16,044	(42,438)
Net cash used in financing activities	(21,310)	(15,640)	(5,670)

Cash Flows from Operating Activities

Net cash provided by operating activities for the three months ended March 31, 2021 was \$84.1 million, consisting primarily of our net income of \$109.7 million, adjusted for net non-cash items such as \$19.7 million of deferred income taxes and \$3.5 million of depreciation and amortization, partially offset by \$54.7 million increase in the fair values of our equity investments, an increase in receivables from collaborative arrangements of \$5.0 million and a reduction in accrued interest payable of \$2.5 million.

Net cash provided by operating activities for the three months ended March 31, 2020 was \$73.5 million, consisting primarily of our net income of \$79.0 million, adjusted for net non-cash items of \$0.4 million, an increase in receivables from collaborative arrangements of \$2.7 million and a reduction in accrued interest payable of \$2.5 million.

Cash Flows from Investing Activities

Net cash used in investing activities for the three months ended March 31, 2021 of \$26.4 million was primarily due to our investments in Armata and ImaginAb.

Net cash provided by investing activities for the three months ended March 31, 2020 of \$16.0 million was primarily due to \$54.0 million received from maturities of marketable securities, partially offset by \$12.9 million in purchases of marketable securities and \$25.0 million for our investments in Armata.

Cash Flows from Financing Activities

Net cash used in financing activities for the three months ended March 31, 2021 of \$21.3 million was primarily due to distributions to noncontrolling interest.

Net cash used in financing activities for the three months ended March 31, 2020 of \$15.6 million was primarily due to \$15.8 million distributions to noncontrolling interest.

Item 3. Quantitative and Qualitative Disclosure about Market Risk

There have been no significant changes in our market risk or how our market risk is managed compared to those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures.

We conducted an evaluation as of March 31, 2021, under the supervision and with the participation of our management, of the effectiveness of the design and operation of our disclosure controls and procedures, which are defined under SEC rules as controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files under the Securities Exchange Act of 1934 (“Exchange Act”) is recorded, processed, summarized and reported within required time periods. Based upon that evaluation, our Chief Executive Officer and Chief Accounting Officer, concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance levels.

Limitations on the Effectiveness of Controls

Our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all frauds. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefit of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within Innoviva have been detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no material changes in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) during the quarter ended March 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

In May 2019, Theravance Biopharma, which is the owner of 85% of the economic interests in TRC, initiated arbitration against the Company and TRC, relating to a dispute as to the determination by Innoviva (as manager of TRC) to cause TRC to explore potential reinvestment opportunities for the royalty proceeds received by GSK into initiatives that Innoviva believes will increase the value of TRC and TRELEGY® ELLIPTA®. Theravance Biopharma alleged that, in causing TRC to not distribute substantially all royalty proceeds received from GSK, Innoviva breached the limited liability company operating agreement governing TRC (the “Operating Agreement”), as well as the fiduciary duties applicable to Innoviva as manager of TRC. The hearing in respect of the arbitration was conducted from July 23, 2019 through July 25, 2019. Post-arbitration oral argument was heard on August 14, 2019. On September 26, 2019, the arbitrator issued a final decision. The arbitrator ruled that Innoviva did not breach the Operating Agreement or its fiduciary duties by withholding royalties or pursuing reinvestment opportunities. Accordingly, the Company is permitted to continue to pursue development and commercialization initiatives. The arbitrator did conclude that Innoviva breached a provision of the Operating Agreement requiring Innoviva to deliver quarterly financial plans to Theravance Biopharma. However, the arbitrator concluded that this technical breach did not cause any damages to Theravance Biopharma and the arbitrator awarded limited injunctive relief to expand and clarify the disclosure obligations under the Operating Agreement related to the delivery of financial plans and the pursuit of investment opportunities (if those opportunities related to TRELEGY® ELLIPTA®). Finally, the arbitrator ruled that the Company is entitled to indemnification from TRC for 95% of its fees and expenses incurred in connection with the arbitration.

On September 30, 2019, the Company and TRC filed a Verified Complaint in the Court of Chancery of the State of Delaware (“Court of Chancery”) to confirm the arbitration award. The award was confirmed by the Court of Chancery on May 4, 2020.

[Table of Contents](#)

On July 16, 2020, Innoviva and TRC initiated a lawsuit in the Court of Chancery against Theravance Biopharma, seeking a permanent injunction preventing Theravance Biopharma from interfering with Innoviva's ability to cause TRC to reserve cash to pursue non-Trelegy related investments opportunities and a declaration that the arbitration award conclusively established that Innoviva, as manager of TRC, has such authority. The Court of Chancery directed the parties to obtain the arbitrator's opinion as to whether the arbitration award addressed non-Trelegy related investment opportunities. On July 31, 2020, the arbitrator, while reiterating that Innoviva has broad authority as manager of TRC, found that this award did not specifically address this situation. Accordingly, on August 5, 2020, the parties stipulated to the dismissal of the Court of Chancery action.

On October 6, 2020, Theravance Biopharma initiated a new arbitration against the Company and TRC, challenging Innoviva's authority as manager of TRC to cause TRC to pursue non-Trelegy related investment opportunities and again alleging that Innoviva is required to cause TRC to distribute substantially all royalty proceeds from GSK. The hearing in respect of the arbitration was conducted from February 16, 2021 through February 19, 2021. Post-arbitration oral argument was heard on March 8, 2021. On March 30, 2021, the arbitrator issued a final decision. The arbitrator ruled that Innoviva did not breach the Operating Agreement or its fiduciary duties by withholding royalties to pursue non-Trelegy-related investment opportunities. Additionally, the arbitrator ruled that the Company is entitled to indemnification from TRC for 100% of its fees and expenses reasonably incurred in connection with the arbitration.

On April 15, 2021, the Company filed a Verified Complaint in the Court of Chancery to confirm the arbitration award. Theravance Biopharma must respond to the Verified Complaint by May 19, 2021.

Item 1A. Risk Factors

Our business is subject to a number of risks, including those identified in Item 1A of Part I of our 2020 Form 10-K. There have been no material changes to the risk factors described in our 2020 Form 10-K .

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

None.

Item 3: Defaults Upon Senior Securities

None.

Item 4: Mine Safety Disclosures

None.

Item 5: Other Information

None.

[Table of Contents](#)

Item 6. Exhibits

(a) Index to Exhibits

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>Exhibit</u>	<u>Incorporated by Reference Filing Date/Period End Date</u>
10.1	Indemnification Agreement, dated as of March 9, 2021, by and between Innoviva, Inc. and Deborah L. Birx, M.D.			
31.1	Certification of Principal Executive Officer pursuant to Rules 13a-14 pursuant to the Securities Exchange Act of 1934			
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14 pursuant to the Securities Exchange Act of 1934			
32	Certifications Pursuant to 18 U.S.C. Section 1350			
101	Interactive Data File (Quarterly Report on Form 10-Q, for the quarterly period ended March 31, 2021) formatted in iXBRL (Inline eXtensible Business Reporting Language).			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).			

SIGNATURES

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

Innoviva, Inc.

Date: April 28, 2021

/s/ Pavel Raifeld

Pavel Raifeld
Chief Executive Officer
(Principal Executive Officer)

Date: April 28, 2021

/s/ Marianne Zhen

Marianne Zhen
Chief Accounting Officer
(Principal Financial Officer)

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “**Agreement**”) is made and entered into as of March 9, 2021 by and between Innoviva, Inc., a Delaware corporation (the “**Company**”), and Deborah L. Birx, M.D. (“**Indemnitee**”).

WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Company's Bylaws, the Certificate of Incorporation and any resolutions adopted

pursuant thereto, as well as any rights of Indemnitee under any directors' and officers' liability insurance policy, and this Agreement shall not be deemed a substitute therefor, nor to limit, diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be indemnified in accordance with the terms of this Agreement; and

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as a director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 1(b) if, by reason of his Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Company shall indemnify to the fullest extent permitted by applicable law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all

claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Indemnification of Appointing Stockholder. If (i) Indemnitee is or was affiliated with one or more venture capital funds, hedge funds, private equity funds or similar institutional investors that has invested in the Company (an “**Appointing Stockholder**”), and (ii) the Appointing Stockholder is, or is threatened to be made, a party to or a participant in any Proceeding, and (iii) the Appointing Stockholder's involvement in the Proceeding (A) arises primarily out of, or relates to, any action taken by the Company that was approved by the Company’s Board, and (B) arises out of facts or circumstances that are the same or substantially similar to the facts and circumstances that form the basis of claims that have been, could have been or could be brought against the Indemnitee in a Proceeding, regardless of whether the legal basis of the claims against the Indemnitee and the Appointing Stockholder are the same or similar, then the Company shall to the fullest extent permitted by applicable law indemnify the Appointing Stockholder under this Agreement as if the Appointing Stockholder were the Indemnitee.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company’s obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 7 and 8 hereof) to be unlawful.

3. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of his Corporate Status, a witness, is or was made (or asked) to respond to discovery requests in any Proceeding or otherwise asked to participate in any aspect of a Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. For the avoidance of doubt, the Company does not waive any other rights hereunder or under applicable law. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the

Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

6. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance, to the extent not prohibited by applicable law, all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within twenty (20) days after the receipt by the Company of a written statement or statements from Indemnitee requesting such advance or advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses or otherwise reasonable evidence with respect to the Expenses incurred by Indemnitee, but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be required to be so included), whether prior to or after final disposition of such Proceeding. Such statement or statements also include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 6 shall be unsecured and interest free.

7. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 7(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company. For purposes hereof, disinterested directors are those

members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(b) hereof, the Independent Counsel shall be selected as provided in this Section 7(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “**Independent Counsel**” as defined in Section 14 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 7(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company’s selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 7(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 7(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 7(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee reasonably relied on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or

employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

(f) If the person, persons or entity empowered or selected under Section 7 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided further, that the foregoing provisions of this Section 7(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 7(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

8. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 7 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 6 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 7(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within sixty (60) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within sixty (60) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 7 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 8(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 8 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 7(b).

(c) If a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 8, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 8, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 14 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 8 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within twenty (20) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

9. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. The Company shall not adopt any amendment or alteration to, or repeal of, the Certificate of Incorporation or the Bylaws, the effect of which would be to deny, diminish or encumber the Indemnitee's rights to indemnification pursuant to this Agreement, the Certificate of Incorporation, the Bylaws or applicable law relative to such rights prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, By-laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the

Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Company hereby acknowledges and agrees that (i) the Company shall be the indemnitor of first resort with respect to any Proceeding, Expense, liability or matter that is the subject of the Indemnity Obligations, (ii) the Company shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee or advance Expenses or liabilities to Indemnitee in respect of any Proceeding shall be secondary to the obligations of the Company hereunder, (iv) the Company shall be required to indemnify Indemnitee and advance Expenses or liabilities to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person and (v) the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Company hereunder. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Company or payable under any Company insurance policy, the payor shall have a right of subrogation against the Company or its insurer or insurers for all amounts so paid which would otherwise be payable by the Company or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Company hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnitee may be associated with respect to any liability arising as a result of Indemnitee's status as director, officer, employee or agent of the Company or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Company or valid and any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company under this Agreement.

(d) Except as provided in paragraph (c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) Except as provided in paragraph (c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and

to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(f) Except as provided in paragraph (c) above, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

10. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of Indemnitee set forth in Section 9(c) above; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

11. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 8 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. The Company shall require and shall cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company to, by written agreement, expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

12. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

13. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement.

14. Definitions. For purposes of this Agreement:

(a) "**Corporate Status**" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "**Enterprise**" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses of the types customarily incurred in connection with, or as a result of, prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a deponent or witness in or otherwise participating in a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the premium, security for and other costs relating to any cost bond, supersede as bond or other appeal bond or its equivalent, (ii) expenses incurred in connection with recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of

whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement or Expenses or insurance recovery, as the case may be, and (iii) for purposes of Section 14(d) only, Expenses incurred by or on behalf of Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, the Certificate of Incorporation, the Bylaws or under any officers' liability insurance policies maintained by the Company, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "**Indemnity Obligations**" shall mean all obligations of the Company to Indemnitee under this Agreement, including the Company's obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

(f) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(g) "**Proceeding**" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, regulatory, legislative or investigative (formal or informal) nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him (or a failure to take action by him) or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement or advancement of Expenses can be provided under this Agreement. If Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(h) Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the

generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) 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:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:

1350 Bayshore Highway
Suite 400
Burlingame, California 94010
Attention: Chief Executive Officer

With a copy, which shall not constitute notice to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
Attention: Russell Leaf
rleaf@willkie.com

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

INNOVIVA, INC.

By: /s/ Marianne Zhen
Name: Marianne Zhen
Title: Chief Accounting Officer

INDEMNITEE

Name: /s/ Deborah Birx

Address: _____



**Certification of Principal Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Pavel Raifeld, certify that:

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

Date: April 28, 2021

/s/ Pavel Raifeld

Pavel Raifeld
Chief Executive Officer
(Principal Executive Officer)

**Certification of Principal Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Marianne Zhen, certify that:

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

Date: April 28, 2021

/s/ Marianne Zhen

Marianne Zhen
Chief Accounting Officer
(Principal Financial Officer)

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

I, Pavel Raifeld, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Innoviva, Inc. on Form 10-Q for the period ended March 31, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition of Innoviva, Inc. at the end of the periods covered by such Quarterly Report on Form 10-Q and results of operations of Innoviva, Inc. for the periods covered by such Quarterly Report on Form 10-Q.

Date: April 28, 2021

By: _____ /s/ Pavel Raifeld
Pavel Raifeld
Chief Executive Officer
(Principal Executive Officer)

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

I, Marianne Zhen, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Innoviva, Inc. on Form 10-Q for the period ended March 31, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition of Innoviva, Inc. at the end of the periods covered by such Quarterly Report on Form 10-Q and results of operations of Innoviva, Inc. for the periods covered by such Quarterly Report on Form 10-Q.

Date: April 28, 2021

By: _____ /s/ Marianne Zhen
Marianne Zhen
Chief Accounting Officer
(Principal Financial Officer)
