Table of Contents

As confidentially submitted to the Securities and Exchange Commission on August 16, 2013. This draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential.

Registration No. 333-

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

Form S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BIOCEPT, INC.

(Exact name of registrant as specified in its charter)

Delaware	**8071**	**80-0943522**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification No.)**

5810 Nancy Ridge Drive
San Diego, CA 92121
(858) 320-8200
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Michael W. Nall
Chief Executive Officer and President
Biocept, Inc.
5810 Nancy Ridge Drive
San Diego, CA 92121
(858) 320-8200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Michael J. Brown, Esq. **Hayden J. Trubitt, Esq.** **Michael L. Lawhead, Esq.** **Stradling Yocca Carlson & Rauth, P.C.** **4365 Executive Drive, Suite 1500** **San Diego, CA 92121** **(858) 926-3000**	**William G. Kachioff** **Senior Vice-President, Finance and Chief Financial Officer** **Biocept, Inc.** **5810 Nancy Ridge Drive** **San Diego, CA 92121** **(858) 320-8200**	**Ivan K. Blumenthal, Esq.** **Merav Gershtenman, Esq.** **Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.** **666 Third Avenue** **New York, NY 10017** **(212) 935-3000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☒

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Proposed Maximum Aggregate Offering Price(1)**	**Amount of Registration Fee(2)**
Common Stock, $0.0001 par value per share(3)	$	$
Representative's Warrants to Purchase Common Stock(3)(4)	—	—
Common Stock Underlying Representative's Warrants(3)(5)	$	$
Total Registration Fee	$	$

(1) Estimated solely for the purpose of calculating the Registration Fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended. Includes the offering price of shares of common stock the underwriters have the option to purchase to cover over-allotments, if any.

(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

(3) Pursuant to Rule 416 under the Securities Act, the shares of common stock registered hereby also include an indeterminate number of additional shares of common stock as may from time to time become issuable by reason of stock splits, stock dividends, recapitalizations or other similar transactions.

(4) No registration fee pursuant to Rule 457(g) under the Securities Act.

(5) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. The warrants are exercisable at a per share exercise price equal to 125% of the public offering price.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the Registration Statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS SUBJECT TO COMPLETION DATED AUGUST__, 2013

Shares

Common Stock

This is the initial public offering of shares of common stock of Biocept, Inc. No public market currently exists for our shares. We are offering all of the shares of common stock offered by this prospectus. We expect the public offering price of our shares of common stock to be between $[__.__] and $[__.__] per share.

We have applied to list our common stock on The NASDAQ Capital Market under the symbol “BIOC.” No assurance can be given that our application will be approved.

We are an “emerging growth company” as that term is used in the Jumpstart Our Business Startups Act of 2012, and, as such, we have elected to take advantage of certain reduced public company reporting requirements for this prospectus and future filings.

Investing in our common stock involves a high degree of risk. See “Risk Factors” beginning on page 12 of this prospectus for a discussion of information that should be considered in connection with an investment in our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions(1)	$	$
Offering proceeds to us, before expenses	$	$

(1) See “Underwriting” beginning on page 122 of this prospectus for a description of compensation payable to the underwriters.

We have granted a 45-day option to the underwriters to purchase up to _____ additional shares of common stock to cover over-allotments, if any.

The underwriters expect to deliver the shares against payment therefor on or about __, 2013.

Aegis Capital Corp

TABLE OF CONTENTS

Neither we nor the underwriters have authorized anyone to provide you with information that is different from that contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. When you make a decision about whether to invest in our common stock, you should not rely upon any information other than the information in this prospectus or in any free writing prospectus that we may authorize to be delivered or made available to you. Neither the delivery of this prospectus nor the sale of our common stock means that the information contained in this prospectus or any free writing prospectus is correct after the date of this prospectus or such free writing prospectus. This prospectus is not an offer to sell or the solicitation of an offer to buy the shares of common stock in any circumstances under which the offer or solicitation is unlawful.

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market share, is based on information from our own management estimates and research, as well as from industry and general publications and research, surveys and studies conducted by third parties. Management estimates are derived from publicly available information, our knowledge of our industry and assumptions based on such information and knowledge, which we believe to be reasonable. Our management estimates have not been verified by any independent source, and we have not independently verified any third-party information. In addition, assumptions and estimates of our and our industry's future performance are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from our assumptions and estimates. See "Special Note Regarding Forward-Looking Statements."

We use in this prospectus our BIOCEPT LABORATORIES logo, for which we hold a registered United States trademark, our mark CEE, which is a registered United States trademark, and our marks OncoCEE-BR, OncoCEE-LU, CEE-Selector, CEE-Cap, CEE-Enhanced, CEE-Sure, OncoCEE-GA, OncoCEE-PR, OncoCEE-ME, OncoCEE-CR and OncoCEE, which in the United States are unregistered trademarks. This prospectus also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this prospectus appear (after the first usage) without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, especially the "Risk Factors" section of this prospectus and the financial statements and related notes appearing at the end of this prospectus before making an investment decision.

Unless the context provides otherwise, all references in this prospectus to "Biocept," "we," "us," "our," the "Company," or similar terms, refer to Biocept, Inc. We reincorporated from California to Delaware in July 2013. Except where otherwise expressly stated, no distinction is made in this prospectus between historic activities and results of the California and Delaware corporations.

Our Company

We are a cancer diagnostics company that develops and commercializes proprietary circulating tumor cell, or CTC, and circulating tumor DNA, or ctDNA, tests utilizing a standard blood sample. These tests provide information to oncologists that enable them to select the best treatment for their patients due to better, timelier and more-detailed data on the characteristics of tumors. Our tests utilize our Cell Enrichment and Extraction, or CEE®, technology for the detection and analysis of CTCs, and our CEE-Selector™ technology for the detection and analysis of ctDNA, each performed on a standard blood sample. CEE is an internally invented and developed, microfluidics-based CTC capture and analysis platform, with enabling features that change how CTC testing can be used by clinicians by providing real-time biomarker monitoring with only a standard blood sample. The CEE-Selector™ technology enables mutation detection with ultra-high sensitivity and specificity and is applicable to nucleic acid from CTCs or other samples types, such as blood plasma for ctDNA.

At our corporate headquarters facility located in San Diego, California, we operate a clinical laboratory that is certified under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, and accredited by the College of American Pathologists, or CAP. We also manufacture our microfluidic CEE microchannels, related equipment and certain reagents to perform our tests at this facility.

We are in the process of commercializing our first proprietary test, OncoCEE-BR™. The OncoCEE-BR is a breast cancer CTC test that is performed on a standard blood sample. It detects CTCs, which are typically very rare, and determines the patient's human epidermal growth factor receptor 2, or HER2, status by fluorescence *in situ* hybridization, or FISH. Pursuant to an agreement that we entered into with Clarient Diagnostic Services, Inc., or Clarient, a GE Healthcare Company, we are cooperating with Clarient to market, sell and otherwise commercialize OncoCEE-BR tests. We perform these tests in our laboratory and results are interpreted and reported by Clarient's pathology group, Clarient Pathology Services, Inc.

We anticipate launching OncoCEE-LU™, a proprietary test performed on a standard blood sample for non-small cell lung cancer, or NSCLC, in the first half of 2014. The OncoCEE-LU test's biomarker analysis would include FISH for echinoderm microtubule-associated protein-like 4/ anaplastic lymphoma kinase, or EML4/ALK1, and c-ros oncogene 1, receptor tyrosine kinase, or ROS1, gene fusions, as well as mutation analysis for the epidermal growth factor receptor, or EGFR, gene, the K-ras gene and the B-raf gene.

Other biomarker analyses can be added to these tests as their clinical relevance is demonstrated, for example, ret proto-oncogene gene fusions in NSCLC. In addition, we are developing a series of other proprietary CTC and ctDNA tests for different solid tumor types, including colorectal cancer, prostate cancer, gastric cancer and melanoma, each incorporating treatment-associated biomarker analyses specific to that cancer, planned to be launched over the next two to three years. We also have a research and development program focused on technology enhancements and novel platform development, and a translational research group evaluating clinical applications for our cancer diagnostic tests in different cancer types and clinical settings.

We collaborate with physicians and researchers at The University of Texas MD Anderson Cancer Center and the Dana-Farber Cancer Institute and plan to expand our current collaborative relationships to include other key thought leaders for the types of cancer we are targeting with our CTC and ctDNA tests. Such relationships help us develop and validate the effectiveness and utility of our tests in specific clinical settings and provide us access to patient samples and data.

Market Overview

Despite many advances in the treatment of cancer, cancer remains one of the greatest areas of unmet medical need. In 2008, the World Health Organization attributed 7.6 million deaths worldwide to cancer-related causes. The World Health Organization projects that by 2030 this number will rise to 13.1 million deaths per year. They also project that worldwide, cancer has surpassed cardiovascular disease as the leading cause of death. The incidence of, and deaths caused by, the major cancers are staggering.

Cancer constitutes a heterogeneous class of diseases, characterized by uncontrollable cell growth, that result from a combination of both environmental and hereditary risk factors. Many different tissue types can become malignant, such as breast, lung, liver, and skin, and even within a particular tumor there is heterogeneity, with certain cancer cells in a patient bearing specific cellular or genetic biomarkers, while other cells in the tumor may not have these markers. It has only been in recent years that technology has progressed far enough to enable researchers to understand many cancers at a molecular level and attribute specific cancers to associated genetic changes.

Limitations of Traditional Cancer Diagnostic and Profiling Approaches

Cancer is difficult to diagnose and manage due to its heterogeneity at morphologic, genetic and clinical levels. Traditional methods of diagnosis for solid tumors, routinely used as the initial step in cancer detection, involve a tissue biopsy, followed by a pathologist examining a thin slice of potentially cancerous tissue under a microscope. A relatively new tissue sample must be used in combination with chemical staining techniques to enable analysis of the biopsy. Through visual inspection, the pathologist determines whether the biopsy contains normal or cancerous cells, with those cells that are deemed cancerous being graded on a level of aggressiveness. After the diagnosis, a clinical workup is performed according to established guidelines for the specific cancer type. From there, the physician determines the stage of progression of the cancer based on a series of clinical measures, such as size, grade, metastasis rates, symptoms and patient history, and decides on a treatment plan that may include surgery, watchful waiting, radiation, chemotherapy, or stem cell transplant.

This type of analysis is dependent on the availability of a relatively recent tissue biopsy for the pathologist to analyze. Such a biopsy is often not available. A tumor may not be readily accessible for biopsy, a patient's condition may be such that a biopsy is not advised, and for routine periodic patient monitoring to evaluate potential progression or recurrence, a biopsy is a fairly invasive procedure and not typically performed. As the length of time between when the original biopsy, diagnosis or surgery is conducted to the current evaluation of the patient increases, the likelihood that an original biopsy specimen is truly representative of the current disease condition declines, as does the usefulness of the original biopsy for making treatment decisions. This risk intensifies in situations where a drug therapy is being administered, because the drug can put selective pressure on the tumor cells to adapt and change. Similarly, the heterogeneity referred to above means that different parts or areas of the same tumor can have different molecular features or properties. In evaluating a biopsy specimen, the pathologist will take a few thin slices of the tumor for microscopic review rather than exhaustively analyzing the whole tumor mass. The pathologist can only report on the tumor sections analyzed, and if other parts of the tumor have different features, such as biomarkers corresponding to specific treatments, they can be missed. A more representative analysis of the entire tumor, as well as any metastases if they are present, is very helpful.

CTCs, ctDNA and Cancer

Circulating tumor cells, or CTCs, are cancer cells that have detached from the tumor matrix and invaded the patient's blood or other bodily fluids. These cells are representative of the tumor and its metastases, and can function as their surrogates. Testing CTCs can complement pathologic information drawn from a biopsy or resected tissue sample, helping to insure that the analysis is comprehensive and not biased by tumor heterogeneity and sampling issues. Testing CTCs can also provide critical data when a biopsy is not possible. Clinical studies have demonstrated that the presence and number of CTCs provides information on the likely course of the cancer for the patient, or in other words they are considered "prognostic." Since CTCs are understood to be

representative of the tumor, they can also be used for biomarker analysis, for example, to help guide therapy selection. In this way they are “predictive” in that they offer insight into the likely responsiveness or resistance to particular therapies. After surgery and during any subsequent therapy or monitoring period, blood samples can periodically be drawn and analyzed to evaluate a therapy’s continuing effectiveness, as well as to detect other biomarkers, such as new genetic mutations that may arise as a result of selection pressure by a particular therapy or by chance. Physicians can use this information to determine which therapy is most likely to benefit their patients at particular times through the course of their disease. Treatment decisions based on patient-specific information are the foundation of personalized medicine, and tests, or assays, that guide a physician in the selection of individualized therapy for a patient are termed “predictive assays.”

ctDNA is nucleic acid that is released into blood by dying tumor cells. Cell death occurs in all tissues, especially those that are rapidly dividing, and in cancer, where cell growth is not only rapid but also uncontrolled, parts of tumors often outgrow their blood supply, resulting in cell death. As a consequence, ctDNA is common in cancer patients, and like CTCs, scientists believe that it may be more representative of a patient’s tumor than a few thin sections from a tissue biopsy, thus reducing the heterogeneity problem. ctDNA is found in the plasma component of blood, and is readily accessible in a standard blood sample. Analyzing ctDNA for mutations that are used as biomarkers for therapy selection shows great promise. One of its strengths, in addition to not requiring a tissue biopsy, is that it is not dependent on capturing rare tumor cells from blood to provide a sample for testing. The negative side of this approach is that the cellular context is lost, as the ctDNA is mixed with a much larger amount of circulating DNA from normal cells that are continuously dying and being replaced in the body, thus making analysis challenging. This requires an ultra-sensitive and specific mutation detection methodology to distinguish mutations in particular gene regions in cancer cells from the normal gene sequence which co-exist in blood as normal cells die and are replaced in the body. Our CEE-Selector technology provides the necessary sensitivity and specificity, creating an opportunity for ctDNA testing to complement CTC analysis or potentially to serve as stand-alone tests.

Use of CTC- and ctDNA-Derived Biomarker Data in Cancer Treatment

CTCs and ctDNA are derived from, and are understood to be representative of, a solid tumor and its metastases and can be analyzed as adjuncts to, or in place of, the tumor, especially when a recent tumor biopsy is not available. Almost any analysis that can be performed on tumor tissue can also be performed on CTCs, while ctDNA is more limited. We have focused our analysis of CTCs and ctDNA on known biomarkers associated with specific therapies to support treatment decisions and therapy selection made by oncologists. The biomarkers we analyze consist of proteins or protein modifications that can be identified by immunocytochemical means, cytogenetic or chromosomal aberrations, which are detected by FISH, and gene mutations which are detected in CTCs or ctDNA by molecular diagnostic tests, including gene sequencing. Specific examples include (i) for immunocytochemistry, the detection of the estrogen receptor protein in breast cancer, indicative of the likely responsiveness to hormonal therapies like tamoxifen, often sold under the trade name Nolvadex®, (ii) for FISH, the presence of an amplified HER2 gene in breast cancer, indicative of the likely responsiveness to HER2-targeted agents like Herceptin®, and (iii) for mutation detection, the presence of an EGFR activating mutation in NSCLC like L858R, indicative of the likely responsiveness to EGFR-targeted agents like Tarceva®. All of these biomarkers are currently tested on tumor tissue and can be tested on CTCs, while ctDNA only provides information on mutations. The resulting information is then used to guide patient care, specifically treatment selection.

To date, these types of molecular and genetic detection methods have been successfully utilized to provide predictive information for several cancers, including breast, colon, NSCLC, melanoma and others in the form of companion diagnostics, typically performed on tumor tissue. CTC and ctDNA tests analyze the same biomarkers in a more convenient, standard blood test format that permits periodic testing.

Our Business Strategy

We plan to provide oncologists with a straightforward means to profile and characterize their patients’ tumors on a real-time basis by analyzing CTCs and ctDNA found in standard blood test draws. Biomarkers are currently detected and analyzed primarily in tissue biopsy specimens. We believe that our technology, which not only provides information on CTC enumeration but also the assessment of treatment-associated biomarkers identified within the CTCs or in ctDNA, provide information to oncologists that improve patient treatment and management and will become a key component in the standard of care for personalized cancer treatment.

Our approach is to develop and commercialize proprietary CTC and ctDNA tests and services to enable us to offer to oncologists standard blood sample based, real-time, testing solutions for a range of solid tumor types, starting with breast cancer and progressing to NSCLC, gastric cancer, colorectal cancer, prostate cancer, melanoma and others, to improve patient treatment with better prognostic and predictive tools. To achieve this, we intend to:

- Develop and commercialize a portfolio of proprietary CTC and ctDNA tests and services.
- Establish our internal sales and marketing capabilities in a scalable manner.
- Develop and expand our collaborations with leading university hospitals and research centers.
- Enhance our efforts in reaching and educating community oncologists about CTC and ctDNA tests and services.
- Increase our efforts on providing biopharmaceutical companies and clinical research organizations with our proprietary CTC and ctDNA tests and services.
- Support our tests with clinical utility studies to drive adoption and facilitate reimbursement.
- Continue to enhance our proprietary CTC and ctDNA tests and reduce the costs associated with providing them through internal research and development and partnering with leading technology developers and reagent suppliers.

Our Competitive Advantages

We believe that our competitive advantages are as follows:

Our proprietary CTC and ctDNA tests enable detailed analysis of a patient's cancer utilizing a standard blood sample, facilitating testing at any time, including when a biopsy is not available or inconclusive, offering real-time monitoring of the cancer and the response of the cancer to therapy, and allowing oncologists to select timely modifications to treatment regimens. CTCs and ctDNA, because they are derived from the primary tumor or its metastases, function as surrogates for the tumor, with the advantage of being readily accessible in a standard blood sample, which is especially important in situations where a biopsy is not available or advised. The simplicity of obtaining a standard blood sample permits repeat testing in a monitoring mode to detect recurrence or progression, and to offer information on treatment modifications based on a current assessment of the cancer's properties.

Our tests provide more information than existing tests, including predictive information on biomarkers linked to specific therapies, enabling a more personalized treatment plan. By including biomarker information in our analysis in addition to CTC enumeration, our tests are designed to provide a more complete profile of a patient's disease than existing CTC tests, with actionable information to assist physicians in selecting appropriate therapies for individual patients. Our ctDNA tests are expected to offer superior sensitivity and specificity based on the CEE-Selector technology, enabling earlier detection of therapy-associated mutation targets or resistance markers, again supporting treatment decisions.

Our CTC tests are designed to capture and detect a broader range of CTC phenotypes than existing tests and are applicable to, or can be quickly modified for, a wide range of cancer types. Our CEE-Cap™ antibody capture cocktail is comprised of antibodies targeting not only EpCAM, the traditional epithelial CTC capture antigen utilized in Janssen Diagnostics, LLC's CellSearch® system and in other platforms, but also other epithelial antigens and mesenchymal and cancer stem cell antigens, indicative of cells having undergone the epithelial-to-mesenchymal transition, or EMT. These cells may be more relevant for metastasis. Our detection modalities include cytokeratin staining, with a broader range of cytokeratin isotypes than existing CTC tests. We plan to introduce our CEE-Enhanced™ staining, which would enable detection of cells specifically

captured with our antibody cocktail, including EMT cells lacking cytokeratin. Through CEE-Enhanced staining, more CTCs and different types of CTCs can be identified, potentially at earlier stages of disease, resulting in fewer non-informative cases and more information for physicians.

Our CTC and ctDNA tests are flexible, and can readily be configured to accommodate new biomarkers with clinical relevance as they are identified. Our CEE platform permits almost any analysis that is currently performed on tumor tissue to be performed on CTCs, including immunocytochemical staining, FISH and molecular analysis. As new therapies are approved, and to the extent that they are targeted therapies for which knowledge of a particular gene amplification event or mutation or of the presence, absence or modification, such as phosphorylation, of a protein are indicative of likely response or resistance to that therapy, it is simple for us to include it in our tests with minimal changes. This is attractive to pharmaceutical and biotechnology companies that are developing such therapies, or seeking ways to make their clinical trials more efficient, as it enables them to focus on patients more likely to respond to a particular therapy and demonstrate a benefit from that therapy.

Collaborative relationships with physicians at MD Anderson Cancer Center. We work closely with a number of physicians at MD Anderson Cancer Center in Houston, Texas, with various collaborative projects in different cancer types, including breast, NSCLC, prostate, colorectal, ovarian, bladder, renal and endometrial cancers. These projects provide us access to leading researchers, leading clinicians and key thought leaders, access to valuable patient samples and insight into clinical applications for our tests. Some of these projects have resulted in publications in leading journals, such as *Cancer Discovery* and *Cancer Medicine*, which enhances our standing in the oncology community and supports our marketing efforts.

Our CEE-Selector mutation tests are not platform dependent. These tests can be performed on almost any polymerase chain reaction, or PCR, instrument, which provides flexibility to us in our laboratory operations. To the extent we elect to develop these tests as in vitro diagnostics, or IVDs, including pursuing CE marks for them outside the United States, the ability to rapidly deploy them on different approved instrument platforms already in many laboratories greatly simplifies their distribution and commercialization.

Focus on targeting oncologists at private and group practices and at community hospitals, where approximately 85% of all cancer patients in the United States are initially diagnosed. Our sales and marketing efforts will be directed primarily at oncologists at community hospitals to better service their oncology patients. Our proprietary tests and testing services can help oncologists and community hospitals deliver a higher value of service to their cancer patients.

Our Proprietary Tests and Services

We are in the process of commercializing our first proprietary test, OncoCEE-BR for breast cancer, and plan to continue to launch a series of tests for CTCs in different tumor types, including NSCLC, gastric, colorectal and prostate cancers and melanoma, incorporating analyses for different biomarkers, at the rate of at least 1-2 per year for the next 3 years. OncoCEE-BR and the planned future tests are based on the CEE technology platform. The CEE system isolates CTCs from blood samples of cancer patients for enumeration, immunocytochemical, cytogenetic and molecular genetic analysis. A sample is shipped to us in our proprietary blood collection tube called the CEE-Sure™ tube for recovery and analysis of CTCs. The cells are typically incubated with a cocktail of tumor-associated capture antibodies and passed through a proprietary microfluidic channel containing 9,000 microscopic posts coated with reagents to capture antibody-labeled tumor cells. Captured cells are suitable for immunocytochemical or cytogenetic testing of whole cells directly in the microchannel, or for molecular genetic analysis using CEE-Selector or similar PCR techniques following release of the cells from the microchannel, cell lysis, extraction of cellular DNA, and amplification.

Clinicians acknowledge limitations of currently available CTC test systems such as the CellSearch® that rely on immuno-capture solely by anti-EpCAM antibodies and detection by anti-cytokeratin antibodies. Capture and detection based only on these two antigens is unlikely to identify all CTCs, and clinically this may result in no CTCs being detected in cases in which they are present. For example, some tumor cells that have been released into the circulatory system have undergone an EMT. These mesenchymal cells are less differentiated than epithelial cells and more similar to stem cells. These mesenchymal cells down-regulate the expression of certain proteins, including EpCAM and cytokeratin, to enable them to move through tiny

capillaries and exist in the blood rather than in an epithelial matrix. Antibodies to other tumor antigens are therefore necessary for capture of CTCs with very low densities of EpCAM. These cells are subsequently proven to be CTCs with positive cytokeratin staining and no CD45 staining, a marker for white blood cells, aneuploidy analysis by FISH, or detection of other tumor biomarkers. We have developed several antibody cocktails that have enabled the capture of significantly more CTCs than is accomplished through the use of traditional anti-EpCAM immuno-capture alone.

In addition to enhanced capture, we are also improving detection of CTCs. As with EpCAM, tumor cells that have undergone EMT can down-regulate the synthesis of cytokeratin, leading to an underestimate or even an apparent absence of CTCs since their positive identification has traditionally relied on anti-cytokeratin staining. We have developed alternative methods of fluorescent cell staining that are uniquely possible within the CEE system to enhance detection of CTCs with low or no cytokeratin signal. This technology is called CEE-Enhanced. We believe that the combination of specific cocktails of tumor-associated capture antibodies and more sensitive fluorescent detection of CTCs through CEE-Enhanced staining will lead to major advances in the capture, enumeration and analysis of CTCs. CEE-Enhanced staining is expected to be included in our commercially available tests by the end of 2013.

Analysis of CTCs performed by us incorporates both standard and novel methods. Immunocytochemistry, analogous to the immunohistochemistry, or IHC, performed on tissues, can be readily applied and performed in the microchannel, dependent only on suitable antibodies. Similarly, FISH used to evaluate cytogenetic abnormalities in cells, like gene amplification or deletion, or gene fusions, may be performed in our microchannel and requires validated probe sets available from a number of vendors. For mutation analysis, standard or digital PCR technologies can be applied. We have also developed proprietary CEE-Selector technology for mutation analysis in CTCs and ctDNA, which enables either real-time or end-point PCR and thermal melt curve analysis, and interfaces directly with sequencing for mutation detection and confirmation, with very high sensitivity and specificity.

As indicated, CEE-Selector was developed specifically for analysis of CTCs, which are generally very rare and outnumbered many-fold by background white blood cells, even after enrichment. This combination of target scarcity and complex background nucleic acid has been a challenge for standard technologies. CEE-Selector offers significantly enhanced specificity and sensitivity, greater than 1:10,000 of mutated sequence to wild-type sequence in a complex genetic background compared to other nucleic acid detection approaches, and potentially has broader application than just CTC analysis, including analysis of ctDNA in plasma, both in a CLIA lab setting and as an IVD.

We are developing and offering Laboratory Developed Tests for CTCs and ctDNA. FDA clearance or approval is not currently required to offer these types of tests in our laboratory once they have been clinically and analytically validated. We seek licenses and approvals for our laboratory facility and for our LDTs from the appropriate regulatory authorities, such as the Centers for Medicare & Medicaid Services, or CMS, which oversees CLIA, and various state regulatory bodies. Certain states, such as New York, require us to obtain approval of our proprietary tests in order for us to be paid for testing patient specimens from that state.

Clinical Trial Services

Industry research has shown many promising drugs have produced disappointing results in clinical trials. For example, a study by Princess Margaret Hospital in Toronto estimated that 85% of the phase III trials testing new therapies for solid tumors studied over a five-year period failed to meet their primary endpoint. Given such a high failure rate of oncology drugs in clinical development, combined with constrained budgets for biopharmaceutical companies, there is a significant need for drug developers to utilize molecular diagnostics to decrease these failure rates. For specific molecular-targeted therapeutics, the identification of appropriate biomarkers potentially may help to optimize clinical trial patient selection and success rates by helping clinicians identify patients that are most likely to benefit from a therapy based on their individual genetic profile.

We also offer clinical trial testing services to help increase the efficiency and economic viability of clinical trials for biopharmaceutical companies and clinical research organizations. Our clinical trial services are aimed at developing customizable tests and techniques utilizing our proprietary CTC and ctDNA technologies to provide sensitive, real-time characterization of individual patient’s tumors using a standard blood sample. These tests may be useful as, and ultimately developed into, companion diagnostics associated with a specific therapeutic. Additionally, through our services we gain further insights into disease progression and the latest drug development that we can incorporate into our proprietary tests and services.

Risks That We Face

An investment in our common stock involves a high degree of risk. You should carefully consider the risks summarized below. The risks are discussed more fully in the "Risk Factors" section of this prospectus immediately following this prospectus summary. These risks include, but are not limited to, the following:

- we are an early-stage company with a significant cumulative net loss and we may never achieve sustained profitability;
- our business depends upon our ability to increase sales of our cancer diagnostic tests;
- we will need to raise additional capital to fund our operations;
- our business depends on executing on our sales and marketing strategy for our cancer diagnostic tests and gaining acceptance of our tests in the market;
- our business depends on our ability to continually develop new cancer diagnostic tests and enhance our existing tests;
- our business depends on being able to obtain adequate reimbursement from governmental and other third-party payors for our tests and services;
- our business depends on satisfying any applicable United States (including FDA) and international regulatory requirements with respect to our tests and services; and many of these requirements are new and still evolving;
- our business depends on our ability to effectively compete with other diagnostic tests, methods and services that now exist or may hereafter be developed;
- we depend on our senior management and we have recently hired a new chief executive officer;
- we depend on our ability to attract and retain scientists, clinicians and sales personnel with extensive experience in oncology, who are in short supply; and
- we need to obtain or maintain patents or other appropriate protection for the intellectual property utilized in our proprietary tests and services.

Company Information

We maintain our principal executive offices at 5810 Nancy Ridge Drive, San Diego, California 92121. Our telephone number is (858) 320-8200 and our website address is www.biocept.com. The information contained in, or that can be accessed through, our website is not incorporated into and is not part of this prospectus. We were incorporated in California on May 12, 1997 and reincorporated as a Delaware corporation on July 30, 2013.

Implications of being an Emerging Growth Company

As a company with less than $1.0 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act, or JOBS Act, enacted in April 2012. An "emerging growth company" may take advantage of reduced reporting requirements that are otherwise applicable to public companies. These provisions include, but are not limited to:

- being permitted to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations in this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We may take advantage of these provisions until the last day of our fiscal year following the fifth anniversary of the date of the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act of 1933, as amended, or the Securities Act, which such fifth anniversary will occur in 2018. However, if certain events occur before the end of such five-year period, including if we become a "large accelerated filer," our annual gross revenues exceed $1.0 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company before the end of such five-year period.

We have elected to take advantage of certain of the reduced disclosure obligations and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than the information you might receive from other public reporting companies in which you hold equity interests.

The Offering

Common stock offered by us	[------] shares of our common stock.
Over-allotment option	We have granted the underwriters a 45-day option to purchase up to [-------] additional shares of our common stock from us at the public offering price less underwriting discounts and commissions.
Common stock outstanding after this offering	[-------] shares.
Use of proceeds	We estimate that the net proceeds from our sale of shares of our common stock in this offering will be approximately $[__.__] million, or approximately $[__.__] million if the underwriters exercise their over-allotment option in full, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We currently expect to use the net proceeds from this offering as follows: • approximately $5 million to hire sales and marketing personnel and support increased sales and marketing activities; • approximately $5 million to fund further research and development, clinical utility studies and future enhancements of our proprietary tests and services; • approximately $3 million to acquire equipment, implement automation and scale our capabilities to prepare for significant test volume; and

	• the balance for general corporate purposes and to fund ongoing operations and expansion of our business. For additional information please refer to the section entitled "Use of Proceeds" on page 41 of this prospectus.
Risk Factors	See the section entitled "Risk Factors" beginning on page 12 of this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.
NASDAQ Capital Market symbol	BIOC.

The number of shares of our common stock to be outstanding after this offering is based on 2,553,783 shares of our common stock outstanding as of June 30, 2013 and excludes as of such date:

- 738,999 shares of common stock issuable upon exercise of stock options outstanding as of June 30, 2013, at a weighted-average exercise price of $0.35 per share;
- 458,784 shares of common stock issuable upon the settlement of restricted stock units outstanding as of June 30, 2013;
- 464,234 common stock equivalents issuable upon the settlement of restricted stock units expressed in Series A preferred stock, outstanding as of June 30, 2013;
- shares of our common stock reserved for future issuance under our 2013 and 2007 Equity Incentive Plans; and
- an estimated 4,241,872 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2013, at an estimated weighted-average exercise price of $0.43 per share.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- the filing of our amended certificate of incorporation and the adoption of our amended and restated bylaws, which will occur immediately before the closing of this offering;
- a 1-for-_____ reverse stock split of our common stock to be effected before the completion of this offering;
- the automatic conversion of all outstanding shares of our Series A preferred stock into 23,140,332 (post-reverse-split) shares of our common stock immediately before the closing of the offering;
- the automatic issuance of _____ (post-reverse-split) shares of common stock immediately before or immediately after the closing of the offering, pursuant to the terms of certain outstanding restricted stock units currently expressed in shares of common stock or Series A preferred stock; but otherwise no settlement of the outstanding restricted stock units described above;
- the automatic conversion of all outstanding convertible notes, at a conversion price equal to the public offering price per share of this offering, into shares of common stock upon the closing of this offering;
- no exercise of the outstanding options or warrants described above;
- no exercise by the underwriters of their option to purchase additional shares of our common stock to cover over-allotments, if any;
- the issuance of the warrants to be issued to the representative of the underwriters in connection with this offering as described in the "Underwriting – Representative's Warrants" section of this prospectus; and
- no exercise by the representative of the underwriters of such representative's warrants.

SUMMARY FINANCIAL DATA

The following tables set forth a summary of our historical financial data as of, and for the period ended on, the dates indicated. We have derived the statement of operations data for the years ended December 31, 2011 and 2012 and the balance sheet data as of December 31, 2012 from our audited financial statements appearing elsewhere in this prospectus. We have derived the statements of operations data for the six months ended June 30, 2012 and 2013 and balance sheet data as of June 30, 2013 from our unaudited financial statements appearing elsewhere in this prospectus. The unaudited financial statements have been prepared on a basis consistent with our audited financial statements included in this prospectus and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, necessary to fairly state our financial position as of June 30, 2013 and results of operations for the six months ended June 30, 2012 and 2013. You should read this data together with our financial statements and related notes appearing elsewhere in this prospectus and the sections in this prospectus entitled "Capitalization," "Selected Historical Financial Data," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our historical results for any prior period are not necessarily indicative of our future results.

	Year ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
	(in thousands, except share and per share data)			
Statement of Operations Data:				
Revenues	$ 109	$ 1	$ 84	$ 64
Cost of revenues	1,201	17	1,141	465
Gross profit	(1,092)	(16)	(1,057)	(401)
Research and development expenses	6,562	8,853	1,401	3,797
General and administrative expenses	2,063	2,729	929	1,165
Sales and marketing expenses	786	673	124	402
Loss from operations	(10,503)	(12,271)	(3,511)	(5,765)
Total other income/(expense)	(1,756)	(1,357)	(389)	(677)
Loss Before Income Taxes	$ (12,259)	$ (13,628)	$ (3,900)	$ (6,442)
Income tax expense	1	1	1	1
Net loss & comprehensive loss	$ (12,260)	$ (13,629)	$ (3,901)	$ (6,443)
Weighted average shares outstanding used in computing net loss per common share:				
Basic	2,246,730	1,593,777	2,527,530	2,246,730
Diluted	2,246,730	1,593,777	2,527,530	2,246,730
Net loss per common share				
Basic	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)
Diluted	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)

	As of December 31, 2012	As of June 30, 2013	
	Actual	Actual (Unaudited)	Pro Forma[1] (Unaudited)
Balance Sheet Data:			
Cash and cash equivalents	$ 185	$ 4	$
Total assets	$ 1,470	$ 992	$
Notes payable, net of debt discount	$ 22,376	$ 3,816	$
Total liabilities	$ 28,855	$ 9,207	$
Convertible preferred stock	$ 3	$ 7	$
Total shareholders' deficit	$ (27,385)	$ (8,215)	$

(1) Gives effect to (i) the sale of [_____] shares of common stock in this offering less offering costs of $[____] million and underwriting discounts, expenses, and commissions of $[____] million, of which $[____] million was previously paid, (ii) the automatic conversion of all outstanding shares of our Series A preferred stock (including shares issued in July 2013 which, as of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, (iii) the conversion of convertible promissory notes and accrued interest in the amount of $[____] million into an aggregate of [_____] shares of our common stock in connection with the closing of our initial public offering, (iv) the issuance of _____shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, (v) the termination of certain warrants upon the closing of our initial public offering in accordance with their terms and (vi) the reclassification to shareholders' deficit of the fair value of certain warrants the exercise price and/or exercisability period length of which will be fixed upon the closing of our initial public offering in accordance with their terms, assuming for all such items an initial public offering price of $[____] per share, the midpoint of the price range listed on the cover page of this prospectus. Each $1.00 increase (decrease) in the assumed initial public offering price of $[____] per share would increase (decrease) the pro forma amount of each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[____], assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price would increase (decrease) each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[____]. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

RISK FACTORS

An investment in our common stock involves a high degree of risk. You should consider carefully the specific risk factors described below in addition to the other information contained in this prospectus, including our financial statements and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in the prospectus, before making your investment decision. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

Risks Relating to Our Financial Condition and Capital Requirements

We are an early stage company with a history of net losses; we expect to incur net losses in the future, and we may never achieve sustained profitability.

We have historically incurred substantial net losses, including net losses of $3.9 million in the first six months of 2013, $12.3 million in 2012 and $13.6 million in 2011, and we have never been profitable. We expect our losses to continue as a result of costs relating to our lab operations as well as increased sales and marketing costs and ongoing research and development expenses. These losses have had, and will continue to have, an adverse effect on our working capital, total assets and stockholders' equity. Because of the numerous risks and uncertainties associated with our commercialization efforts, we are unable to predict when we will become profitable, and we may never become profitable. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our inability to achieve and then maintain profitability would negatively affect our business, financial condition, results of operations and cash flows.

Our independent registered public accounting firm has expressed substantial doubt about our ability to continue as a going concern.

As described in Note 2 of our accompanying audited financial statements, our auditors have included a "going concern" Provision in their opinion on our financial statements, expressing substantial doubt that we can continue as an ongoing business for the next twelve months. Our financial statements do not include any adjustments that may result from the outcome of this uncertainty. If we cannot secure the financing needed to continue as a viable business, our stockholders may lose some or all of their investment in us.

We will need to raise additional capital.

We believe our current cash resources and committed borrowing capacity are sufficient to satisfy our liquidity requirements at our current level of operations only through October of 2013. We need to raise additional financing by the fourth quarter of 2013, through this offering or otherwise, to fund our current level of operations. Such financing may not be available to us on favorable terms, if at all. Without proceeds from this offering or other sources of financing, we would need to scale back our general and administrative activities and certain of our research and development activities. Our forecast pertaining to the adequacy of our current financial resources supporting our current level of operations until the fourth quarter of 2013 is a forward-looking statements and involves risks and uncertainties.

We will also need to raise additional capital to expand our business to meet our long-term business objectives. Additional financing, which is not in place at this time, may be from the sale of equity or convertible or other debt securities in a public or private offering, from an additional credit facility or strategic partnership coupled with an investment in us or a combination of both. We may be unable to raise sufficient additional financing on terms that are acceptable to us, if at all. Failure to raise additional capital in sufficient amounts would significantly impact our ability to expand our business. For further discussion of our liquidity requirements as they relate to our long-term plans, see the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources."

Risks Relating to Our Business and Strategy

If we are unable to increase sales of our cancer diagnostic tests or successfully develop and commercialize other proprietary tests, our revenues will be insufficient for us to achieve profitability.

We currently derive substantially all of our revenues from our cancer diagnostic tests. We recently began offering our OncoCEE-BR breast cancer test through our CLIA-accredited and state licensed laboratory. We are in varying stages of research and development for other cancer diagnostic tests that we may offer. If we are unable to increase sales of our cancer diagnostic tests or successfully develop and commercialize other cancer diagnostic tests, we will not produce sufficient revenues to become profitable.

If we are unable to execute our sales and marketing strategy for our cancer diagnostic tests and are unable to gain acceptance in the market, we may be unable to generate sufficient revenue to sustain our business.

We are an early-stage company and have engaged in only limited sales and marketing activities for the cancer diagnostic tests we offer through our CLIA laboratory. To date, we have received very limited revenue from sales of our tests.

Although we believe that our diagnostic tests represent a promising commercial opportunity, our tests may never gain significant acceptance in the marketplace and therefore may never generate substantial revenue or profits for us. We will need to establish a market for our cancer diagnostic tests and build that market through physician education, awareness programs and the publication of clinical trial results. Gaining acceptance in medical communities requires publication in leading peer-reviewed journals of results from studies using our cancer tests. The process of publication in leading medical journals is subject to a peer review process and peer reviewers may not consider the results of our studies sufficiently novel or worthy of publication. Failure to have our studies published in peer-reviewed journals would limit the adoption of our tests.

Our ability to successfully market the cancer diagnostic tests that we may develop will depend on numerous factors, including:

- conducting clinical utility studies of our tests in collaboration with key thought leaders to demonstrate their use and value in important medical decisions such as treatment selection;
- whether healthcare providers believe our diagnostic tests provide clinical utility;
- whether the medical community accepts that our diagnostic tests are sufficiently sensitive and specific to be meaningful in patient care and treatment decisions; and
- whether health insurers, government health programs and other third-party payors will cover and pay for our cancer diagnostic tests and, if so, whether they will adequately reimburse us.

Failure to achieve widespread market acceptance of our cancer diagnostic tests would materially harm our business, financial condition and results of operations.

If we cannot develop tests to keep pace with rapid advances in technology, medicine and science, our operating results and competitive position could be harmed.

In recent years, there have been numerous advances in technologies relating to the diagnosis and treatment of cancer. Several new cancer drugs have been approved, and a number of new drugs in clinical development may increase patient survival time. There

have also been advances in methods used to identify patients likely to benefit from these drugs based on analysis of biomarkers. We must continuously develop new cancer diagnostic tests and enhance our existing tests to keep pace with evolving standards of care. Our tests could become obsolete unless we continually innovate and expand them to demonstrate benefit in the diagnosis, monitoring or prognosis of patients with cancer. New cancer therapies typically have only a few years of clinical data associated with them, which limits our ability to develop cancer diagnostic tests based on, for example, biomarker analysis related to the appearance or development of resistance to those therapies. If we cannot adequately demonstrate the applicability of our tests to new treatments, by incorporating important biomarker analysis, sales of our tests could decline, which would have a material adverse effect on our business, financial condition and results of operations.

If our tests do not continue to perform as expected, our operating results, reputation and business will suffer.

Our success depends on the market's confidence that we can continue to provide reliable, high-quality diagnostic results. We believe that our customers are likely to be particularly sensitive to test defects and errors. As a result, the failure of our tests to perform as expected would significantly impair our reputation and the public image of our cancer tests, and we may be subject to legal claims arising from any defects or errors.

If our sole laboratory facility becomes damaged or inoperable, or we are required to vacate the facility, our ability to sell and provide our cancer diagnostic tests and pursue our research and development efforts may be jeopardized.

We currently derive our revenues from our cancer diagnostic tests conducted in our CLIA laboratory. We do not have any clinical reference laboratory facilities outside of our facility in San Diego, California. Our facilities and equipment could be harmed or rendered inoperable by natural or man-made disasters, including fire, earthquake, flooding and power outages, which may render it difficult or impossible for us to perform our diagnostic tests for some period of time. The inability to perform our tests or the backlog of tests that could develop if our facility is inoperable for even a short period of time may result in the loss of customers or harm to our reputation or relationships with scientific or clinical collaborators, and we may be unable to regain those customers or repair our reputation in the future. Furthermore, our facilities and the equipment we use to perform our research and development work could be costly and time-consuming to repair or replace.

The San Diego area has recently experienced serious fires and power outages, and is considered to lie in an area with earthquake risk.

Additionally, a key component of our research and development process involves using biological samples as the basis for our diagnostic test development. In some cases, these samples are difficult to obtain. If the parts of our laboratory facility where we store these biological samples were damaged or compromised, our ability to pursue our research and development projects, as well as our reputation, could be jeopardized. We carry insurance for damage to our property and the disruption of our business, but this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all.

Further, if our CLIA laboratory became inoperable we may not be able to license or transfer our proprietary technology to another facility with the necessary state licensure and CLIA accreditation under the scope of which our cancer diagnostic tests could be performed. Even if we find a facility with such qualifications to perform our tests, it may not be available to us on commercially reasonable terms.

If we cannot compete successfully with our competitors, we may be unable to increase or sustain our revenues or achieve and sustain profitability.

Our principal competition comes from mainstream diagnostic methods, used by pathologists and oncologists for many years, which focus on tumor tissue analysis. It may be difficult to change the methods or behavior of oncologists to incorporate our CTC

and ctDNA testing, including molecular diagnostic testing, in their practices in conjunction with or instead of tissue biopsies and analysis. In addition, companies offering capital equipment and kits or reagents to local pathology laboratories represent another source of potential competition. These kits are used directly by the pathologist, which can facilitate adoption. We plan to focus our marketing and sales efforts on medical oncologists rather than pathologists.

We also face competition from companies that offer products or are conducting research to develop products for CTC or ctDNA testing in various cancers. In particular, Janssen Diagnostics, LLC markets its CellSearch® test and Atossa Genetics markets its ArgusCYTE® test, which are competitive to our OncoCEE-BR test for CTC enumeration, and HER2 analysis, respectively. CTC and ctDNA testing is a new area of science and we cannot predict what tests others will develop that may compete with or provide results similar or superior to the results we are able to achieve with the tests we develop. In addition to Janssen Diagnostics and Atossa Genetics, our competitors also include public companies such as Alere (Adnagen) and Illumina as well as many private companies, including Apocell, EPIC Sciences, Clearbridge Biomedics, Cynvenio Biosystems, Fluxion Biosciences, RareCells, ScreenCell and Silicon Biosystems. Many of these groups, in addition to operating research and development laboratories, are establishing CLIA-certified testing laboratories while others are focused on selling equipment and reagents.

We expect that pharmaceutical and biopharmaceutical companies will increasingly focus attention and resources on the personalized cancer diagnostic sector as the potential and prevalence of molecularly targeted oncology therapies approved by the FDA along with companion diagnostics increases. For example, the FDA has recently approved two such agents—Xalkori® from Pfizer Inc. along with its companion anaplastic lymphoma kinase FISH test from Abbott Laboratories, Inc., Zelboraf® from Daiichi-Sankyo/Genentech/Roche along with its companion B-raf kinase V600 mutation test from Roche Molecular Systems, Inc. and Tafinlar® from GlaxoSmithKline along with its companion B-raf kinase V600 mutation test from bioMerieux. These recent FDA approvals are only the second, third and fourth instances of simultaneous approvals of a drug and companion diagnostic, the first being the 1998 approval of Genentech's Herceptin® for HER2 positive breast cancer along with the HercepTest from partner Dako A/S. Our competitors may invent and commercialize technology platforms or tests that compete with ours.

There are a number of companies which are focused on the oncology diagnostic market, such as Biodesix, Caris, Clarient, Foundation Medicine, Genomic Health, and Genoptix, who while not currently offering CTC or ctDNA tests are selling to the medical oncologists and pathologists. Large laboratory services companies, such as Quest and LabCorp, provide more generalized cancer diagnostic testing.

Additionally, projects related to cancer diagnostics and particularly genomics have received increased government funding, both in the United States and internationally. As more information regarding cancer genomics becomes available to the public, we anticipate that more products aimed at identifying targeted treatment options will be developed and that these products may compete with ours. In addition, competitors may develop their own versions of our tests in countries where we did not apply for patents or where our patents have not issued and compete with us in those countries, including encouraging the use of their test by physicians or patients in other countries.

Some of our present and potential competitors have widespread brand recognition and substantially greater financial and technical resources and development, production and marketing capabilities than we do. Others may develop lower-priced, less complex tests that payors, pathologists and oncologists could view as functionally equivalent to our tests, which could force us to lower the list price of our tests and impact our operating margins and our ability to achieve and maintain profitability. In addition, technological innovations that result in the creation of enhanced diagnostic tools that are more sensitive or specific than ours may enable other clinical laboratories, hospitals, physicians or medical providers to provide specialized diagnostic tests similar to ours in a more patient-friendly, efficient or cost-effective manner than is currently possible. If we cannot compete successfully against current or future competitors, we may be unable to increase or create market acceptance and sales of our tests, which could prevent us from increasing or sustaining our revenues or achieving or sustaining profitability.

We expect to continue to incur significant expenses to develop and market our cancer diagnostic tests, which could make it difficult for us to achieve and sustain profitability.

In recent years, we have incurred significant costs in connection with the development of our cancer diagnostic tests. For the year ended December 31, 2012, our research and development expenses were $6.6 million and our sales and marketing expenses were $0.8 million. For the year ended December 31, 2011, our research and development expenses were $8.9 million and our sales and marketing expenses were $0.7 million. We expect our expenses to continue to increase for the foreseeable future as we seek to expand the clinical utility of our cancer diagnostic tests, establish a sales and marketing organization, drive adoption of and reimbursement for our diagnostic tests and develop new tests. As a result, we need to generate significant revenues in order to achieve sustained profitability.

If oncologists decide not to order our cancer diagnostic tests, we may be unable to generate sufficient revenue to sustain our business.

To generate demand for our cancer diagnostic tests, we will need to educate oncologists, pathologists, and other health care professionals on the clinical utility, benefits and value of the tests we provide through published papers, presentations at scientific conferences, educational programs and one-on-one education sessions by members of our sales force. In addition, we need to assure oncologists of our ability to obtain and maintain adequate reimbursement coverage from third-party payors. We need to hire additional commercial, scientific, technical and other personnel to support this process. If we cannot convince medical practitioners to order our tests, we will likely be unable to create demand for our tests in sufficient volume for us to achieve sustained profitability.

Clinical utility studies are important in demonstrating to both customers and payors a test's clinical relevance and value. If we are unable to identify collaborators willing to work with us to conduct clinical utility studies, or the results of those studies do not demonstrate that our tests provide clinically meaningful information and value, commercial adoption of our tests may be slow, which would negatively impact our business.

Clinical utility studies show when and how to use a clinical test, and describe the particular clinical situations or settings in which it can be applied and the expected results. Clinical utility studies also show the impact of the test results on patient care and management. Clinical utility studies are typically performed with collaborating oncologists at medical centers and hospitals, analogous to a clinical trial, and generally result in peer-reviewed publications. Sales and marketing representatives use these publications to demonstrate to customers how to use a clinical test, as well as why they should use it. These publications are also used with payors to obtain coverage for a test, helping to assure there is appropriate reimbursement.

We are currently conducting a clinical utility study for our OncoCEE-BR test with investigators at the Dana-Farber Cancer Institute and The Ohio State University. We will need to conduct additional studies for this test, as well as other CTC and ctDNA tests we plan to introduce, to drive test adoption in the marketplace and reimbursement. Should we not be able to perform these studies, or should their results not provide clinically meaningful data and value for oncologists, adoption of our tests could be impaired and we may not be able to obtain reimbursement for them.

We are undergoing a management transition.

Until August 26, 2013, David F. Hale, our Executive Chairman, served as our principal executive officer. On that date, Michael W. Nall began his employment with us as our Chief Executive Officer and President, with David F. Hale remaining employed as our Executive Chairman. We intend to recruit and hire other senior executives. Such a management transition subjects us to a number of risks, including risks pertaining to coordination of responsibilities and tasks, creation of new management systems and processes, differences in management style, effects on corporate culture, and the need for transfer of historical knowledge.

The loss of key members of our executive management team could adversely affect our business.

Our success in implementing our business strategy depends largely on the skills, experience and performance of key members of our executive management team and others in key management positions, including Michael W. Nall, our Chief Executive Officer and President, David F. Hale, our Executive Chairman, Lyle J. Arnold, Ph.D., our Senior Vice-President of Research & Development/Chief Scientific Officer, and Farideh Z. Bischoff, Ph.D., our Vice-President of Translational Research and Clinical Development. The collective efforts of each of these persons and others working with them as a team are critical to us as we continue to develop our technologies, tests and research and development and sales programs. As a result of the difficulty in locating qualified new management, the loss or incapacity of existing members of our executive management team could adversely affect our operations. If we were to lose one or more of these key employees, we could experience difficulties in finding qualified successors, competing effectively, developing our technologies and implementing our business strategy. Our Chief Executive Officer and President, Executive Chairman, Chief Financial Officer and Chief Scientific Officer have employment agreements, however, the existence of an employment agreement does not guarantee retention of members of our executive management team and we may not be able to retain those individuals for the duration of or beyond the end of their respective terms. We do not maintain “key person” life insurance on any of our employees.

In addition, we rely on collaborators, consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our collaborators, consultants and advisors are generally employed by employers other than us and may have commitments under agreements with other entities that may limit their availability to us.

The loss of a key employee, the failure of a key employee to perform in his or her current position or our inability to attract and retain skilled employees could result in our inability to continue to grow our business or to implement our business strategy.

There is a scarcity of experienced professionals in our industry. If we are not able to retain and recruit personnel with the requisite technical skills, we may be unable to successfully execute our business strategy.

The specialized nature of our industry results in an inherent scarcity of experienced personnel in the field. Our future success depends upon our ability to attract and retain highly skilled personnel, including scientific, technical, commercial, business, regulatory and administrative personnel, necessary to support our anticipated growth, develop our business and perform certain contractual obligations. Given the scarcity of professionals with the scientific knowledge that we require and the competition for qualified personnel among life science businesses, we may not succeed in attracting or retaining the personnel we require to continue and grow our operations.

Our inability to attract, hire and retain a sufficient number of qualified sales professionals would hamper our ability to increase demand for our cancer diagnostic tests, to expand geographically and to successfully commercialize any other tests or products we may develop.

To succeed in selling our cancer diagnostic tests and any other tests or products that we are able to develop, we must expand our sales force in the United States and/or internationally by recruiting additional sales representatives with extensive experience in oncology and close relationships with medical oncologists, surgeons, oncology nurses, pathologists and other hospital personnel. To achieve our marketing and sales goals, we will need to substantially build our sales and commercial infrastructure, with which to date we have had little experience. Sales professionals with the necessary technical and business qualifications are in high demand, and there is a risk that we may be unable to attract, hire and retain the number of sales professionals with the right qualifications, scientific backgrounds and relationships with decision-makers at potential customers needed to achieve our sales goals. We expect to face competition from other companies in our industry, some of whom are much larger than us and who can pay greater compensation and benefits than we can, in seeking to attract and retain qualified sales and marketing employees. If we are unable to hire and retain qualified sales and marketing personnel, our business will suffer.

Our dependence on commercialization partners for sales of our tests could limit our success in realizing revenue growth.

We intend to grow our business through the use of commercialization partners for the sales, marketing and commercialization of our tests, and to do so we must enter into agreements with these partners to sell, market or commercialize our tests. These agreements may contain exclusivity provisions and generally cannot be terminated without cause during the term of the agreement. We may need to attract additional partners to expand the markets in which we sell our tests. These partners may not commit the necessary resources to market and sell our cancer diagnostics tests to the level of our expectations, and we may be unable to locate suitable alternatives should we terminate our agreement with such partners or if such partners terminate their agreement with us. If current or future commercialization partners do not perform adequately, or we are unable to locate commercialization partners, we may not realize revenue growth.

We depend on third parties for the supply of blood samples and other biological materials that we use in our research and development efforts. If the costs of such samples and materials increase after we complete our initial public offering or our third party suppliers terminate their relationship with us, our business may be materially harmed.

We have relationships with suppliers and institutions that provide us with blood samples and other biological materials that we use in developing and validating our tests. If one or more suppliers terminate their relationship with us or are unable to meet our requirements for samples, we will need to identify other third parties to provide us with blood samples and biological materials, which could result in a delay in our research and development activities and negatively affect our business. In addition, as we grow, our research and academic institution collaborators may seek additional financial contributions from us, which may negatively affect our results of operations.

We currently rely on third-party suppliers for critical materials needed to perform our tests and any problems experienced by them could result in a delay or interruption of their supply to us.

We currently purchase raw materials for our microchannels and testing reagents under purchase orders and do not have long-term contracts with most of the suppliers of these materials. If suppliers were to delay or stop producing our materials or reagents, or if the prices they charge us were to increase significantly, or if they elected not to sell to us, we would need to identify other suppliers. We could experience delays in manufacturing the microchannels or performing our tests while finding another acceptable supplier, which could impact our results of operations. The changes could also result in increased costs associated with qualifying the new materials or reagents and in increased operating costs. Further, any prolonged disruption in a supplier's operations could have a significant negative impact on our ability to perform our cancer diagnostic tests in a timely manner.

Some of the components used in our current or planned products are currently sole-source, and substitutes for these components might not be able to be obtained easily or may require substantial design or manufacturing modifications. Any significant problem experienced by one of our sole source suppliers may result in a delay or interruption in the supply of components to us until that supplier cures the problem or an alternative source of the component is located and qualified. Any delay or interruption would likely lead to a delay or interruption in our manufacturing operations. The inclusion of substitute components must meet our product specifications and could require us to qualify the new supplier with the appropriate government regulatory authorities.

If we were sued for product liability or professional liability, we could face substantial liabilities that exceed our resources.

The marketing, sale and use of our cancer diagnostic tests could lead to the filing of product liability claims against us if someone alleges that our tests failed to perform as designed. We may also be subject to liability for errors in the test results we provide to physicians or for a misunderstanding of, or inappropriate reliance upon, the information we provide. A product liability or professional liability claim could result in substantial damages and be costly and time-consuming for us to defend.

Although we believe that our existing product and professional liability insurance is adequate, our insurance may not fully protect us from the financial impact of defending against product liability or professional liability claims. Any product liability or professional liability claim brought against us, with or without merit, could increase our insurance rates or prevent us from securing insurance coverage in the future. Additionally, any product liability lawsuit could damage our reputation, result in the recall of our tests, or cause current partners to terminate existing agreements and potential partners to seek other partners, any of which could impact our results of operations.

If we use biological and hazardous materials in a manner that causes injury, we could be liable for damages.

Our activities currently require the controlled use of potentially harmful biological materials and chemicals. We cannot eliminate the risk of accidental contamination or injury to employees or third parties from the use, storage, handling or disposal of these materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could exceed our resources or any applicable insurance coverage we may have. Additionally, we are subject to, on an ongoing basis, federal, state and local laws and regulations governing the use, storage, handling and disposal of these materials and specified waste products. The cost of compliance with these laws and regulations may become significant and could have a material adverse effect on our financial condition, results of operations and cash flows. In the event of an accident or if we otherwise fail to comply with applicable regulations, we could lose our permits or approvals or be held liable for damages or penalized with fines.

We may acquire other businesses or form joint ventures or make investments in other companies or technologies that could harm our operating results, dilute our stockholders' ownership, increase our debt or cause us to incur significant expense.

As part of our business strategy, we may pursue acquisitions of businesses and assets. We also may pursue strategic alliances and joint ventures that leverage our core technology and industry experience to expand our offerings or distribution. We have no experience with acquiring other companies and limited experience with forming strategic alliances and joint ventures. We may not be able to find suitable partners or acquisition candidates, and we may not be able to complete such transactions on favorable terms, if at all. If we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. Any future acquisitions also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could have a material adverse effect on our financial condition, results of operations and cash flows. Integration of an acquired company also may disrupt ongoing operations and require management resources that would otherwise focus on developing our existing business. We may experience losses related to investments in other companies, which could have a material negative effect on our results of operations. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any acquisition, technology license, strategic alliance or joint venture.

To finance any acquisitions or joint ventures, we may choose to issue shares of our common stock as consideration, which would dilute the ownership of our stockholders. If the price of our common stock is low or volatile, we may not be able to acquire other companies or fund a joint venture project using our stock as consideration. Alternatively, it may be necessary for us to raise additional funds for acquisitions through public or private financings. Additional funds may not be available on terms that are favorable to us, or at all.

If we cannot support demand for our cancer diagnostic tests, including successfully managing the evolution of our technology and manufacturing platforms, our business could suffer.

As our test volume grows, we will need to increase our testing capacity, implement automation, increase our scale and related processing, customer service, billing, collection and systems process improvements and expand our internal quality assurance program and technology to support testing on a larger scale. We will also need additional cytogenetic technicians, certified laboratory scientists and other scientific and technical personnel to process these additional tests. Any increases in scale, related improvements and quality assurance may not be successfully implemented and appropriate personnel may not be available. As additional tests are commercialized, we may need to bring new equipment on line, implement new systems, technology, controls and procedures and hire personnel with different qualifications. Failure to implement necessary procedures or to hire the necessary personnel could result in a higher cost of processing or an inability to meet market demand. We cannot assure you that we will be able to perform tests on a timely basis at a level consistent with demand, that our efforts to scale our commercial operations will not negatively affect the quality of our test results or that we will respond successfully to the growing complexity of our testing operations. If we encounter difficulty meeting market demand or quality standards for our tests, our reputation could be harmed and our future prospects and business could suffer, which may have a material adverse effect on our financial condition, results of operations and cash flows.

We may encounter manufacturing problems or delays that could result in lost revenue.

We currently manufacture our proprietary microchannels at our San Diego facility and intend to continue to do so. We believe we currently have adequate manufacturing capacity for our microchannels. If demand for our tests increases significantly, we will need to either expand our manufacturing capabilities or outsource to other manufacturers. If we or third party manufacturers engaged by us fail to manufacture and deliver our microchannels or certain reagents in a timely manner, our relationships with our customers could be seriously harmed. We cannot assure you that manufacturing or quality control problems will not arise as we attempt to increase the production of our microchannels or reagents or that we can increase our manufacturing capabilities and maintain quality control in a timely manner or at commercially reasonable costs. If we cannot manufacture our microchannels consistently on a timely basis because of these or other factors, it could have a significant negative impact on our ability to perform our tests and generate revenues.

International expansion of our business would expose us to business, regulatory, political, operational, financial and economic risks associated with doing business outside of the United States.

Our business strategy contemplates possible international expansion, including partnering with academic and commercial testing laboratories, and introducing OncoCEE technology outside the United States as part of CE-marked IVD test kits and/or testing systems utilizing our CEE and/or CEE-Selector technologies. Doing business internationally involves a number of risks, including:

- multiple, conflicting and changing laws and regulations such as tax laws, export and import restrictions, employment laws, regulatory requirements and other governmental approvals, permits and licenses;
- failure by us or our distributors to obtain regulatory approvals for the sale or use of our tests in various countries;
- difficulties in managing foreign operations;
- complexities associated with managing government payor systems, multiple payor-reimbursement regimes or self-pay systems;

- logistics and regulations associated with shipping blood samples, including infrastructure conditions and transportation delays;
- limits on our ability to penetrate international markets if our diagnostic tests cannot be processed by an appropriately qualified local laboratory;
- financial risks, such as longer payment cycles, difficulty enforcing contracts and collecting accounts receivable and exposure to foreign currency exchange rate fluctuations;
- reduced protection for intellectual property rights, or lack of them in certain jurisdictions, forcing more reliance on our trade secrets, if available;
- natural disasters, political and economic instability, including wars, terrorism and political unrest, outbreak of disease, boycotts, curtailment of trade and other business restrictions; and
- failure to comply with the Foreign Corrupt Practices Act, including its books and records provisions and its anti-bribery provisions, by maintaining accurate information and control over sales activities and distributors' activities.

Any of these risks, if encountered, could significantly harm our future international expansion and operations and, consequently, have a material adverse effect on our financial condition, results of operations and cash flows.

Declining general economic or business conditions may have a negative impact on our business.

Continuing concerns over United States health care reform legislation and energy costs, geopolitical issues, the availability and cost of credit and government stimulus programs in the United States and other countries have contributed to increased volatility and diminished expectations for the global economy. These factors, combined with low business and consumer confidence and high unemployment, precipitated an economic slowdown and recession. If the economic climate does not improve, or it deteriorates, our business, including our access to patient samples and the addressable market for diagnostic tests that we may successfully develop, as well as the financial condition of our suppliers and our third-party payors, could be adversely affected, resulting in a negative impact on our business, financial condition and results of operations.

Intrusions into our computer systems could result in compromise of confidential information.

Despite the implementation of security measures, our technology or systems that we interface with, including the Internet and related systems, may be vulnerable to physical break-ins, hackers, improper employee or contractor access, computer viruses, programming errors, or similar problems. Any of these might result in confidential medical, business or other information of other persons or of ourselves being revealed to unauthorized persons.

There are a number of state, federal and international laws protecting the privacy and security of health information and personal data. As part of the American Recovery and Investment Act 2009, or ARRA, Congress amended the privacy and security provisions of the Health Insurance Portability and Accountability Act, or HIPAA. HIPAA imposes limitations on the use and disclosure of an individual's healthcare information by healthcare providers, healthcare clearinghouses, and health insurance plans, collectively referred to as covered entities. The HIPAA amendments also impose compliance obligations and corresponding penalties for non-compliance on individuals and entities that provide services to healthcare providers and other covered entities, collectively referred to as business associates. ARRA also made significant increases in the penalties for improper use or disclosure of an individual's health information under HIPAA and extended enforcement authority to state attorneys general. The amendments also create notification requirements for individuals whose health information has been inappropriately accessed or disclosed: notification requirements to

federal regulators and in some cases, notification to local and national media. Notification is not required under HIPAA if the health information that is improperly used or disclosed is deemed secured in accordance with encryption or other standards developed by the U.S. Department of Health and Human Services, or HHS. Most states have laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual terms to ensure ongoing protection of personal information. Activities outside of the United States implicate local and national data protection standards, impose additional compliance requirements and generate additional risks of enforcement for non-compliance. We may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and data security laws, to protect against security breaches and hackers or to alleviate problems caused by such breaches.

We depend on our information technology and telecommunications systems, and any failure of these systems could harm our business.

We depend on information technology and telecommunications systems for significant aspects of our operations. In addition, our third-party billing and collections provider depends upon telecommunications and data systems provided by outside vendors and information we provide on a regular basis. These information technology and telecommunications systems support a variety of functions, including test processing, sample tracking, quality control, customer service and support, billing and reimbursement, research and development activities and our general and administrative activities. Information technology and telecommunications systems are vulnerable to damage from a variety of sources, including telecommunications or network failures, malicious human acts and natural disasters. Moreover, despite network security and back-up measures, some of our servers are potentially vulnerable to physical or electronic break-ins, computer viruses and similar disruptive problems. Despite the precautionary measures we have taken to prevent unanticipated problems that could affect our information technology and telecommunications systems, failures or significant downtime of our information technology or telecommunications systems or those used by our third-party service providers could prevent us from processing tests, providing test results to oncologists, pathologists, billing payors, processing reimbursement appeals, handling patient or physician inquiries, conducting research and development activities and managing the administrative aspects of our business. Any disruption or loss of information technology or telecommunications systems on which critical aspects of our operations depend could have an adverse effect on our business.

Regulatory Risks Relating to Our Business

Healthcare policy changes, including recently enacted legislation reforming the U.S. health care system, may have a material adverse effect on our financial condition, results of operations and cash flows.

The 2010 Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the ACA, makes a number of substantial changes in the way health care is financed by both governmental and private insurers. Among other things, the ACA:

- Mandates a reduction in payments for clinical laboratory services paid under the Medicare Clinical Laboratory Fee Schedule annual Consumer Price Index update of 1.75% for the years 2011 through 2015. In addition, a permanent productivity adjustment is made to the fee schedule payment amount, which could range from 1.1% to 1.4% each year over the next 10 years. These changes in payments may apply to some or all of the tests we furnish to Medicare beneficiaries.
- Establishes an Independent Payment Advisory Board to reduce the per capita rate of growth in Medicare spending if spending exceeds a target growth rate. The Independent Payment Advisory Board has broad discretion to propose policies, which may have a negative impact on payment rates for services, including clinical laboratory services, beginning in 2016, and for hospital services beginning in 2020.

- Requires each medical device manufacturer to pay a sales tax equal to 2.3% of the price for which such manufacturer sells its medical devices, beginning in 2013. We do not believe, at this time, that this tax applies to our current cancer diagnostic tests or will apply to our products that are in development.

Although some of these provisions may negatively impact payment rates for clinical laboratory tests, the ACA also extends coverage to over 30 million previously uninsured people, which may result in an increase in the demand for our cancer diagnostic tests. The mandatory purchase of insurance has been strenuously opposed by a number of state governors, resulting in lawsuits challenging the constitutionality of certain provisions of the ACA. In 2012, the Supreme Court upheld the constitutionality of the health care reform law, with the exception of certain provisions dealing with the expansion of Medicaid coverage under the law. Therefore, most of the law's provisions will go into effect in 2013 and 2014. Congress has also proposed a number of legislative initiatives, including possible repeal of the ACA. At this time, it remains unclear whether there will be any changes made to the ACA, whether to certain provisions or its entirety.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. The Budget Control Act of 2011, among other things, created the Joint Select Committee on Deficit Reduction to recommend proposals in spending reductions to Congress. The Joint Select Committee did not achieve a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions to Medicare payments to providers and suppliers of up to 2% per fiscal year, starting in 2013. The full impact on our business of the ACA and the sequester law is uncertain. In addition, the Middle Class Tax Relief and Job Creation Act of 2012, or MCTRJCA, mandated an additional change in Medicare reimbursement for clinical laboratory tests. This legislation requires a rebasing of the Medicare clinical laboratory fee schedule to effect a 2% reduction in payment rates otherwise determined for 2013. This will serve as a base for 2014 and subsequent years. In January 2013, as a result of the changes mandated by the ACA and MCTRJCA, the Centers for Medicare & Medicaid Services reduced its reimbursement for laboratory tests for 2013 by approximately 3%.

Certain of our laboratory tests are paid under the Medicare Physician Fee Schedule and, under the current statutory formula, the rates for these services are updated annually. For the past several years, the application of the statutory formula would have resulted in substantial payment reductions if Congress failed to intervene. In the past, Congress passed interim legislation to prevent the decreases. On November 1, 2012, the CMS issued its 2013 Physician Fee Schedule Final Rule, or the Final Rule. In the Final Rule, CMS called for a reduction of approximately 26.5% in the 2013 conversion factor that is used to calculate physician reimbursement. However, the American Taxpayer Relief Act of 2012 prevented this proposed cut and keeps the current reimbursement rate in effect until December 31, 2013. If Congress fails to act in future years to offset similar proposed reductions, the resulting decrease in payment could adversely impact our revenues and results of operations.

In addition, many of the Current Procedure Terminology, or CPT, procedure codes that we use to bill our cancer diagnostic tests were revised by the American Medical Association, effective January 1, 2013. In the Final Rule, CMS announced that it has decided to keep the new molecular codes on the Clinical Laboratory Fee Schedule rather than move them to the Physician Fee Schedule as some stakeholders had urged. CMS has also announced that for 2013 it will price the new codes using a "gapfilling" process by which it will refer the codes to the Medicare contractors to allow them to determine an appropriate price. Our reimbursement could be adversely affected by CMS' actions. If it reduces reimbursement for the new test codes or does not pay for our codes, then our revenues would be adversely affected. There can be no guarantees that Medicare and other payors will establish positive or adequate coverage policies or reimbursement rates**.**

We cannot predict whether future health care initiatives will be implemented at the federal or state level, or how any future legislation or regulation may affect us. The taxes imposed by the new federal legislation and the expansion of government's role in the U.S. health care industry as well as changes to the reimbursement amounts paid by payors for our cancer diagnostic tests may

reduce our profits and have a materially adverse effect on our business, financial condition, results of operations and cash flows. Moreover, Congress has proposed on several occasions to impose a 20% coinsurance payment requirement on patients for clinical laboratory tests reimbursed under the Medicare Clinical Laboratory Fee Schedule, which would require us to bill patients for these amounts. In the event that Congress were to ever enact such legislation, the cost of billing and collecting for our tests could often exceed the amount actually received from the patient.

Our commercial success could be compromised if third-party payors, including managed care organizations and Medicare, do not provide coverage and reimbursement, breach, rescind or modify their contracts or reimbursement policies or delay payments for our tests.

Oncologists may not order our cancer diagnostic tests unless third-party payors, such as managed care organizations and government payors such as Medicare and Medicaid, pay a substantial portion of the test price. Coverage and reimbursement by a third-party payor may depend on a number of factors, including a payor's determination that tests using our technologies are:

- not experimental or investigational;
- medically necessary;
- appropriate for the specific patient;
- cost-effective;
- supported by peer-reviewed publications; and
- included in clinical practice guidelines.

Uncertainty surrounds third-party payor reimbursement of any test incorporating new technology, including tests developed using our technologies. Technology assessments of new medical tests conducted by research centers and other entities may be disseminated to interested parties for informational purposes. Third-party payors and health care providers may use such technology assessments as grounds to deny coverage for a test or procedure. Technology assessments can include evaluation of clinical utility studies, which define how a test is used in a particular clinical setting or situation.

Because each payor generally determines for its own enrollees or insured patients whether to cover or otherwise establish a policy to reimburse our cancer diagnostic tests, seeking payor approvals is a time-consuming and costly process. We cannot be certain that coverage for our tests will be provided in the future by additional third-party payors or that existing agreements or policy decisions or reimbursement levels will remain in place or be fulfilled under existing terms and provisions. If we cannot obtain coverage and reimbursement from private and governmental payors such as Medicare and Medicaid for our current tests, or new tests or test enhancements that we may develop in the future, our ability to generate revenues could be limited, which may have a material adverse effect on our financial condition, results of operations and cash flow. Further, we have experienced in the past, and will likely experience in the future, delays and interruptions in the receipt of payments from third-party payors due to missing documentation and/or other issues, which could cause delay in collecting our revenue.

We will depend on Medicare and a limited number of private payors for a significant portion of our revenues and if these or other payors stop providing reimbursement or decrease the amount of reimbursement for our tests, our revenues could decline.

We expect that approximately 50% of the patients for whom we perform our cancer diagnostic tests will have Medicare coverage. Medicare and other third-party payors may change their coverage policies or cancel future contracts with us at any time, review and adjust the rate of reimbursement or stop paying for our tests altogether, which would reduce our total revenues.

Payors have increased their efforts to control the cost, utilization and delivery of health care services. In the past, measures have been undertaken to reduce payment rates for and decrease utilization of the clinical laboratory testing generally. Because of the cost-trimming trends, third-party payors that currently cover and provide reimbursement for our cancer diagnostic tests may suspend, revoke or discontinue coverage at any time, or may reduce the reimbursement rates payable to us. Any such action could have a negative impact on our revenues, which may have a material adverse effect on our financial condition, results of operations and cash flows.

In addition, we are currently considered a "non-contracting provider" by private third-party payors because we have not entered into a specific contract to provide our cancer diagnostic tests to their insured patients at specified rates of reimbursement. If we were to become a contracting provider with one more payors in the future, the amount of overall reimbursement we receive would likely decrease because we would be reimbursed less money per test performed at a contracted rate than at a non-contracted rate, which could have a negative impact on our revenues. Further, we typically are unable to collect payments from patients beyond that which is paid by their insurance and will continue to experience lost revenue as a result.

Because of certain Medicare billing rules, we may not receive reimbursement for all tests provided to Medicare patients.

The Medicare Administrative Contractors, MACs, who process claims for Medicare also can impose their own rules related to coverage and payment for laboratory services provided in their jurisdiction. Recently, Palmetto GBA, LLC, the Medicare Administrative Contractor for California and other areas, announced a comprehensive new billing policy and a coverage policy applicable to diagnostic tests, such as ours. Under a coverage policy, Palmetto will deny payment for molecular diagnostic tests for specific mutations, unless it has issued a positive coverage determination for the mutation. All of the molecular diagnostic tests which we are developing have received such positive coverage determinations. We have received a negative coverage determination from Palmetto, which we are appealing, for our CTC enumeration tests. CMS has determined that as of September 1, 2013, Noridian will be the MAC for California, which could lead to changes in Medicare coverage for our tests. The processing of Medicare claims is subject to change at the discretion of CMS at any time.

Long payment cycles of Medicare, Medicaid and/or other third-party payors, or other payment delays, could hurt our cash flows and increase our need for working capital.

Medicare and Medicaid have complex billing and documentation requirements that we must satisfy in order to receive payment, and the programs can be expected to carefully audit and monitor our compliance with these requirements. We must also comply with numerous other laws applicable to billing and payment for healthcare services, including privacy laws. Failure to comply with these requirements may result in non-payment, refunds, exclusion from government healthcare programs, and civil or criminal liabilities, any of which may have a material adverse effect on our revenues and earnings. In addition, failure by third-party payors to properly process our payment claims in a timely manner could delay our receipt of payment for our products and services, which may have a material adverse effect on our cash flows.

Complying with numerous regulations pertaining to our business is an expensive and time-consuming process, and any failure to comply could result in substantial penalties.

We are subject to CLIA, a federal law regulating clinical laboratories that perform testing on specimens derived from humans for the purpose of providing information for the diagnosis, prevention or treatment of disease. Our clinical laboratory must be certified under CLIA in order for us to perform testing on human specimens. CLIA is intended to ensure the quality and reliability of clinical laboratories in the United States by mandating specific standards in the areas of personnel qualifications, administration, and participation in proficiency testing, patient test management, quality control, quality assurance and inspections. We have a current certificate of accreditation under CLIA to perform high complexity testing, and our laboratory is accredited by the College of American Pathologists, or CAP, one of six CLIA-approved accreditation organizations. To renew this certificate, we are subject to survey and inspection every two years. Moreover, CLIA inspectors may make periodic inspections of our clinical laboratory outside of the renewal process.

In addition, our laboratory is located in California and is required by state law to have a California state license; as we expand our geographic focus, we may need to obtain laboratory licenses from additional states. California laws establish standards for operation of our clinical laboratory, including the training and skills required of personnel and quality control. In addition, Florida, Maryland, New York and Rhode Island require that we hold licenses to test specimens from patients in those states; Pennsylvania licensure or registration may be required as well, depending on the circumstances. In addition to California, we hold clinical laboratory licenses from the Maryland Department of Health and Pennsylvania Department of Health. Other states may have similar requirements or may adopt similar requirements in the future. Finally, we may be subject to regulation in foreign jurisdictions if we seek to expand international distribution of our tests outside the United States.

If we were to lose our CLIA accreditation or California laboratory license, whether as a result of a revocation, suspension or limitation, we would no longer be able to offer our tests, which would limit our revenues and harm our business. If we were to lose our license in any other state where we are required to hold a license, we would not be able to test specimens from those states.

If the FDA were to begin requiring approval or clearance of our tests, we could incur substantial costs and time delays associated with meeting requirements for pre-market clearance or approval or we could experience decreased demand for, or reimbursement of, our tests.

Although the FDA maintains that it has authority to regulate the development and use of laboratory developed tests, or LDTs, such as ours, as medical devices, it has not exercised its authority with respect to most LDTs as a matter of enforcement discretion. The FDA could, at any time, change its policy with regard to this matter.

We believe that our cancer diagnostic tests, as utilized in our clinical laboratory, are LDTs. As a result, we believe that pursuant to the FDA's current policies and guidance, the FDA does not require that we obtain regulatory clearances or approvals for our LDTs. The container we provide for collection and transport of blood samples from a health care provider to our clinical laboratory may be a medical device subject to the FDA regulation but is currently exempt from pre-market review by the FDA. While we believe that we are currently in material compliance with applicable laws and regulations, we cannot assure you that the FDA or other regulatory agencies would agree with our determination, and a determination that we have violated these laws, or a public announcement that we are being investigated for possible violations of these laws, could adversely affect our business, prospects, results of operations or financial condition.

Moreover, FDA policy pertaining to diagnostic testing is continuing to evolve and is subject to ongoing review and revision. A significant change in any of the laws, regulations or policies may require us to achieve regulatory compliance. At various times since 2006, the FDA has issued guidance documents or announced draft guidance regarding initiatives that may require varying levels of FDA oversight of our tests. For example, in June 2010, the FDA announced a public meeting to discuss the agency's oversight of LDTs prompted by the increased complexity of LDTs and their increasingly important role in clinical decision-making and disease management, particularly in the context of personalized medicine. The FDA indicated that it was considering a risk-based application of oversight to LDTs and that, following public input and discussion, it might issue separate draft guidance on the regulation of LDTs, which ultimately could require that we seek and obtain either pre-market clearance or approval of LDTs, depending upon the risk-based approach the FDA adopts. The public meeting was held in July 2010 and further public comments were submitted to the FDA through September 2010. The FDA has stated it is continuing to develop draft guidance in this area. Section 1143 of the Food and Drug Administration Safety and Innovation Act of 2012 requires the FDA to notify U.S. Congress at least 60 days before issuing a draft or final guidance regulating LDTs and to provide details of the anticipated action.

We cannot provide any assurance that FDA regulation, including pre-market review, will not be required in the future for our tests, whether through additional guidance issued by the FDA, new enforcement policies adopted by the FDA or new legislation enacted by Congress. We believe it is possible that legislation will be enacted into law or guidance could be issued by the FDA which may result in increased regulatory burdens for us to continue to offer our tests or to develop and introduce new tests. Given the attention Congress continues to give to these issues, legislation affecting this area may be enacted into law and may result in increased regulatory burdens on us as we continue to offer our tests and to develop and introduce new tests.

In addition, HHS requested that its Advisory Committee on Genetics, Health and Society make recommendations about the oversight of genetic testing. A final report was published in April 2008. If the report's recommendations for increased oversight of genetic testing were to result in further regulatory burdens, they could negatively affect our business and delay the commercialization of tests in development.

The requirement of pre-market review could negatively affect our business until such review is completed and clearance to market or approval is obtained. The FDA could require that we stop selling our cancer diagnostic tests pending pre-market clearance or approval. If the FDA allows our tests to remain on the market but there is uncertainty about our tests, if they are labeled investigational by the FDA or if labeling claims the FDA allows us to make are very limited, orders from oncologists or reimbursement may decline. The regulatory approval process may involve, among other things, successfully completing additional clinical trials and making a 510(k) submission, or filing a pre-market approval application with the FDA. If the FDA requires pre-market review, our tests may not be cleared or approved on a timely basis, if at all. We may also decide voluntarily to pursue FDA pre-market review of our tests if we determine that doing so would be appropriate.

Additionally, should future regulatory actions affect any of the reagents we obtain from suppliers and use in conducting our tests, our business could be adversely affected in the form of increased costs of testing or delays, limits or prohibitions on the purchase of reagents necessary to perform our testing.

If we were required to conduct additional clinical studies or trials before continuing to offer our tests that we have developed or may develop as LDTs, those studies or trials could lead to delays or failure to obtain necessary regulatory approval, which could cause significant delays in commercializing any future products and harm our ability to achieve sustained profitability.

If the FDA decides to require that we obtain clearance or approvals to commercialize our proprietary cancer diagnostic tests, we may be required to conduct additional pre-market clinical testing before submitting a regulatory notification or application for commercial sales. In addition, as part of our long-term strategy we may plan to seek FDA clearance or approval so we can sell our proprietary tests outside our CLIA laboratory; however, we would need to conduct additional clinical validation activities on our proprietary tests before we can submit an application for FDA approval or clearance. Clinical trials must be conducted in compliance with FDA regulations or the FDA may take enforcement action or reject the data. The data collected from these clinical trials may ultimately be used to support market clearance or approval for our tests. We believe it would likely take two years or more to conduct the clinical studies and trials necessary to obtain approval from the FDA to commercially launch our tests outside of our clinical laboratory. Even if our clinical trials are completed as planned, we cannot be certain that their results will support our test claims or that the FDA or foreign authorities will agree with our conclusions regarding our test results. Success in early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the later trials will replicate the results of prior clinical trials and studies. If we are required to conduct pre-market clinical trials, whether using prospectively acquired samples or archival samples, delays in the commencement or completion of clinical testing could significantly increase our test development costs and delay commercialization. Many of the factors that may cause or lead to a delay in the commencement or completion of clinical trials may also ultimately lead to delay or denial of regulatory clearance or approval. The commencement of clinical trials may be delayed due to insufficient patient enrollment, which is a function of many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the clinical trial. Moreover, the clinical trial process may fail to demonstrate that our tests are effective for the proposed indicated uses, which could cause us to abandon a test candidate and may delay development of other tests.

We may find it necessary to engage contract research organizations to perform data collection and analysis and other aspects of our clinical trials, which might increase the cost and complexity of our trials. We may also depend on clinical investigators, medical institutions and contract research organizations to perform the trials properly. If these parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, or if the quality, completeness or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or for other reasons, our clinical trials may have to be extended, delayed or terminated. Many of these factors would be beyond our control. We may not be able to enter into replacement arrangements without undue delays or considerable expenditures. If there are delays in testing or approvals as a result of the failure to perform by third parties, our research and development costs would increase, and we may not be able to obtain regulatory clearance or approval for our tests. In addition, we may not be able to establish or maintain relationships with these parties on favorable terms, if at all. Each of these outcomes would harm our ability to market our tests or to achieve sustained profitability.

We are subject to federal and state healthcare fraud and abuse laws and regulations and could face substantial penalties if we are unable to fully comply with such laws.

We are subject to health care fraud and abuse regulation and enforcement by both the federal government and the states in which we conduct our business. These health care laws and regulations include, for example:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons or entities from soliciting, receiving, offering or providing remuneration, directly or indirectly, in return for or to induce either the referral of an individual for, or the purchase order or recommendation of, any item or services for which payment may be made under a federal health care program such as the Medicare and Medicaid programs;
- the federal physician self-referral prohibition, commonly known as the Stark Law, which prohibits physicians from referring Medicare or Medicaid patients to providers of “designated health services” with whom the physician or a member of the physician’s immediate family has an ownership interest or compensation arrangement, unless a statutory or regulatory exception applies;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which established federal crimes for knowingly and willfully executing a scheme to defraud any health care benefit program or making false statements in connection with the delivery of or payment for health care benefits, items or services;
- federal false claims laws, which, prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us to the extent that our interactions with customers may affect their billing or coding practices; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payor, including commercial insurers.

We have adopted policies and procedures designed to comply with these laws. Our compliance is also subject to governmental review. The risk of our being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Further, the

ACA, among other things, amends the intent requirement of the federal anti-kickback and criminal health care fraud statutes. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes. Any action brought against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of these laws and regulations, we may be subject to any applicable penalty associated with the violation, including civil and criminal penalties, damages and fines, and/or exclusion from participation in Medicare, the California Medical Assistance Program (Medi-Cal – the California Medicaid program) or other state or federal health care programs, we could be required to refund payments received by us, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

We may be required to comply with laws governing the transmission, security and privacy of health information that require significant compliance costs, and any failure to comply with these laws could result in material criminal and civil penalties.

Under the administrative simplification provisions of HIPAA, HHS has issued regulations which establish uniform standards governing the conduct of certain electronic health care transactions and protecting the privacy and security of Protected Health Information used or disclosed by health care providers and other covered entities.

The privacy regulations regulate the use and disclosure of Protected Health Information by health care providers engaging in certain electronic transactions or "standard transactions." They also set forth certain rights that an individual has with respect to his or her Protected Health Information maintained by a covered health care provider, including the right to access or amend certain records containing Protected Health Information or to request restrictions on the use or disclosure of Protected Health Information. The HIPAA security regulations establish administrative, physical and technical standards for maintaining the integrity and availability of Protected Health Information in electronic form. These standards apply to covered health care providers and also to "business associates" or third parties providing services involving the use or disclosure of Protected Health Information. The HIPAA privacy and security regulations establish a uniform federal "floor" and do not supersede state laws that are more stringent or provide individuals with greater rights with respect to the privacy or security of, and access to, their records containing Protected Health Information. As a result, we may be required to comply with both HIPAA privacy regulations and varying state privacy and security laws.

Moreover, the Health Information Technology for Economic and Clinical Health Act, or HITECH, among other things, established certain health information security breach notification requirements. In the event of a breach of unsecured Protected Health Information, a covered entity must notify each individual whose Protected Health Information is breached, federal regulators and in some cases, must publicize the breach in local or national media. Breaches affecting 500 individuals or more are publicized by federal regulators who publicly identify the breaching entity, the circumstances of the breach and the number of individuals affected.

These laws contain significant fines and other penalties for wrongful use or disclosure of Protected Health Information. Given the complexity of HIPAA and HITECH and their overlap with state privacy and security laws, and the fact that these laws are rapidly evolving and are subject to changing and potentially conflicting interpretation, our ability to comply with the HIPAA, HITECH and state privacy requirements is uncertain and the costs of compliance are significant. Adding to the complexity is that our operations are evolving and the requirements of these laws will apply differently depending on such things as whether or not we bill electronically for our services, or provide services involving the use or disclosure of Protected Health Information and incur compliance obligations as a business associate. The costs of complying with any changes to the HIPAA, HITECH and state privacy restrictions may have a negative impact on our operations. Noncompliance could subject us to criminal penalties, civil sanctions and significant monetary penalties as well as reputational damage.

State-imposed genetic testing and privacy laws will affect our operations and our testing services.

Many states have adopted laws regulating genetic testing and limiting the use and disclosure of genetic test results. These laws vary widely, many are vague and as a result, applicability can be unclear leading to confusion, noncompliance or in some cases, unnecessary compliance. State genetic testing laws may impose specific informed consent requirements, creating administrative burden for providers and potentially discouraging the use of the testing. The costs of complying with these laws may have a negative impact on our operations and there may be significant penalties for non-compliance.

Clinical research is heavily regulated and failure to comply with human subject protection regulations may disrupt our research program leading to significant expense, regulatory enforcement, private lawsuits and reputational damage.

Clinical research is subject to federal, state and, for studies conducted outside of the United States, international regulation. At the federal level, the FDA and NIH impose regulations for the protection of human subjects and requirements such as initial and ongoing institutional review board review; informed consent requirements, adverse event reporting and other protections to minimize the risk and maximize the benefit to research participants. Many states impose human subject protection laws that mirror or in some cases exceed federal requirements. HIPAA also regulates the use and disclosure of Protected Health Information in connection with research activities. Research conducted overseas is subject to a variety of national protections such as mandatory ethics committee review, as well as laws regulating the use, disclosure and cross-border transfer of personal data. The costs of compliance with these laws may be significant and compliance with regulatory requirements may result in delay. Noncompliance may disrupt our research and result in data that is unacceptable to regulatory authorities, data lock or other sanctions that may significantly disrupt our operations.

Intellectual Property Risks Related to Our Business

Our collaborators may assert ownership or commercial rights to inventions we develop from our use of the biological materials which they provide to us, or otherwise arising from the collaboration.

We rely on certain third parties to provide us with blood samples and biological materials that we use to develop our tests, and we collaborate with several institutions, physicians and researchers in other manners as well. We do not have written agreements with certain collaborators, or the written agreements we have do not cover intellectual property rights. If we cannot successfully negotiate sufficient ownership and commercial rights to any inventions that result from our use of a third party collaborator's materials, or if disputes arise with respect to the intellectual property developed with the use of a collaborator's samples, or data developed in a collaborator's study, we may be limited in our ability to capitalize on the market potential of these inventions or developments.

If we are unable to maintain intellectual property protection, our competitive position could be harmed.

Our ability to protect our proprietary discoveries and technologies affects our ability to compete and to achieve sustained profitability. Currently, we rely on a combination of U.S. and foreign patents and patent applications, copyrights, trademarks and trademark applications, confidentiality or non-disclosure agreements, material transfer agreements, licenses, consulting agreements, work-for-hire agreements and invention assignment agreements to protect our intellectual property rights. We also maintain certain company know-how, trade secrets and technological innovations designed to provide us with a competitive advantage in the market place as trade secrets. Currently, we have only two issued U.S. patents and 33 pending U.S. and foreign patent applications relevant to our cancer diagnostics business. While we intend to pursue additional patent applications, it is possible that our pending patent applications and any future applications may not result in issued patents. Even if patents are issued, third parties may independently develop similar or competing technology that avoids our patents. Further, we cannot be certain that the steps we have taken will prevent the misappropriation of our trade secrets and other confidential information as well as the misuse of our patents and other intellectual property, particularly in foreign countries where we have not filed for patent protection.

From time to time the U.S. Supreme Court, other federal courts, the U.S. Congress or the U.S. Patent and Trademark Office, or USPTO, may change the standards of patentability and any such changes could have a negative impact on our business. For instance, in 2008, the Court of Appeals for the Federal Circuit issued a decision that methods or processes cannot be patented unless they are tied to a machine or involve a physical transformation. The U.S. Supreme Court later reversed that decision in *Bilski v. Kappos*, finding that the "machine-or-transformation" test is not the only test for determining patent eligibility. The Court, however, declined to specify how and when processes are patentable. In 2012, in the case *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, the U.S. Supreme Court reversed the Federal Circuit's application of *Bilski* and invalidated a patent focused on a diagnostic process because the patent claim embodied a law of nature. It is unclear at this time whether the USPTO will amend its patent prosecution guidelines for determining patentability of diagnostic or other processes, and how lower courts will implement the decision. Some aspects of our technology involve processes that may be subject to this evolving standard and we cannot guarantee that any of our pending process claims will be patentable as a result of such evolving standards.

In 2013, in *Association for Molecular Pathology v. Myriad Genetics*, the Supreme Court unanimously ruled that, "A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated," invalidating Myriad Genetics' patents on the BRCA1 and BRCA2 genes. However, the Supreme Court also held that manipulation of a gene to create something not found in nature, such as a strand of synthetically-produced complementary DNA, or cDNA, could still be eligible for patent protection. The Supreme Court noted that method patents, which concern technical procedures for carrying out a certain process, are not affected by the ruling.

It should also be noted that in 2010, the Secretary's Advisory Committee on Genetics, Health and Society voted to approve a report entitled "Gene Patents and Licensing Practices and Their Impact on Patient Access to Genetic Tests." That report defines "patent claims on genes" broadly to include claims to isolated nucleic acid molecules as well as methods of detecting particular sequences or mutations. The report also contains six recommendations, including the creation of an exemption from liability for infringement of patent claims on genes for anyone making, using, ordering, offering for sale or selling a test developed under the patent for patient care purposes, or for anyone using the patent-protected genes in the pursuit of research. The report also recommended that HHS should explore, identify and implement mechanisms that will encourage more voluntary adherence to current guidelines that promote nonexclusive in-licensing of diagnostic genetic and genomic technologies. It is unclear whether HHS will act upon these recommendations, or if the recommendations would result in a change in law or process that could negatively impact our patent portfolio or future research and development efforts.

We may face intellectual property infringement claims that could be time-consuming and costly to defend, and could result in our loss of significant rights and the assessment of treble damages.

From time to time we may face intellectual property infringement or misappropriation claims from third parties. Some of these claims may lead to litigation. The outcome of any such litigation can never be guaranteed, and an adverse outcome could affect us negatively. For example, were a third-party to succeed on an infringement claim against us, we may be required to pay substantial damages, including treble damages if such infringement were found to be willful. In addition, we could face an injunction, barring us from conducting the allegedly infringing activity. The outcome of the litigation could require us to enter into a license agreement which may not be pursuant to acceptable or commercially reasonable or practical terms or which may not be available at all.

It is also possible that an adverse finding of infringement against us may require us to dedicate substantial resources and time in developing non-infringing alternatives, which may or may not be possible. In the case of diagnostic tests, we would also need to include non-infringing technologies which would require us to re-validate our tests. Any such re-validation, in addition to being costly and time consuming, may be unsuccessful.

Finally, we may initiate claims to assert or defend our own intellectual property against third parties. Any intellectual property litigation, irrespective of whether we are the plaintiff or the defendant, and regardless of the outcome, is expensive and time-consuming, and could divert our management's attention from our business and negatively affect our operating results or financial condition.

Risks Relating to Our Common Stock and This Offering

The price of our common stock may be volatile, and the market price of our common stock after this offering may drop below the price you pay.

The initial public offering price per share may vary from the market price of our common stock after the offering. If an active market for our stock develops and continues, our stock price nevertheless may be volatile. Market prices for securities of early-stage life sciences companies have historically been particularly volatile. As a result of this volatility, you may not be able to sell your common stock at or above the initial public offering price per share. The factors that may cause the market price of our common stock to fluctuate include, but are not limited to:

- progress, or lack of progress, in developing and commercializing our cancer diagnostic tests;
- favorable or unfavorable decisions about our tests from government regulators, insurance companies or other third-party payors;
- our ability to recruit and retain qualified research and development personnel;
- changes in investors' and securities analysts' perception of the business risks and conditions of our business;
- changes in our relationship with key collaborators;
- changes in the market valuation or earnings of our competitors or companies viewed as similar to us;
- changes in key personnel;
- depth of the trading market in our common stock;
- termination of the lock-up agreements or other restrictions on the ability of our existing stockholders to sell shares after this offering;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- the granting or exercise of employee stock options or other equity awards;
- realization of any of the risks described under this section entitled "Risk Factors"; and
- general market and economic conditions.

In addition, the equity markets have experienced significant price and volume fluctuations that have affected the market prices for the securities of newly public companies for a number of reasons, including reasons that may be unrelated to our business or operating performance. These broad market fluctuations may result in a material decline in the market price of our common stock and you may not be able to sell your shares at prices you deem acceptable. In the past, following periods of volatility in the equity markets, securities class action lawsuits have been instituted against public companies. Such litigation, if instituted against us, could result in substantial cost and the diversion of management attention.

The NASDAQ Capital Market may not list our securities, which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions.

We anticipate that our securities will be listed on The NASDAQ Capital Market, a national securities exchange, upon consummation of this offering. Although, after giving effect to this offering, we expect to meet, on a pro forma basis, The NASDAQ Capital Market's minimum initial listing standards, which generally mandate that we meet certain requirements relating to stockholders' equity, market capitalization, aggregate market value of publicly held shares and distribution requirements, we cannot assure you that we will be able to meet those initial listing requirements. If The NASDAQ Capital Market does not list our securities for trading on its exchange, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;
- reduced liquidity with respect to our securities;
- a determination that our shares of common stock are "penny stock" which will require brokers trading in our shares of common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our shares of common stock;
- a limited amount of news and analyst coverage for our company; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." Assuming our common stock will be listed on The NASDAQ Capital Market, our common stock will be covered securities. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, then the states can regulate or bar the sale of covered securities in a particular case. Further, if we were no longer listed on The NASDAQ Capital Market, our common stock would not be covered securities and we would be subject to regulation in each state in which we offer our securities.

Our failure to meet the continued listing requirements of The NASDAQ Capital Market could result in a de-listing of our common stock.

If after listing we fail to satisfy the continued listing requirements of The NASDAQ Capital Market, such as the corporate governance requirements or the minimum closing bid price requirement, NASDAQ may take steps to de-list our common stock. Such a de-listing would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. In the event of a de-listing, we would take actions to restore our compliance with NASDAQ's listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock to become listed again, stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below the NASDAQ minimum bid price requirement or prevent future non-compliance with NASDAQ's listing requirements.

If our shares become subject to the penny stock rules, it would become more difficult to trade our shares.

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than $5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not obtain or retain a listing on The NASDAQ

Capital Market and if the price of our common stock is less than $5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- the rate of adoption and/or continued use of our tests by healthcare practitioners;
- variations in the level of expenses related to our development programs;
- addition or reduction of resources for sales and marketing;
- addition or termination of clinical utility studies;
- any intellectual property infringement lawsuit in which we may become involved;
- third party payor determinations affecting our tests; and
- regulatory developments affecting our tests.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially.

The shares you purchase in this offering will experience immediate and substantial dilution and may also be diluted by exercises of outstanding options and warrants.

The initial public offering price per share of our common stock will be substantially higher than the net tangible book value per share of our common stock immediately after the offering. At the assumed initial public offering price of $[____] per share, purchasers of our common stock will effectively incur dilution of $[__.__] per share in the net tangible book value of their purchased shares. Conversely, the shares of our common stock that our existing stockholders currently own will receive a material increase in net tangible book value per share. As of June 30, 2013, we had outstanding options to purchase an aggregate of 738,999 shares of our common stock at a weighted average exercise price of $0.35 per share and warrants to purchase an estimated aggregate of 4,241,872 shares of our common stock at an estimated weighted average exercise price of $0.43 per share. The exercise of such outstanding options and warrants will result in further dilution of your investment. In addition, you may experience additional dilution if we issue common stock in the future. As a result of this dilution, you may receive significantly less than the full purchase price you paid for the shares in the event of liquidation.

Future sales of our common stock, or the perception that future sales may occur, may cause the market price of our common stock to decline, even if our business is doing well.

Sales of substantial amounts of our common stock after this offering, or the perception that these sales may occur, could materially and adversely affect the price of our common stock and could impair our ability to raise capital through the sale of

additional equity securities. The shares of common stock sold in this offering will be freely tradable, without restriction, in the public market, except for any shares sold to our affiliates.

In connection with this offering, we have agreed, subject to limited exceptions, not to issue, sell or transfer any shares of common stock for 180 days after the date of this prospectus without the consent of Aegis Capital Corp. Our officers, directors and certain stockholders have agreed before the commencement of this offering, subject to limited exceptions, not to sell or transfer any shares of common stock for 180 days after the date of this prospectus without the consent of Aegis Capital Corp. However, Aegis Capital Corp. may release these shares from any restrictions at any time. We cannot predict what effect, if any, market sales of shares held by any stockholder or the availability of shares for future sale will have on the market price of our common stock.

Approximately [__,__,__] shares of common stock may be sold in the public market by existing stockholders on or about 181 days after the date of this prospectus, subject to volume and other limitations imposed under the federal securities laws. Sales of substantial amounts of our common stock in the public market after the completion of this offering, or the perception that such sales could occur, could adversely affect the market price of our common stock and could materially impair our ability to raise capital through offerings of our common stock. See the section entitled “Shares Eligible for Future Sale” for a more detailed description of the restrictions on selling shares of our common stock after this offering.

In addition, as of June 30, 2013, we had outstanding options to purchase 738,999 shares of our common stock and outstanding warrants to purchase shares of our common and Series A preferred stock overlying an estimated aggregate of 5,568,903 common stock equivalents. We plan to register for offer and sale the shares of common stock that are reserved for issuance pursuant to outstanding options. Shares covered by such registration statements upon the exercise of stock options generally will be eligible for sale in the public market, except that affiliates will continue to be subject to volume limitations and other requirements of Rule 144 under the Securities Act. The issuance or sale of such shares could depress the market price of our common stock.

In addition, we are registering the [ ] shares of our common stock underlying the warrants to be issued to the representative of the underwriters in connection with this offering as described in the “Underwriting – Representative’s Warrants” section of this prospectus.

We also intend to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates and the lock-up agreements described in the “Underwriting” section of this prospectus.

An active trading market may not develop for our common stock, and you may not be able to sell your stock at or above the initial public offering price per share.

There is no established trading market for our common stock, and the market for our common stock will likely be highly volatile, and the market price of our common stock may decline regardless of our operating performance. Before this offering, you could not buy or sell our securities publicly. Although we anticipate that our common stock will be approved for listing on The NASDAQ Capital Market, an active public market for our common stock may not develop or be sustained after this offering. We cannot predict the extent to which investor interest in our company will lead to the development of an active trading market in our common stock or how liquid that market might become. If a market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at the time you wish to sell them, at a price that is attractive to you, or at all.

The initial public offering price per share has been determined through negotiation between us and representatives of the underwriters, and may not be indicative of the market price for our common stock after this offering. You may not be able to sell your shares at or above the initial public offering price per share.

If securities or industry analysts do not publish research or reports or publish unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who covers us downgrades our stock, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to regularly publish reports on us, interest in our stock could decrease, which could cause our stock price or trading volume to decline.

Our largest stockholder will continue to have substantial influence over us after this offering and could delay or prevent a change in corporate control.

Claire K. T. Reiss beneficially owns approximately 79% of our common stock and, upon the closing of this offering, assuming we sell _____ shares of common stock in this offering and there is no exercise of the underwriters' option to purchase additional shares, will beneficially own approximately __% of our common stock. Mrs. Reiss has significant influence over the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. Accordingly, this concentration of ownership might harm the market price of our common stock by:

- delaying, deferring or preventing a change in control;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

If we are unable to favorably assess the effectiveness of our internal control over financial reporting, investors may lose confidence in our financial reporting and our stock price could be materially adversely affected.

As a private company, we were not subject to the requirements of Section 404 of the Sarbanes-Oxley Act of 2002. After completion of this offering, we will be required to document and test our internal control over financial reporting. If we fail to remediate any significant deficiencies or material weaknesses in internal controls that may be identified in the future, we may be unable to conclude that our internal control over financial reporting is effective. Under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, issuers that qualify as "emerging growth companies" under the JOBS Act will not be required to provide an auditor's attestation report on internal controls for so long as the issuer qualifies as an emerging growth company. We currently qualify as an emerging growth company under the JOBS Act and we may choose not to provide an auditor's attestation report on internal controls. However, if we cannot favorably assess the effectiveness of our internal control over financial reporting, or if we require an attestation report from our independent registered public accounting firm in the future and that firm is unable to provide an unqualified attestation report on the effectiveness of our internal controls over financial reporting, investor confidence and, in turn, our stock price could be materially adversely affected.

We are an "emerging growth company," and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an emerging growth company, as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of

Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements and exemptions from the requirements of holding nonbinding advisory votes on executive compensation and stockholder approval of any golden parachute payments not previously approved. We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our common stock held by non-affiliates exceeds $700 million as of any June 30 before that time or if we have total annual gross revenue of $1.0 billion or more during any fiscal year before that time, in which cases we would no longer be an emerging growth company as of the following December 31 or, if we issue more than $1.0 billion in non-convertible debt during any three year period before that time, we would cease to be an emerging growth company immediately. Even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company" which would allow us to take advantage of many of the same exemptions from disclosure requirements including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations.

We will incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. We will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which will require, among other things, that we file with the Securities and Exchange Commission, or the SEC, annual, quarterly and current reports with respect to our business and financial condition. In addition, the Sarbanes-Oxley Act, as well as rules subsequently adopted by the SEC and The NASDAQ Stock Market to implement provisions of the Sarbanes-Oxley Act, imposes significant requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Further, there are significant corporate governance and executive compensation related provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, that require the SEC to adopt additional rules and regulations in these areas such as "say on pay" and proxy access. Recent legislation permits smaller "emerging growth companies" to implement many of these requirements over a longer period and up to five years from the pricing of this offering. We intend to take advantage of this new legislation but cannot guarantee that we will not be required to implement these requirements sooner than budgeted or planned and thereby incur unexpected expenses. Stockholder activism, the current political environment and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact the manner in which we operate our business in ways we cannot currently anticipate.

We expect the rules and regulations applicable to public companies to substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly. If these requirements divert the attention of our management and personnel from other business concerns, they could have a material adverse effect on our business, financial condition and results of operations. The increased costs will decrease our net income or increase our consolidated net loss, and may require us to reduce costs in other areas of our business or increase the prices of our products or services. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur

substantial costs to maintain the same or similar coverage. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

Our management will have broad discretion over the use of the proceeds we receive in this offering, and may not apply the proceeds in ways that increase the value of your investment.

We estimate that net proceeds of the sale of the common stock that we are offering will be approximately $[____] million, or $[____] million, if the underwriters exercise their option to purchase additional shares in this offering in full. We currently intend to use the net proceeds of the offering to hire sales and marketing personnel and support increased sales and marketing activities, to fund further research and development, clinical utility studies and future enhancements of our proprietary tests, to acquire equipment, implement automation and scale our capabilities to prepare for significant test volume, and for general corporate purposes and to fund ongoing operations and expansion of our business. We will have broad discretion in the application of the net proceeds, and investors will be relying on our judgment regarding the application of the proceeds of this offering. The actual amounts and timing of our actual expenditures depend on numerous factors, including the success of our efforts to market our tests, the timing and progress of our research and development activities for the tests in our pipeline, our ability to reduce operating costs through the implementation of automation and economies of scale, changes in regulatory requirements for LDTs, and other unforeseen regulatory or compliance costs. The costs and timing of development activities, particularly conducting clinical utility studies and validation studies are highly uncertain, subject to substantial risks and can often change. Depending on the outcome of these activities, our plans and priorities may change and we may apply the net proceeds of this offering differently than we currently anticipate. Moreover, you will not have the opportunity to influence our decision on how to use the proceeds from this offering. We may use the proceeds for corporate purposes that do not immediately enhance our prospects for the future or increase the value of your investment. See the Section entitled “Use of Proceeds.”

Existing stockholders may view our initial public offering process unfavorably.

The process of effecting an initial public offering has taken considerable time and involved a reverse common stock split. Some of our current stockholders have invested in our securities at prices which are at or above the initial public offering price per share. No assurances can be given as to whether any stockholders will seek to take actions against our company or the board with respect to our initial public offering process.

Anti-takeover provisions of our certificate of incorporation, our bylaws and Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove the current members of our board and management.

Certain provisions of our amended and restated certificate of incorporation and bylaws that will be in effect upon the completion of this offering could discourage, delay or prevent a merger, acquisition or other change of control that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. Furthermore, these provisions could prevent or frustrate attempts by our stockholders to replace or remove members of our board of directors. (For example, Delaware law provides that if a corporation has a classified board of directors, stockholders cannot remove any director during his or her term without cause.) These provisions also could limit the price that investors might be willing to pay in the future for our common stock, thereby depressing the market price of our common stock. Stockholders who wish to participate in these transactions may not have the opportunity to do so. These provisions, among other things:

- classify our board of directors into three classes of equal (or roughly equal) size, with all directors serving for a three-year term and the directors of only one class being elected at each annual meeting of stockholders, so that the terms of the classes of directors are “staggered”;

- allow the authorized number of directors to be changed only by resolution of our board of directors;
- authorize our board of directors to issue, without stockholder approval, preferred stock, the rights of which will be determined at the discretion of the board of directors and that, if issued, could operate as a "poison pill" to dilute the stock ownership of a potential hostile acquirer to prevent an acquisition that our board of directors does not approve;
- establish advance notice requirements for stockholder nominations to our board of directors or for stockholder proposals that can be acted on at stockholder meetings; and
- limit who may call a stockholders meeting.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or DGCL, which may, unless certain criteria are met, prohibit large stockholders, in particular those owning 15% or more of the voting rights on our common stock, from merging or combining with us for a prescribed period of time.

Because we do not expect to pay cash dividends for the foreseeable future, you must rely on appreciation of our common stock price for any return on your investment. Even if we change that policy, we may be restricted from paying dividends on our common stock.

We do not intend to pay cash dividends on shares of our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend upon results of operations, financial performance, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant. Accordingly, you will have to rely on capital appreciation, if any, to earn a return on your investment in our common stock. Investors seeking cash dividends in the foreseeable future should not purchase our common stock.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

Our ability to utilize our federal net operating loss, carryforwards and federal tax credit may be limited under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended. The limitations apply if an "ownership change," as defined by Section 382, occurs. Generally, an ownership change occurs if the percentage of the value of the stock that is owned by one or more direct or indirect "five percent shareholders" increases by more than 50 percentage points over their lowest ownership percentage at any time during the applicable testing period, typically three years. If we have experienced an "ownership change" at any time since our formation, we may already be subject to limitations on our ability to utilize our existing net operating losses and other tax attributes to offset taxable income. In addition, future changes in our stock ownership, which may be outside of our control, may trigger an "ownership change" and, consequently, Section 382 and 383 limitations. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carryforwards and other tax attributes to offset United States federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us. As of December 31, 2012, we had federal and state net operating loss carryforwards of approximately $104.4 million and $95.7 million, respectively, and federal and California research and development credits of $2.9 million and $3.0 million, respectively, which could be limited if we experience an "ownership change."

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because early-stage life sciences companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy, prospective products, product approvals, timing and likelihood of success, plans and objectives of management for future operations, and future results of current and anticipated products are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this prospectus are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties and assumptions described under the sections in this prospectus entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise. The forward-looking statements contained in this prospectus are excluded from the safe harbor protection provided by the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act.

This prospectus also contains estimates and other statistical data made by independent parties and by us relating to market size and growth and other data about our industry. This data involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. In addition, projections, assumptions and estimates of our future performance and the future performance of the markets in which we operate are necessarily subject to a high degree of uncertainty and risk.

USE OF PROCEEDS

We estimate that we will receive net proceeds from this offering of approximately $[____] million, or approximately $[____] million if the underwriters exercise their over-allotment option in full, assuming an initial public offering price of $[____] per share, the midpoint of the price range listed on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each $1.00 increase (decrease) in the assumed initial public offering price of $[____] per share would increase (decrease) the net proceeds to us from this offering by approximately $[____] million, or approximately $[____] million if the underwriters exercise their over-allotment option in full, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We currently intend to use the net proceeds of the offering as follows:

- approximately $5 million to hire sales and marketing personnel and support increased sales and marketing activities;
- approximately $5 million to fund further research and development, clinical utility studies and future enhancements of our proprietary tests and services;
- approximately $3 million to acquire equipment, implement automation and scale our capabilities to prepare for significant test volume; and
- the balance for general corporate purposes and to fund ongoing operations and expansion of our business.

The expected use of net proceeds of this offering represents our current intentions based upon our present plan and business conditions. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the completion of this offering. For example, if we identify opportunities that we believe are in the best interests of our stockholders, we may use a portion of the net proceeds from this offering to acquire, invest in or license complementary products, technologies or businesses although we have no current commitments, understandings or agreements to do so. We will have broad discretion in the application of the net proceeds, and investors will be relying on our judgment regarding the application of the proceeds of this offering. The actual amounts and timing of our actual expenditures depend on numerous factors, including the success of our efforts to market OncoCEE-BR, the timing and progress of our discovery, research and development activities for the tests in our pipeline, the success of our efforts to increase sales of our laboratory services, the success of our efforts to expand our international sales, changes in regulatory requirements for LDTs, and other unforeseen regulatory or compliance costs. The costs and timing of test discovery and development activities, particularly conducting clinical validation studies and obtaining regulatory clearance or approval, if required, are highly uncertain, subject to substantial risks and can often change. Depending on the outcome of these activities, our plans and priorities may change and we may apply the net proceeds of this offering differently than we currently anticipate.

DIVIDEND POLICY

We have never declared dividends on our equity securities, and currently do not plan to declare dividends on shares of our common stock in the foreseeable future. We expect to retain our future earnings, if any, for use in the operation and expansion of our business. Subject to the foregoing, the payment of cash dividends in the future, if any, will be at the discretion of our board of directors and will depend upon such factors as earnings levels, capital requirements, our overall financial condition and any other factors deemed relevant by our board of directors.

CAPITALIZATION

The following table sets forth our capitalization as of June 30, 2013:

- on an actual basis; and
- on a pro forma basis as of June 30, 2013, to reflect the sale of [_____] shares of common stock in this offering less offering costs of $[____] million and underwriting discounts, expenses, and commissions of $[____] million, of which $[____] million was previously paid, the automatic conversion of all outstanding shares of our Series A preferred stock (including shares issued in July 2013 which, as of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, the conversion of convertible promissory notes and accrued interest in the amount of $[____] million into an aggregate of [_____] shares of our common stock in connection with the closing of our initial public offering, and the issuance of _____ shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, the termination of certain warrants upon the closing of our initial public offering in accordance with their terms and the reclassification to shareholders' deficit of the fair value of certain warrants the exercise price and/or exercisability period length of which will be fixed upon the closing of our initial public offering in accordance with their terms, assuming for all such items an initial public offering price of $[____] per share, the midpoint of the price range listed on the cover page of this prospectus.

You should read this table together with the sections entitled "Use of Proceeds" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" as well as our financial statements and the related notes, which appear elsewhere in this prospectus.

	As of June 30, 2013	
(dollars in thousands)	**(unaudited) Actual**	**(unaudited) Pro Forma**
Cash and cash equivalents	$ 4	$
Long term debt (inclusive of current portion)	3,816	
Series A convertible preferred stock, par value $0.0001 per share, 36,460,000 shares authorized, 27,175,213 shares issued and outstanding, actual; _____ shares authorized, no shares issued and outstanding, pro forma	3	
Series A convertible preferred stock, par value $0.0001 per share, 42,245,834 shares to be issued for conversion of debt and accrued interest	4	
Common stock, par value $0.0001 per share, 14,600,000 shares authorized, 2,553,783 shares issued and outstanding, actual; _____ shares authorized, _____ shares issued and outstanding, pro forma	—	
Accumulated deficit	(117,089)	
Total stockholders' equity/(deficit)	(8,215)	
Total capitalization	(4,399)	

The number of shares of common stock to be outstanding after the offering is based on the pro forma number of shares outstanding as of June 30, 2013 after giving effect to (i) the sale of [_____] shares of common stock in this offering, (ii) the automatic conversion of all outstanding shares of our Series A preferred stock (including shares issued in July 2013 which, as of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, (iii) the conversion of convertible promissory notes and accrued interest in the amount of $[____] million into an aggregate of [_____] shares of our common stock in connection with the closing of our initial public offering, (iv) the issuance of _____ shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, (v) the termination of certain warrants upon the closing of our initial public offering in accordance with their terms and (vi) the reclassification to shareholders' deficit of the fair value of certain warrants the exercise price and/or exercisability period length of which will be fixed upon the closing of our initial public offering in accordance with their terms, assuming for all such items an initial public offering price of $[____] per share, the midpoint of the price range listed on the cover page of this prospectus. This number excludes:

- 738,999 shares of our common stock issuable upon the exercise of stock options as of June 30, 2013, with a weighted average exercise price of $0.35 per share;
- 4,241,872 shares of our common stock issuable upon the exercise of outstanding warrants as of June 30, 2013, at a weighted average exercise price of $0.43 per share;
- 458,784 shares of our common stock issuable upon the exercise of outstanding RSUs as of June 30, 2013;
- 2,692,128 common stock equivalents issuable upon the exercise of our outstanding warrants to purchase preferred stock; and
- any shares of our common stock issuable upon exercise of the underwriters' over-allotment option.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the public offering price per share of our common stock in this offering and our pro forma net tangible book value per share immediately after this offering. We calculate net tangible book value per share by dividing our net tangible book value, which is tangible assets less total liabilities less debt discounts and financing fees related to debt to be paid as a result of this offering, by the number of outstanding shares of our common stock. Before considering the effects of the proceeds of this offering, but giving effect to the completion of our initial public offering of _____ shares of our common stock at $____ per share, the automatic conversion of our outstanding shares of Series A preferred stock into 23,140,332 shares of our common stock upon completion of our initial public offering, and the conversion of convertible promissory notes and accrued interest in the amount of $_____million at a conversion price of $____ per share, into an aggregate of _____ shares of our common stock, our pro forma net tangible book value (deficit) as of June 30, 2013 was approximately $ (____) million, or approximately $(____) per share. Upon completion of this offering, our pro forma net tangible book value as of June 30, 2013 will be approximately $____ million or approximately $____ per share. This represents an immediate increase in pro forma net tangible book value of $____ per share to our existing stockholders and an immediate dilution of $____ per share to new investors purchasing our common stock in this offering. The following table illustrates the per share dilution (unaudited):

Assumed public offering price per share		$
Pro forma net tangible book value per share as of June 30, 2013	$( )	
Increase in pro forma net tangible book value per share after this offering		
Pro forma net tangible book value per share after this offering		
Dilution in pro forma net tangible book value per share to new investors		$

The information above assumes that the underwriters do not exercise their over-allotment option. If the underwriters exercise their over-allotment option in full, the pro forma net tangible book value will increase to $____ per share, representing an immediate increase to existing stockholders of $____ per share and an immediate dilution of $____ per share to new investors. If any shares are issued upon exercise of outstanding options or warrants, new investors will experience further dilution.

The following table summarizes, on a pro forma basis as of June 30, 2013, the differences between the number of shares of common stock purchased from us, the total consideration and the average price per share paid by existing stockholders and by investors participating in this offering, after deducting estimated underwriting discounts and commissions and estimated offering expenses, at an assumed public offering price of $____ per share (unaudited).

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	%	Amount	%	
Existing stockholders			$		$
New investors			$		
Total		100	$	100	$

The number of shares purchased from us by existing stockholders is based on _____ shares of our common stock outstanding as of June 30, 2013 after giving effect to the automatic conversion of all outstanding shares of our Series A preferred stock (including shares issued in July 2013 which, as of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, the conversion of convertible promissory notes and accrued interest in the amount of $[____]

million into an aggregate of [_____] shares of our common stock in connection with the closing of our initial public offering, and the issuance of _____ shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, assuming for all such items an initial public offering price of $[____] per share, the midpoint of the price range listed on the cover page of this prospectus. This number excludes:

- 738,999 shares of our common stock issuable upon the exercise of stock options as of June 30, 2013, with a weighted average exercise price of $0.35 per share;
- 4,241,872 shares of our common stock issuable upon the exercise of outstanding warrants as of June 30, 2013, at a weighted average exercise price of $0.43 per share;
- 458,784 shares of our common stock issuable upon the exercise of outstanding RSUs as of June 30, 2013;
- 2,692,128 common stock equivalents issuable upon the exercise of our outstanding warrants to purchase preferred stock; and
- any shares of our common stock issuable upon exercise of the underwriters' over-allotment option.

To the extent that the underwriters' over-allotment option is exercised or any warrants or options are exercised, there will be further dilution to investors.

SELECTED HISTORICAL FINANCIAL DATA

The following table summarizes our selected financial data for the periods and as of the dates indicated. Our selected statements of operations data for each of the years in the periods ended December 31, 2011 and 2012, and our selected balance sheet data as of December 31, 2011 and 2012, have been derived from our audited financial statements and their related notes, which are included elsewhere in this prospectus. The unaudited selected statements of operations data for the six months ended June 30, 2013 and 2012, and the unaudited balance sheet data as of June 30, 2013, are derived from our unaudited financial statements, which are included elsewhere in this prospectus. Our unaudited financial statements have been prepared on the same basis as the audited financial statements and, in the opinion of management, include all adjustments, consisting of normal recurring adjustments necessary for a fair presentation of our financial condition as of such dates and our results of operations for such periods. Our historical results are not necessarily indicative of the results to be expected for any future periods and our interim results are not necessarily indicative of the results to be expected for the full fiscal year. Our selected financial data should be read together with the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and with our financial statements and their related notes, which are included elsewhere in this prospectus.

	Year ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
	(in thousands, except share and per share data)			
Revenues	$ 109	$ 1	$ 84	$ 64
Cost of revenues	1,201	17	1,141	465
Gross profit	(1,092)	(16)	(1,057)	(401)
Research and development expenses	6,562	8,853	1,401	3,797
General and administrative expenses	2,063	2,729	929	1,165
Sales and marketing expenses	786	673	124	402
Loss from operations	(10,503)	(12,271)	(3,511)	(5,765)
Total other income/(expense)	(1,756)	(1,357)	(389)	(677)
Loss Before Income Taxes	$ (12,259)	$ (13,628)	$ (3,900)	$ (6,442)
Income tax expense	1	1	1	1
Net loss & comprehensive loss	$ (12,260)	$ (13,629)	$ (3,901)	$ (6,443)
Weighted average shares outstanding				
Basic	2,246,730	1,593,777	2,527,530	2,246,730
Diluted	2,246,730	1,593,777	2,527,530	2,246,730
Net loss per common share				
Basic	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)
Diluted	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)
Pro forma net loss per common share				
Basic	$	$	$	$
Diluted	$	$	$	$

	As of December 31, 2012	As of June 30, 2013	
	Actual	Actual (unaudited)	Pro Forma[1] (unaudited)
Balance Sheet Data:			
Cash and cash equivalents	$ 185	$ 4	
Total assets	1,470	992	
Notes payable, net of debt discount	22,376	3,816	
Warrant liability	982	1,384	
Total liabilities	28,855	9,207	
Convertible preferred stock	3	7	
Total shareholders' deficit	(27,385)	(8,215)	

(1) Gives effect to (i) the sale of [_____] shares of common stock in this offering less offering costs of $[____] million and underwriting discounts, expenses, and commissions of $[____] million, of which $[____] million was previously paid, (ii) the automatic conversion of all outstanding shares of our Series A preferred stock (including shares issued in July 2013 which, as

of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, (iii) the conversion of convertible promissory notes and accrued interest in the amount of $[____] million into an aggregate of [_____] shares of our common stock in connection with the closing of our initial public offering, (iv) the issuance of _____ shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, (v) the termination of certain warrants upon the closing of our initial public offering in accordance with their terms and (vi) the reclassification to shareholders' deficit of the fair value of certain warrants the exercise price and/or exercisability period length of which will be fixed upon the closing of our initial public offering in accordance with their terms, assuming for all such items an initial public offering price of $[_____] per share, the midpoint of the price range listed on the cover page of this prospectus. Each $1.00 increase (decrease) in the assumed initial public offering price of $[_____] per share would increase (decrease) the pro forma amount of each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[_____], assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price would increase (decrease) each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[_____]. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITIONAND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read together with our financial statements and related notes included elsewhere in the prospectus. This discussion contains forward-looking statements based upon our current plans, estimates, beliefs and expectations that involve risks, uncertainties and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under the sections entitled "Risk Factors," "Special Note Regarding Forward-Looking Statements" and elsewhere in this prospectus. The share numbers in the following discussion reflect a 1-for-3 reverse common stock split that we effected on November 3, 2011 and a further 1-for-[_____] reverse common stock split that we will effect before the completion of this offering.

Overview

We are an early-stage cancer diagnostics company that develops and commercializes proprietary circulating tumor cell, or CTC, and circulating tumor DNA, or ctDNA, tests utilizing a standard blood sample. These tests provide information to oncologists that enable them to select the most appropriate treatment for their patients based on better, timelier and more-detailed data on the characteristics of tumors.

Our tests utilize our Cell Enrichment and Extraction (CEE) technology for the detection and analysis of CTCs, and our CEE-Selector technology for the detection and analysis of ctDNA, each performed on a standard blood sample. The CEE technology is an internally invented and developed, microfluidics-based CTC capture and analysis platform, with enabling features that change how CTC testing can be used by clinicians by providing real-time biomarker monitoring with only a standard blood sample. The CEE-Selector technology enables mutation detection with ultra-high sensitivity and specificity and is applicable to nucleic acid from CTCs or other samples types, such as blood plasma for ctDNA. We believe the CEE-Selector technology is an important part of certain of our pipeline CTC tests and will be a stand-alone test for molecular analysis of biomarkers.

At our corporate headquarters facility located in San Diego, California, we operate a clinical laboratory that is certified under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, and accredited by the College of American Pathologists, or CAP. We manufacture our microfluidic CEE microchannels, related equipment and certain reagents to perform our tests at this facility. CLIA certification and CAP accreditation are required before any clinical laboratory, including ours, may perform testing on human specimens for the purpose of obtaining information for the diagnosis, prevention, or treatment of disease or the assessment of health. The tests we offer are classified as laboratory developed tests, or LDTs, under CLIA regulations.

We are in the process of commercializing our first proprietary test, OncoCEE-BR, for breast cancer, and anticipate launching an OncoCEE-LU test for non-small cell lung cancer, or NSCLC, in the first half of 2014. These tests utilize our CEE technology platform and provide CTC enumeration as well as biomarker analysis from a standard blood sample. In the case of the OncoCEE-BR test, biomarker analysis involves fluorescence in situ hybridization, or FISH, for the detection and quantitation of the human epidermal growth factor receptor 2, or HER2, gene copy number. We plan to include immunocytochemical analysis of estrogen receptor and progesterone receptor proteins, as well as mutation analysis as appropriate, in the OncoCEE-BR test within the next year. The OncoCEE-LU test's biomarker analysis would include FISH for EML4/ALK1 and ROS1 gene fusions, as well as mutation analysis for the epidermal growth factor receptor, or EGFR, gene, the K-ras gene and the B-raf gene.

The L858R mutation of the EGFR gene and D747-751 deletions as activators of EGFR kinase activity are linked to the drugs Tarceva® and Iressa® (AstraZeneca). The T790M mutation of the EGFR gene as a resistance marker for EGFR tyrosine kinase inhibitors is linked to drugs in clinical development that address this resistance such as Gilotrif® (Boehringer-Ingelheim) and dacomitinib (Pfizer). The codon 12 and 13 mutations of the K-ras gene are linked to non-responsiveness to the EGFR kinase inhibitors, and the codon 600 mutations of the B-raf gene are linked to Zelboraf® and Tafinlar®, which are both approved for melanoma and are in clinical trials for lung cancer. Our OncoCEE-LU test would be performed on a standard blood sample.

We plan to add other biomarker analyses to our OncoCEE tests as their relevance is demonstrated in clinical trials, for example, ret proto-oncogene gene fusions in NSCLC, which may indicate a particular course of therapy. In addition, we are developing a series of other proprietary CTC and ctDNA tests for different solid tumor types, including colorectal cancer, prostate cancer, gastric cancer and melanoma, each incorporating treatment-associated biomarker analyses specific to that cancer, planned to be launched over the next two to three years.

Key Factors Affecting our Results of Operations and Financial Condition

Our overall long-term growth plan depends on our ability to develop and commercialize our proprietary tests through our CLIA laboratory. We have the OncoCEE-BR test available as a commercial product and we plan to enhance revenue for this product through the efforts of a sales and marketing organization we plan to hire after the completion of this offering. We are developing additional OncoCEE tests for non-small cell lung, colorectal, gastric and prostate cancers and melanoma that we expect to make available to physicians over the next several years. To facilitate market adoption of our proprietary tests, we anticipate having to successfully complete additional clinical utility studies with clinical samples to generate clinical utility data and then publish our results in peer-reviewed scientific journals. Our ability to complete such clinical studies is dependent upon our ability to leverage our collaborative relationships with leading institutions to facilitate our research, to conduct the appropriate clinical studies and to obtain favorable clinical data.

We believe that the factors discussed in the following paragraphs have had and are expected to continue to have a material impact on our results of operations and financial condition.

Revenues

Almost all of our revenue in 2012 was generated through limited commercialization of our OncoCEE-BR test. Over 75% of this revenue was generated through our arrangement with Clarient. The clinical laboratory industry is highly competitive, and our relationships and our partners' relationships with decision-makers at hospitals, cancer centers or physician offices is a critical component of securing their business. Consequently, our ability to establish and manage partnerships with groups that have sales and marketing capabilities in our target markets and attract and maintain productive sales personnel that have and can grow these relationships will largely determine our ability to grow our clinical services revenue.

The majority of our commercial revenue for 2012 was billed through our arrangement with Clarient, which until May 2013 had responsibility for billing the payor. As a result, we have limited information about the payor mix, reimbursement history and collectability for the tests performed under this arrangement. Clarient has paid us for all tests that we conducted under our arrangement in 2012.

Cost of Revenues

Our cost of revenues consists principally of personnel costs, laboratory and manufacturing supplies and overhead. We are pursuing various strategies to reduce and control our cost of revenues, including automating aspects of our processes, developing more efficient technology and methods, attempting to negotiate improved terms with our suppliers and exploring relocating our operations to a lower-cost facility.

Operating Expenses

We classify our operating expenses into three categories: research and development, sales and marketing, and general and administrative. Our operating expenses principally consist of personnel costs, outside services, laboratory consumables and overhead, development costs, and legal and accounting fees.

Research and Development Expenses. We incur research and development expenses principally in connection with our efforts to develop and improve our proprietary tests. Our primary research and development expenses consist of direct personnel costs, laboratory equipment and consumables and overhead expenses. We anticipate that research and development expenses will increase in the near-term, principally as a result of hiring additional personnel to develop and validate tests in our pipeline and to perform work associated with clinical utility studies and development collaborations. In addition, we expect that our costs related to collaborations with research and academic institutions will increase. All research and development expenses are charged to operations in the periods in which they are incurred.

Sales and Marketing Expenses. Our sales and marketing expenses consist principally of personnel and related overhead costs for our sales team and their support personnel, travel and entertainment expenses, and other selling costs including sales collaterals and trade shows. We expect our sales and marketing expenses to increase significantly after we complete our initial public offering as we hire additional sales and marketing personnel and launch new tests.

General and Administrative Expenses. General and administrative expenses consist principally of personnel-related expenses, professional fees, such as legal, accounting and business consultants, occupancy costs, and other general expenses. We expect that our general and administrative expenses will increase as we expand our business operations. When we begin billing a significant number of tests, bad debt is expected to become a greater expense. We further expect that general and administrative expenses will increase significantly due to increased information technology, legal, insurance, accounting and financial reporting expenses associated with being a public company.

Seasonality

We expect our test volume to decrease during vacation and holiday seasons, when patients are less likely to visit their health care providers. We expect this trend in seasonality to continue for the foreseeable future.

Critical Accounting Policies and Significant Judgments and Estimates

Our management’s discussion and analysis of 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. The preparation of our financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates based on historical experience and make various assumptions, which management believes to be reasonable under the circumstances, which form the basis for judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The notes to our audited and unaudited financial statements, which are included elsewhere in this prospectus, contain a summary of our significant accounting policies. We consider the following accounting policies critical to the understanding of the results of our operations:

- Revenue recognition;
- Accounts receivable and bad debts;
- Stock-based compensation;
- Common stock valuation; and
- Warrant liability.

Revenue Recognition

We recognize revenue in accordance with ASC 605, *Revenue Recognition*, and ASC 954-605, *Health Care Entities*, *Revenue Recognition* which requires that four basic criteria must be met before revenue can be recognized: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred and title and the risks and rewards of ownership have been transferred to the client or services have been rendered; (3) the price is fixed or determinable; and (4) collectability is reasonably assured. For contract partners, revenue is recorded based upon the contractually agreed upon fee schedule. When assessing collectability, we consider whether we have sufficient payment history to reliably estimate a payor's individual payment patterns. For new tests where there is limited evidence of payment history at the time the tests are completed, we recognize revenue equal to the amount of cash received until such time as reimbursement experience can be established.

Our primary source of revenue for the year ended December 31, 2012 was our commercial partner. This revenue is derived from clinical laboratory testing performed in our laboratories under our collaboration agreement. As there is a contractually agreed upon price, and collectability from our collaboration partner is reasonably assured, revenues for these tests is earned at the time the test is completed and the results are delivered to the third party.

Accounts Receivable and Bad Debts

We carry accounts receivable at original invoice amounts, less an estimate for doubtful receivables, based on a review of all outstanding amounts on a periodic basis. The estimate for doubtful receivables is determined from an analysis of the accounts receivable on a quarterly basis, and is recorded as bad debt expense. Since we only recognize revenue to the extent we expect to collect such amounts, bad debt expense related to receivables from patient service revenue is recorded in general and administrative expense in the statements of operations. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received.

Stock-Based Compensation Expense

We account for stock-based compensation under the provisions of ASC Topic 718, *Compensation—Stock Compensation*, which requires the measurement and recognition of compensation expense for all stock-based awards made to employees and directors based on estimated fair values on the grant date. We estimate the fair value of stock-based awards on the date of grant using the Black-Scholes option pricing model, or Black-Scholes valuation model. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service periods using the straight-line method. We estimate forfeitures at the time of grant and revise our estimates in subsequent periods if actual forfeitures differ from those estimates. At June 30, 2013, we had unrecognized compensation cost related to nonvested employee stock options of approximately $53,000, which amount is expected to be recognized over the next 1.05 years.

We account for stock-based compensation awards to non-employees in accordance with ASC Topic 505-50, *Equity-Based Payments to Non-Employees*. Under ASC 505-50, we determine the fair value of the warrants or stock-based compensation awards granted as either the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measurable. All issuances of equity instruments issued to non-employees as consideration for goods or services received by us are accounted for based on the fair value of the equity instruments issued. These awards are recorded in expense and additional paid-in capital in stockholders' equity over the applicable service periods based on the fair value of the options at the end of each period.

Calculating the fair value of stock-based awards requires the input of highly subjective assumptions into the Black-Scholes valuation model. Stock-based compensation expense is calculated using our best estimate, which involves inherent uncertainties, and the application of our management's judgment. Significant estimates include the fair value of our common stock at the date of grant, the expected life of the stock option, stock price volatility, risk-free interest rate and forfeiture rates.

Common Stock Valuation

In the absence of a public trading market, our board of directors determined a reasonable estimate of the then-current fair value of our common stock for purposes of granting stock-based compensation based on input from management and valuation reports prepared by an independent third-party valuation specialist. We determined the fair value of our common stock utilizing methodologies, approaches and assumptions consistent with the American Institute of Certified Public Accountants Practice Aid, "Valuation of Privately-Held-Company Equity Securities Issued as Compensation," which we refer to as the AICPA Practice Aid. In addition, we exercised judgment in evaluating and assessing the foregoing based on several factors including:

- the nature and history of our business;
- our historical operating and financial results;
- the market value of companies that are engaged in a similar business to ours;
- the lack of marketability of our common stock;
- the price at which shares of our equity instruments have been sold;
- our progress in developing our technology;
- the overall inherent risks associated with our business at the time stock option grants or warrants were approved; and
- the overall equity market conditions and general economic trends.

Warrant Liability

Warrants for shares that are contingently redeemable and for which the exercise price is not fixed are classified as liabilities on the accompanying balance sheets and carried at their estimated fair value, determined through use of a Black-Scholes valuation model. At the end of each reporting period, any changes in fair value are recorded as a component of total other income/(expense). We will continue to adjust the carrying value of the warrants until the earlier of the exercise of the warrants, the warrants no longer meeting the criteria to be classified as liabilities or the completion of a liquidation event, including the completion of an initial public offering under the Securities Act, at which time the exercise price will be fixed for the surviving warrants, and the fair value of those warrants will be reclassified to shareholders' deficit.

Results of Operations

Six Months Ended June 30, 2013 and 2012

The following table sets forth certain information concerning our results of operations for the periods shown:

	Six Months Ended June 30,		Change	
	2013 (unaudited)	2012 (unaudited)	$	%
(dollars in thousands)				
Revenue	$ 84	$ 64	$ 20	31.3%
Cost of revenues	1,141	465	676	145.4%
Research and development expenses	1,401	3,797	(2,396)	(63.1%)
General and administrative expenses	929	1,165	(236)	(20.3%)
Sales and marketing expenses	124	402	(278)	(69.2%)
Total Operating Loss	(3,511)	(5,765)	(2,254)	(39.1%)
Interest income/(expense), net	(978)	(1,020)	(42)	(4.1%)
Change in fair value of warrant liability	601	356	245	68.8%
Other income/(expense)	(12)	(13)	(1)	(7.7%)
Income/(loss) before income taxes	(3,900)	(6,442)	(2,542)	(39.5%)
Income tax expense	1	1	0	0.0%
Net income/(loss)	$ (3,901)	$ (6,443)	$(2,542)	(39.5%)

Revenue

Revenues were $84,000 for the six months ended June 30, 2013, compared with $64,000 for the six months ended June 30, 2012, an increase of $20,000, or 31.3%. The increase was primarily related to tests ordered through our development program with the Dana-Farber Cancer Institute.

Cost of Revenues

Cost of revenues were $1.1 million for the six months ended June 30, 2013, compared with $465,000 for the six months ended June 30, 2012, an increase of $675,000, or 145.4%. The increase was primarily related to the volume of tests ordered through our development program with the Dana-Farber Cancer Institute.

Operating Expenses

Research and Development Expenses.

Research and development expenses were $1.4 million for the six months ended June 30, 2013, compared with $3.8 million for the six months ended June 30, 2012, a decrease of $2.4 million, or 63.1%. The decrease was primarily due to a reduction in headcount from an average of 19 for the six months ended June 30, 2012 to an average of 8 for the same period in 2013.

General and Administrative Expenses.

General and administrative expenses were $929,000 for the six months ended June 30, 2013, compared with $1.2 million for the six months ended June 30, 2012, a decrease of $236,000, or 20.3%. The decrease was primarily due to a reduction in headcount from an average of 10 for the six months ended June 30, 2012 to an average of 6 for the same period in 2013.

Sales and Marketing Expenses.

Sales and marketing expenses were $124,000 for the six months ended June 30, 2013, compared with $402,000 for the six months ended June 30, 2012, a decrease of $278,000, or 69.2%. The decrease was primarily due to a reduction in headcount from an average of 3 for the six months ended June 30, 2012 to an average of 1 for the same period in 2013.

Interest Income and Expense

Net interest expense was $978,000 for the six months ended June 30, 2013, compared with $1.0 million for the six months ended June 30, 2012, a decrease of $42,000, or 4.1%. The decrease was primarily due to lower amortization of debt discount due to the completion of the amortization in prior periods.

Change in Fair Value of Warrant Liability

The change in the fair value of warrant liability was $601,000 for the six months ended June 30, 2013 compared with $356,000 for the six months ended June 30, 2012, an increase of $245,000, or 68.8%. The increase is primarily due to the decrease in the estimated underlying value of our shares of Series A preferred stock, for which the warrants are exercisable, as well as a decrease in the discount rate used to value the warrants due to a decrease in the average expected life as of June 30, 2013 compared to June 30, 2012.

Years Ended December 31, 2012 and 2011

The following table sets forth certain information concerning our results of operations for the periods shown:

	Year Ended December 31,		Change	
	2012	2011	$	%
(dollars in thousands)				
Revenue	$ 109	$ 1	$ 108	10800.0%
Cost of revenues	1,201	17	1,184	6964.7%
Research and development expenses	6,562	8,853	(2,291)	(25.9%)
General and administrative expenses	2,063	2,729	(666)	(24.4%)
Sales and marketing expenses	786	673	113	16.8%
Total Operating Loss	(10,503)	(12,271)	(1,768)	(14.4%)
Interest income/(expense), net	(2,187)	(1,700)	487	28.6%
Change in fair value of warrant liability	454	361	93	25.8%
Other income/(expense)	(23)	(18)	5	27.8%
Income/(loss) before income taxes	(12,259)	(13,628)	(1,369)	(10.0%)
Income tax expense	1	1	—	0.0%
Net loss	$ (12,260)	$ (13,629)	$(1,369)	(10.0%)

Revenue

Revenues were $109,000 for the year ended December 31, 2012, compared with $1,000 for the year ended December 31, 2011, an increase of $108,000. The increase was primarily due to commercial tests ordered through our marketing partner, Clarient.

Cost of Revenues

Cost of revenues was $1.2 million for the year ended December 31, 2012, compared with $17,000 for the year ended December 31, 2011, an increase of $1.2 million. The increase was primarily related to the volume of commercial tests ordered through our marketing partner, Clarient.

Operating Expenses

Research and Development Expenses. Research and development expenses were $6.6 million for the year ended December 31, 2012, compared with $8.9 million for the year ended December 31, 2011, a decrease of $2.3 million, or 25.9%. This decrease was primarily attributable to reduced expenditures on clinical samples and lab supplies as we approached commercialization.

General and Administrative Expenses. General and administrative expenses were $2.1 million for the year ended December 31, 2012, compared with $2.7 million for the year ended December 31, 2011, a decrease of $0.7 million, or 24.4%. This decrease was primarily attributable to a reduced level of legal fees, particularly fees pertaining to our patent portfolio.

Sales and Marketing Expenses. Sales and marketing expenses were $786,000 for the year ended December 31, 2012, compared with $673,000 for the year ended December 31, 2011, an increase of $113,000, or 16.8%. This increase was primarily attributable to personnel costs relating to the two sales personnel we employed in 2012.

Interest Income and Expense

Interest expense was $2.2 million for the year ended December 31, 2012, compared with $1.7 million for the year ended December 31, 2011, with the $500,000 increase primarily related to higher debt balances.

Income Taxes

Over the past several years we have generated operating losses in all jurisdictions in which we may be subject to income taxes. As a result, we have accumulated significant net operating losses and other deferred tax assets. Because of our history of losses and the uncertainty as to the realization of those deferred tax assets, a full valuation allowance has been recognized. We do not expect to report a provision for income taxes until we have a history of earnings, if ever, that would support the realization of our deferred tax assets.

We have not completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since our formation, due to the complexity and cost associated with such a study, and the fact that there may be additional ownership changes in the future. We estimate that if such a change did occur, the federal and state net operating loss carryforwards and research and development credits that can be utilized in the future will be significantly limited.

Liquidity and Capital Resources

We are actively working to improve our financial position and enable the growth of our business, by raising new capital and resolving our outstanding debt.

Pursuant to a note and warrant purchase agreement executed as of June 28, 2013 to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million, we have borrowed from several of our directors and their affiliates an aggregate of $3.8 million through July 31, 2013 (including $0.7 million borrowed under this arrangement during fiscal year 2012.) The maturity date of each note is May 31, 2014 and may be extended for two successive six month periods. Each note bears interest at 8.0% per annum, payable at maturity. The principal amount of and accrued interest on each note will automatically convert into shares of our common stock upon the closing of an underwritten initial public offering resulting in at least $8.0 million of gross proceeds to us, at a conversion price equal to the price per share of our common stock sold in the initial public offering. The number of shares underlying the associated common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the note principal, by the exercise price, which will be set at the price per share of common stock sold in the initial public offering.

In June 2013, we arranged the conversion of all outstanding indebtedness under our January 2009 amended and restated loan agreement, our February 2011 note and warrant purchase agreement and our January 2012 note and warrant purchase agreement. In this series of transactions, promissory notes with outstanding principal totaling $20,231,000 and accrued interest of approximately $2,591,000 were converted into 42,245,834 shares of Series A preferred stock. The conversion included the issuance of 41,694,122 shares of Series A preferred stock to directors and their affiliates and other related parties. All of the converted notes and interest were in default and classified as current as of December 31, 2012.

In connection with the conversion of the 2009 amended and restated loan agreement’s promissory note, we issued 333,333 common stock warrants to Goodman Co. Ltd., a 5% shareholder.

In July 2013, we amended a secured promissory note with a principal balance of $1.4 million, held by a trust affiliated with Claire K. T. Reiss, a 5% shareholder and at the time a director, to provide that all principal of and accrued interest on the note would automatically convert into common stock upon the closing of an initial public offering, at the price per share at which common stock is sold in such initial public offering. This amendment was not related to Mrs. Reiss’ later decision to resign from the board of directors.

In July 2013, we entered into a revolving line of credit with UBS Bank USA in the initial amount of $1.5 million. Interest accrues daily on the outstanding balance and is paid monthly at a variable rate which is currently 2.75% over the 30 day LIBOR rate or a current effective annual interest rate of 2.942%. An affiliate of our director David F. Hale, and an affiliate of Claire K. T. Reiss, a 5% shareholder and at the time a director, and our director Edward Neff guaranteed the loan and pledged financial assets to UBS Bank USA to secure their guaranties. In return, we issued common stock warrants to the guarantors. The number of shares subject to the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by the respective guarantors to secure their respective guaranty obligations to UBS Bank USA, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. We have entered into an agreement with the guarantors that provides for us to reimburse them for any amounts paid by them on such guaranties. This reimbursement obligation is secured by a security interest in our assets.

Cash Flows

Our net cash flow from operating, investing and financing activities for the periods below were as follows:

	Year Ended December 31,		Six Months Ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
(dollars in thousands)				
Cash provided by (used in):				
Operating activities	$(8,607)	$(10,985)	$ (3,046)	$ (4,947)
Investing activities	(8)	(295)	(1)	(8)
Financing activities	8,365	10,205	2,866	4,881
Net increase (decrease) in cash and cash equivalents	$ (250)	$ (1,075)	$ (181)	$ (74)

Cash Used in Operating Activities. Net cash used in operating activities was $8.6 million for the year ended December 31, 2012, compared to net cash used in operating activities of $11.0 million for the year ended December 31, 2011. Net cash used in operating activities was $3.0 million for the six months ended June 30, 2013, compared to net cash used in operating activities of $4.9 million for the six months ended June 30, 2012. In all periods the primary use of cash was to fund our net loss.

Cash Used in Investing Activities. Cash used in investing activities was $8,000 for the year ended December 31, 2012, compared to $295,000 for the year ended December 31, 2011. The cash used in investing activities in 2011 was primarily used to acquire laboratory equipment and software.

Cash Provided by Financing Activities. Net cash provided by financing activities was $8.4 million for the year ended December 31, 2012, compared to net cash provided by financing activities of $10.2 million for the year ended December 31, 2011. Net cash provided by financing activities was $2.9 million for the six months ended June 30, 2013, compared to net cash provided by financing activities of $4.9 million for the six months ended June 30, 2012. Our primary source of financing in all periods consisted of loans received from our major shareholder and members of our board of directors and their affiliates, in exchange for convertible promissory notes and warrants. Our ability to continue as a going concern relies on the continued availability of financing from these and other sources.

Capital Resources and Expenditure Requirements

We expect to continue to incur substantial operating losses in the future. It may take several years to achieve positive operational cash flow or we may not ever achieve positive operational cash flow. We expect that we will use a portion of the net proceeds from this offering and our revenues from operations to hire sales and marketing personnel, support increased sales and marketing activities, fund further research and development, clinical utility studies and future enhancements of our proprietary tests, acquire equipment, implement automation and scale our capabilities to prepare for significant test volume, for general corporate purposes and to fund ongoing operations and the expansion of our business, including the increased costs associated with being a public company. We may also use a portion of the net proceeds of this offering to acquire or invest in businesses, technologies, services or products, although we do not have any current plans to do so.

Without the net proceeds from this offering, we believe our current cash resources are insufficient to satisfy our liquidity requirements at our current level of operations. If we do not consummate this offering by October 2013, we expect that we will need to raise additional financing early in the fourth quarter of 2013, which might not be available on favorable terms, if at all. We can provide no assurances that any sources of a sufficient amount of financing will be available to us on favorable terms, if at all. If we are unable to raise a sufficient amount of financing in a timely manner, we would likely need to scale back our general and administrative activities and certain of our research and development activities. Our forecast pertaining to our current financial resources and the costs to support our general and administrative and research and development activities are forward-looking statements and involve risks and uncertainties. Actual results could vary materially and negatively as a result of a number of factors, including:

- our ability to secure financing and the amount thereof;

- the costs of operating and enhancing our laboratory facilities;
- the costs of developing our anticipated internal sales and marketing capabilities;
- the scope, progress and results of our research and development programs, including clinical utility studies;
- the scope, progress, results, costs, timing and outcomes of the clinical utility studies for our cancer diagnostic tests;
- our ability to manage the costs for manufacturing our microchannels;
- the costs of maintaining, expanding and protecting our intellectual property portfolio, including potential litigation costs and liabilities;
- our ability to obtain adequate reimbursement from governmental and other third-party payors for our tests and services;
- the costs of additional general and administrative personnel, including accounting and finance, legal and human resources, as a result of becoming a public company;
- our ability to collect revenues; and
- other risks discussed in the section entitled “Risk Factors”.

As of June 30, 2013, we had approximately $5 million of outstanding indebtedness, all of which will convert to equity upon completion of this offering. Following completion of this offering, we believe we will have approximately $2 million in outstanding indebtedness, which will consist of borrowings under our revolving line of credit from UBS Bank USA which was initiated in July 2013.

Our auditor’s report on our financial statements includes an explanatory paragraph expressing substantial doubt that we can continue as a going concern for the next twelve months. With the net proceeds of this offering, we believe that we will have sufficient funds to continue our current level of operations for the next eighteen months. During 2012 and this year to date, we are experiencing net cash outflows at our current level of operations of approximately $2 million per quarter. Assuming that we continue at our current level of operations after consummation of our initial public offering and add our planned sales and marketing resources, we would expect our net cash outflow to increase by at least $1 million per quarter.

Furthermore, we may need to raise additional capital to expand our business to meet our long-term business objectives. We expect that our operating expenses and capital expenditures will increase in the future as we expand our business. We plan to increase our sales and marketing headcount to promote our cancer diagnostic tests and our research and development headcount to validate the tests currently in our pipeline. These headcount increases are aimed to expand our pipeline and to perform work associated with our research collaborations. Until we can generate a sufficient amount of revenues to finance our cash requirements, which we may never do, we may need to continue to raise additional capital to fund our operations.

We may raise additional capital to fund our current operations and to fund expansion of our business to meet our long-term business objectives through public or private equity offerings, debt financings, borrowings or strategic partnerships coupled with an

investment in our company or a combination thereof. If we raise additional funds through the issuance of convertible debt securities, or other debt securities, these securities could be secured and could have rights senior to those of our common stock. In addition, any new debt incurred by us could impose covenants that restrict our operations. The issuance of any new equity securities will also dilute the interest of our current stockholders. Given the risks associated with our business, including our unprofitable operating history and our ability or inability to develop additional proprietary tests, additional capital may not be available when needed on acceptable terms, or at all. If adequate funds are not available, we will need to curb our expansion plans or limit our research and development activities, which would have a material adverse impact on our business prospects and results of operations.

Off-Balance Sheet Arrangements

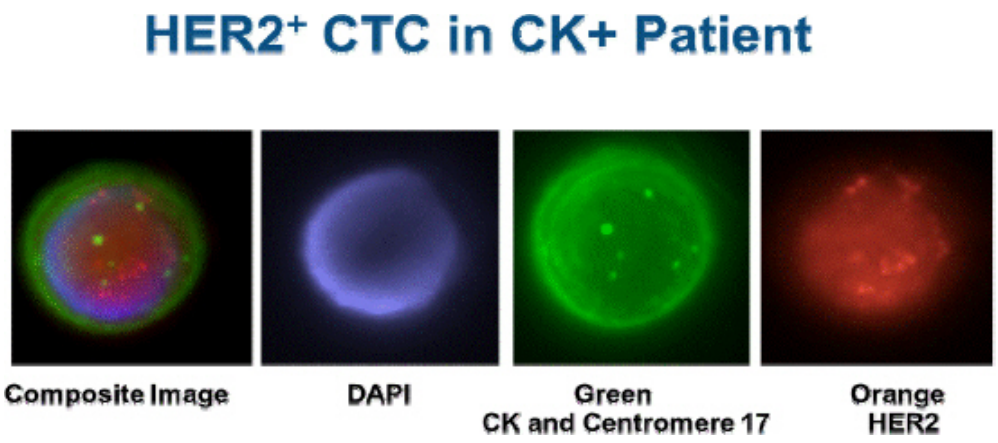
We have not engaged in any off-balance sheet activities as defined in Item 303(a)(4) of Regulation S-K.

Table of Contents

DESCRIPTION OF THE BUSINESS

Company Overview

We are a cancer diagnostics company that develops and commercializes proprietary circulating tumor cell, or CTC, and circulating tumor DNA, or ctDNA, tests utilizing a standard blood sample. These tests provide information to oncologists that enable them to select the most appropriate treatment for their patients based on better, timelier and more-detailed data on the characteristics of tumors. Our tests utilize our Cell Enrichment and Extraction (CEE) technology for the detection and analysis of CTCs, and our CEE-Selector technology for the detection and analysis of ctDNA, each performed on a standard blood sample. The CEE technology is an internally invented and developed, microfluidics-based CTC capture and analysis platform, with enabling features that change how CTC testing can be used by clinicians by providing real-time biomarker monitoring with only a standard blood sample. The CEE-Selector technology enables mutation detection with ultra-high sensitivity and specificity and is applicable to nucleic acid from CTCs or other sample types, such as blood plasma for ctDNA. We believe CEE-Selector technology is an important part of certain of our pipeline CTC tests, and believe it could also be a stand-alone test for molecular analysis of biomarkers.



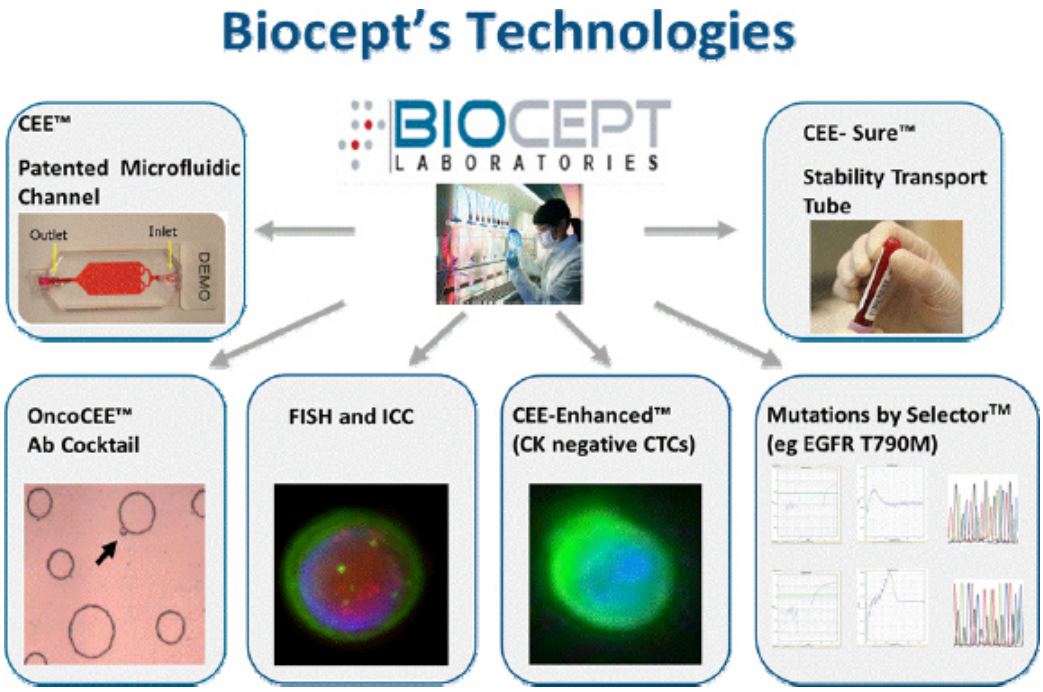
At our corporate headquarters facility located in San Diego, California, we operate a clinical laboratory that is certified under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, and accredited by the College of American Pathologists, or CAP, and manufacture our microfluidic CEE microchannels, related equipment and certain reagents to perform our tests at this facility. CLIA certification and CAP accreditation are required before any clinical laboratory, including ours, may perform testing on human specimens for the purpose of obtaining information for the diagnosis, prevention, or treatment of disease, or the assessment of health. The tests we offer are classified as laboratory developed tests, or LDTs, under CLIA regulations.

We are in the process of commercializing our first proprietary test, OncoCEE-BR. OncoCEE-BR is a breast cancer CTC test that is performed on a standard blood sample. It detects CTCs, which are typically very rare compared to normal blood cells, and determines the patient's human epidermal growth factor receptor 2, or HER2, status by fluorescence *in situ* hybridization, or FISH. Pursuant to an agreement that we entered into with Clarient Diagnostic Services, Inc., a GE Healthcare Company, Clarient is making OncoCEE-BR available to physicians through its sales force.

We believe that the OncoCEE-BR test offers advantages over other available CTC tests, with improved sensitivity and enumeration results as well as diagnostic biomarker analyses. Competitive CTC tests rely on the expression of the epithelial cell adhesion molecule, or EpCAM, and cytokeratins for CTC capture, detection and enumeration. This approach may exclude CTCs that have undergone intrinsic modifications of their phenotype, such as the epithelial-to-mesenchymal transition, or EMT, thought to be critical for metastasis. EMT may represent a possible explanation for many patients who, despite an aggressive disease, are found to be negative for the presence of CTCs by current technologies. OncoCEE™ captures and detects EpCAM and cytokeratin negative CTCs, which are more mesenchymal-like. Additionally, the OncoCEE platform enables evaluation of treatment-associated biomarkers, like HER2 status, which qualifies patients as candidates for HER2-targeted therapeutics such as Herceptin®, Perjeta®, Kadcyla® (all Genentech/Roche) and Tykerb® (GlaxoSmithKline). We plan to include immunocytochemical analysis of estrogen receptor and progesterone receptor proteins, as well as mutation analysis as appropriate, into the OncoCEE-BR test within the next year.

We anticipate launching OncoCEE-LU, a proprietary test performed on a standard blood sample for non-small cell lung cancer, or NSCLC, in the first half of 2014. The biomarkers to be analyzed in the OncoCEE-LU test would include EML4/ALK1 and ROS1 gene fusions by FISH, and the epidermal growth factor receptor, or EGFR, gene, the K-ras gene and the B-raf gene by mutation analysis, in addition to CTC enumeration. Our OncoCEE-LU test would be run against a standard blood sample. We have entered into an agreement with Life Technologies Corporation, or Life Technologies, under which we are cooperating with Life Technologies to develop, promote and commercialize our OncoCEE-LU test. Under this agreement, we would perform OncoCEE-LU tests in our laboratory and transmit the results to Life Technologies for their interpretation and reporting to healthcare professionals.

We plan to add other biomarker analyses to our OncoCEE tests as their relevance is demonstrated in clinical trials, for example, ret proto-oncogene gene fusions in NSCLC, which may indicate a particular course of therapy. In addition, we are developing a series of other proprietary CTC and ctDNA tests for different solid tumor types, including colorectal cancer, prostate cancer, gastric cancer and melanoma, each incorporating treatment-associated biomarker analyses specific to that cancer, planned to be launched over the next two to three years.



Biomarkers are molecular or cellular features of a cancer cell that indicate an abnormality. This abnormality, typically a genetic mutation or aberration, detected at either the gene, protein or metabolite level, may in fact be responsible for the transformation of the cell from a normal cell to a cancer cell. We have focused our efforts on biomarkers associated with specific targeted cancer therapeutics, or resistance to those therapeutics. Examples include an amplified HER2 gene, which is associated with HER2-targeted therapeutics like Herceptin®, Perjeta®, Kadcyla® and Tykerb® for the treatment of breast cancer, or a mutated B-ras gene, which is associated with the drugs Zelboraf® (Daiichi-Sankyo/Genentech/Roche) and Tafinlar® (GlaxoSmithKline) for the treatment of melanoma. This is important because the presence or level of these biomarkers indicates to a physician that the associated therapy is appropriate for the patient, or instead that the patient has, or has developed, resistance to that therapy.

Biomarkers have traditionally been detected in tumor tissue after biopsy or re-section, with the analysis performed by a pathologist. We are able to perform these same analyses on CTCs or ctDNA on a standard blood sample using our CEE and CEE-Selector technology in our CLIA laboratory, meaning that the biomarkers detected in a patient's tumor can now be monitored on a real-time basis without the need for a tissue biopsy. Because of the difficulty or inability to obtain periodic tissue biopsies, especially at the time of recurrence, this offers the physician a new source and level of information than was previously available.

We also have a research and development program focused on technology enhancements and novel platform development and a translational research group evaluating clinical applications for our cancer diagnostic tests in different cancer types and clinical settings. We offer our unique cancer diagnostic tests through our CLIA laboratory to physicians for patient care applications as well as to pharmaceutical and biopharmaceutical companies and academic centers using CTC or ctDNA testing, with biomarker analysis including mutation detection, in their clinical trials and research efforts. CTC tests, particularly those that offer analysis of CTCs for treatment-associated biomarkers, are becoming powerful tools in the practice of personalized medicine. They enable physicians to utilize a standard blood sample as a "liquid biopsy" to assess the status of their patient's cancer at a cellular and molecular level on an ongoing basis, and to select therapies that have the highest likelihood of benefiting their patients.

To date, we have engaged in only limited sales and marketing activities. Such activities have primarily related to OncoCEE-BR tests and have been conducted pursuant to an agreement with Clarient. We also have established an agreement with Life Technologies for the commercialization of OncoCEE-LU tests when the development and validation of the OncoCEE-LU test are completed.

Using a portion of the proceeds from this offering, we plan to build an internal sales and marketing team to market and sell our cancer diagnostic tests directly to oncologists. This team will also provide technical expertise and support for the sales representatives of our sales and marketing partners. Our plans call for starting with an initial group of 7 sales representatives, and, based on success and test volume, growing this number to 15-20 within two years.

We collaborate with physicians and researchers at MD Anderson Cancer Center and plan to expand our collaborative relationships to include other key thought leaders at other institutions for the cancer types we target with our CTC and ctDNA tests. Such relationships help us develop and validate the effectiveness and utility of our tests in specific clinical settings and provide us access to patient samples and data. We completed a study, recently published in *Cancer Medicine*, utilizing our OncoCEE-BR test, and a version of this test adapted for use with bone marrow samples, with a group at MD Anderson Cancer Center comprised of breast cancer surgeons, pathologists and basic researchers. In this study, we demonstrated the ability to identify HER2 positive CTCs and disseminated tumor cells, or DTCs, seen in bone marrow in patients that had been previously classified as HER2 negative by analysis of their tumor tissue. A HER2 positive result in a patient with breast cancer provides an indication to the oncologist that there is likely to be a survival benefit from treatment with Herceptin®, which has been demonstrated in a number of large clinical studies.

We are currently involved in a new clinical study following up on this finding in CTCs, employing OncoCEE-BR tests for patient selection and monitoring. This study, led by investigators at the Dana-Farber Cancer Institute and The Ohio State University, is currently enrolling patients, and is likely to produce initial results within a year. We believe that these results will provide clinical utility data to support the wide use of OncoCEE-BR tests as a routine diagnostic test for breast cancer patients. In the screening phase of this study, we are testing in our CLIA laboratory blood samples from HER2 negative patients based on standard tumor tissue analysis, to identify those patients that have HER2 positive CTCs. These patients are then being randomized to chemotherapy plus/minus Herceptin®, and followed for a period of time, with additional CTC tests, including biomarker analysis for HER2 using FISH, performed at subsequent time points.

We plan to grow our business by directly offering oncologists proprietary CTC and ctDNA tests. Based on our product development data, as well as discussions with our collaborators, we believe that our proprietary tests should provide important information and clinical value to oncologists. In particular, our proprietary CTC and ctDNA tests should deliver important, actionable information not provided by other tests. For example, the market leading clinical CTC test is the United States Food and Drug Administration, or FDA, approved CellSearch® test (Janssen Diagnostics), which provides CTC enumeration, but lacks the ability to perform biomarker analysis. The CellSearch® test provides prognostic information, but not predictive information that an oncologist can use in selecting appropriate therapies for their patients. We believe our ability to rapidly translate research insights about the utility of cytogenetic, immunocytochemical and molecular biomarkers to provide information to oncologists for treatment decisions in the clinical setting will improve patient treatment and management, and that these tests will become a key component in the standard of care for personalized cancer treatment.

According to the National Cancer Institute, there are approximately 230,000 new cases of both breast cancer and lung cancer diagnosed in the United States each year, with over 3 million patients who have had a diagnosis of these cancers and either are living with these diseases and are undergoing treatment or are being monitored. For example, in breast cancer, many women have been deemed cancer-free, but continue to undergo periodic monitoring to assure there has been no disease recurrence. Our OncoCEE-BR

test and our planned OncoCEE-LU test only require a readily accessible standard blood sample and thus may be used to help manage these patients, including supporting the selection of appropriate treatment, at multiple time points during the course of their disease. Because our tests require only a standard blood sample, they can be particularly useful when no, old or inadequate amounts of, biopsy or surgical material is available, as is often the case in lung cancer, even at the time of initial evaluation. For example, up to 25% of patients with lung cancer are not surgically treated for various reasons, including patient status (consensus statement from the American College of Chest Physicians and the Society of Thoracic Surgeons; *Chest*, Dec. 2012). This is also the case with breast and lung cancers once surgical resection of the tumor has taken place and treatment has been initiated. Patients with breast and lung cancer must often undergo surgical resection of their primary tumor as part of their treatment. Therefore, at the time of progression or recurrence there may be no ability to obtain a tissue biopsy. Additionally, many studies have shown that most tumors mutate during treatment and as the disease progresses, so information from the initial tumor tissue may not be relevant. Again, a significant benefit of our technology is that it allows physicians to assess the current status of the tumors on a real-time basis utilizing a standard blood sample.

We currently offer and conduct our proprietary cancer diagnostic tests and provide clinical trial services at our CLIA and CAP accredited, and state law licensed, laboratory. Our current and near-term cancer diagnostic tests and clinical trial services include:

- *Proprietary CTC and ctDNA Testing*. Our cancer diagnostic tests are based on our proprietary CEE and CEE-Selector technologies and are currently performed only in our clinical laboratory. After completing testing, we or our partner provide our customers with an easy to understand report that describes the results of the analyses performed, designed to help oncologists make better decisions about the treatment of their patients.
- *Clinical Trial Services.* We plan to utilize our clinical laboratory and translational research capabilities to provide clinical trial and research services to pharmaceutical and biopharmaceutical companies and clinical research organizations to improve the efficiency and economic viability of their clinical trials. Our clinical trials and translational research services leverage our knowledge of CTCs and ctDNA and our ability to develop and implement new cytogenetic, immunocytochemical and molecular diagnostic tests. Our cancer diagnostic tests and biomarker tests help optimize clinical trial patient selection, and as a result potentially improve the likelihood of success of the clinical trial. With positive results in a clinical trial, our tests can then move into standard clinical practice, helping physicians select the most appropriate therapy for their patients.

We intend to continue offering our proprietary cancer diagnostic tests in the United States as LDTs performed in our CLIA laboratory. We plan to evaluate potential opportunities for the commercialization of our products in other countries. We are currently exploring the possibility of introducing OncoCEE-LU technology outside the United States as part of CE-marked IVD test kits and/or testing systems utilizing our CEE and/or CEE-Selector technologies. We also plan to evaluate this format for our other tests.

Our sales strategy is focused on leveraging the sales forces of partners already selling to our target markets, as well as building an internal direct sales and marketing team that can also support our partners. In both cases we plan to engage oncologists in the United States at hospitals, cancer centers, and most importantly, physician offices. With our academic center and key thought leader collaborators, we intend to focus on oncologists in private and group practices and in community hospitals, where nearly 85% of all cancers are initially diagnosed (National Cancer Institute Community Cancer Center Status Update, Feb 2010) and where a large percentage are treated.

Market Overview

Cancer Market Overview

Despite many advances in the treatment of cancer, it remains one of the greatest areas of unmet medical need. In 2008, the World Health Organization attributed 7.6 million deaths worldwide to cancer-related causes. The World Health Organization projects that by 2030 this number will rise to 13.1 million deaths per year. They also project that worldwide, cancer has surpassed cardiovascular disease as the leading cause of death. The incidence of, and deaths caused by, the major cancers are staggering. The following data published by the National Cancer Institute shows estimated new cases and deaths for 2013, and prevalence in 2010, in the United States for the major solid cancers types:

Cancer Type	Est. Incidence (New Cases/Year-2013)	Est. Mortality (Deaths/Year-2013)	Est. Prevalence (Diagnosed and Alive as of 2010)**
Bladder	72,570	15,210	563,640
Breast*	232,340	39,620	2,829,641
Cervical	12,340	4,030	249,496
Colorectal*	142,820	50,830	1,154,481
Endometrial	49,560	8,190	600,346
Gastric*	21,600	10,990	72,269
Kidney	65,150	13,680	341,505
Lung*	228,190	159,480	399,431
Melanoma*	76,690	9,480	921,780
Ovarian	22,240	14,030	186,138
Pancreatic	42,220	38,460	41,609
Prostate*	238,590	29,720	2,617,682
Thyroid	60,220	1,850	534,973

* Areas where we currently have tests or active development programs.

** Includes active disease and disease-free.

In addition to the human toll, the financial cost of cancer is overwhelming. An independent study published in 2010 and conducted jointly by the American Cancer Society and LIVESTRONG ranked cancer as the most economically devastating cause of death in the world - estimated to be as high as $895 billion globally. According to an article in the Journal of the National Cancer Institute, the direct cost of cancer deaths in the United States in 2000 was over $115 billion, and if lost wages and caregiver costs were added, the total costs increased to over $230 billion.

Cancer is a Heterogeneous Disease

Cancer constitutes a heterogeneous class of diseases, characterized by uncontrolled cell growth that results from a combination of both environmental and hereditary risk factors. Many different tissue types can become malignant, such as breast, lung, liver, and skin, and even within a particular tumor there is heterogeneity, with certain cancer cells in a patient bearing specific cellular or genetic biomarkers which others lack. It has only been in recent years that technology has progressed far enough to enable researchers to understand many cancers at a cellular and molecular level, attribute specific cancers to associated genetic changes and determine the extent to which these changes are seen in a patient’s tumor.

Cancer cells contain genetic alterations compared to normal human cells. Common genetic abnormalities correlated to cancer include gains or losses of genetic material on specific chromosomal regions, or loci, or changes in specific genes, or mutations, which ultimately result in detrimental cellular changes followed by cancerous or pre-cancerous conditions. For example, multiple gains or losses of or on various chromosomes, and the rearrangement of genetic material among chromosomes, or chromosomal translocations, have been observed in different cancer types, such as HER2 in breast cancer and EML4/ALK1 in NSCLC. In addition, mutations within gene sequences, or single nucleotide variations, can give rise to aberrant proteins that do not perform their functions correctly, leading to uncontrolled cell growth. Such genetic alterations can be a result of multiple factors, including genetic predisposition, environmental or lifestyle factors or viral infections. Importantly, these genetic changes can be used as biomarkers to help guide appropriate treatment. Detecting these biomarkers, particularly those representing drug targets, or those indicative of responsiveness or resistance of a tumor’s cells to specific therapies, helps clinicians to select drugs, design treatment regimens and optimize patient care and management. Tests that provide such predictive information have the potential to dramatically improve treatment outcomes for patients suffering from cancer.

Limitations of Traditional Cancer Diagnostic and Profiling Approaches

Cancer is difficult to diagnose and manage due to its heterogeneity at morphologic, genetic and clinical levels. Traditional methods of diagnosis for solid tumors, routinely used as the initial step in cancer detection, involve a tissue biopsy followed by a pathologist examining a thin slice of potentially cancerous tissue under a microscope. A recently obtained tissue sample is used in combination with chemical staining techniques to enable analysis of the biopsy. After staining, the pathologist determines through visual inspection whether the biopsy contains normal or cancerous cells, with those that are deemed cancerous being graded on a level of aggressiveness. Often an analysis of biomarkers relevant to that tumor type is also performed on the tissue, ranging from immunohistochemistry to FISH, to mutation analysis by various means such as microarrays and sequencing. After the diagnosis, a clinical workup is performed according to established guidelines for the specific cancer type. From there, the physician determines the stage of progression of the cancer based on a series of clinical measures, such as size, grade, metastasis rates, symptoms and patient history, and decides on a treatment plan that may include surgery, watchful waiting, radiation, chemotherapy, or stem cell transplant.

This type of analysis is dependent on the availability of a recently obtained tissue biopsy for the pathologist to analyze. Such a biopsy is often not available. A tumor may not be readily accessible for biopsy, a patient’s condition may be such that a biopsy is not advised, and for routine periodic patient monitoring to evaluate potential progression or recurrence, a biopsy is a fairly invasive procedure and not typically performed. As the length of time between when the original biopsy, diagnosis or surgery is conducted to

the current evaluation of the patient increases, the likelihood that an original biopsy specimen is truly representative of the current disease condition declines, as does the usefulness of the original biopsy for making treatment decisions. This risk intensifies in situations where a drug therapy is being administered, because the drug can put selective pressure on the tumor cells to adapt and change.

Similarly, the heterogeneity referred to above means that different parts or areas of the same tumor can have different molecular features or properties. In evaluating a biopsy specimen, the pathologist will take a few thin slices of the tumor for microscopic review rather than exhaustively analyzing the whole tumor mass. The pathologist can only report on the tumor sections analyzed and if other parts of the tumor have different features, such as biomarkers corresponding to specific treatments, they can be missed. A more representative analysis of the entire tumor, as well as any metastases if they are present, is very helpful.

CTCs, ctDNA and Cancer

Circulating tumor cells, or CTCs, are cancer cells that have detached from the tumor matrix and invaded the patient's blood or other bodily fluids. These cells are representative of the tumor and its metastases, and can function as their surrogates. Testing CTCs can complement pathologic information drawn from a biopsy or resected tissue sample, helping to insure that the analysis is comprehensive and not biased by tumor heterogeneity and sampling issues. They can also provide critical data when a biopsy is not possible. Clinical studies have demonstrated that the presence and number of CTCs provides information on the likely course of the disease for the cancer patient, or in other words they are considered "prognostic." Since CTCs are representative of the tumor, they can also be used for biomarker analysis, such as helping to guide therapy selection. Such analyses are "predictive" in that they offer insight into the likely responsiveness or resistance to particular therapies. After surgery and during any subsequent therapy or monitoring period, blood samples can periodically be drawn in a standard manner and analyzed to evaluate a therapy's continuing effectiveness, as well as to detect other biomarkers such as new genetic mutations that may arise as a result of selection pressure by a particular therapy or by chance. Physicians can use this information to determine which therapy is most likely to benefit their patients at particular times through the course of their disease. Treatment decisions based on patient-specific information are the foundation of personalized medicine, and tests, or assays, that guide a physician in the selection of individualized therapy for a patient are termed "predictive assays."

ctDNA is nucleic acid that is released into blood by dying tumor cells. Cell death occurs in all tissues, especially those that are rapidly dividing, and in cancer, where cell growth is not only rapid but also uncontrolled. Parts of tumors often outgrow their blood supply, resulting in cell death. Tumor cells dying as a result of therapy also release nucleic acid into blood. As a consequence, ctDNA is common in cancer patients and scientists believe that like CTCs, it may be more representative of a patient's tumor than a few thin sections from a tissue biopsy, thus reducing the heterogeneity problem. ctDNA is found in the plasma component of blood and is readily accessible in a standard blood sample. Analyzing ctDNA for mutations that are used as biomarkers for therapy selection shows great promise. One of the strengths of this approach, in addition to not requiring a tissue biopsy, is that it is not dependent on capturing rare tumor cells from blood to provide a sample for testing. The difficulty with this approach is that the cellular context is lost since the ctDNA is mixed with a much larger amount of circulating DNA from normal cells that are continuously dying and being replaced in the body, thus making analysis challenging. This requires an ultra-sensitive and specific mutation detection methodology to distinguish mutations in particular gene regions in cancer cells from the normal gene sequence present in those same genes in normal cells which co-exist in blood as normal cells die and are replaced in the body. Our CEE-Selector technology provides this necessary sensitivity and specificity and creates an opportunity for ctDNA analysis to complement CTC analysis, or potentially to serve as the platform for stand-alone tests.

Given the incidence of cancer in the United States, with over 800,000 new cases per year for the major solid tumors targeted by our planned test products, the markets for our cancer diagnostic tests are very large. Furthermore, these market opportunities are even greater due to the benefits of CTC and ctDNA testing, including not only the ability to offer physicians a simple way to augment an initial tumor biopsy analysis but also to provide a means for relatively frequent monitoring of the tumor's molecular status, utilizing a standard blood sample as a "liquid biopsy." The latter application enables the oncologist to determine if or how a tumor is changing over time or is responding to therapy and what the next treatment should be. For example, in the United States, the incidence of new cases of breast cancer alone is over 230,000 per year, and the prevalence of this disease is over 2.8 million, with an estimated

330,000 lumpectomies performed annually in the United States. Of these lumpectomies, 20% need to be repeated because on pathological examination it is shown the procedure did not result in "clear margins," thus suggesting not all the tumor was removed, according to a Johns Hopkins report. If a CTC test were performed at the time of initial diagnosis, at the time of surgery, or in lieu of, or as an adjunct to, a PET/CT scan (as a CTC test has the potential to identify a single tumor cell in a blood sample, while a scan requires a tumor mass of millions of cells to be detectable), to monitor disease progression or test for recurrence, thousands of tests, in breast cancer alone, could be performed per year with still relatively low market penetration. For comparison, it is estimated that there are between 50,000 and 60,000 CellSearch® CTC tests performed annually in the United States, which only provide for CTC enumeration without biomarker analysis, of which 75-80% are thought to be for breast cancer with the rest being for colorectal and prostate cancers.

Use of CTC- and ctDNA-Derived Biomarker Data in Cancer Treatment

CTCs and ctDNA are derived from, and are understood to be representative of, a solid tumor and its metastases and can be analyzed as adjuncts to or in place of the tumor, especially when a recent tumor biopsy is not available. Almost any analysis that can be performed on tumor tissue can also be performed on CTCs, while ctDNA, because it is only nucleic acid, is more limited. We have focused our analysis of CTCs and ctDNA on known biomarkers associated with specific therapies to support treatment decisions and therapy selection made by oncologists. The biomarkers we analyze consist of proteins or protein modifications that can be identified by immunocytochemical means, cytogenetic or chromosomal aberrations, which are detected by FISH, and gene mutations which are detected in CTCs or ctDNA by molecular diagnostic tests, including CEE-Selector techniques and gene sequencing. Specific examples include (i) for immunocytochemistry, the detection of the estrogen receptor protein in breast cancer, indicative of the likely responsiveness to hormonal therapies like tamoxifen, often sold under the trade name Nolvadex®, (ii) for FISH, the presence of an amplified HER2 gene in breast cancer, indicative of the likely responsiveness to HER2-targeted agents like Herceptin®, and (iii) for mutation detection, the presence of an EGFR activating mutation in NSCLC like L858R, indicative of the likely responsiveness to EGFR-targeted agents like Tarceva®. All of these biomarkers are currently tested on tumor tissue and can be tested on CTCs, and in the latter case on ctDNA. The resulting information could then be used to guide patient care, and specifically treatment selection.

To date these types of molecular and genetic detection methods have been successfully utilized to provide predictive information for several cancers, including breast, colon, NSCLC, melanoma and others in the form of companion diagnostics, typically performed on tumor tissue. CTC and ctDNA tests, which analyze the same biomarkers but in a more convenient standard blood sample test that also permits periodic monitoring, may be used in the same way.

Our Business Strategy

We plan to provide oncologists with a straightforward means to profile and characterize their patients' tumors on a real-time basis by analyzing CTCs and ctDNA found in standard blood draws. Biomarkers are currently detected and analyzed primarily in tissue biopsy specimens. We believe that our technology, which not only provides information on CTC enumeration but also the assessment of treatment-associated biomarkers identified within the CTCs or in ctDNA, provides information to oncologists that improve patient treatment and management and will become a key component in the standard of care for personalized cancer treatment.

Our approach is to develop and commercialize proprietary CTC and ctDNA tests and services to enable us to offer to oncologists standard blood sample based, real-time, testing solutions for a range of solid tumor types, starting with breast cancer and progressing to NSCLC, gastric cancer, colorectal cancer, prostate cancer, melanoma and others, to improve patient treatment with better prognostic and predictive tools. To achieve this, we intend to:

- *Develop and commercialize a portfolio of proprietary CTC and ctDNA tests and services.* We intend to continue the development of additional proprietary prognostic and predictive tests and services to provide information that is essential to personalized cancer treatment. We have launched our first proprietary CTC test, OncoCEE-BR for breast cancer, performed in our CLIA-accredited testing facility. We are also developing a number of other CTC and ctDNA tests,

including OncoCEE-LU for non-small cell lung cancer, OncoCEE-CR for colorectal cancer, OncoCEE-GA™ for gastric cancer, OncoCEE-PR™ for prostate cancer and OncoCEE-ME™ for melanoma. We plan to perform the necessary validation studies to allow us to commercialize these tests through our clinical laboratory.

- *Establish our internal sales and marketing capabilities in a scalable manner.* We are actively seeking additional partners to increase our market reach. We intend to build our own specialized sales force with experience in cancer diagnostic testing, focusing on key identified territories in order to provide geographic coverage throughout the United States. We plan to start with 7 sales representatives, and depending on test volume, expect to increase this group to 15-20 within two years and potentially 40-50 within five years. This team will educate physicians directly on the benefits of our proprietary tests and the clinical data supporting them, as well as provide support to and serve as technical specialists for our partners such as Life Technologies.
- *Develop and expand our collaborations with leading university hospitals and research centers.* We collaborate with key thought leaders, physicians and clinical researchers, including those at the MD Anderson Cancer Center, Columbia University and the University of California, San Diego. Our collaborations enable us to test new technologies, validate the effectiveness and utility of our proprietary tests in a clinical setting and provide us access to clinically well-characterized and highly annotated patient data. These samples and data accelerate our validation process and facilitate the testing and refinement of our new tests.
- *Enhance our efforts in reaching and educating community oncologists about CTC and ctDNA tests.* According to the American Society for Clinical Oncology, in 2011 there were approximately 10,000 oncologists in the United States, or 12,500 if gynecologic and pediatric oncologists are included. Community oncologists represent a large target market for our CTC and ctDNA tests and services because approximately 85% of cancer patients in the United States are initially diagnosed by, and many treated by, these physicians as reported to the National Cancer Database. With the support of our key thought leader collaborators, we intend to focus on oncologists by targeting our sales and marketing efforts on this important customer segment. We believe this will expand and optimize the oncology testing services and personalization of cancer treatment provided by community oncologists so that they can better serve their cancer patients.
- *Increase our efforts on providing biopharmaceutical companies and clinical research organizations with our proprietary CTC and ctDNA tests and services.* Oncology drugs have the potential to be among the most personalized of therapeutics, yet oncology drugs have one of the worst approval rates, hovering under 7% of cancer drug compounds from first administration in humans to approval (2004-2011, Biotechnology Industry Organization). In an effort to improve the outcome of clinical trials for oncology drugs, and more rapidly advance targeted therapeutics, pharmaceutical and biopharmaceutical companies are increasingly looking to companies that have proprietary cancer diagnostic tests that specifically address their needs, including the ability to characterize and monitor a patient's tumor over time using CTC and ctDNA tests to analyze biomarkers of interest. There are over 5,000 active trials in the United States in breast, lung, colorectal, prostate and gastric cancers and melanoma according to clinicaltrials.gov. We expect to increase our sales and marketing focus in this business as well as seek additional collaborations and partnerships with pharmaceutical and biopharmaceutical companies.
- *Support our tests with clinical utility studies to drive adoption and facilitate reimbursement.* Through our agreement with the Dana-Farber Cancer Institute, we are currently conducting testing for a study that we expect to provide clinical utility data for our OncoCEE-BR test, demonstrating that patients who are treated with targeted therapies based on biomarkers identified on their CTCs, when those biomarkers are absent on their tumor tissue, have better outcomes. In this study, we are specifically identifying patients with metastatic breast cancer that are HER2 negative, by analysis of their tumor tissue, and who have HER2 positive CTCs utilizing our OncoCEE-BR test on a standard blood sample. These patients are being randomized for treatment with chemotherapy, the current standard of care, with or without Herceptin®, and then evaluated for progression-free survival and overall survival. We intend to conduct additional studies in breast cancer, and similar

studies for our NSCLC test and other CTC and ctDNA tests we plan to introduce. Clinical utility and validation studies for our ctDNA tests may rely on archived plasma or blood samples from clinical trials in which patient outcomes are already available, in a retrospective-prospective design that significantly shortens the length of such studies.

- *Continue to enhance our proprietary CTC and ctDNA tests and reduce the costs associated with providing them through internal research and development and partnering with leading technology developers and reagent suppliers.* We intend to work closely with select key technology developers and suppliers to further automate the optical interpretation of our CTC tests, including enumeration, immunocytochemical biomarker staining and FISH. We also intend to reduce the costs associated with key material components of these tests, including FISH probes. We have identified a technology group that, based on initial studies, can provide an automation system that will significantly reduce the hands-on time of our cytotechnicians for microchannel analysis while increasing the uniformity, and potentially the sensitivity and quality, of the data we generate. This system is also expected to provide the ability to evaluate multiple fluorescent signals of different wavelengths simultaneously for multiplexed analysis, again enhancing efficiency. Similarly, we have identified suppliers that can provide FISH probes at reduced cost and with a broader choice of available fluors, enabling more extensive multiplexing of tests.

Our Competitive Advantages

We believe that the competitive advantages of our tests, including our tests which are still under development, would include:

Our proprietary CTC and ctDNA tests could enable detailed analysis of a patient's cancer utilizing a standard blood sample, facilitating testing at any time, including when a biopsy is not available or inconclusive, offering real-time monitoring of the cancer and the response of the cancer to therapy, and allowing oncologists to select timely modifications to treatment regimens. Because CTCs and ctDNA are derived from the primary tumor or its metastases, they function as surrogates for the tumor, with the advantage of being readily accessible in a standard blood sample. This is especially important in situations where a biopsy is not available or advised. The simplicity of obtaining a standard blood sample permits repeat testing in a monitoring mode to detect recurrence or progression and to offer information on treatment modifications based on a current assessment of the cancer's properties.

Our tests could provide more information than existing tests, including predictive information on biomarkers linked to specific therapies, enabling a more personalized treatment plan. By including biomarker information in our analysis, in addition to CTC enumeration our tests are designed to provide a more complete profile of a patient's disease than existing CTC tests. We intend for our tests to contain actionable information to assist physicians in selecting appropriate therapies for individual patients. Our ctDNA tests are expected to offer superior sensitivity and specificity based on the CEE-Selector technology, enabling earlier detection of therapy-associated mutation targets or resistance markers, again supporting treatment decisions.

Our CTC tests are designed to capture and detect a broader range of CTC phenotypes than existing tests, and are applicable to, or could be quickly modified for, a wide range of cancer types. Our CEE-Cap antibody capture cocktail includes antibodies targeting not only EpCAM, the traditional epithelial CTC capture antigen utilized in the CellSearch® system and in other platforms, but also other epithelial antigens as well as mesenchymal and cancer stem cell antigens, indicative of cells having undergone the epithelial-to-mesenchymal transition. These cells may be more relevant for metastasis. Our detection methods include cytokeratin staining with a broader range of cytokeratin isotypes than existing CTC tests, and we plan to introduce our CEE-Enhanced staining which would enable detection of cells specifically captured with our antibody cocktail, including EMT cells lacking cytokeratin. This means more CTCs and different types of CTCs can be identified and potentially at earlier stages of disease, resulting in fewer non-informative cases and more information for physicians.

Our CTC and ctDNA tests are expected to be flexible and we believe they could readily be configured to accommodate new biomarkers with clinical relevance as they are identified. Our CEE platform permits essentially any analysis that is currently performed on tumor tissue to be performed on CTCs, including immunocytochemical staining, FISH and molecular analysis. As new therapies are approved, and to the extent that they are targeted therapies for which knowledge of a particular gene amplification

event, mutation or presence, absence or modification, such as phosphorylation, of a protein are indicative of likely response or resistance to that therapy, it is simple for us to include it in our tests with minimal changes. This is attractive to pharmaceutical and biopharmaceutical companies that are developing such therapies, and seeking ways to make their clinical trials more efficient, as it could enable them to focus on patients more likely to respond to a particular therapy and demonstrate a benefit from that therapy.

Collaborative relationships with physicians at MD Anderson Cancer Center. We have worked closely with a number of physicians at the MD Anderson Cancer Center in Houston, Texas, on various collaborative projects in different cancer types including breast, NSCLC, prostate, colorectal, ovarian, bladder, renal and endometrial. These projects provide us access to leading researchers, clinicians and key thought leaders, access to valuable patient samples and insight into clinical applications for our tests. Some of these projects have resulted in publications in leading journals, such as *Cancer Discovery* and *Cancer Medicine*, which enhances our standing in the oncology community and supports our marketing efforts.

Our CEE-Selector mutation tests have very high sensitivity and specificity, and are not platform dependent. These tests have unprecedented sensitivity and specificity of up to 1,000 times more sensitive than competing technologies and they can be performed on essentially any PCR instrument. This could provide flexibility to us in our laboratory operations, and to the extent we elect to develop these tests as IVDs, including pursuing CE marks for them outside the United States, the ability to rapidly deploy them on different approved instrument platforms already in many laboratories should greatly simplify their distribution and commercialization.

Focus on targeting oncologists at private and group practices and at community hospitals, where approximately 85% of all cancer patients in the United States are initially diagnosed. Our sales and marketing efforts will be directed primarily to oncologists in group practices and at community hospitals to better service their oncology patients. Our proprietary tests and testing services should be able to help oncologists in group practices and at community hospitals deliver a higher value of service to their cancer patients.

Our Proprietary Tests and Services

We have launched our first product, OncoCEE-BR for breast cancer, and expect to launch a series of tests for CTCs in different tumor types, including NSCLC, gastric, colorectal and prostate cancers and melanoma, incorporating analyses for different biomarkers at the rate of at least 1-2 per year for the next 3 years. OncoCEE-BR is and the planned tests will be based on the CEE technology platform. The CEE system isolates CTCs from blood samples of cancer patients for enumeration, immunocytochemical, cytogenetic and molecular genetic analysis. A sample is shipped to us in our proprietary blood collection tube, called the CEE-Sure tube, for recovery and analysis of CTCs. The cells are incubated with a cocktail of capture antibodies, typically containing different antibodies targeting tumor-associated antigens, and passed through a proprietary microfluidic channel containing 9,000 microscopic posts coated with reagents to capture antibody-labeled tumor cells. Captured cells are suitable for immunocytochemical or cytogenetic testing of whole cells directly in the microchannel, or for molecular genetic analysis using CEE-Selector or similar PCR techniques following release of the cells from the microchannel, cell lysis, extraction of cellular DNA, and amplification.

Clinicians acknowledge limitations of currently available CTC test systems such as the CellSearch® that rely on immuno-capture solely by anti-EpCAM antibodies and detection by anti-cytokeratin antibodies. Capture and detection based only on these two antigens have been shown to be unlikely to identify all CTCs. Clinically, this may result in no CTCs being detected in cases in which they are actually present. For example, some tumor cells that have been released into the circulatory system are likely to have undergone an epithelial-to-mesenchymal transition, or EMT. These mesenchymal cells are less differentiated than epithelial cells and more stem cell-like. They down-regulate the expression of certain proteins, including EpCAM and cytokeratin, to enable them to move through tiny capillaries and exist in the blood rather than in an epithelial matrix. Antibodies to other tumor antigens may therefore be necessary for capture of CTCs with no, or very low densities of, EpCAM. These cells can subsequently be proven to be CTCs by various means, including positive cytokeratin staining and absence of CD45 staining, a marker for white blood cells, aneuploidy analysis by FISH, or detection of other tumor biomarkers. We have developed several antibody “cocktails” that have enabled the capture of significantly more CTCs than is accomplished through the use of traditional anti-EpCAM immuno-capture alone.

In addition to enhanced capture, our technology also improves the detection of CTCs. As with EpCAM, tumor cells that have undergone EMT can down-regulate the synthesis of cytokeratin, leading to an underestimate or even an apparent absence of CTCs since their positive identification has traditionally relied on anti-cytokeratin staining. We have developed alternative methods of fluorescent cell staining that are uniquely possible within the CEE system to enhance or enable detection of CTCs with low or no cytokeratin signal. This technology is called CEE-Enhanced. We believe that the combination of specific cocktails of tumor-associated capture antibodies and more sensitive fluorescent detection of CTCs through CEE-Enhanced methodology will lead to major advances in the capture, enumeration and analysis of CTCs. CEE-Enhanced methodology is expected to be included in our commercially available tests by mid-2014.

By design, our analysis of CTCs incorporates both standard and novel methods. Immunocytochemistry, analogous to the immunohistochemistry performed on tissues, can be readily applied and performed on CTCs in our microchannel, dependent only on suitable antibodies. Similarly, FISH used to evaluate cytogenetic abnormalities in cells, like gene amplification or deletion, or gene fusions, may be performed in our microchannel and requires validated probe sets available from a number of vendors. For mutation analysis, standard or digital PCR technologies can be applied. We have also developed our proprietary CEE-Selector technology for mutation analysis in CTCs and ctDNA, which enables either real-time or end-point PCR and thermal melt curve analysis, and interfaces directly with sequencing for mutation detection and confirmation, with very high sensitivity and specificity.

As indicated, CEE-Selector staining was developed specifically for analysis of CTCs, which are generally very rare and outnumbered many-fold by background white blood cells, even after enrichment. This combination of target scarcity and complex background nucleic acid has been a challenge for commercially available technologies. Our CEE-Selector technology offers significantly enhanced specificity and sensitivity, greater than 1-in-10,000 of mutated sequence to wild-type sequence in a complex genetic background, compared to other nucleic acid detection approaches. It also has broader application than just CTC analysis, including analysis of ctDNA in plasma, both in a CLIA lab setting and as an IVD.

We are developing and offering Laboratory Developed Tests for CTCs and ctDNA. FDA clearance or approval is not currently required to offer these types of tests in our laboratory once they have been clinically and analytically validated. We seek licenses and approvals for our laboratory facility and for our LDTs from the appropriate regulatory authorities, such as the Centers for Medicare & Medicaid Services, which oversees CLIA, and various state regulatory bodies. Certain states, such as New York, require us to obtain approval of our proprietary tests in order for us to be paid for testing patient specimens from such state.

The following outline indicates our current and planned proprietary tests:

Test Name	Solid Tumor Type and Biomarkers	Indication
OncoCEE-BR™	Breast Cancer- Enumeration (CK); HER2 by FISH, ER and PR by ICC added later	Prognosis, therapy selector, monitoring
OncoCEE-LU™	Lung Cancer- Enumeration; EML4/ALK1 and ROS1 by FISH, K-ras, B-raf and EGFR mutations (codons 12/13, codon 600 and L858R, T790M and 747-751 dels, respectively)	Prognosis, therapy selector, monitoring
OncoCEE-PR™	Prostate Cancer- Enumeration; PTEN deletion, AR and c-myc amp. by FISH, potential to add FAD, CAD11, PSA and PMSA by ICC	Prognosis, therapy selector, monitoring
OncoCEE-CR™	Colorectal Cancer- Enumeration; K-ras, B-raf and EGFR mutations	Prognosis, therapy selector, monitoring
OncoCEE-GA™	Gastric Cancer- Enumeration; HER2 by FISH	Prognosis, therapy selector, monitoring
OncoCEE-ME™	Melanoma- Enumeration and B-raf mutations	Prognosis, therapy selector, monitoring
OncoCEE-DTC	Breast and Prostate Cancer- DTC analysis in Bone Marrow; HER2 and AR/PTEN by FISH, respectively	Prognosis, therapy selector, monitoring
CEE-Selector™	Multiple cancer types- K-ras, B-raf, EGFR and other mutations detected in plasma	Therapy selector, monitoring

Our Marketed OncoCEE CTC Test: OncoCEE-BR

Our OncoCEE-BR breast cancer test is the first CTC test we developed and we are currently offering it to physicians through our CLIA laboratory. It is based on a standard blood sample and can be used at the time of diagnosis and for monitoring, including at the time of progression or recurrence. This allows the physician to characterize the tumor to help define treatment options, either augmenting tissue analysis or replacing it when a tumor biopsy is not available. The test currently includes CTC enumeration and determination of HER2 status by FISH on the captured CTCs, and then more broadly to any cell captured on our CEE microchannels that is not a white blood cell. HER2 status is used by oncologists to determine suitability of a patient for treatment with HER2-targeted therapeutics, which include Herceptin®, as well as Kadcyla® and Perjeta®, monoclonal antibodies directed to HER2, and Tykerb®, a kinase inhibitor with activity against HER2. We plan to add immunocytochemistry analysis of CTCs for estrogen receptor and progesterone receptor to our OncoCEE-BR test, which will provide information on suitability of breast cancer patients for

endocrine or hormonal therapies such as selective estrogen receptor modulators, including tamoxifen, aromatase inhibitors that block the synthesis of estrogen, including Femara® (Novartis) and Arimidex® (AstraZeneca) or other therapeutics that block estrogen production, including Zoladex® (AstraZeneca) and Lupron® (AbbVie).

Other OncoCEE CTC Tests in Development

We are now following a similar development path for additional OncoCEE CTC tests for cancer types other than breast cancer, with a focus on large population solid tumor types, or cancers for which there are approved therapies that rely on biomarker tests we have previously developed. Examples of these tests include OncoCEE-LU for lung cancer, OncoCEE-GA for gastric cancer, OncoCEE-CR™ for colorectal cancer, OncoCEE-PR for prostate cancer, and OncoCEE-ME for melanoma, each described below.

OncoCEE-LU

Up to 25% of lung cancer patients, especially those diagnosed at Stage IIIB or Stage IV, are not treated surgically for various reasons, including tumor accessibility and status of the patient. In these cases, CTC and ctDNA tests are alternatives for obtaining more detailed information about the molecular status of the tumor that helps the physician select appropriate therapy. This is even more important as the number of targeted therapies for lung cancer with associated biomarkers increases. Our OncoCEE-LU test would include several components: CTC enumeration, FISH analysis for EML4/ALK1 and ROS1, and potentially for ret proto-oncogene, all linked to the drug Xalkori® (Pfizer), mutation analysis for the EGFR gene, the K-ras gene and the B-raf gene. The L858R mutation of the EGFR gene and D747-751 deletions are activators of EGFR kinase activity and are linked to the drugs Tarceva® (Astellas/Genentech/Roche) and Iressa® (AstraZeneca). The T790M mutation of the EGFR gene is a resistance marker for EGFR tyrosine kinase inhibitors and is linked to drugs in development that address this resistance, such as Gilotrif® (Boehringer-Ingelheim) and dacomitinib (Pfizer). The codon 12 and 13 mutations of the K-ras gene are linked to non-responsiveness to the EGFR kinase inhibitors such as Tarceva® and Iressa®, and the codon 600 mutations of the B-raf gene are linked to Zelboraf® and Tafinlar®, which are both approved for melanoma and are in clinical trials for lung cancer. Our OncoCEE-LU test would be performed on a standard blood sample.

In parallel, we plan to offer ctDNA tests for mutation analysis of, for example, EGFR, K-ras and B-raf genes, to provide information in situations where CTCs are not identified. In our development of this technology platform we have generated data showing detection of the T790M mutation in ctDNA from the blood plasma of lung cancer patients progressing on tyrosine kinase inhibitors in which no CTCs were detected.

OncoCEE-GA

We are developing our OncoCEE-GA test for gastric cancer based on the identification of HER2 as a biomarker for this disease. We plan to employ our CTC HER2 FISH test, which we had previously developed for breast cancer, for the analysis of gastric cancer CTCs. The presence of HER2 positive cells is an indication for likely benefit from the use of Herceptin®, which has been approved for the treatment of metastatic gastric cancer. Current clinical practice relies on a biopsy for tumor tissue analysis to detect elevated HER2, in the same manner as is done for breast cancer. Our test would circumvent this need for tissue, as well as providing straightforward monitoring of HER2 status from a standard blood sample, on a real-time basis during treatment. Our OncoCEE-GA test would include CTC enumeration and HER2 analysis of CTCs by FISH.

OncoCEE-CR

Our current plan for our OncoCEE-CR test for colorectal cancer is to offer mutation testing analogous to that performed on lung cancer CTCs, namely detection of key mutations in the EGFR, K-ras and B-raf genes, along with CTC enumeration. Testing of the EGFR gene would focus on the L858R mutation and D747-751 deletions as activators of EGFR kinase activity, and the T790M mutation as a resistance marker for certain EGFR tyrosine kinase inhibitors. Testing on the K-ras gene would focus on codons 12 and 13 mutations. Testing on the B-raf gene would focus on V600 mutations. Our OncoCEE-CR test would be run against a standard blood sample.

This testing is important because certain targeted therapies for colorectal cancer, including the monoclonal antibodies targeting EGFR, Erbitux® (Lilly/Bristol-Myers Squibb/Merck Serono) and Vectibix® (Amgen), and the kinase inhibitor Stivarga® (Onyx/Bayer) targeting vascular endothelial growth factor receptor kinases, but also ret proto-oncogene, KIT, platelet-derived growth factor receptor, or PDGF-R, and fibroblast growth factor receptor kinases, have been shown to be ineffective in patients who have a K-ras mutation, which is found in up to 40% of cases according to the National Comprehensive Cancer Network. While up to 20 different mutations have been reported at codons 12 and 13 in K-ras, there are reports in the scientific literature that patients with one particular mutation, G13D, do respond well to Erbitux®, and that there may be variability in response to different chemotherapies based on the specific K-ras mutation, suggesting that detailed information on mutation status is clinically relevant.

OncoCEE-PR

Our OncoCEE-PR test for prostate cancer would be based on the analysis of CTCs found in a standard blood sample by FISH for three key biomarkers, the androgen receptor, phosphatase and tensin homolog, and c-myc. The test would also include CTC enumeration, and our CEE-Cap antibody capture cocktail would be modified from that used for breast and lung cancer to include prostate specific membrane antigen.

The androgen receptor normally binds the hormones testosterone and dihydrotestosterone, and is the target for several drug molecules, including those acting directly as antagonists for the receptor, such as Casodex® (AstraZeneca), and those acting indirectly through inhibition of androgen synthesis, such as Zytiga® (Janssen).

Phosphatase and tensin homolog, an enzyme that functions as a tumor suppressor, if mutated, deleted or otherwise functionally disrupted, removes a brake from cell replication and allows uncontrolled growth, which is seen in many cancers. If phosphatase and tensin homolog is mutated, deleted or disrupted, chemotherapy or polytherapy is usually recommended.

c-myc is a gene that encodes a transcription factor that, if mutated, also leads to uncontrolled cell growth. Mutated c-myc is common in many cancers.

OncoCEE-ME

Our OncoCEE-ME melanoma test, performed on a standard blood sample, would provide information on the presence or absence and specific nature of the V600 mutation in the B-raf gene, which indicates whether the B-raf inhibitors Xelboraf® or Tafinlar® are candidate therapies for the patient. CTC enumeration would also be a component of our test.

Disseminated Tumor Cell (DTC) Assays Performed on Bone Marrow

We have shown that our CEE-Sure blood collection tubes and CEE microchannels work well with bone marrow samples, and we have further demonstrated the ability to perform FISH on disseminated tumor cells, or DTCs, from bone marrow that are isolated in this way. While bone marrow biopsies are not performed routinely in the United States, they are utilized in Europe, especially in prostate cancer. In addition, we were involved in a study at MD Anderson Cancer Center in which bone marrow was isolated from early stage operable breast cancer patients at the time of surgery. In this later study, published in *Cancer Medicine* (2013, 2(2) 226-233), we found a significant percentage of patients classified as HER2 negative by their primary tumor had HER2 positive DTCs, and hence could be considered for Herceptin® therapy. DTCs provide an interesting adjunct to CTC analysis that is well suited for our technology platform, and we plan to work with collaborators and key thought leaders to determine how best to introduce a series of tests based on a bone marrow sample type.

ctDNA Tests

We plan to introduce ctDNA tests for mutation analysis performed on blood plasma isolated from a standard blood sample using the CEE-Selector technology, based on increasing interest in the research community in this type of analysis. We plan to launch the first tests, for K-ras, B-raf and EGFR mutations, in conjunction with, or as a complement to, our OncoCEE-LU test. Tests for

other mutations will be added as they are developed. These tests would be similar to those performed on CTCs but would instead focus on ctDNA in plasma. These tests lack the cellular context provided by CTCs but don't require CTC isolation and are simpler to perform. In addition, one of the benefits of this technology is its ability to detect and identify mutations in blood plasma from cancer patients in whom we were not able to isolate CTCs. This indicates the ultra-high sensitivity of the CEE-Selector technology and the ability of ctDNA tests to complement CTC tests.

Laboratory Testing

From our CLIA laboratory in San Diego, California, we plan to provide test results from our proprietary CTC and ctDNA tests to oncologists in community hospitals, cancer centers, group practices and offices. At the federal level, clinical laboratories, such as ours, must be certified under CLIA in order for us to perform testing on human specimens. Our laboratory is also accredited by CAP, which is one of six accreditation organizations approved by CMS under CLIA. Our clinical laboratory is located in California and we hold the requisite license from the California Department of Public Health to operate our laboratory. In addition, Florida, Maryland, New York and Rhode Island require that we hold licenses to test specimens from patients in those states; Pennsylvania licensure or registration may be required as well, depending on the circumstances. In addition to California, we hold clinical laboratory licenses from the Maryland Department of Health and Pennsylvania Department of Health. We are diligently pursuing a license in New York, and renewing licenses in Florida and Rhode Island, and we believe that we will be able to accept specimens from those states in the near future.

Clinical Trials Services

Industry research has shown many promising drugs have produced disappointing results in clinical trials. For example, a study by Princess Margaret Hospital in Toronto estimated that 85% of the phase III trials testing new therapies for solid tumors studied over a five-year period failed to meet their primary endpoint. Given such a high failure rate of oncology drugs in clinical development, combined with constrained budgets for pharmaceutical and biopharmaceutical companies, there is a significant need for drug developers to utilize molecular diagnostics to help decrease these failure rates. For specific molecular-targeted therapeutics, the identification of appropriate biomarkers may help to optimize clinical trial patient selection and success rates by helping clinicians identify patients that are most likely to benefit from a therapy based on their individual genetic profile.

In addition to testing for oncologists and their patients, we plan to offer clinical trials testing services to help increase the efficiency and economic viability of clinical trials for pharmaceutical and biopharmaceutical companies and clinical research organizations. Our clinical trial services will be aimed at developing customizable tests and techniques utilizing our proprietary CTC and ctDNA technologies to provide sensitive, real-time characterization of individual patient's tumors using a standard blood sample. These tests may be useful as, and ultimately developed into, companion diagnostics associated with a specific therapeutic. Additionally, through our services we may gain further insights into biomarkers for disease progression and drug resistance, as well as those associated with current drug development efforts, which we can incorporate into our proprietary tests.

Test Development Process

Our proprietary CTC and ctDNA tests have been, and continue to be, developed and validated in conjunction with leading academic and clinical research centers to ensure that the needs of the clinical community are being met with the latest research on key biomarkers that affect patient care. We utilize a research and validation process to help ensure that we are providing diagnostic, prognostic and predictive information that is clinically relevant and accurate. In our experience the time-frame for this process from design through development and market launch is usually between 6 to 18 months. This is dependent on the biomarkers in question having been discovered and validated before we incorporate them in a test, the specific clinical claims we plan to pursue, and the availability of high quality samples for validation and ultimately clinical utility studies. Our development protocol calls for us to monitor and review the process in four stages as detailed below:

- **Stage 1, Research**. We review known, validated biomarkers, preferably linked to a specific therapeutic or other high value treatment decision, and discuss with clinical collaborators and key thought leaders to characterize the opportunity, the specific clinical setting and the product profile of the candidate test.

- **Stage 2, Test Development**. We design the test, which typically has two parts: efficient capture of CTCs from the targeted cancer type and development of the biomarker assays that will be included. For example, the first part may involve modification of the antibody capture cocktail and the second could include development of specific CEE-Selector mutation tests or testing of FISH probes. The test will be used on normal control specimens and clinical samples to assure performance and the process includes defining the performance characteristics of the test as well as developing standard protocols for our CLIA laboratory, where the test will ultimately be performed. This assessment includes such features as reproducibility, accuracy, sensitivity, and specificity.
- **Stage 3, Clinical Validation**. When the assay is performing as desired in the research laboratory, it is then transferred to the CLIA laboratory and validated on clinical samples, typically in comparison to the existing gold standard for that biomarker, which is usually tumor tissue analysis. Depending on the tumor type and specimen requirement, samples are collected from patients through collaborators, or in the case of ctDNA tests, from sample banks, where clinical information on the patients, including outcomes, is already available.
- **Stage 4, Market Entry, Launch and Commercialization**. As clinical validation is completed and before launch, we take several steps to prepare our tests for marketing as LDTs. We create standard operating procedures and quality assurance and quality control measures to ensure repeatability and high standards of quality. We train both our commercial and laboratory staff on the interpretation and use of the data. Licenses and approvals for our laboratory to perform or use LDTs are obtained from the appropriate regulatory authorities, such as CMS, which oversees CLIA, and different state regulatory bodies.

As part of our long-term strategy, we may seek FDA clearance or approval to expand the commercial use of our tests to other laboratories and testing sites in the United States. We will also need to complete additional activities to submit each of these tests for regulatory clearance or approval before commercialization in each of the international markets where we would plan to introduce them.

Research and Development

We incurred research and development expenses of $6.6 million, which represents 6010% of our net revenue, for the year ended December 31, 2012 and $8.9 million, which represents 8852% of our net revenue, for the year ended December 31, 2011. Research and development expenses represented 62% of our total operating expenses for the year ended December 31, 2012 and 72% of our total operating expenses for the year ended December 31, 2011. Major components of the research and development expenses were direct personnel costs, laboratory equipment and consumables and overhead expenses.

Technology Development

In addition to developing new CTC and ctDNA tests for different cancers to be offered through our CLIA testing laboratory, and adapting additional predictive biomarkers to these tests as their importance is demonstrated by the scientific and clinical research communities, we continue to focus on improving the base technologies underlying our tests and processes. We are exploring various ways to improve CTC capture efficiency and detection, as well as approaches to sub-categorize CTCs into different populations that may have clinical relevance. For example, by determining which antigens individual CTCs expressed that enabled their capture, we could differentiate, and enumerate, various CTC phenotypes, for example, epithelial versus mesenchymal. We are also working to simplify the test process, and in general to provide a broader range of useful data on a patient's cancer to assist the oncologist in determining an appropriate treatment. Some of these projects and initiatives include:

- **Improve Ability to Capture CTCs**
  - Continued modification and optimization of our CEE microchannel as a way to further enhance CTC capture efficiency. Capture efficiency directly impacts sensitivity, informative rate, and the ability to perform accurate and reliable biomarker analyses on the CTCs, all of which increase the value of our offering. We are utilizing some of our early experience with hydrogels, as well as our expertise with linker chemistry, affinity techniques and fluid dynamic modeling to improve CTC capture rates and reduce background contamination from normal white blood cells.

- **Automation of Our Test Process**
  - Development of automation throughout the test process, but particularly at the visual evaluation steps, which include enumeration, any immunocytochemistry for biomarkers beyond those used to identify CTCs, for example protein biomarkers, and FISH analysis, is a way to drive efficiencies, reduce costs, speed up turnaround time, and generate more reliable, uniform, and in some cases more sensitive data. We have identified an automation solution for the visual analysis, which needs to be optimized and then transferred to and validated in our CLIA laboratory. We have also adapted a semi-automated system for the separation, processing and washing steps before running a sample on the microchannel, which is now being used in the research laboratory and similarly needs to be transferred and validated in the CLIA laboratory. These measures will reduce costs and time as well as allow for higher-throughput as sample volumes increase.
- **Development of Second Generation Platform for CTC Testing**
  - Evaluating and developing techniques for CTC capture that take advantage of our CEE-Cap antibody capture cocktail and CEE-Enhanced staining technology to modify our current CTC process to a simpler, essentially IVD, format. In addition to reducing internal costs, such an advance would offer the opportunity for us to offer a product format that enable us to access the worldwide CTC testing market. The distribution of such kits could create a new business opportunity for Biocept.
- **Utilization of CEE-Selector Technology for Highly Multiplexed Mutation Testing**
  - The CEE-Selector technology should enable us to multiplex mutation testing such that larger panels of genes can be analyzed in a single step. This should position us for the analysis at the molecular level of whole signaling pathways or enzyme cascades. We plan to take advantage of the sensitivity and specificity of the CEE-Selector technology and leverage interest in the clinical research community for detecting any actionable biomarker in a particular tumor, as opposed to only those that are known to occur at relatively higher frequencies in that type of tumor. Such multiplexed mutation tests, relying on our CEE-Selector technology, could provide a more global evaluation of a tumor through analysis of either CTCs or ctDNA. This would offer a broader range of potential treatment options as well as enable the monitoring of the effectiveness of those treatments over time.
- **Development of Single Cell CTC Isolation Techniques for Molecular Analysis**
  - Tumor heterogeneity is a well-recognized problem for tissue analysis and is in part addressed by focusing on CTCs, which may provide a more universal sampling of a tumor. One result of this can be a diverse population of CTCs in a sample, with different phenotypes and genotypes represented. We are working with a collaborator on techniques for subsequent sorting of our highly enriched CTC samples released from our CEE microchannels into pools of CTCs with similar phenotypes, and ultimately to single CTCs, for molecular analysis.

Translational/Clinical Research

In the course of our research and validation studies, we have processed several hundred cancer patient samples and normal control samples for CTC enumeration and analysis. Our initial focus has been on breast cancer, where validation studies for the

OncoCEE-BR test, including enumeration of CTCs compared to the CellSearch® system, and HER2 FISH performed on CTCs and compared with HER2 analysis performed on tumor tissue from the same patients, involved over 120 patient samples. The results of our validation studies, and the demonstration of a reliable and reproducible method for CTC capture and analysis using the OncoCEE platform were published in a paper entitled "Novel Platform for the Detection of Cytokeratin Positive (CK+) and Cytokeratin Negative (CK+) CTCs" appearing in the December 2011 issue of *Cancer Discovery* and a paper entitled "Efficient capture of circulating tumor cells with a novel immunocytochemical microfluidic device" appearing in the September 2011 issue of *BioMicrofluidics*.

Additional studies were conducted in breast and other tumor types, including lung, prostate and colorectal cancers, utilizing patient samples for comparison to the CellSearch® system. In head-to-head studies, the CEE system detected cytokeratin positive CTCs in comparable numbers of breast cancer patients, and in considerably more patients in the other cancer types (*Cancer Discovery*, December 2011). Moreover, the results clearly demonstrated that our use of the CEE-Cap capture antibody cocktail enabled recovery of more CTCs as compared to using only anti-EpCAM antibodies. This data served as a clinical validation study for CTC enumeration. When CEE-Enhanced staining is applied to detect cytokeratin-negative CTCs, we expect to see far more CTCs based on preliminary studies reported in a paper entitled "Detection of EPCAM-Negative and Cytokeratin-Negative CTCs in Peripheral Blood" appearing in the 2011 issue of the *Journal of Oncology*.

The CEE system has the added advantage of post-capture immunocytochemical, cytogenetic and molecular genomic analyses of the CTCs. The CEE system captured cells can be analyzed directly within the microchannel, thereby removing the need to re-deposit cells on a slide, which could result in cell loss or damage. Furthermore, given the transparency of the microchannel, it can be immediately analyzed on a microscope. Together these two important features allow for a very efficient process that is well suited for a LDT performed in a CLIA laboratory. The post-capture analyses, which focus on the evaluation of biomarkers, are particularly important and valuable to physicians and patients, as they focus on actionable information related to therapy selection. We have performed a number of clinical research studies in collaboration with MD Anderson Cancer Center investigators involving various tumor types, including breast, ovarian, endometrial, lung, colorectal, bladder and prostate cancers.

In a collaboration with physicians and researchers at MD Anderson Cancer Center, we evaluated matched samples of tumor tissue, blood for CTCs and bone marrow for DTCs in early stage breast cancer patients for evidence of HER2 amplification, which would indicate eligibility for HER2-targeted therapies like Herceptin®, a potentially life-saving treatment. In this study involving over 100 patients and an expanded data set, HER2 positive CTCs and/or DTCs were identified in more than twice as many women as tumor tissue alone, with very little overlap, suggesting their eligibility for HER2-targeted therapy. These results were presented at both the 2011 and 2012 annual meetings of the American Society of Clinical Oncology and are now published in *Cancer Medicine* (2013, 2(2) 226-233). Patients classified as HER2 negative based on tumor tissue and found to have HER2 positive CTCs and/or DTCs will continue to be followed by our collaborators at MD Anderson Cancer Center to assess their overall and progression-free survival. Tumor heterogeneity is one likely cause of the discordance for HER2 status between tumor tissue and our test performed on blood and bone marrow samples. Tumor heterogeneity indicates an important clinical application for the OncoCEE-BR test, confirmation and crosschecking of the tissue analysis performed by the pathologist at the time of biopsy or surgery, especially if HER2 negative, with a CTC analysis derived from a standard blood sample.

Clinical utility studies, which demonstrate the specific clinical setting in which a particular CTC or ctDNA test is used, and how to use the information generated for medical, specifically treatment-related, decision making is a key part of our strategy and research and development plan. Data resulting from such studies is critical not only in the sales and marketing process, but also for reimbursement, as many payors now ask for peer-reviewed publications describing such studies and results before agreeing to coverage of a specific test. The study with Dana-Farber Cancer Institute is the first example of a clinical utility study for one of our tests and we plan to conduct additional studies in breast cancer and similar studies in NSCLC and other cancers for which we develop tests, including sponsoring such studies ourselves with some of the proceeds from this offering.

Sales and Marketing

Our sales and marketing efforts consist of working with our partners such as Life Technologies and establishing our own direct sales force in the United States focused on selling directly to community oncologists in hospitals, cancer centers and offices, and supporting our partners as technical specialists and medical science liaisons.

To date, we have engaged in only limited sales and marketing activities, primarily through an agreement with Clarient Diagnostic Services, Inc., a GE Healthcare Company, for the OncoCEE-BR test. We also have an agreement with Life Technologies Corporation for the commercialization of the OncoCEE-LU test. With the proceeds of this offering we plan to build an internal sales and marketing team that will sell directly to community oncologists and serve as technical experts and clinical specialists to support the sales representatives of our partners. Under the arrangement with Clarient, as recently renegotiated, Clarient's sales force sells the test, and we are responsible for performing the test, reporting the results, billing, and obtaining reimbursement for the test. Under the agreement with Life Technologies, when our OncoCEE-LU test is commercially launched, Life Technologies' Medical Science Division sales force would sell the tests and Life Technologies' pathologists would perform the pathology review component, otherwise called the professional component of the test, in Life Technologies' laboratory. We would perform the technical component of the test in our laboratory. Life Technologies would bill payors for the entire test, pay us for the technical component of the test at an agreed upon rate and keep the professional component. Reimbursement and pricing are based on Current Procedural Terminology, or CPT, codes. Under the Life Technologies agreement, the parties would share the payment and reimbursement risk, as we would be paid an agreed upon fee for the technical component of tests performed, and there would be a quarterly adjustment based on amounts actually received from payors. We will look to identify and engage additional groups with appropriately targeted sales efforts as partners for these and future tests and have initiated discussions with other companies.

Our plan for a Biocept sales organization calls for an initial group of 7 sales representatives placed in strategic locations around the country that have high concentrations of cancer patients, and potentially growing this number to 15-20 sales representatives within two years, and to 40-50 within five years. We have defined the initial sales territories and are targeting sales professionals with an average of 5-10 years of successful experience in clinical oncology sales or oncology diagnostic testing sales from leading biopharmaceutical, pharmaceutical or specialty reference laboratory companies. We plan on growing this specialized, oncology-focused sales force and supporting it with clinical specialists who bring significant technical knowledge in the use of the CTC and ctDNA tests.

Our sales and marketing efforts are and will be based on a three-part marketing strategy:

- Work with oncologists and group practices at community hospitals and community-based cancer centers to educate them on the advantages and opportunities that CTC and ctDNA tests provide for better information, allowing them to select the most appropriate therapy for their patients, and how and when these testes are most effectively used;
- Build relationships with key thought leaders in oncology, specifically in the cancers for which we are offering or plan to offer tests, to educate and support community oncologists; and
- Collaborate with leading research universities and institutions that enable the validation of our new tests, as well as the generation of clinical utility data.

We also promote our tests and services through marketing channels commonly used by the diagnostic and pharmaceutical industries, such as medical meetings, broad-based publication of our scientific and clinical data, and the internet. In addition, we provide easy-to-access information to our customers through our website and a data portal for physicians who wish to access test results electronically. Our customers value easily accessible information in order to quickly review their patients' information and begin developing a treatment protocol.

Outside the United States

Outside the United States, where a central laboratory business model is less developed, we will evaluate opportunities with our existing and other partners for the conversion and/or development of our CTC and ctDNA tests to test systems or IVDs, and related strategies to develop and serve such regional oncology markets. We also plan to sell our clinical trial services to biopharmaceutical companies and research organizations outside the United States.

While the initial focus of our agreement with Life Technologies for OncoCEE-LU tests is on customers in the United States, the parties plan to cooperate on accessing markets internationally. We plan for this to be accomplished either through partnerships with local groups and distributors or the development of IVDs and/or test systems, including instrumentation.

Competition

As a cancer diagnostics company focused on tests for CTCs and ctDNA from standard blood samples, we rely extensively on our ability to combine novel technology and biomarker information with high-quality, state-of-the art clinical laboratory testing. We believe that we compete principally on the basis of:

- our ability to address complex cancers that are currently difficult to prognose and help determine appropriate therapy using currently available technologies, especially without a current biopsy;
- our ability to utilize standard blood samples, enabling testing of patients frequently through the course of their disease without a biopsy, providing real-time information on the current status of the tumor and accelerating the time-frame for clinical validation of our tests;
- the rapid integration of new biomarkers, either validated in academic laboratories or of interest to pharmaceutical and biopharmaceutical companies in the context of their new therapies, into our tests, facilitating the expansion of actionable information for oncologists;
- enabling health care providers to readily integrate our tests into their established workflow, including blood draws performed in the physician’s office, without the need for a local pathology laboratory;
- our ability to collaborate with our customers, including medical oncologists, pharmaceutical and biopharmaceutical companies on a consultative basis; and
- our research and clinical collaborations with key academic and clinical study groups.

We believe that we compete favorably with respect to these factors, although we cannot assure you that we will be able to continue to do so in the future or that new products or tests that perform better than our proprietary tests and services will not be introduced. We believe that our continued success depends on our ability to:

- expand and enhance our OncoCEE tests to provide clinically meaningful information in additional cancers;
- work with clinicians to design and implement clinical studies that demonstrate the clinical utility of our products;
- continue to innovate and maintain scientifically advanced technology;
- successfully market and sell our proprietary tests;
- continue to comply with regulatory guidelines and obtain appropriate regulatory approvals in the United States and abroad as applicable;

- continue to validate our pipeline of tests;
- conduct clinical utility studies to demonstrate the application and medical value of our tests;
- seek to obtain positive reimbursement decisions from payors and from CMS;
- continue to enter into sales and marketing partnerships;
- maintain existing and enter into new research and clinical collaborations with key academic and clinical study groups;
- continue to attract and retain skilled scientific and clinical personnel;
- obtain patents or other protection for our proprietary technologies, tests and services; and
- obtain and maintain our clinical reference laboratory accreditations and licenses.

Our principal competition comes from mainstream diagnostic methods, used by pathologists and oncologists for many years, which focus on tumor tissue analysis. It may be difficult to change the methods or behavior of oncologists to incorporate our CTC and ctDNA testing, including molecular diagnostic testing, into their practices in conjunction with or instead of tissue biopsies and analysis. In addition, companies offering capital equipment and kits or reagents to local pathology laboratories represent another source of potential competition. These kits are used directly by the pathologist, which can facilitate adoption. We plan to focus our marketing and sales efforts on medical oncologists rather than pathologists.

We also face competition from companies that offer products or are conducting research to develop products for CTC or ctDNA testing in various cancers. In particular, Janssen Diagnostics, LLC markets its CellSearch® test and Atossa Genetics markets its ArgusCYTE® test, which are competitive to our OncoCEE-BR test for CTC enumeration, and HER2 analysis, respectively. However, the ArgusCYTE® test measures HER2 mRNA, which is not typically used for HER2 analysis, while we employ FISH for this analysis. FISH is generally considered to be the gold standard. CTC and ctDNA testing is a new area of science and we cannot predict what tests others will develop that may compete with or provide results similar or superior to the results we are able to achieve with the tests we develop. In addition to Janssen Diagnostics and Atossa Genetics, our competitors include public companies such as Alere (Adnagen) and Illumina as well as many private companies, including Apocell, EPIC Sciences, Clearbridge Biomedics, Cynvenio Biosystems, Fluxion Biosciences, RareCells, ScreenCell and Silicon Biosystems. Many of these groups, in addition to operating research and development laboratories, are establishing CLIA-certified testing laboratories while others are focused on selling equipment and reagents.

We expect that pharmaceutical and biopharmaceutical companies will increasingly focus attention and resources on the personalized cancer diagnostic sector as the potential and prevalence increases of molecularly targeted oncology therapies approved by the FDA along with companion diagnostics. For example, the FDA has recently approved two such agents—Xalkori® from Pfizer Inc. along with its companion anaplastic lymphoma kinase FISH test from Abbott Laboratories, Inc., Zelboraf® from Daiichi-Sankyo/Genentech/Roche along with its companion B-raf kinase V600 mutation test from Roche Molecular Systems, Inc. and Tafinlar® from GlaxoSmithKline along with its companion B-raf kinase V600 mutation test from bioMerieux. These recent FDA approvals are only the second, third and fourth instances of simultaneous approvals of a drug and companion diagnostic. The first approval was the 1998 approval of Genentech's Herceptin® for HER2 positive breast cancer along with the HercepTest from partner Dako A/S. Our competitors may invent and commercialize technology platforms or tests that compete with ours.

There are a number of companies which are focused on the oncology diagnostic market, such as Biodesix, Caris, Clarient, Foundation Medicine, Genomic Health, and Genoptix, who while not currently offering CTC or ctDNA tests which are truly competitive with ours, are selling to the medical oncologists and pathologists. Large laboratory services companies, such as Quest and LabCorp, provide more generalized cancer diagnostic testing.

Additionally, projects related to cancer diagnostics and genomics have received increased government funding, both in the United States and internationally. As more information regarding cancer genomics becomes available to the public, we anticipate that more products aimed at identifying targeted treatment options will be developed and that these products may compete with ours. In addition, competitors may develop their own versions of our tests in countries where we did not apply for patents or where our patents have not issued and compete with us in those countries, including encouraging the use of their test by physicians or patients in other countries.

Third-Party Suppliers and Manufacturers

Several of the components used in our current or planned products are available from only one supplier, and substitutes for these components cannot be obtained easily or would require substantial design or manufacturing modifications or identification and qualification of alternative sources. Any significant problem experienced by one of our sole source suppliers may result in a delay or interruption in the supply of components to us until that supplier cures the problem or an alternative source of the component is located and qualified. Any delay or interruption would likely lead to a delay or interruption in our manufacturing or testing operations. The inclusion of substitute components must meet our product specifications and could require us to qualify the new supplier or validate materials as necessary, including with the appropriate government regulatory authorities.

Patents and Proprietary Technology

Our business is dependent upon our ability to develop and perform proprietary CTC and ctDNA tests that enable oncologists at hospitals, cancer centers and physician offices to receive information on properly characterized samples from individual cancer patients to select the most appropriate therapy for those patients. We rely on a combination of patents, patent applications, trademarks, trademark applications, trade secrets and industry know-how, in order to protect the proprietary aspects of our technology and assure that we can perform our tests.

Our patent portfolio consists of two patents issued by the United States Patent and Trademark Office, or USPTO, and a number of filed patent applications pending before the USPTO and a number of filed Patent Cooperation Treaty applications pending before the World Intellectual Property Organization. These patents and patent applications are related to various aspects of our CTC and ctDNA tests, including our CEE microchannels, our CEE-Sure blood collection tubes, CEE-Cap antibody capture cocktail, CEE-Enhanced staining methodology, and CEE-Selector technology for mutation detection.

CEE Microchannels. We have two issued U.S. patents that are directly applicable to our current business (U.S. Patent Nos. 7,695,956 and 8,158,410), and a number of additional U.S. and foreign patent applications, which cover our microchannel technology. Our microchannels are differentiated from other microfluidic channels used for CTC capture based on their unique geometry, particularly the arrangement of posts within the flow channel. The posts are chemically derivatized to enable capture of antibody-tagged CTCs, and are positioned to disrupt streamline or laminar flow of cells through the microchannel to assure they come in contact with the posts for capture. Because the capture area of the microchannel is sealed on one side with a glass cover slip, immunocytochemical and cytogenetic staining and analysis can occur within the microchannel.

CEE-Sure Blood Collection Tubes. We have a U.S. patent application (13/243,432) in prosecution for our CEE-Sure blood collection tubes, which contain reagents designed to prevent clumping of blood cells and CTCs that could clog the microchannels and disrupt our assays. These reagents also provide stability to the sample for shipping and transport, enabling blood samples to be shipped at ambient temperature from a collection site anywhere in the United States, and even outside the United States, to our laboratory in San Diego, California, and perform well in our assays for up to 96 hours after collection. Nucleic acid (both DNA and RNA) has been shown to be stable and accessible in cells under these conditions, and preliminary work suggests the same may be true for ctDNA, with more research required.

CEE-Cap Antibody Capture Cocktail. Our antibody capture cocktail, which includes antibodies to a number of tumor-associated antigens from cancer cells of both epithelial and mesenchymal phenotype, as well as cancer stem cells, is being pursued through U.S. patent applications (12/730,738 and 13/269,532) and foreign equivalents. In addition to the sets of specific antigens targeted by the cocktail, the application covers the binding of the antibodies to the target CTCs in solution, which we have shown greatly improves the capture efficiency because of superior binding kinetics and the lack of spatial constraints imposed by attachment of the antibodies to a solid surface.

CEE-Enhanced Staining. This technology was developed to enable detection of CTCs that do not express sufficient amounts of cytokeratin, an epithelial marker that, in conjunction with DAPI and CD45 staining, is used to identify CTCs. It has made it possible to detect non-traditional CTCs, including mesenchymal types such as result from EMT, which, in conjunction with the antibody capture cocktail, has significantly increased the sensitivity of our CTC assays, and the informative rate for clinical samples. The CEE-Enhanced staining, along with the use of certain types of chromosomal aneuploidy, such as "complex" aneuploidy, to identify CTCs, is being pursued in a U.S. patent application (13/241,083) and foreign equivalents.

CEE-Selector Mutation Detection Technology. This technology was developed to perform mutation analysis on CTCs, ctDNA or other sample types. It addresses the challenge of a sample in which copies of the normal gene locus vastly exceed the copies of the mutant gene locus. The technology has been demonstrated to have utility for ultra-sensitive mutation detection in ctDNA as well as CTC analysis. It is co-owned with Aegea Biotechnologies, Inc., with Biocept having exclusive commercial rights for clinical oncology applications, including LDTs and IVDs. We are prosecuting two U.S. patent applications (13/841,842 and 61/784,101) with Aegea, with Biocept responsible for the former and Aegea the latter, and expect to file these cases in foreign jurisdictions as well. Lyle J. Arnold, Ph.D., our Senior Vice-President of Research & Development and Chief Scientific Officer, is the controlling person of Aegea.

In 2013, in *Association for Molecular Pathology v. Myriad Genetics*, the Supreme Court unanimously ruled that a "naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated," invalidating Myriad Genetics' patents on the BRCA1 and BRCA2 genes. This case removed some of the risk associated with testing laboratories like ours using isolated nucleic acid fragments for molecular analysis. Testing laboratories have been uncertain as to whether analysis of gene mutations covered by third party patents would violate such patents. We will continue to monitor developments in this area.

In addition to patents, we hold five U.S. registered trademarks, including a federal registration for the "CEE" mark, as well as several foreign registered trademarks and U.S. trademark applications for certain of our proprietary tests.

Through our clinical laboratory, we provide diagnostic testing and clinical services that utilize our proprietary trade secrets. In particular, we maintain trade secrets with respect to specimen accessioning, sample preparation and certain aspects of cytogenetic analysis. All of our trade secrets are kept in confidence and we take steps to ensure that our confidential information is not disseminated, including the use of non-disclosure agreements and confidentiality agreements.

Operations and Production Facilities

Our research and development laboratories, our CLIA-certified diagnostic testing laboratory and our manufacturing facility are located in our San Diego, California headquarters. The laboratories employ commercial state-of-the-art equipment as well as custom-made components specific to our CTC process that are generated in a small in-house engineering shop. The manufacturing facility used for the production of our CEE microchannels is a Class 10,000 suite in which polydimethylsiloxane is formed into the base of our proprietary microchannels in a molding process. A glass cover slip suitable for optical analysis is added to seal the channels and make them watertight by making them reactive using plasma techniques. The inside of the microchannels is subsequently chemically derivatized to enable the attachment of binding elements that strongly bind to antibody-tagged or coated CTCs. Because the microchannels have micrometer dimensions, and we are seeking individual cells in a blood sample to interact with the surface of the microchannel, dust particles and other microscopic debris that could clog the channel needs to be avoided.

The process of performing our test is straightforward. When a health care professional takes a standard blood sample from a patient for CTC or ctDNA testing, he or she will place the blood sample in our CEE-Sure blood collection tubes, complete a requisition form, and package the specimen in our shipping kit for direct shipment to us. Once we receive the specimen at our laboratory and we enter all pertinent information about the specimen into our clinical laboratory information system, our

laboratory technologists prepare the specimen for processing and analysis. Laboratory technologists, including clinical laboratory technologists and clinical laboratory scientists then conduct the analysis, including enumeration of CTCs and biomarker analysis such as FISH. The data, including images and the processed cells, are sent to our pathologists or our collaborating pathologists who are experienced in the analysis and evaluation requested by the referring oncologist or pathologist.

After analysis, our pathologists or our partner pathologists use laboratory information systems to prepare a comprehensive report, which includes selected relevant images associated with the specimen. Our internet reporting portal allows a referring oncologist or pathologist to access his or her patient's test results in real time in a secure HIPAA compliant manner. The reports are generated in industry standard PDF formats which allows for high definition color images to be reproduced clearly. This portal has been fully operational at our facilities since the fourth quarter of 2011.

In all cases, we provide the technical analysis, and in the case of our OncoCEE-BR test under our 2013 agreement with Clarient, we also provide the professional analysis. For our OncoCEE-LU test, while we would perform all of the technical analysis, the pathologists at our partner Life Technologies' CLIA laboratory would provide the professional evaluation of the laboratory data. For OncoCEE-BR tests, we will send the results to the ordering oncologist and bill the payor through an arrangement we have with Xifin, Inc. For OncoCEE-LU tests, Life Technologies would send out the report and bill the appropriate parties, then pay us a predetermined fee for the technical analysis with a subsequent quarterly adjustment of that fee based on payments actually received by Life Technologies from payors.

Quality Management Program

We are committed to providing reliable and accurate diagnostic testing to our customers. Accurate specimen identification, timely communication of test results, and prompt correction of errors, is critical. We monitor and improve our performance through a variety of methods, including performance improvement indicators, internal proficiency testing and external quality audits conducted by CAP. All quality concerns and incidents are subject to review and analysis, and our procedures are designed to ensure that we are providing the best services possible to our patients and customers. Protection of patient results from misuse and improper access is imperative and electronic and paper results are guarded via password-protection and identification cards.

We have established a Quality Management Program for our laboratory designed to help ensure accurate and timely test results, a consistent high quality of our testing services. The Quality Management Program documents the quality assurance and performance improvement plans and policies, the laboratory quality assurance and quality control procedures that are necessary to ensure that we offer the highest quality of diagnostic testing services. This program is designed to satisfy all the requirements necessary for local and state licensures and accreditation for clinical diagnostic laboratories by CAP. We follow the policies and procedures for patient and employee safety, hazardous waste disposal and fire codes stated in the general laboratory procedure manual. We believe that all pertinent regulations of CLIA, the Occupational Safety and Health Administration, the Environmental Protection Agency and the FDA are satisfied by following the established guidelines and procedures of our Quality Management Program.

In addition to the compulsory proficiency programs and external inspections required by CMS and other regulatory agencies, we have developed a variety of internal systems and procedures to emphasize, monitor and continuously improve the quality of our operations. We maintain internal quality controls by routinely processing specimens with known diagnoses in parallel with patient specimens. We also have an internally administered proficiency program for specimen testing.

The CAP accreditation program involves unannounced on-site inspections of our laboratories. CAP is an independent, non-governmental organization of board-certified pathologists that accredits laboratories nationwide on a voluntary basis and that has been recognized by CMS as an accreditation organization to inspect laboratories to determine adherence to the CLIA standards.

Third-party Payor Reimbursement

Revenues from our clinical laboratory tests are derived from several different sources. Depending on the billing arrangement and applicable law, parties that reimburse us for our services include:

- third-party payors that provide coverage to the patient, such as an insurance company, a managed care organization or a governmental payor program;
- physicians or other authorized parties, such as hospitals or independent laboratories, that order the testing service or otherwise refer the services to us; or
- the patients.

We are reimbursed for two categories of testing, anatomic pathology, which includes cell staining and the enumeration component of our CTC tests, and molecular pathology, which includes FISH testing and mutation analysis. Reimbursement under the Medicare program for the diagnostic services that we offer is based on either the Medicare Physician Fee Schedule or the Medicare Clinical Laboratory Fee Schedule, each of which is subject to geographic adjustments and is updated annually. Medical services provided to Medicare beneficiaries that require a degree of physician supervision, judgment or other physician involvement, such as pathology services, are generally reimbursed under the Medicare Physician Fee Schedule, whereas clinical diagnostic laboratory tests are generally reimbursed under the Medicare Clinical Laboratory Fee Schedule. Some of the services that we provide are genetic and molecular testing, which are reimbursed as clinical diagnostic laboratory tests.

Regardless of the applicable fee schedule, Medicare payment amounts are established for each billing code, or CPT code. In addition, under the Clinical Laboratory Fee Schedule, Medicare also sets a cap on the amount that it will pay for any individual test. This cap, usually referred to as the National Limitation Amount, is set at a percentage of the median of all the contractor fee schedule amounts for each billing code. In the past, Congress has lowered the percentage of the median used to calculate the National Limitation Amount in order to achieve budget savings. Currently, the National Limitation Amount ceiling is set at 74% of the median for established tests and 100% of the median for certain new tests that were not previously reimbursed. In billing Medicare for clinical laboratory services, we are required to accept, as payment in full, the lowest of our actual charge, the fee schedule amount for the state or local geographical area or the National Limitation Amount.

Medicare also has policies that may limit when we can bill directly for our services and when we must instead bill another provider, such as a hospital. When the testing that we perform is done on a specimen that was collected while the patient was in the hospital, as either an inpatient or outpatient, we may be required to bill the hospital for clinical laboratory services and for the technical component of pathology services, rather than the Medicare program, depending primarily on whether the service was ordered at least 14 days after the patient's discharge from the hospital. Complying with these requirements is complex and time-consuming and may affect our ability to collect for our services.

Our reimbursement rates can vary based on whether we are considered to be an "in-network" provider, a participating provider, a covered provider or an "out-of-network" provider. These definitions can vary from insurance company to insurance company, but we are generally considered an "out of network" or non-participating provider by the vast majority of private third-party payors. It is not unusual for a company that offers highly specialized or unique testing to be an "out of network" provider. An "in-network" provider usually has a contracted arrangement with the insurance company or benefits provider. This contract governs, among other things, service-level agreements and reimbursement rates. In certain instances an insurance company may negotiate an "in-network" rate for our testing rather than pay the typical "out-of-network" rate. An "in-network" provider usually has rates that are lower per test than those that are "out-of-network", and that rate can vary from a single digit percentage deduction discount to upwards of 25% to 30% percent lower than an "out-of-network" provider. The discount rate varies based on the insurance company, the testing type and often times the specifics of the patient's insurance plan.

Billing and Billing Codes for Third-party Payor Reimbursement

CPT codes are the main data code set used by physicians, hospitals, laboratories and other health care professionals to report separately-payable clinical laboratory tests for reimbursement purposes. The CPT coding system is maintained and updated on an annual basis by the American Medical Association. Although there is no specific code applicable to the specific CTC testing we perform, such as our OncoCEE-BR test, there are existing codes that describe nearly all of the steps in our testing process. We currently use a combination of different codes to describe the various steps in our testing process. Many of the CPT codes used to bill for molecular pathology tests such as those planned in our OncoCEE-LU test have been significantly revised by the CPT Code Editorial Panel. These new codes replace the more general "stacking" codes that were previously used to bill for these services with more test-specific codes, which were effective January 2013. In the Final Physician Fee Schedule Rule, which was issued in November 2012, CMS stated that it had determined it would pay for the new codes as clinical laboratory tests, which are payable on the Medicare Clinical Laboratory Fee Schedule. CMS has also started a process to "gapfill" the new codes. In other words, it will ask each of the MACs to determine a reasonable price for the new codes.

Changes in coding and reimbursement methods could have an adverse impact on our revenues going forward. However, we are currently working with our billing consultants to determine what changes will be required by the new coding changes. The elimination of the "stacking" codes would require us to either use the new more specific codes where applicable effective January 2013, or to use other "Not Otherwise Classified," or NOC, codes when billing for some of our tests. The implementation of these new codes will vary from payor to payor, and it is too early to assess the impact, if any, that the migration to the new codes may have on our results of operations. The introduction of the new codes by CMS, in combination with the other actions it is considering with regard to pricing, could result in a reduction in the payments that we receive for our tests and make it more difficult to obtain coverage from Medicare or other payors. There can be no guarantees that Medicare and other payors will establish positive or adequate coverage policies or reimbursement rates. We are moving forward with plans to obtain billing codes for our tests. Specific codes for our tests, however, do not assure an adequate coverage policy or reimbursement rate. Please see the section entitled "Legislative and Regulatory Changes Impacting Clinical Laboratory Tests" for further discussion of certain legislative and regulatory changes to these billing codes and the impact on our business.

Coverage and Reimbursement for Our Tests

OncoCEE-BR is a new test, and because of our previous relationship with Clarient, under which it had responsibility for billing and reimbursement, we do not have established coverage and reimbursement policies set with third-party payors. While Palmetto GBA, our Medicare Administrative Contractor (to be replaced by Noridian in September 2013), has a negative coverage determination for all CTC tests except the CellSearch® test, we have submitted a dossier to Palmetto GBA regarding CTC enumeration based on our CEE platform. We have received reimbursement for our tests from some payors, including major commercial third-party payors, based on submission of standard CPT codes.

The current landscape with payors is generally as follows:

Commercial Third-party Payors and Patient Pay. Where there is a coverage policy in place, we bill the payor and the patient in accordance with the established policy. Where there is no coverage policy in place, we pursue reimbursement on behalf of each patient on a case-by-case basis. Our efforts in obtaining reimbursement based on individual claims, including pursuing appeals or reconsiderations of claims denials, take a substantial amount of time, and bills may not be paid for many months, if at all. Furthermore, if a third-party payor denies coverage after final appeal, payment may not be received at all. We are working to decrease risks of nonpayment by implementing a revenue cycle management system.

Medicare and Medicaid. We believe that as much as 50% to 60% of our future market for our tests may be derived from patients covered by Medicare and Medicaid.

We cannot predict whether, or under what circumstances, payors will reimburse our tests. Payment amounts can also vary across individual policies. Denial of coverage by payors, or reimbursement at inadequate levels, would have a material adverse impact on market acceptance of our tests.

Legislative and Regulatory Changes Impacting Clinical Laboratory Tests

From time to time, Congress has revised the Medicare statute and the formulas it establishes for both the Medicare Clinical Laboratory Fee Schedule and the Medicare Physician Fee Schedule. The payment amounts under the Medicare fee schedules are important because they determine not only our reimbursement under Medicare, but also because those payment amounts are often used as a basis for payment amounts set by other third party payors. For example, state Medicaid programs are prohibited from paying more than the Medicare fee schedule limit for clinical laboratory services furnished to Medicaid recipients.

Under the statutory formula for Medicare Clinical Laboratory Fee Schedule amounts, increases are made annually based on the Consumer Price Index for All Urban Consumers as of June 30 for the previous twelve-month period. From 2004-2008, Congress eliminated the Consumer Price Index for All Urban Consumers update in the Medicare Prescription Drug, Improvement and Modernization Act of 2003. In addition, for years 2009 through 2013, the Medicare Improvements for Patients and Providers Act of 2008 mandated a 0.5% cut to the Consumer Price Index for All Urban Consumers. Accordingly, the update for 2009 was reduced to 4.5% and negative 1.9% for 2010. The ACA has, among other things, imposed additional cuts to the Medicare reimbursement for clinical laboratories. The ACA replaced the 0.5% cut enacted by the Medicare Improvements for Patients and Providers Act with a “productivity adjustment” that will reduce the Consumer Price Index update in payments for clinical laboratory tests. In 2011, the productivity adjustment was -1.2%. In addition, the ACA includes a separate 1.75% reduction in the CPI update for clinical laboratories for the years 2011 through 2015. The MCTRJCA, enacted in 2012, mandated an additional change in reimbursement for clinical laboratory service programs. This legislation requires CMS to reduce the Medicare Clinical Laboratory Fee Schedule by 2% in 2013, which in turn will serve as a base for 2014 and subsequent years. CMS has projected that because of the changes required by ACA and MCTRJCA, payment for clinical laboratory services will go down by approximately 3% by 2013.

With respect to our diagnostic services for which we are reimbursed under the Medicare Physician Fee Schedule, because of the statutory formula, the rates would have decreased for the past several years if Congress failed to intervene. In the past, when the application of the statutory formula results in lower payment, Congress has passed interim legislation to prevent the reductions. In November 2012, CMS issued its 2013 Physician Fee Schedule Final Rule, or the Final Rule. In the Final Rule, CMS called for a reduction of approximately 26.5% in the 2013 conversion factor that is used to calculate physician reimbursement. However, the American Taxpayer Relief Act of 2012, which was signed into law on January 2, 2013, prevents this proposed reduction and keeps the current reimbursement rate in effect until December 31, 2013. If Congress fails to act in future years to offset similar deductions, the resulting decrease in payment could adversely impact our revenues and results of operations. In addition, for 2012, CMS requested that the American Medical Association’s Relative Value Scale Update Committee reexamine the relative values of certain codes, including FISH codes. The Relative Value Scale Update Committee is an expert panel that provides relative value recommendations to CMS for use in annual updates to the Medicare Physician Fee Schedule. These relative values are used by CMS to determine payments, and CMS seeks to assess whether such codes are misvalued and an adjustment is necessary. On July 19, 2013, CMS published its Medicare Physician Fee Schedule Proposed Rule in which it proposed to cap reimbursement for approximately 200 CPT codes, which include anatomic and molecular pathology codes. The Proposed Rule, if finalized, would limit reimbursement under the Medicare Physician Fee Schedule for services provided by independent laboratories to the total payments received by ambulatory surgery centers and hospital outpatient departments for the same services. In addition, the Proposed Rule, if finalized, could cut reimbursement for FISH codes; if such cuts go into effect, the resulting decrease in payment could adversely impact our revenues and results of operations.

In addition, the Final Rule included a reduction of certain relative value units and geographic adjustment factors used to determine reimbursement for a number of codes used in our tests. These codes describe services that we must perform in connection with our tests and we bill for these codes in connection with the services that we provide.

Further, with respect to the Medicare Program, Congress has proposed on several occasions to impose a 20% coinsurance on patients for clinical laboratory tests reimbursed under the Medicare Clinical Laboratory Fee Schedule, which would require us to bill patients for these amounts. Because of the relatively low reimbursement for many clinical laboratory tests, in the event that Congress were to ever enact such legislation, the cost of billing and collecting for these services would often exceed the amount actually received from the patient and effectively increase our costs of billing and collecting.

Some of our Medicare claims may be subject to policies issued by Palmetto GBA and Noridian, our current and future Medicare Administrative Contractor for California, respectively. Palmetto GBA, acting on behalf of many MACs, has recently issued a Local Coverage Decision that affects coverage, coding and billing of many molecular diagnostic tests. Under this Local Coverage Determination, Palmetto will not cover any molecular diagnostic tests, including our tests, unless the test is expressly included in a National Coverage Determination issued by CMS or a Local Coverage Determination or coverage article issued by Palmetto. Currently, laboratories may submit coverage determination requests to Palmetto for consideration and apply for a unique billing code for each test (which is a separate process from the coverage determination). In the event that a non-coverage determination is issued, the laboratory must wait six months following the determination to submit a new request. In addition, effective January 1, 2013, Palmetto implemented its new Molecular Diagnostic Services Program, under which, among other things, laboratories must use newly-assigned billing codes specific to the test, with accompanying reimbursement amounts. Reimbursement amounts under these new billing codes were well below prior amounts. Upward adjustments were made in the subsequent months. Denial of coverage by Palmetto or Noridian, its successor MAC, or reimbursement at inadequate levels, would have a material adverse impact on market acceptance of our tests; in addition, inasmuch as we believe that as much as 50% to 60% of our future market for our tests may be derived from patients covered by Medicare and Medicaid, denial of coverage by Palmetto or Noridian or reimbursement at inadequate levels would be very injurious to our business.

Governmental Regulations

Clinical Laboratory Improvement Amendments of 1988 and State Regulation

As a provider of laboratory testing on human specimens for the purpose of diagnosis, prevention, or treatment, we are required to hold certain federal, state and local licenses, certifications and permits to conduct our business. In 1988, Congress enacted CLIA, which established quality standards for all laboratories providing testing to ensure the accuracy, reliability and timeliness of patient test results regardless of where the test was performed. Our laboratory holds a CLIA certificate of accreditation. As to state laws, we are required to meet certain laboratory licensing and other requirements. Our laboratory holds the required licenses from the applicable state agencies in which we operate. For more information on state licensing requirements, see the sections entitled see the section entitled “Description of the Business—Governmental Regulations—California State Laboratory Testing” and “Description of the Business—Governmental Regulations—Other States’ Laboratory Testing.”

Under CLIA, a laboratory is defined as any facility which performs laboratory testing on specimens derived from humans for the purpose of providing information for the diagnosis, prevention or treatment of disease, or the impairment of, or assessment of health of human beings. CLIA also requires that we hold a certificate applicable to the complexity of the categories of testing we perform and that we comply with certain standards. CLIA further regulates virtually all clinical laboratories by requiring they comply with various operational, personnel, facilities administration, quality and proficiency testing requirements intended to ensure that their clinical laboratory testing services are accurate, reliable and timely. CLIA certification is also a prerequisite to be eligible to bill for services provided to state and federal health care program beneficiaries. CLIA is user-fee funded. Therefore, all costs of administering the program must be covered by the regulated facilities, including certification and survey costs.

We are subject to survey and inspection every two years to assess compliance with program standards, and may be subject to additional unannounced inspections. Laboratories performing high complexity testing are required to meet more stringent requirements than laboratories performing less complex tests. In addition, a laboratory like ours that is certified as “high complexity” under CLIA may obtain analyte specific reagents, or ASRs, which are used to develop diagnostic tests that are developed and validated for use in examinations the laboratory performs itself known as LDTs.

In addition to CLIA requirements, we must comply with the standards set by CAP, which accredits our laboratory. Under CMS requirements, accreditation by CAP is sufficient to satisfy the requirements of CLIA.

Therefore, because we are accredited by CAP, we are deemed to also comply with CLIA. CLIA also provides that a state may adopt laboratory regulations that are more stringent than those under federal law, and certain states have implemented their own more stringent laboratory regulatory schemes.

Federal, State and Foreign Fraud and Abuse Laws

A variety of federal and state laws prohibit fraud and abuse. These laws are interpreted broadly and enforced aggressively by various state and federal agencies, including CMS, the Department of Justice, the Office of Inspector General for HHS, and various state agencies. In addition, the Medicare and Medicaid programs increasingly use a variety of contractors to review claims data and to identify improper payments as well as fraud and abuse. These contractors include Recovery Audit Contractors, Medicaid Integrity Contractors and Zone Program Integrity Contractors. In addition, CMS conducts CERT audits, the purpose of which is to detect improper Medicare payments. Any overpayments identified must be repaid unless a favorable decision is obtained on appeal. In some cases, these overpayments can be used as the basis for an extrapolation, by which the error rate is applied to a larger universe of claims, and which can result in even higher repayments.

The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, to induce or in return for either the referral of an individual, or the furnishing, recommending, or arranging for the purchase, lease or order of any health care item or service reimbursable, in whole or in part, under a federal health care program. The definition of "remuneration" has been broadly interpreted to include anything of value, including gifts, discounts, credit arrangements, payments of cash, ownership interests and providing anything at less than its fair market value. Recognizing that the Anti-Kickback Statute is broad and may technically prohibit many innocuous or beneficial arrangements within the health care industry, the Office of Inspector General for HHS has issued a series of regulatory "safe harbors." These safe harbor regulations set forth certain requirements that, if met, will assure immunity from prosecution under the federal Anti- Kickback Statute. Although full compliance with these provisions ensures against prosecution under the federal Anti-Kickback Statute, the failure of a transaction or arrangement to fit within a specific safe harbor does not necessarily mean that the transaction or arrangement is illegal or that prosecution under the federal Anti-Kickback Statute will be pursued. For further discussion of the impact of federal and state health care fraud and abuse laws and regulations on our business, see the section entitled "Risk Factors—Regulatory Risks Relating to Our Business". We are subject to federal and state health care fraud and abuse laws and regulations and could face substantial penalties if we are unable to fully comply with such laws.

In addition to the administrative simplification regulations discussed above, HIPAA also created two new federal crimes; health care fraud and false statements relating to health care matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including private third-party payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from federal health care programs, such as the Medicare and Medicaid programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for health care benefits, items or services. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from federal health care programs.

Finally, another development affecting the health care industry is the increased enforcement of the federal False Claims Act and, in particular, actions brought pursuant to the False Claims Act's "whistleblower" or "qui tam" provisions. The False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the federal government. The qui tam provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government and permit such individuals to share in any amounts paid by the entity to the government in fines or settlement. In addition, various states have enacted false claim laws analogous to the federal False Claims Act, and some of these state laws apply where a claim is submitted to any third-party payor. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties ranging from $5,500 to $11,000 for each false claim.

Additionally, in Europe various countries have adopted anti-bribery laws providing for severe consequences, in the form of criminal penalties and/or significant fines for individuals and/or companies committing a bribery offence. Violations of these

anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation. For instance, in the United Kingdom, under the new Bribery Act 2010, which went into effect in July 2011, a bribery occurs when a person offers, gives or promises to give a financial or other advantage to induce or reward another individual to improperly perform certain functions or activities, including any function of a public nature. Bribery of foreign public officials also falls within the scope of the Bribery Act 2010. Under the new regime, an individual found in violation of the Bribery Act of 2010, faces imprisonment of up to 10 years. In addition, the individual can be subject to an unlimited fine, as can commercial organizations for failure to prevent bribery.

Physician Referral Prohibitions

Under a federal law directed at "self-referral," commonly known as the "Stark Law," there are prohibitions, with certain exceptions, on Medicare and Medicaid payments for laboratory tests referred by physicians who personally, or through a family member, have a "financial relationship" – including an investment or ownership interest or a compensation arrangement – with the clinical laboratory performing the tests. Several Stark Law exceptions are relevant to arrangements involving clinical laboratories, including: (1) fair market value compensation for the provision of items or services; (2) payments by physicians to a laboratory for clinical laboratory services; (3) certain space and equipment rental arrangements that satisfy certain requirements, and (4) personal services arrangements. The laboratory cannot submit claims to the Medicare Part B program for services furnished in violation of the Stark Law, and Medicaid reimbursements may be at risk as well. Penalties for violating the Stark Law include the return of funds received for all prohibited referrals, fines, civil monetary penalties and possible exclusion from the federal health care programs. Many states have comparable laws that are not limited to Medicare and Medicaid referrals.

Corporate Practice of Medicine

Numerous states have enacted laws prohibiting business corporations, such as us, from practicing medicine and employing or engaging physicians to practice medicine, generally referred to as the prohibition against the corporate practice of medicine. These laws are designed to prevent interference in the medical decision-making process by anyone who is not a licensed physician. Violation of these laws may result in civil or criminal fines, as well as sanctions imposed against us and/or the professional through licensure proceedings.

Direct Billing Laws and Other State Law Restrictions on Billing for Laboratory Services

Laws and regulations in certain states prohibit laboratories from billing physicians for testing that they order. Some of those laws and regulations apply only to anatomic pathology services while others extend to other types of testing as well. Some states may allow laboratories to bill physicians directly but may prohibit the physician (and, in some cases, other purchasers) from charging more than the purchase price for the services (or may allow only for the recovery of acquisition costs) or may require the physician to disclose certain information on the invoice. In some cases, and if not prohibited by law or regulation, we may bill physicians directly for the services that they order.

California State Laboratory Licensing

Our laboratory is licensed and in good standing under the State of California Department of Health standards. Our current licenses permit us to receive specimens obtained in this state.

California state laws and regulations also establish standards for the day-to-day operations of clinical laboratories, including physical facility requirements and equipment, quality control and proficiency testing requirements. If we are found to be out of compliance with California statutory or regulatory standards, we may be subject to suspension, restriction or revocation of our laboratory license or assessed civil money penalties. The operator of a noncompliant laboratory may also be found guilty of a misdemeanor under California law. A finding of noncompliance, therefore, may result in harm to our business.

Other States' Laboratory Testing

Several states require the licensure of out-of-state laboratories that accept specimens from those states. With the exception of New York, Florida, and Rhode Island, we have obtained licenses in these states and believe we are in compliance with their applicable licensing laws. We are diligently pursuing a license in New York, and renewing licenses in Florida and Rhode Island, and we believe that we will be able to accept specimens from those states in the near future.

From time to time, other states may require out of state laboratories to obtain licensure in order to accept specimens from such states. If we identify any other state with such requirements or if we are contacted by any other state advising us of such requirements, we intend to follow instructions from the state regulators as to how we should comply with such requirements.

Other Regulatory Requirements

Our laboratory is subject to federal, state and local regulations relating to the handling and disposal of regulated medical waste, hazardous waste and biohazardous waste, including chemical, biological agents and compounds, blood and bone marrow samples and other human tissue. Typically, we use outside vendors who are contractually obligated to comply with applicable laws and regulations to dispose of such waste. These vendors are licensed or otherwise qualified to handle and dispose of such waste.

The Occupational Safety and Health Administration has established extensive requirements relating to workplace safety for health care employers, including requirements to develop and implement programs to protect workers from exposure to blood-borne pathogens by preventing or minimizing any exposure through needle stick or similar penetrating injuries.

Segment and Geographical Information

We operate in one reportable business segment and historically have derived revenues only from the United States.

Employees

As of June 30, 2013, we had a total of 27 full-time and one part time employee, five of whom hold doctorate degrees and seven of whom are engaged in full-time research and development activities. We plan to expand production, sales and marketing and our research and development programs, and we plan to hire additional staff as these initiatives are implemented. None of our employees are represented by a labor union.

Properties

We have a lease for approximately 48,000 square feet of space in San Diego, California for use as a clinical reference laboratory and corporate headquarters, including manufacturing and research laboratories. The average rent for the remaining lease period is approximately $108,000 per month. This lease expires in 2018. Based on our current operation plans, we believe that such facilities are adequate for our operations and provide space for future expansion.

Legal Proceedings

In the normal course of business, we may be involved in legal proceedings or threatened legal proceedings. We are not party to any legal proceedings or aware of any threatened legal proceedings which are expected to have a material adverse effect on our financial condition, results of operations or liquidity.

Thomas Burns, our former Vice President of Operations, filed an administrative proceeding against us with the California Labor Commissioner in June 2013, seeking approximately $62,000 in damages for alleged unpaid wages and penalties. A hearing is scheduled for August 19, 2013.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age and position of each of our directors and executive officers.

Name	Age	Position	Served as an Officer or Director Since
David F. Hale	64	Executive Chairman of the Board of Directors	2011
Marsha A. Chandler[3]	68	Director	2013
Bruce E. Gerhardt, CPA[1]	62	Director	2010
Michael W. Nall	50	Director, Chief Executive Officer and President	2013
Edward Neff[1]	61	Director	2006
Ivor Royston, M.D. [2] [3]	68	Director	2010
M. Faye Wilson [1] [2] [3]	75	Director	2009
Lyle J. Arnold, Ph. D.	67	Senior Vice-President of Research & Development, Chief Scientific Officer	2011
Farideh Z. Bischoff, Ph. D.	48	Vice-President Translational Research and Clinical Development	2007
William G. Kachioff	47	Senior Vice-President of Finance and Chief Financial Officer	2011

(1) Audit Committee
(2) Compensation Committee
(3) Nominating and Corporate Governance Committee

Our board of directors is classified into three classes of two or three directors each, with all directors serving for a three-year term and the directors of only one class being elected at each annual meeting of stockholders, so that the terms of the classes of directors are "staggered." The directors in Class I are _____and _____. The next election of Class I directors by stockholders will be at our 2014 annual meeting of stockholders, with the elected candidates to then serve until our 2017 annual meeting of stockholders. The directors in Class II are _____and _____. The next election of Class II directors by stockholders will be at our 2015 annual meeting of stockholders, with the elected candidates to then serve until our 2018 annual meeting of stockholders. The directors in Class III are _____and _____. The next election of Class III directors by stockholders will be at our 2016 annual meeting of stockholders, with the elected candidates to then serve until our 2019 annual meeting of stockholders.

Our executive officers are elected by, and serve at the discretion of, our board of directors. There are no family relationships among any of our directors and executive officers. The business experience for the past five years (and, in some instances, for prior years) of each of our executive officers and directors is as follows:

David F. Hale

Mr. Hale was appointed as our Executive Chairman in March 2011. He is the Chairman and CEO of Hale BioPharma Ventures LLC, a private company focused on the formation and development of biotechnology, specialty pharma, diagnostic and medical device companies. He has also been the Chairman of Santarus, Inc., a specialty biopharmaceutical company, since 2004 and a member of Santarus' board since 2000. He was previously President and CEO of CancerVax Corporation from October 2000 through its merger in May 2006 with Micromet, Inc., a biotechnology company focused on the development of novel biological products for the treatment of cancer, when he became Chairman of the combined companies. He is a co-founder and served as Chairman of Somaxon Pharmaceuticals before its acquisition by Pernix, and as Chairman of SkinMedica, Inc., before its acquisition by Allergan, Inc. He also serves as Chairman of Conatus Pharmaceuticals, Inc., Neurelis, Inc., Coloresciences, Inc., CRISI Medical Systems, Inc. and other private companies. Mr. Hale is a serial entrepreneur who has been involved in the founding and/or development of a

number of life sciences technology companies. In 1982, after joining Hybritech, Inc., the first monoclonal antibody company, he served as COO, President and then Chief Executive Officer, until Hybritech was acquired by Eli Lilly and Co. in 1986. From 1987 until 1997 he was Chairman, President and CEO of Gensia, Inc., which merged with SICOR to become Gensia Sicor, Inc., which was later acquired by Teva Pharmaceuticals. He was a co-founder and Chairman of Viagene, Inc. from 1987 to 1995, when Viagene was acquired by Chiron, Inc. He was President and CEO of Women First HealthCare, Inc. from late 1997 to June 2000, before joining CancerVax in October 2000. Before joining Hybritech, Mr. Hale was Vice President and General Manager of BBL Microbiology Systems, a diagnostics division of Becton, Dickinson & Co. and from 1971 to 1980, held various marketing and sales management positions with Ortho Pharmaceutical Corporation, a division of Johnson & Johnson, Inc.

We selected Mr. Hale to serve on and lead our board of directors due to his public and private company board experience as well as his extensive experience with and knowledge of health care issues and the operational activities of life sciences companies.

Marsha A. Chandler

Dr. Chandler has been the Executive Vice President/Chief Operating Officer of the Salk Institute for Biological Studies since 2007. She oversees the fiscal and administrative functions of the Institute, providing support to approximately 870 research staff and 230 administrative personnel, and oversees all fund-raising activities. From 1997 to 2007 she served as Senior Vice Chancellor for Academic Affairs at the University of California, San Diego, where she was the chief academic officer responsible for the policies and decisions relating to all academic programs and faculty appointments and performance. She served as Acting Chancellor from 2003-04 and holds an appointment as Professor of Political Science in the Graduate School of International Relations and Pacific Studies at UCSD.

Dr. Chandler is a Fellow of the Royal Society of Canada, the highest academic honor bestowed in that country. She received her Ph.D. from The University of North Carolina at Chapel Hill.

We selected Dr. Chandler to serve on our board of directors due to her experience in organizational management and her stature in the life sciences community. Dr. Chandler also serves as a member of our nominating and corporate governance committee.

Bruce E. Gerhardt

Mr. Gerhardt has been a practicing Certified Public Accountant since 1986. He is also a tax and business advisor providing tax compliance for small businesses and upper income individuals. He earned his Bachelor of Arts Degree from the University of Southern California in 1973 and is a member of the American Institute of Certified Public Accountants.

We selected Mr. Gerhardt to serve on our board of directors due to his experience and expertise in financial accounting and auditing. Mr. Gerhardt also serves as a member of our audit committee.

Michael W. Nall

Mr. Nall served at Clarient Diagnostic Services, Inc. in positions of increasing responsibility from 2002 through August 2013, with his last position being General Manager, North American Sales and Marketing. Mr. Nall received a Bachelor of Science degree from Central Missouri State University.

We selected Mr. Nall to serve on our board of directors due to his experience in the cancer diagnostics business, his expertise in the commercialization of products and services such as ours, and his status as our chief executive officer and president.

Edward Neff

Since 1990, Mr. Neff has been the Chief Executive Officer of Systems, Machines, Automation Components Corporation (also known as SMAC), a manufacturer of moving coil electric actuators.

We selected Mr. Neff to serve on our board of directors due to his experience and expertise in business management and in automated systems. Mr. Neff also serves as a member of our audit committee.

Ivor Royston, M.D.

Dr. Royston co-founded Forward Ventures and has served as its Managing Partner since 2000. From 1990 to 2000, he served as founding President and CEO of The Sidney Kimmel Cancer Center and from 1978 to 1990, he was a member of the oncology faculty of the University of California, San Diego. In addition to being a co-founder of Hybritech, Inc., in 1986 he co-founded IDEC Corporation, which later merged with Biogen to form BiogenIdec. Dr. Royston has been instrumental in the formation, financing and development of numerous biotechnology companies, including Applied Molecular Evolution (acquired by Eli Lilly), Corixa (acquired by GlaxoSmithKline), Dynavax, LigoCyte (acquired by Takeda), Morphotek (acquired by Eisai), Sequana Therapeutics (acquired by Celera), TargeGen (acquired by Sanofi-Aventis), and Triangle Pharmaceuticals (acquired by Gilead). He is currently a director of MMRGlobal, Inc., a publicly-traded health records management company. Dr. Royston received his B.A. and M.D. degrees from Johns Hopkins University and completed post-doctoral training in internal medicine and medical oncology at Stanford University. In 1997, President Clinton appointed Dr. Royston to a six-year term on the National Cancer Advisory Board.

We selected Dr. Royston to serve on our board of directors due to his extensive experience with emerging life sciences companies. Dr. Royston also serves as chairman of our compensation committee and as a member of our nominating and governance committee.

M. Faye Wilson

Ms. Wilson has been a principal of Wilson Boyles & Co., LLC, a business management and strategic planning consulting firm, since 2003. Ms. Wilson is also a member of the board of directors of BioMed Realty Trust, Inc., a real estate investment trust. She served on the board of directors of Farmers Insurance Group of Companies from 1992 through 1998 and the board of directors of The Home Depot, Inc. from 1991 through 2001. Ms. Wilson was also a senior officer of Home Depot from 1998 through 2002. From 1992 until 1998, Ms. Wilson served in several senior management roles at Bank of America Corporation including Chairman of Security Pacific Financial Services and Executive Vice President and Chief Credit Officer for Bank of America's National Consumer Banking Group. She earned her Master's Degrees in International Relations and Business Administration from the University of Southern California and an undergraduate degree from Duke University.

We selected Ms. Wilson to serve on our board of directors due to her extensive experience as a director of public companies, her financial acumen and experience, and her expertise in business strategy. Ms. Wilson also serves as chairwoman of our audit committee, as a member of our compensation committee and as a member of our nominating and governance committee.

Lyle J. Arnold, Ph. D.

Dr. Arnold joined us as Senior Vice President and Chief Scientific Officer in 2011. Before then, he consulted for us from May 2010 to April 2011. He is a biotechnology executive, entrepreneur, and developer of innovative technologies covering therapeutics, molecular diagnostics, and genomics. In 2010, Dr. Arnold founded Aegea Biotechnologies, Inc. to acquire, develop, and commercialize, next generation nucleic acid technologies. Dr. Arnold also serves on the board of directors of Asuragen, a rapidly emerging biotechnology company in Austin, Texas as well as on the board of Aegea. Previously he was Vice President, Research at Gen-Probe Incorporated from September 2003 to October 2009. He has also held senior scientific and management positions at Molecular Biosystems (co-founder), Genta, Synteni, Incyte Genomics, and Oasis Biosciences (co-founder), where he was President and Chief Scientific Officer from October 2001 to September 2003. In addition, Dr. Arnold was a faculty member of the UCSD

School of Medicine and a member of the UCSD Cancer Center. Dr. Arnold is an inventor or co-inventor on 38 issued U.S. patents and more than 140 issued and pending patents worldwide. He is the principal inventor of the chemiluminescent Hybridization Protection Assay (HPA) and associated technologies, core to Gen-Probe assays that have generated more than $5 billion in product revenue. In addition, he has authored more than 50 scientific publications.

He received a B.S. in Chemistry from the University of California at Los Angeles and a Ph.D. in Chemistry/Biochemistry from the University of California at San Diego.

Farideh Z. Bischoff, Ph. D.

Dr. Bischoff joined us in 2007 as Director of Translational Research and Development and has been Vice President, Translational Research and Clinical Development since 2011. From 1994 to 2007, she was a full-time faculty member in the Department of Obstetrics/Gynecology at Baylor College of Medicine. An expert in clinical cytogenetics and molecular human genetics, she has conducted research and focused on clinical assays relevant to non-invasive (prenatal) genetic testing and more recently cancer screening and surveillance. Dr. Bischoff has been a key investigator in a multi-center NIH/NICHD funded study focused on establishment of protocols and investigations into the clinical utility of circulating rare fetal cells as well as cell-free DNA/RNA for noninvasive prenatal genetic diagnosis. She was also charged with establishment and supervision of the molecular cytogenetic pre-implantation genetic diagnostic (PGD) program at Baylor College of Medicine.

She holds a Ph.D. in Cancer Biology from University of Texas Graduate School for Biomedical Sciences, with postdoctoral training at the MD Anderson Cancer Center and Baylor College of Medicine. Her graduate thesis project directly contributed to the discovery of germline p53 mutations in Li-Fraumeni Cancer Patients. Dr. Bischoff has published numerous peer-reviewed papers and book chapters.

William G. Kachioff

Mr. Kachioff, who joined us as Senior Vice President and Chief Financial Officer in August 2011, is experienced in corporate finance, investor relations, corporate governance and manufacturing accounting and systems. He has over twenty years of experience in the life science industry, having most recently served as Vice President and Chief Financial Officer at Althea Technologies, Inc., a pharmaceutical contract manufacturer, from 2009 to 2011. From 2007 to 2009 he was a CFO Partner with Tatum LLC, a national Executive Services firm, where he served a variety of life science industry clients in senior financial management roles. From 2002 to 2005, Mr. Kachioff was Chief Financial Officer at MicroIslet, a publicly traded biotechnology company developing cell transplant therapies for insulin dependent diabetes. From 1999 to 2001, he was Director of Finance at Cutera where he helped prepare the company for the commercial launch of its first product and its initial public offering. Mr. Kachioff has also served in a variety of financial management roles at Coulter Pharmaceutical, Vivus and Abbott Laboratories. He began his professional career as an auditor with Deloitte LLP.

Mr. Kachioff has a B.S. in Management from the University at Buffalo, State University of New York with concentrations in Accounting and Information Systems. He is a member of the American Institute of Certified Public Accountants and the Association of Bioscience Financial Officers

Director Independence

Upon the completion of this offering, we expect our common stock will be listed on The NASDAQ Capital Market. Under the rules of The NASDAQ Stock Market, independent directors must comprise a majority of a listed company’s board of directors within twelve months of the completion of an initial public offering. In addition, the rules of The NASDAQ Stock Market require that, (i) on the date of the completion of this offering, at least one member of our audit, compensation and nominating and corporate governance committees be independent, (ii) within 90 days of the date of the completion of our initial public offering, a majority of the members of such committees be independent and (iii) within one year of the date of the completion of our initial public offering, all the members of such committees be independent. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. Under the rules of The NASDAQ Stock Market, a director will only qualify as an

"independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In order to be considered to be independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (1) accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries or (2) be an affiliated person of the listed company or any of its subsidiaries.

Our board of directors undertook a review of its composition, the composition of its committees and the independence of each director. Based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that Dr. Chandler, Mr. Gerhardt, Mr. Neff, Dr. Royston and Ms. Wilson, or five of our seven directors, do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the rules of The NASDAQ Stock Market.

Our board of directors also determined that (i) Messrs. Neff and Gerhardt and Ms. Wilson, who compose our audit committee, (ii) Dr. Royston and Ms. Wilson, who compose our compensation committee, and (iii) Dr. Royston, Dr. Chandler and Ms. Wilson, who compose our nominating and corporate governance committee, each satisfy the independence standards for those committees established by the applicable rules and regulations of the SEC and The NASDAQ Stock Market. In making this determination, our board of directors considered the relationships that each non-employee director has with us and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director. We intend to comply with all size and independence requirements for committees within the applicable time periods.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table shows the compensation awarded to or earned in our last two fiscal years by our principal executive officer and our four most highly compensated executive officers who were serving as executive officers as of December 31, 2012. The persons listed in the following table are referred to herein as the "named executive officers."

Name and Principal Position	Year	Salary ($) (1)		Option Awards ($) (7)	Other Compensation ($) (8)	Total
David F. Hale	2012	323,406	(2)	-		$323,406
Executive Chairman	2011	261,094	(2)	27,530		$288,624
Michael J. Dunn	2012	263,844	(3)	-		$263,844
SVP, Corporate Development	2011	216,360	(3)	19,350		$235,710
William G. Kachioff	2012	222,843	(4)	-		$222,843
SVP Finance, Chief Financial Officer	2011	89,343	(4)	15,600		$104,943
Lyle J. Arnold, Ph. D.	2012	210,063	(5)	-		$210,063
SVP R&D, Chief Scientific Officer	2011	142,298	(5)	16,125		$158,423
Farideh Z. Bischoff, Ph. D.	2012	168,091	(6)	-	76,337	$244,428
VP of Translational Research and Clinical Development	2011	150,032	(6)	3,225	7,080	$160,337

(1) The "Salary" column includes both salary paid and salary amounts deferred under each named executive officer's Salary Reduction and Contingent Payment Agreement, 8% annual interest (compounded monthly) on such deferred salary amounts, and vacation earned but not taken ("accrued vacation"), in each year ended December 31.

(2) Mr. Hale commenced employment on March 10, 2011. 2012 salary amounts include deferred salary of $266,720, interest on deferred salary of $15,049, and accrued vacation of $8,369. 2011 salary amounts include deferred salary of $61,551 and accrued vacation of $17,325.

(3) Mr. Dunn commenced employment on February 15, 2011 and resigned effective on July 31, 2013. 2012 salary amounts include deferred salary of $83,534, interest on accrued salary of $1,628, and accrued vacation of $12,216. 2011 salary amounts include accrued vacation of $14,437.

(4) Mr. Kachioff commenced employment on August 1, 2011. 2012 salary amounts include deferred salary of $94,700, interest on accrued salary of $3,331, and accrued vacation of $4,512. 2011 salary amounts include deferred salary of $6,615 and accrued vacation of $6,605.

(5) Dr. Arnold commenced employment on April 30, 2011. 2012 salary amounts include deferred salary of $64,123, interest on accrued salary of $1,252, and accrued vacation of $8,810. 2011 salary amounts include accrued vacation of $15,375.

(6) 2012 salary amounts include deferred salary of $68,606, interest on accrued salary of $2,420, and accrued vacation of $2,656. 2011 salary amounts include deferred salary of $4,615 and interest on accrued salary of $32.

(7) Represents the aggregate grant date fair value for grants made in 2012 and 2011 computed in accordance with FASB ASC Topic 718. The assumptions we used in valuing the options are described in note 9 to our audited financial statements included in this prospectus.

(8) Includes car and telephone allowances to Dr. Bischoff in each of 2012 and 2011, and a $46,832 commuting expenses reimbursement benefit we provided to Dr. Bischoff in 2012 plus $22,425 of income taxes we paid for Dr. Bischoff in respect of such 2012 benefit.

Narrative Disclosure to Summary Compensation Table

David F. Hale

As of March 10, 2011, we entered into an employment agreement, effective retroactive to January 1, 2011 ("Executive Chairman Agreement"), with David F. Hale in connection with his appointment as our Executive Chairman of the Board of Directors. The Executive Chairman Agreement is effective through December 31, 2013. The Executive Chairman Agreement provides Mr. Hale the following: (i) a monthly fee of $25,000 per month for each month before our board of directors appoints a chief executive officer and for each of the three months following the appointment of the new chief executive officer, with a reduction to $12,500 per month commencing with the fourth month following the appointment of the new chief executive officer, subject to normal employee payroll deductions and withholdings; and (ii) stock options under our 2007 Equity Incentive Plan to purchase 428,597 shares of common stock (142,866 after the 1-for-3 reverse common stock split), vesting in equal monthly installments over a 4 year period, with full vesting upon a change of control or initial public offering. In addition, vesting would accelerate upon his termination by us or our shareholders without cause, as defined in the 2007 Equity Incentive Plan, provided that he gives us an effective waiver and release of claims. Also, upon an equity financing such as this offering, Mr. Hale will be entitled to receive an additional stock option, on the same terms and conditions except for exercise price, to purchase a number of shares of common stock equal to the excess of (i) 1% of our fully-diluted equity capitalization as of immediately after the financing over (ii) the number of shares subject to the first stock option.

The Executive Chairman Agreement also entitled Mr. Hale to restricted stock units ("RSUs"). Mr. Hale received a time-based RSU award for 428,597 shares of our preferred stock, to fully vest and settle upon a change in control or initial public offering during the period of his continuous service, Mr. Hale would receive a prorated portion of such shares if the change in control or initial public offering occurs within 10 years after January 1, 2011 but after the involuntary termination of his continuous service. The proration would be based upon the number of months he provided continuous service to us divided by 48; but the RSUs would be deemed vested in full upon his involuntary termination without cause, provided that he gives us an effective waiver and release of claims. Upon the closing of this offering, Mr. Hale would receive 142,866 shares of common stock in settlement of the time-based RSUs.

The Executive Chairman Agreement also entitled Mr. Hale to a performance-based RSU award, which is divided into three equal tranches, each representing shares of our preferred stock equal to 0.5% of our fully-diluted equity capitalization, and each to fully vest and settle upon a change in control or initial public offering occurring within 10 years after January 1, 2011. The tranches were associated with achievement of a specified commercial milestone, a specified funding milestone, and specified leadership milestones.

The Executive Chairman Agreement provides that if a change in control or initial public offering occurs during the time of his continuous service but before the performance requirements are achieved, he will be entitled to receive 0.5% of our fully-diluted equity capitalization as of immediately before such event for each of the three tranches. Upon the closing of this offering, Mr. Hale would receive in settlement of the three tranches of the performance-based RSUs a number of shares of common stock equal to 1.5% of our fully-diluted equity capitalization as of immediately before the closing of this offering.

Michael J. Dunn

We entered into an employment agreement as of February 15, 2011 ("SVP Corporate Development Employment Agreement") with Michael J. Dunn in connection with his appointment as our Senior Vice-President of Corporate Development. The SVP Corporate Development Employment Agreement provided Mr. Dunn the following: (i) a base salary of $250,000 per year, provided that the salary will increase by $25,000 per year upon the finalization of one or more corporate collaborations or other investments that provide at least $15,000,000 in financing to us; (ii) stock options under our 2007 Equity Incentive Plan to purchase 250,000 shares of common stock (83,333 after 1-for-3 reverse common stock split), with 25% of all shares vesting on the one year anniversary of his employment start date and the remainder vesting in equal monthly installments over the following 3 year period; and (iii) an additional option to purchase 50,000 shares of common stock (16,667 after 1-for-3 reverse common stock split), vesting in equal monthly installments over a one year period, to be issued upon the completion of a corporate collaboration providing at least $5,000,000 in financing to us.

Mr. Dunn resigned effective on July 31, 2013.

William G. Kachioff

We entered into an employment agreement as of August 1, 2011 ("CFO Employment Agreement") with William G. Kachioff in connection with his appointment as our Senior Vice-President and Chief Financial Officer. The CFO Employment Agreement provides Mr. Kachioff the following: (i) a base salary of $215,000 per year, provided that the salary will increase to $240,000 per year upon our receipt of aggregate proceeds of $15,000,000 or more from the sales of equity securities, excluding the conversion of outstanding indebtedness (ii) a one-time bonus of $30,000 upon our receipt of aggregate proceeds of $15,000,000 or more from the sales of equity securities, excluding the conversion of outstanding indebtedness; (iii) stock options under our 2007 Equity Incentive Plan to purchase 250,000 shares of common stock (83,333 after the 1-for-3 reverse common stock split), with 25% of all shares vesting on the one year anniversary of the grant and the remainder vesting in equal monthly installments over the following 3 year period; and (iv) an additional option to purchase 50,000 shares of common stock to be issued upon our receipt of aggregate proceeds of $15,000,000 or more from the sales of equity securities, excluding the conversion of outstanding indebtedness.

Lyle J. Arnold

We entered into an employment agreement as of April 30, 2011 ("CSO Employment Agreement") with Lyle J. Arnold in connection with his appointment as our Senior Vice-President of Research and Development and Chief Scientific Officer. The CSO Employment Agreement provides Dr. Arnold the following: (i) a base salary of $200,000 per year, provided that the salary will increase to $250,000 per year upon our receipt of aggregate proceeds of $15,000,000 or more from the sales of equity securities, excluding the conversion of outstanding indebtedness; (ii) stock options under our 2007 Equity Incentive Plan to purchase 250,000 shares of common stock (83,333 after the 1-for-3 reverse common stock split), with 25% of all shares vesting on the one year anniversary of the grant and the remainder vesting in equal monthly installments over the following 3 year period; and (iii) an additional option to purchase 50,000 shares of common stock when, based upon a good faith determination by our board of directors, a second generation platform for the capture, detection and enumeration of CTCs has been finalized.

Salary Deferrals

Pursuant to written agreements with 10 officers and senior employees, we deferred payment of portions of such individuals' salaries in 2012. In exchange we agreed to pay 8% per annum interest (compounded monthly) on the deferred amounts and to award them each, based on their election, either 5,000 common stock options or 5,000 restricted stock unit awards. Additional deferrals have been made in 2013 only from the salary of David F. Hale and the salary of one other employee. As of June 30, 2013, the deferred salary amount owing to Mr. Hale was $492,506 (inclusive of interest), the deferred salary amount owing to Dr. Arnold was $67,919 (inclusive of interest), the deferred salary amount owing to Dr. Bischoff was $78,578 (inclusive of interest), the deferred salary amount owing to Mr. Dunn was $88,288 (inclusive of interest), the deferred salary amount owing to Mr. Kachioff was $108,711 (inclusive of interest), and the aggregate deferred salary amount owing to the five other persons was $293,341 (inclusive of interest). Under the terms of the salary reduction and contingent payment agreements, we must satisfy these deferred salary amounts from the proceeds of this offering.

Outstanding Equity Awards

The following table sets forth certain information, on an award-by-award basis, concerning unexercised options to purchase common stock and common stock that has not yet vested for each named executive officer and outstanding as of December 31, 2012. These figures have been adjusted to reflect both our November 2011 1-for-3 reverse common stock split and the 1-for-_____ reverse common stock split to be effected immediately before the closing of this offering.

		Option Awards				Restricted Stock Units	
Name	Grant Date	Number of Securities Underlying Unexercised Option (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Unvested Securities Underlying (#)	Market Price of Units that are Unvested ($)
David F. Hale	1/3/2011	71,433	71,433	0.33	1/1/2021		
	1/3/2011					428,597	0.33
	1/3/2011					Variable	0.33
Michael J. Dunn	3/25/11	22,569	60,764	0.33	3/25/2021		
	3/25/11	16,666	—	0.33	3/25/2021		
William G. Kachioff	8/1/2011	13,889	27,777	0.33	8/1/2021		
	8/1/2011	13,889	27,777	0.33	8/1/2021		
Lyle J. Arnold, Ph. D.	4/30/2011	34,722	48,611	0.33	4/30/2021		
Farideh Z. Bischoff, Ph. D.	8/11/2009	8,352	—	0.36	8/11/2019		
	8/11/2009	8,351	—	0.36	8/11/2019		
	8/11/2009	8,351	—	0.36	8/11/2019		
	8/11/2009	4,176	—	0.36	8/11/2019		
	8/11/2009	4,176	—	0.36	8/11/2019		
	3/25/2011	7,870	8,796	0.33	3/25/2021		

Potential Payments upon Termination or Change-In-Control

Our employment agreement with Mr. Hale provides that his stock option for 142,866 shares of common stock will fully vest in the event of a change in control (or upon the completion of our initial public offering), and that his time-based RSU award for 428,597 shares of our preferred stock (equivalent to 142,866 shares of common stock) will fully vest and settle upon a change in

control (or upon the completion of our initial public offering) during the period of his continuous service; he would receive a prorated portion of such shares if the change in control or initial public offering occurs within 10 years after January 1, 2011 but after the involuntary termination of his continuous service. The proration would be based upon the number of months he provided continuous service to us divided by 48; but the RSUs would be deemed vested in full upon his termination without cause, provided that he gives us an effective waiver and release of claims. The Executive Chairman Agreement also entitled Mr. Hale to a performance-based RSU award, which is divided into three equal tranches, each representing shares of our preferred stock equal to 0.5% of our fully-diluted equity capitalization, and each to settle upon a change in control (or upon the completion of our initial public offering) occurring within 10 years after January 1, 2011. The tranches were associated with achievement of a specified commercial milestone, a specified funding milestone, and specified leadership milestones. The Executive Chairman Agreement provides that if a change in control (or initial public offering) occurs during the time of his continuous service but before the performance requirements are achieved, he will be entitled to receive 0.5% of our fully-diluted equity capitalization as of immediately before such event for each of the three tranches. Because Mr. Hale's time-based and performance-based RSUs under the Executive Chairman Agreement will both vest and settle upon the closing of this offering, Mr. Hale would receive no additional payments thereunder if a change in control occurs after the closing of this offering.

Our employment agreement with Mr. Dunn provided that if his continuous service was terminated without cause or he resigned with good reason then, provided that he gave us an effective waiver and release of claims, he would be entitled to 6 months' salary plus up to 6 months of COBRA premiums. However, if he was terminated without cause or he resigned with good reason within 3 months before or 12 months after a change in control, then, provided that he gave us an effective waiver and release of claims, he would be entitled to 12 months' salary plus up to 12 months of COBRA premiums, plus all his then-outstanding stock options would fully vest. Effective on July 31, 2013, Mr. Dunn resigned, and there was no right to any such severance payments.

Our employment agreement with Mr. Kachioff provides that if his continuous service is terminated without cause or he resigns with good reason then, provided that he gives us an effective waiver and release of claims, he will be entitled to 6 months' salary plus up to 6 months of COBRA premiums. However, if he is terminated without cause or he resigns with good reason within 3 months before or 12 months after a change in control, then, provided that he gives us an effective waiver and release of claims, he will be entitled to 12 months' salary plus up to 12 months of COBRA premiums. Additionally, all of his then-outstanding stock options will fully vest.

Our employment agreement with Dr. Arnold provides that if his continuous service is terminated without cause or he resigns with good reason then, provided that he gives us an effective waiver and release of claims, he will be entitled to 6 months' salary plus up to 6 months of COBRA premiums. However, if he is terminated without cause or he resigns with good reason within 3 months before or 12 months after a change in control, then, provided that he gives us an effective waiver and release of claims, he will be entitled to 12 months' salary plus up to 12 months of COBRA premiums. Additionally, all of his then-outstanding stock options will fully vest.

The common stock RSUs granted to five of our non-employee directors under the 2007 Equity Incentive Plan provide for acceleration of vesting in the event of a change in control or the director's involuntary removal from the board of directors by our shareholders without cause.

A total of 183,330 stock options granted to five of our non-employee directors under the 2007 Equity Incentive Plan were amended in February 2012 to provide for acceleration of vesting in the event of the director's involuntary removal from the board of directors by our shareholders without cause, provided that the director gives us an effective waiver and release of claims.

The 390,000 preferred stock RSUs granted to Dr. Royston vest only upon a change in control or the effectiveness of an underwriting agreement for an initial public offering within 10 years. If Dr. Royston is still serving on the board at that time, all of the preferred stock RSUs would vest. If Dr. Royston was not serving on the board at that time, his entitlement would be equal to the full award multiplied by a fraction (not to exceed 1), the numerator of which is the number of months he served on the board and the denominator of which is 48. This RSU award was amended in February 2012 to provide that in the event of his involuntary removal from the board of directors by our shareholders without cause before the change in control or the effectiveness of an underwriting agreement for an initial public offering, then (provided that the director gives us an effective waiver and release of claims) all the preferred stock RSUs would vest upon the change in control or the effectiveness of an underwriting agreement for an initial public offering.

The vesting of all stock options and RSUs awarded under our 2013 Equity Incentive Plan will accelerate fully in the event that the optionee's continuous service is terminated without cause, or the optionee resigns for good reason, within 10 days before or 12 months after a change in control. In addition, the vesting of all stock options and RSUs awarded in July 2013 to Mr. Hale, Mr. Kachioff, Dr. Arnold and Dr. Bischoff under our 2013 Equity Incentive Plan will, if the optionee's continuous service persists through the first anniversary of a change in control, accelerate fully upon such first anniversary.

Director Compensation

In December 2010, our board of directors approved a resolution that each year on January 1, each non-employee director (with the exception of Mrs. Reiss and Mr. Neff) shall be automatically granted an annual RSU award under the 2007 Equity Incentive Plan covering a number of shares of common stock equal to 0.25% of our fully diluted outstanding capital stock as of the December 31 immediately preceding the applicable grant date of the RSUs. Such RSU awards were granted on January 1, 2011 and 2012, and vested in equal monthly installments over 12 months from the date of the grant. Additionally, in January 2012, each person who was serving as a non-employee director was granted a "true up grant" in addition to the annual RSU award covering a number of shares of common stock equal to 0.25% of our fully diluted outstanding capital stock as of December 31, 2011. These "true up grants" vested 100% on the date of the grant. In January 2012, five RSU awards, for a total of 293,030 shares of common stock, were granted in accordance with this resolution.

The RSU awards due to be granted on January 1, 2013 were not in fact granted. Instead, on July 31, 2013, RSU awards for 122,300 shares of common stock were granted to each of Mr. Gerhardt, Mr. Neff and Dr. Royston and a RSU award for 200,000 shares of common stock was granted to Ms. Wilson. These awards vest in equal monthly installments over five months beginning August 1, 2013. The shares underlying the 2013 awards, if vested, would be distributed no later than August 24, 2014.

During 2012, the non-employee directors received compensation for their service as follows (we have listed the value of the RSU awards in the "Restricted Stock Awards ($)" column):

Name	Fees Earned or Paid in Cash ($) (1)	Option Awards ($) (2)	Restricted Stock Awards ($) (3)	Total ($)
Edward A. Dennis, Ph. D. (4)	—	—	$38,680	$38,680
Bruce E. Gerhardt	—	—	$38,680	$38,680
Ivor Royston, M.D.	—	—	$38,680	$38,680
Daniel H. Petree (4)	—	—	$38,680	$38,680
M. Faye Wilson	—	—	$38,680	$38,680

(1) During 2012, we did not pay any cash compensation to our non-employee directors.
(2) During 2012, we did not issue stock option awards to our non-employee directors.
(3) The amounts in the "Restricted Stock Awards" column reflect the aggregate grant date fair value of restricted stock granted during the year computed in accordance with the provisions of FASB ASC Topic 718.
(4) Dr. Dennis and Mr. Petree resigned from our board of directors in January 2013.

In 2013 our board of directors adopted a resolution that, beginning at the closing of this offering, the previous non-employee directors automatic grant program shall be terminated and, instead, non-employee members of our board of directors shall be eligible to automatically receive annual cash and equity compensation, as follows:

- Annual Retainer. For service as a director: an annual cash retainer of $15,000.

- Executive Chairman. For service as Executive Chairman: an annual cash retainer of $85,000 (in addition to an annual cash retainer of $15,000 as a director), plus an annual grant of an option to purchase 50,000 shares of common stock.
- Lead Independent Director. For service as Lead Independent Director: an annual cash retainer of $20,000 (inclusive of the annual cash retainer of $15,000 as a director), plus an annual grant of an option to purchase 20,000 shares of common stock.
- Audit Committee.
  - For service as Chair of the audit committee: an annual grant of an option to purchase 7,500 shares of common stock.
  - For service as member of the audit committee other than as its Chair: an annual grant of an option to purchase 3,000 shares of common stock.
- Compensation Committee.
  - For service as Chair of the compensation committee: an annual grant of an option to purchase 5,000 shares of common stock.
  - For service as member of the compensation committee other than as its Chair: an annual grant of an option to purchase 2,000 shares of common stock.
- Nominating and Corporate Governance Committee.
  - For service as Chair of the nominating and corporate governance committee: an annual grant of an option to purchase 3,000 shares of common stock.
  - For service as member of the nominating and corporate governance committee other than as its Chair: an annual grant of an option to purchase 1,500 shares of common stock.
- Initial Post-IPO Equity Award. For each non-employee director serving at the time of the closing of this offering: an annual grant of an option to purchase 20,000 shares of common stock.
- Initial Awards. For each non-employee director who is initially elected or appointed to the board after the closing of this offering: an annual grant of an option to purchase 20,000 shares of common stock.
- Subsequent Awards.
  - For each non-employee director who (i) has been serving on the board for at least six months as of the date of any annual meeting of our stockholders and (ii) will continue to serve as a non-employee director immediately following such meeting: an option to purchase 15,000 shares of common stock.
  - For each non-employee director who (i) has been serving as Chair of the board for at least six months as of the date of any annual meeting of our stockholders and (ii) will continue to serve as Chair of the board immediately following such meeting: an additional option to purchase 50,000 shares of common stock.

The annual cash retainers shall be earned and paid on a calendar quarterly basis, subject to proration in the case of service during only a portion of a calendar quarter.

The per share exercise price of each option granted under this program shall equal the fair market value of a share of common stock on the date the option is granted. Each such stock option shall vest and become exercisable in substantially equal installments on each of the first three anniversaries of the date of grant, subject to continuing in service on the board through each such vesting date; provided, that each Subsequent Award shall vest and/or become exercisable on the first anniversary of the date of grant, subject to continuing in service on the board through such vesting date; and provided further, that all stock options under the program shall vest in full upon the occurrence of a change in control.

The term of each such stock option shall be 10 years from the date the option is granted. Upon a non-employee director's cessation of service on the board for any reason, his or her stock options granted under this program shall, to the extent vested on the date of cessation of service, remain exercisable for 12 months following the cessation of his or her service on the board (or such longer period as the board may determine in its discretion on or after the date of such stock options).

Employee Stock Plans

We have two equity incentive plans: the 2007 Equity Incentive Plan, and the 2013 Equity Incentive Plan. Each plan is described separately below, followed by a description of certain federal income tax consequences with respect to plans of these types.

2007 Equity Incentive Plan

The following is a summary of the material terms of our 2007 Equity Incentive Plan, as amended to date. This description is not complete. For more information, we refer you to the full text of the 2007 Equity Incentive Plan, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

The purposes of the 2007 Equity Incentive Plan are: (i) to secure and retain the services of eligible employees, board members, consultants and other advisors to serve our company and its affiliates, (ii) to provide incentives for such persons to exert maximum efforts for the success of our company and its affiliates and (iii) to provide a means by which they can benefit from increases in the value of our common stock.

The 2007 Equity Incentive Plan authorizes the grant of the following types of awards: (i) nonstatutory stock options, or NSOs, (ii) incentive stock options, or ISOs, (iii) restricted stock awards, (iv) restricted stock unit awards, or RSUs, (v) stock appreciation rights, or SARs, (vi) performance stock awards, and (vii) other stock awards. Awards may be granted to employees, directors, consultants and other service providers of our company and its affiliates. However, ISOs may not be granted to non-employees.

We have authorized a total of 2,500,000 shares of common stock for issuance pursuant to all awards granted under the 2007 Equity Incentive Plan. The number of shares issued or reserved pursuant to the 2007 Equity Incentive Plan (or pursuant to outstanding awards) is subject to adjustment as a result of mergers, consolidations, reorganizations, stock splits, stock dividends and other changes in our common stock. Shares subject to awards that have been terminated, expired unexercised, forfeited, settled in cash or cancelled in accordance with the cancellation and regrant procedures under the 2007 Equity Incentive Plan shall again become available for issuance under the 2007 Equity Incentive Plan. Shares of common stock used to pay the exercise price of awards shall also again become available for issuance under the 2007 Equity Incentive Plan.

However, shares in the following categories may not again be made available for issuance as awards under the 2007 Equity Incentive Plan: (i) shares of common stock not issued or delivered as a result of the net settlement of outstanding awards, (ii) shares of common stock used to pay the exercise price of NSOs or ISOs, and (iii) shares of common stock used to pay withholding taxes related to awards.

As of July 31, 2013, 450,023 shares had been issued under the 2007 Equity Incentive Plan, 1,132,785 shares underlay outstanding awards, and 917,192 other shares remained available to be subjected to further awards.

Administration. Our board of directors administers the 2007 Equity Incentive Plan, subject to the board's authority to delegate some or all of such administration to the Compensation Committee.

Performance Criteria. Vesting of any awards granted under the 2007 Equity Incentive Plan may be made subject to the satisfaction of one or more performance goals established by the board of directors, in addition to or instead of time-vesting. The performance goals may vary from participant to participant, group to group, and period to period. Performance goals may be weighted for different factors and measures.

Transferability. Unless otherwise determined by the board of directors, awards granted under the 2007 Equity Incentive Plan are generally not transferable other than by will or by the laws of descent and distribution.

Corporate Transaction. In the event we are acquired in a corporate transaction, as defined in the 2007 Equity Incentive Plan, unless otherwise provided in a written agreement between us and the holder of an outstanding 2007 Equity Incentive Plan award, the award will be assumed by the successor company or a similar award will be substituted by the successor company. If the successor company does not agree to assume or substitute the award, the vesting of the award will accelerate and the award will become exercisable in full.

Effectiveness of the 2007 Equity Incentive Plan; Amendment and Termination. The 2007 Equity Incentive Plan became effective on March 6, 2007. The 2007 Equity Incentive Plan will remain available for the grant of awards until the day before the tenth anniversary of the effective date. The board may amend, alter or discontinue the 2007 Equity Incentive Plan in any respect at any time, subject to certain exceptions, but no amendment may adversely affect the rights of a participant under any awards previously granted, without his or her consent, except that stockholder approval will be needed if required by applicable law.

The 2007 Equity Incentive Plan permits us to reprice any stock option granted under the plan without the approval of our stockholders.

2013 Equity Incentive Plan

The following is a summary of the material terms of our 2013 Equity Incentive Plan. This description is not complete. For more information, we refer you to the full text of the 2013 Equity Incentive Plan, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

The purposes of the 2013 Equity Incentive Plan are: (i) to enable us to attract and retain the types of qualified employees, officers, directors, consultants and other service providers who will contribute to our long range success, (ii) to align the interests of employees, officers, directors, consultants and other service providers with those of our stockholders, and (iii) to promote the success of our business.

The 2013 Equity Incentive Plan authorizes the grant of the following types of awards: NSOs, ISOs, SARs, restricted stock, RSUs, and performance compensation awards. Awards may be granted to employees, officers, non-employee board members, consultants and other service providers of our Company and its affiliates. However, ISOs may be granted only to employees, including officers.

We have authorized a total of 5,650,000 shares of common stock for issuance pursuant to all awards granted under the 2013 Equity Incentive Plan, subject to an increase of 800,000 shares upon the completion of this offering and subject to additional increases every January 1 equal to the lesser of (i) 5% of our outstanding common stock on such January 1, or (ii) a number of shares determined by our board in its discretion for use on such particular January 1. The number of shares issued or reserved pursuant to the 2013 Equity Incentive Plan, or pursuant to outstanding awards, is subject to adjustment as a result of mergers, consolidations, reorganizations, stock splits, stock dividends and other changes in our common stock. Shares subject to awards that have been terminated, expired unexercised, or forfeited do not count as shares issued under the 2013 Equity Incentive Plan. However, shares in the following categories may not again be made available for issuance as awards under the 2013 Equity Incentive Plan: (i) shares of common stock not issued or delivered as a result of the net settlement of outstanding NSOs or ISOs, (ii) shares of common stock used to pay the exercise price of NSOs or ISOs, (iii) shares of common stock used to pay withholding taxes related to awards, or (iv) shares of common stock corresponding to the value of stock-designated SARs which are settled in cash.

In no event shall any participant be granted under the 2013 Equity Incentive Plan in any one calendar year (i) NSOs, ISOs or SARs pursuant to which, in the case of NSOs or ISOs, the aggregate number of shares of common stock that may be acquired thereunder, or, in the case of SARs, the aggregate number of shares of common stock covered thereby, exceeds 5,000,000 shares, or (ii) any other types of awards covering in the aggregate over 500,000 shares of common stock. Also, the maximum number of shares of common stock subject to performance stock awards, other than NSOs, ISOs and SARs, payable to any one participant under the 2013 Equity Incentive Plan in any one performance period is 1,000,000 shares of common stock or, in the event such performance stock award is paid in cash, the equivalent cash value thereof on the first or last day of the performance period to which such award relates, as determined by the Compensation Committee. The maximum amount that can be paid in any calendar year to any participant pursuant to a performance cash bonus award under the 2013 Equity Incentive Plan shall be $1,000,000. In addition, the

maximum number of shares of common stock that may be issued during the life of the 2013 Equity Incentive Plan under ISOs is 5,500,000 shares. If an award is settled in cash, the number of shares of common stock on which the award is based shall count toward the applicable individual share limit.

As of July 31, 2013, no shares had been issued under the 2013 Equity Incentive Plan, no shares had otherwise become unavailable for issuance, 5,123,232 shares underlay outstanding awards, and 526,768 other shares remained available to be subjected to further awards.

Administration. The 2013 Equity Incentive Plan is administered by our Compensation Committee. The Compensation Committee has the discretion to determine the individuals to whom awards may be granted under the 2013 Equity Incentive Plan, the number of shares of our common stock subject to each award, the type of award, the manner in which such awards will vest and the other conditions applicable to awards. The Compensation Committee is authorized to interpret the 2013 Equity Incentive Plan, to establish, amend and rescind any rules and regulations relating to the 2013 Equity Incentive Plan and to make any other determinations that it deems necessary or desirable for the administration of the 2013 Equity Incentive Plan. All decisions, determinations and interpretations by the Compensation Committee, and any rules and regulations under the 2013 Equity Incentive Plan and the terms and conditions of or operation of any award, are final and binding on all participants. Notwithstanding the foregoing, the board of directors also has authority to take action expressly or implicitly in the capacity of the administrator of the 2013 Equity Incentive Plan, and the board also may delegate, to the extent allowed under Delaware law, its authority to one or more of our officers with respect to awards that do not involve covered employees within the meaning of Internal Revenue Code Section 162(m) or “insiders” within the meaning of Section 16 of the Securities Exchange Act.

Stock Options. The Compensation Committee will determine the exercise price and other terms for each option and whether the options will be NSOs or ISOs. The exercise price per share of each option will not be less than 100% of the fair market value of our common stock on the date of grant (or 110% of fair market value in the case of an ISO granted to a 10% stockholder), which, unless otherwise determined by the Committee, will be deemed to be the closing price of a share of our common stock on its principal exchange on the grant date. ISOs may be granted only to employees and are subject to certain other restrictions. To the extent an option intended to be an ISO does not qualify as an ISO, it will be treated as an NSO. A participant may exercise an option by written notice and payment of the exercise price in cash, or in the discretion of the Compensation Committee, in the form of an irrevocable commitment by a broker to pay over the net proceeds from a sale of the shares issuable under an option, the cancellation of indebtedness we owe to the optionee, the waiver of compensation due or accrued to the optionee for services rendered, the delivery of previously owned shares and/or withholding of shares deliverable upon exercise, or any combination of these methods. The maximum term of any option granted under the 2013 Equity Incentive Plan is 10 years from the grant date (or five years in the case of an ISO granted to a 10% stockholder). The 2013 Equity Incentive Plan does not permit us to reprice any stock option granted under the plan without the approval of our stockholders. The 2013 Equity Incentive Plan authorizes us to, but does not require us to, withhold from participants shares of common stock having a fair market value equal to our withholding obligation with respect to exercised NSOs.

Stock Appreciation Rights. The Compensation Committee may grant SARs independent of or in connection with an option. The Compensation Committee will determine the other terms applicable to SARs. The exercise price per share of each SAR will not be less than 100% of the fair market value of our common stock on the grant date, which, unless otherwise determined by the Committee, will be deemed to be the closing price of a share of our common stock on its principal exchange on the grant date. The price will be subject to adjustment for recapitalization or other changes in our common stock. The maximum term of any SAR granted under the 2013 Equity Incentive Plan will be 10 years from the grant date. Generally, each SAR will entitle a participant upon exercise to an amount equal to:

- the excess of the fair market value on the exercise date of one share of our common stock over the exercise price, multiplied by
- the number of shares of common stock covered by the SAR.

Payment may be made in shares of our common stock, in cash or partly in common stock and partly in cash, all as determined by the Compensation Committee.

Restricted Stock and Restricted Stock Units. The Compensation Committee will have the authority to award restricted common stock and/or RSUs under the 2013 Equity Incentive Plan. Restricted stock awards consist of shares of stock that are transferred to a participant subject to service and/or other restrictions that may result in forfeiture if specified conditions are not satisfied. Unless the Compensation Committee determines otherwise at the time the restricted stock award is granted, holders of restricted stock will have the right to vote the shares. RSUs confer the right to receive shares of our common stock, cash or a combination of shares and cash, at a future date upon or following the attainment of service and/or other conditions specified by the Compensation Committee. The Compensation Committee will determine the restrictions and conditions applicable to each award of restricted stock or RSUs, which may include performance-based conditions. The 2013 Equity Incentive Plan authorizes us to, but does not require us to, withhold from participants shares of common stock having a fair market value equal to our withholding obligation with respect to restricted stock and/or settled RSUs.

Performance Compensation Awards. The Compensation Committee may award performance stock awards under the 2013 Equity Incentive Plan. Performance stock awards are awards, denominated in shares of our common stock, cash or a combination thereof, which are earned during a specified performance period subject to the attainment of performance criteria, as established by the Compensation Committee. The Compensation Committee will determine the restrictions and conditions applicable to each stock award.

Performance Criteria. Vesting of awards granted under the 2013 Equity Incentive Plan may be subject to a requirement of continuous service and/or the satisfaction of one or more performance goals established by the Compensation Committee. The performance goals may vary from participant to participant, group to group, and period to period. Performance goals may be weighted for different factors and measures.

Transferability. Unless otherwise determined by the Compensation Committee, awards granted under the 2013 Equity Incentive Plan will generally not be transferable other than by will or by the laws of descent and distribution.

Change in Control. Unless otherwise provided in an award agreement, in the event of a participant's termination of continuous service without cause or for good reason, but excluding termination as a result of resignation in the absence of good reason, during the 10-day period before a change in control or during the 12 month period following a change in control, all options and SARs shall become immediately exercisable with respect to 100% of the shares subject to such options or SARs, and/or the restricted period shall expire immediately with respect to 100% of the shares of restricted stock or RSUs as of the date of the participant's termination of continuous service.

With respect to performance compensation awards, in the event of a change in control, all incomplete performance periods in respect of such award in effect on the date the change in control occurs shall end on the date of such change and the Compensation Committee shall (i) determine the extent to which performance goals with respect to each such performance period have been met based upon such audited or unaudited financial information then available as it deems relevant and (ii) cause to be paid to the applicable participant partial or full awards with respect to performance goals for each such performance period based upon the Compensation Committee's determination of the degree of attainment of performance goals or, if not determinable, assuming that the applicable "target" levels of performance have been attained, or on such other basis determined by the Compensation Committee.

In addition, in the event of an anticipated change in control, the Compensation Committee may in its discretion and upon at least 10 days' advance notice to the affected persons, cancel upon or immediately before the change in control any outstanding awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such awards based upon the value per share of common stock received or to be received or deemed received by our other stockholders in the event. In the case of any option or SAR with an exercise price that equals or exceeds the price paid for a share of common stock in connection with the change in control, the Compensation Committee may cancel the option or SAR without the payment of consideration therefor.

Effectiveness of the 2013 Equity Incentive Plan; Amendment and Termination. The 2013 Equity Incentive Plan was adopted and approved by our board of directors on July 31, 2013 and thereafter approved by our stockholders. The 2013 Equity Incentive Plan will remain available for the grant of awards until the tenth anniversary of the effective date. The board may amend, alter or discontinue the 2013 Equity Incentive Plan in any respect at any time, but no amendment may impair the rights of a participant under any awards previously granted, without his or her consent, except that stockholder approval will be needed for any amendment that would increase the maximum number of shares available for awards, other than the increase that occurs every January 1, reduce the exercise price of outstanding options or SARs, or if otherwise required by applicable law or stock market requirements.

Federal Income Tax Consequences

Following is a summary of the federal income tax consequences of option and other awards under the 2007 Equity Incentive Plan and 2013 Equity Incentive Plan. Optionees and recipients of other rights and awards granted under the 2007 Equity Incentive Plan or the 2013 Equity Incentive Plan are advised to consult their personal tax advisors before exercising an option, stock appreciation right or award or disposing of any stock received pursuant to the exercise of an option, stock appreciation right or award. In addition, the following summary is based upon an analysis of the Internal Revenue Code of 1986, as amended and as currently in effect, existing laws, judicial decisions, administrative rulings, regulations and proposed regulations, all of which are subject to change and does not address state, local or other tax laws.

Treatment of Options. The Code treats incentive stock options and nonstatutory stock options differently. However, as to both types of options, no income will be recognized to the optionee at the time of the grant of the options under the 2007 Equity Incentive Plan or the 2013 Equity Incentive Plan.

Generally, upon exercise of an NSO, including an option intended to be an ISO but which has not continued to so qualify at the time of exercise, an optionee will recognize ordinary income tax on the excess of the fair market value of the stock on the exercise date over the option price. In general, if an optionee, in exercising an NSO, tenders shares of our common stock in partial or full payment of the option price, no gain or loss will be recognized on the tender. However, if the tendered shares were previously acquired upon the exercise of an ISO and the tender is within two years after the date of grant or within one year after the date of exercise of the ISO, the tender will be a disqualifying disposition of the shares acquired upon exercise of the ISO.

For incentive stock options, there is no taxable income to an optionee at the time of exercise. However, the excess of the fair market value of the stock on the date of exercise over the exercise price will be taken into account in determining whether the “alternative minimum tax” will apply for the year of exercise. If the shares acquired upon exercise are held until at least two years from the date of grant and more than one year from the date of exercise, any gain or loss upon the sale of such shares, if held as capital assets, will be long-term capital gain or loss, measured by the difference between the sales price of the stock and the exercise price. Under current federal income tax law, a long-term capital gain will be taxed at a rate which is less than the maximum rate of tax on ordinary income. If the two-year and one-year holding period requirements are not met, an optionee will recognize ordinary income in the year of disposition in an amount equal to the lesser of (i) the fair market value of the stock on the date of exercise minus the exercise price or (ii) the amount realized on disposition minus the exercise price. The remainder of the gain will be treated as long-term capital gain, depending upon whether the stock has been held for more than a year. If an optionee makes such a disposition, he or she will be obligated to notify us.

In general, if an optionee, in exercising an incentive stock option, tenders shares of our common stock in partial or full payment of the option price, no gain or loss will be recognized on the tender. However, if the tendered shares were previously acquired upon the exercise of another incentive stock option and the tender is within two years after the date of grant or within one year after the date of exercise of the other option, the tender will be a disqualifying disposition of the shares acquired upon exercise of the other option.

As noted above, the exercise of an incentive stock option could subject an optionee to the alternative minimum tax. The application of the alternative minimum tax to any particular optionee depends upon the particular facts and circumstances which exist with respect to the optionee in the year of exercise. However, as a general rule, the amount by which the fair market value of the common stock on the date of exercise of an option exceeds the exercise price of the option will constitute an item of “adjustment”

for purposes of determining the alternative minimum taxable income on which the alternative tax may be imposed. As such, this item will enter into the tax base on which the alternative minimum tax is computed and may therefore cause the alternative minimum tax to become applicable in any given year.

Treatment of Stock Appreciation Rights. Generally, the recipient of a stock appreciation right will not recognize any income upon grant of the stock appreciation right. Upon exercise of a stock appreciation right, the holder will recognize ordinary income equal to the fair market value of our common stock at that time.

Treatment of Restricted Stock Awards. Generally, absent an election to be taxed currently under Section 83(b) of the Code, or a Section 83(b) Election, there will be no federal income tax consequences to the recipient upon the grant of a restricted stock award. At the expiration of the restriction period and the satisfaction of any other restrictions applicable to the restricted shares, the recipient will recognize ordinary income equal to the fair market value of our common stock at that time. If a Section 83(b) Election is made within 30 days after the date the restricted stock award is granted, the recipient will recognize an amount of ordinary income at the time of the receipt of the restricted shares equal to the fair market value, determined without regard to applicable restrictions, of the shares of our common stock at such time. If a Section 83(b) Election is made, no additional income will be recognized by the recipient upon the lapse of restrictions on the shares, and before the sale of such shares, but, if the shares are subsequently forfeited, the recipient may not deduct the income that was recognized pursuant to the Section 83(b) Election at the time of the receipt of the shares.

The recipient of an unrestricted stock award will recognize ordinary income equal to the fair market value of our common stock that is the subject of the award when the award is made.

The recipient of an RSU will recognize ordinary income as and when the units vest. The amount of the income will be equal to the fair market value of the shares of our common stock issued at that time. The recipient of an RSU will not be permitted to make a Section 83(b) Election with respect to such award.

Treatment of Performance Share Awards. The federal income tax consequences of performance share awards, performance unit awards, other cash-based awards and other stock-based awards will depend on the terms and conditions of those awards.

Tax Withholding. We have the right to deduct or withhold, or require a participant to remit to us, the amount required to satisfy minimum statutory withholding requirements of federal, state and local tax laws and regulations, domestic or foreign, with respect to any taxable event arising as a result of the 2007 Equity Incentive Plan or the 2013 Equity Incentive Plan.

Inapplicability of Code Sections and ERISA. Sections 401(a) and 401(k) of the Code and the provisions of the Employee Retirement Income Security Act of 1974, or ERISA, are not applicable to the 2007 Equity Incentive Plan or the 2013 Equity Incentive Plan.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than compensation arrangements for named executive officers and directors, we describe below each transaction and series of similar transactions, since January 1, 2011, to which we were a party or will be a party, in which the amount exceeds $120,000 (or, if less, 1% of the average of our total assets amount at December 31, 2011 and December 31, 2012) and in which any related person had or will have a direct or indirect material interest.

Compensation arrangements for our named executive officers and directors are described in the section entitled “Executive Compensation.”

Michael W. Nall

We entered into an employment agreement effective as of August 26, 2013 (“CEO Employment Agreement”) with Michael W. Nall in connection with his appointment as our Chief Executive Officer and President. The CEO Employment Agreement provides Mr. Nall the following: (i) a base salary of $200,000 per year, provided that the salary will increase retroactively to $350,000 per

year upon completion of an initial public offering or an equity or debt financing of at least $5,000,000; (ii) a target bonus of $100,000 per year; (iii) a special one-time bonus of $100,000 in January 2014 if an initial public offering or an equity or debt financing of at least $5,000,000 has been completed by then; (iv) upon completion of an initial public offering or an equity or debt financing of at least $5,000,000, a housing allowance of $2,000 per month; (v) stock options under our 2013 Equity Incentive Plan to purchase a number of shares of common stock equal to at least 4% of our fully diluted stock outstanding as of August 26, 2013, vesting in equal monthly installments over 4 years beginning August 15, 2013; and (vi) performance-based restricted stock units under our 2013 Equity Incentive Plan for a number of shares of common stock equal to 1% of our common stock following completion of an initial public offering or an equity or debt financing of at least $5,000,000, subject to the establishment of goals and objectives to be agreed with and approved by our board of directors. The vesting of such stock options will fully accelerate upon a change in control, and in the event Mr. Nall's continuous service is terminated by us or our stockholders without cause, he will receive one year of additional vesting of such stock options provided that he gives us an effective waiver and release of claims.

The CEO Employment Agreement provides that in the event of termination of Mr. Nall's employment by us without cause or his resignation for good reason, the vesting of any of his outstanding unvested stock options and RSUs which would have vested over the following 12 months will accelerate. Also, in the event of a change of control, the vesting of 50% of any of Mr. Nall's outstanding unvested stock options and RSUs will accelerate on the date of the change of control and the remaining unvested stock options and RSUs will vest on the earliest of (i) the date of the termination of his employment by us without cause, (ii) the date of his resignation for good reason, or (iii) the first anniversary of the change of control.

The CEO Employment Agreement provides that if Mr. Nall has a separation from service as a result of his discharge by us without cause or his resignation with good reason then, provided that he gives us an effective waiver and release of claims, he will be entitled to 12 months' salary and up to 12 months of COBRA premiums (or substantially equivalent health insurance coverage). However, the CEO Employment Agreement further provides that Mr. Nall will have no entitlement to any severance benefits before our completion of an initial public offering or an equity or debt financing of at least $5,000,000.

Claire K. T. Reiss

From time to time, Claire K. T. Reiss, who is our controlling stockholder and at all times described in this section was also a director of Biocept, individually and through entities affiliated with her has loaned us operating funds through various convertible and non-convertible debt instruments. Mrs. Reiss resigned from the board of directors on August 14, 2013.

In February 2011, we executed a note and warrant purchase agreement with Mrs. Reiss's trusts. In exchange for a series of loans, we issued secured convertible promissory notes and warrants to purchase shares of our preferred stock to the trusts. The aggregate borrowing amount allowable under the February 2011 note and warrant purchase agreement was initially $5.0 million and was subsequently raised to $6.0 million and then $15.0 million, and the funding period was extended first to February 2012 and then to December 2012. The notes bore interest at 8%, payable at maturity. Under this note and warrant purchase agreement, we issued notes payable of $1.25 million and $10.0 million to Mrs. Reiss' trusts and a corporation affiliated with her during 2012 and 2011, respectively. The notes matured during 2012, and all principal of these notes was unpaid at December 31, 2012. In June 2013, Mrs. Reiss' trusts and corporation converted the entire principal amount of $11.25 million and accrued interest of $1.7 million due on these notes into 24,002,689 shares of Series A preferred stock. The trusts and corporation retained the 4,166,667 preferred stock warrants they received under the 2011 note and warrant purchase agreement. Such warrants will terminate unexercised upon the closing of this offering. The exercise price of the warrants is $0.54, subject to adjustment when any portion of the associated note has been converted.

In January 2012, we executed a note and warrant purchase agreement with several shareholders, including Mrs. Reiss' trusts. The aggregate borrowing amount allowable under the January 2012 note and warrant purchase agreement was initially $3.35 million and was subsequently raised to $8.35 million, and the funding period was extended to December 2012. The notes bore interest at 10%, payable at maturity. Under this note and warrant purchase agreement, we issued notes payable to Mrs. Reiss' trusts and corporation for an aggregate principal amount of $5.8 million during 2012.

The notes matured during 2012, and all principal and accrued interest on these notes was unpaid at December 31, 2012. In June 2013, Mrs. Reiss' trusts and corporation converted the entire principal amount of $5.8 million and accrued interest of $627,000 due on these notes into 11,921,156 shares of Series A preferred stock. The trusts and corporation retained the 2,151,852 preferred stock warrants they received under the 2012 note and warrant purchase agreement; such warrants will terminate unexercised upon the closing of this offering. The number of warrants exercisable under this series of warrant agreements is determined by dividing the warrant coverage amount of 20% by the exercise price. The exercise price of the warrants is $0.54.

As of June 2013, we executed a note and warrant purchase agreement with several shareholders, including a trust and corporation affiliated with Mrs. Reiss, to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. We had borrowed $0.72 million under this arrangement from Mrs. Reiss' trust before December 31, 2012 and we have borrowed another $1.7 million under it from her trust and corporation in 2013 to date. The maturity date of each note is May 31, 2014 and may be extended for two successive six month periods. Each note bears interest at 8.0% per annum, payable at maturity. The principal amount of and accrued interest on each note automatically converts into common stock upon the closing of an underwritten initial public offering resulting in at least $8.0 million of gross proceeds to us, at a conversion price equal to the price per share of our common stock sold in our initial public offering. The number of shares underlying the associated common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the loan principal, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), the trust and corporation will together have _____ common stock warrants, with an exercise price of $_____ per share, in connection with these loans. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

In July 2013, we and one of Mrs. Reiss' trusts amended a $1.4 million promissory note which we had issued to the trust in 2008 to provide that the entire principal amount of and accrued interest on such note would automatically convert, upon the closing of an initial public offering, into shares of our common stock at a price per share equal to the offering price per share to the public in such offering.

As compensation for guaranteeing, along with two other guarantors, our July 2013 revolving line of credit from UBS Bank USA, which had an initial credit availability of $1.5 million, a trust affiliated with Mrs. Reiss received common stock warrants from us. The number of shares underlying the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by the trust to secure the trust's guaranty obligations to UBS Bank USA, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), the trust will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with this guaranty. The warrants will be exercisable for a two-year period beginning on the closing of this offering.

Edward Neff

Edward Neff, a member of our board of directors, is the chief executive officer and owner of Systems, Machines, Automation Components Corporation (SMAC), a company which has loaned us operating funds under convertible debt arrangements and provided financing for certain fixed asset purchases.

Under the note and warrant purchase agreement executed in February 2011, we borrowed $425,000 and $125,000 from SMAC in 2012 and 2011, respectively. See details of the February 2011 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. The principal and accrued interest on these notes was unpaid at December 31, 2012. In June 2013, SMAC converted the principal of $550,000 and accrued interest of $53,000 due on these notes into 1,116,498 shares of Series A preferred stock. SMAC retained 212,963 preferred stock warrants it received under the 2011 note and warrant purchase agreement. Such warrants will terminate unexercised upon the closing of this offering.

During 2011, we entered into two financing arrangements with SMAC, for the purchase of lab equipment from SMAC totaling $256,000, of which $60,000 and $138,000 was outstanding as of December 31, 2012 and 2011, respectively.

As of June 2013, we executed a note and warrant purchase agreement with several shareholders, including SMAC, to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. See details of the June 2013 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. We borrowed $25,000 from SMAC under this arrangement in 2012 and an additional $722,000 in 2013 to date. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), SMAC will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with these loans. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

As compensation for guaranteeing, along with two other guarantors, our July 2013 revolving line of credit from UBS Bank USA, which had an initial credit availability of $1.5 million, Mr. Neff received common stock warrants from us. The number of shares underlying the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by Mr. Neff to secure his guaranty obligations to UBS Bank USA, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), Mr. Neff will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with this guaranty. The warrants will be exercisable for a two-year period beginning on the closing of this offering.

David F. Hale

Under the note and warrant purchase agreement executed in February 2011, we issued a note payable of $50,000 during 2011 to Hale BioPharma Ventures LLC, which is controlled by our Executive Chairman David F. Hale. Under the note and warrant purchase agreement executed in January 2012, we issued notes payable of $100,000 to Hale BioPharma Ventures LLC. See details of the February 2011 and January 2012 note and warrant purchase agreements in the description of transactions with Claire K. T. Reiss, above. The principal and interest on these notes was unpaid at December 31, 2012. In June 2013, Hale BioPharma Ventures LLC converted the entire $150,000 principal balance of and accrued interest of $18,000 due on these notes into 310,392 shares of our Series A preferred stock. Hale BioPharma Ventures LLC retained _____ preferred stock warrants it received under the 2011 and 2012 note and warrant purchase agreements. Such warrants will terminate unexercised upon the closing of this offering

As of June 2013, we executed a note and warrant purchase agreement with several shareholders, including Hale BioPharma Ventures LLC, to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. See details of the June 2013 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. We have borrowed $443,500 under it from Hale BioPharma Ventures LLC in 2013 to date. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), Hale BioPharma Ventures LLC will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with these loans. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

As compensation for guaranteeing, along with two other guarantors, our July 2013 revolving line of credit from UBS Bank USA, which had an initial credit availability of $1.5 million, Hale BioPharma Ventures LLC received common stock warrants from us. The number of shares underlying the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by Hale BioPharma Ventures LLC to secure its guaranty obligations to UBS Bank USA, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), Hale BioPharma Ventures LLC will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with this guaranty. The warrants will be exercisable for a two-year period beginning on the closing of this offering.

M. Faye Wilson

Under the note and warrant purchase agreement executed in February 2011, we issued notes payable of $75,200 during 2011 to our director M. Faye Wilson and Wilson Boyles & Co., LLC, which is controlled by Ms. Wilson. Under the note and warrant purchase agreement executed in January 2012, we issued a note payable of $20,000 to Ms. Wilson. See details of the February 2011 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. The principal and interest on these notes was unpaid at December 31, 2012. In June 2013, Ms. Wilson and Wilson Boyles & Co., LLC converted the entire $95,200 principal balance of and accrued interest of $10,000 due on these notes into 194,859 shares of our Series A preferred stock.

Ms. Wilson and Wilson Boyles & Co., LLC retained an aggregate of _____ preferred stock warrants she and it received under the 2011 and 2012 note and warrant purchase agreements. Such warrants will terminate unexercised upon the closing of this offering.

As of June 2013, we executed a note and warrant purchase agreement with several shareholders, including Ms. Wilson, to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. See details of the June 2013 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. We have borrowed $25,000 under it from Ms. Wilson in 2013 to date. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), Ms. Wilson will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with these loans. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

Ivor Royston, M.D.

Under the note and warrant purchase agreement executed in February 2011, we issued a note payable of $100,000 during 2011 to the individual retirement account of our director Ivor Royston, M.D. See details of the February 2011 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. The principal and interest on these notes was unpaid at December 31, 2012. In June 2013, Dr. Royston's IRA converted the entire $100,000 principal balance of and accrued interest of $10,000 due on these notes into 204,059 shares of our Series A preferred stock. Dr. Royston's IRA retained _____ preferred stock warrants it received under the 2011 and 2012 note and warrant purchase agreements. Such warrants will terminate unexercised upon the closing of this offering.

Bruce E. Gerhardt

Under the note and warrant purchase agreement executed in February 2011, we issued a note payable of $25,000 during 2011 to our director Bruce E. Gerhardt. Under the note and warrant purchase agreement executed in January 2012, we issued notes payable of $30,000 to Mr. Gerhardt. See details of the February 2011 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. The principal and interest on these notes was unpaid at December 31, 2012. In June 2013, Mr. Gerhardt converted the entire $55,000 principal balance of and accrued interest of $7,000 due on these notes into 115,084 shares of our Series A preferred stock. Mr. Gerhardt retained _____ preferred stock warrants he received under the 2011 and 2012 note and warrant purchase agreements. Such warrants will terminate unexercised upon the closing of this offering.

As of June 2013, we executed a note and warrant purchase agreement with several shareholders, including Mr. Gerhardt, to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. See details of the June 2013 note and warrant purchase agreement in the description of transactions with Claire K. T. Reiss, above. We have borrowed $10,000 under it from Mr. Gerhardt in 2013 to date. Assuming a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus), Mr. Gerhardt will have _____ common stock warrants, with an exercise price of $_____ per share, in connection with these loans. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

Lyle J. Arnold

Lyle J. Arnold, Ph.D., our Senior Vice-President of Research and Development and Chief Scientific Officer, is the controlling person of Aegea Biotechnologies, Inc. On June 2, 2012, we entered into an Assignment and Exclusive Cross-License Agreement with Aegea in regard to the CEE-Selector technology. Under the Agreement, each party has an undivided joint ownership interest in all of the patents and other intellectual property rights for such technology. We obtained an exclusive, worldwide, royalty-free, fully-paid, irrevocable, sublicensable license for all applications in the fields of oncology clinical testing, oncology diagnostics and oncology basic and clinical research (where the sample types tested are tissue, whole blood, bone marrow, cerebrospinal fluid or derivatives of any of such sample types), without any obligation to obtain further consent from Aegea or to account to Aegea. Aegea obtained an exclusive, worldwide, royalty-free, fully-paid, irrevocable sublicensable license for all applications in all other fields, without any obligation to obtain further consent from us or to account to us. We were given responsibility for prosecuting some of the relevant patent applications, and Aegea was given responsibility for prosecuting others, but the two parties will share all patent prosecution and maintenance costs equally.

Goodman Co. Ltd.

In June 2013, Goodman Co. Ltd., a beneficial owner of more than 5% of our common stock, converted the entire principal amount of $1,935,000 and accrued interest of approximately $105,000 due on a secured promissory note held by it into 3,777,324 shares of Series A preferred stock. In connection with this conversion, we issued to Goodman Co. Ltd. a warrant to purchase 333,333 shares of common stock at an exercise price equal which will be set at the price per share of our common stock sold in our initial public offering. The warrants will be exercisable for a two-year period beginning on the closing of this offering.

Indemnification Agreements

We have entered into indemnification agreements with each of our current directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We also intend to enter into indemnification agreements with our future directors and executive officers. In addition, our predecessor company Biocept, Inc., a California corporation, entered into indemnification agreements with each of our current directors and executive officers and certain prior directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under California law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Policies and Procedures for Related Party Transactions

In anticipation of becoming a public company upon completion of this offering, we adopted a policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common stock, any members of the immediate family of any of the foregoing persons and any firms, corporations or other entities in which any of the foregoing persons is employed or is a partner or principal or in a similar position or in which such person has a 5% or greater beneficial ownership interest, collectively, related parties, are not permitted to enter into a transaction with us without the prior consent of our board of directors acting through the audit committee or, in certain circumstances, the chairman of the audit committee. Any request for us to enter into a transaction with a related party in which the amount involved exceeds $120,000, and such related party would have a direct or indirect interest, must first be presented to our audit committee, or in certain circumstances the chairman of our audit committee, for review, consideration and approval. In approving or rejecting any such proposal, our audit committee is to consider the material facts of the transaction, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances, the extent of the benefits to us, the availability of other sources of comparable products or services and the extent of the related person’s interest in the transaction.

PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our common stock as of August 16, 2013 by:

- each person, or group of affiliated persons, whom we know to beneficially own more than 5% of our common stock;
- each of our named executive officers;
- each of our executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the column labeled “Percentage of Shares Beneficially Owned—Before Offering” is based upon 2,553,783 shares of common stock and 69,421,047 shares of Series A preferred stock outstanding as of August 16, 2013, and treats the 69,421,047 outstanding shares of Series A preferred stock as if they had been converted into 23,140,332 shares of common stock as of August 16, 2013 (i.e., the percentage ownership information shown in the column is based on an assumption that there were 25,694,115 shares of common stock outstanding as of August 16, 2013). The percentage ownership information shown in the column labeled “Percentage of Shares Beneficially Owned—After Offering” is further based upon the sale of [_____] shares of common stock in this offering, and upon an assumption that there is no exercise of the underwriters’ overallotment option.

All percentages shown treat each share of Series A preferred stock as being one-_____th of one share of common stock, because all our shares of Series A preferred stock will in fact be converted into common stock at a 1:3 rate before the completion of this offering and the common stock issued upon such conversion will then experience a 1-for-_____ reverse stock split before the completion of this offering. For the same reason, we are not presenting a separate table showing individual or percentage beneficial ownership of Series A preferred stock. Claire K. T. Reiss’ and her affiliates’ beneficial ownership percentage of our Series A preferred stock at August 16, 2013 was 81.5%.

We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are either immediately exercisable or exercisable on or before October 15, 2013, which is 60 days after August 16, 2013. These shares are deemed to be outstanding and beneficially owned by the person holding those options or warrants for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. We have, however, excluded warrants to purchase shares of Series A preferred stock which, although exercisable at August 16, 2013, will nonetheless not be exercised and will terminate unexercised upon the completion of this offering. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Except as otherwise noted below, the address for persons listed in the table is c/o Biocept, Inc., 5810 Nancy Ridge Drive, San Diego, California 92121.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders			
Claire K. T. Reiss[1]	22,267,624	79.4%	
Goodman Co. Ltd.[2]	1,437,159	5.6%	
Named Executive Officers, Executive Officers and Directors:			
David F. Hale[3]	504,372	1.9%	
Marsha A. Chandler	0	*	*
Bruce E. Gerhardt[4]	108,604	*	*
Michael W. Nall[5]	1,400,000	5.2%	
Edward Neff[6]	596,039	2.3%	
Ivor Royston, M.D.[7]	95,518	*	*
M. Faye Wilson[8]	165,749	*	
Lyle J. Arnold, Ph. D.[9]	221,008	*	*
Farideh Z. Bischoff, Ph. D.[10]	211,018	*	*
Michael J. Dunn[11]	83,333	*	*
William G. Kachioff[12]	189,583	*	*
All Executive Officers and Directors as a Group (10 persons)	3,491,891	12.5%	

* denotes less than 1%.

(1) Includes 2,333,333 shares issuable upon conversion of a convertible note held by a family trust controlled by Mrs. Reiss. Also includes outstanding shares held by various family trusts and a private corporation controlled by Mrs. Reiss. Shares beneficially owned After Offering will also include an estimated 2,848,028 shares for which common stock warrants held by Mrs. Reiss, various family trusts and the controlled corporation will become exercisable upon the completion of this offering. The address of Mrs. Reiss is 9675 La Jolla Farms Road, La Jolla, California 92037.

(2) Shares beneficially owned After Offering will also include 333,333 shares of common stock underlying warrants which will become exercisable upon the completion of this offering. The address of Goodman Co. Ltd. is 108 Fujigaoka, Meito-ku, Nagoya 465-0032 Japan.

(3) Includes 189,583 shares of common stock underlying stock options. Includes shares held by Hale BioPharma Ventures, LLC, which is controlled by Mr. Hale. Shares beneficially owned After Offering will also include an estimated _____shares of common stock to underlie the “1% true-up” stock option to be issued to Mr. Hale immediately after the completion of the offering, and an estimated 334,234 shares of common stock to be issued upon the settlement of restricted stock units, at or immediately after the time of the completion of the offering. Shares beneficially owned After Offering will also include an estimated 485,499 shares for which common stock warrants held by Hale BioPharma Ventures, LLC will become exercisable upon the completion of this offering.

(4) Includes 29,027 shares of common stock underlying stock options. Shares beneficially owned After Offering will also include an estimated 11,601 shares for which common stock warrants will become exercisable upon the completion of this offering.

(5) Includes 1,400,000 shares of common stock underlying stock options.

(6) Includes shares held by Systems, Machines, Automation Components Corporation, which is controlled by Mr. Neff. Shares beneficially owned After Offering will also include an estimated 867,742 shares for which common stock warrants held by Systems, Machines, Automation Components Corporation will become exercisable upon the completion of this offering.

(7) Includes 27,499 shares of common stock underlying stock options. Includes shares owned by Dr. Royston’s individual retirement account. Shares beneficially owned After Offering will also include 130,000 shares of common stock to be issued upon the settlement of restricted stock units, at or immediately after the time of the completion of the offering.

(8) Includes 36,666 shares of common stock underlying stock options. Includes shares held by Wilson Boyles & Co., LLC, which is controlled by Ms. Wilson. Shares beneficially owned After Offering will also include an estimated 29,002 shares for which common stock warrants held by Ms. Wilson and Wilson Boyles & Co., LLC will become exercisable upon the completion of this offering.

(9) Includes 221,008 shares of common stock underlying stock options.

(10) Includes 211,018 shares of common stock underlying stock options.

(11) Includes 83,333 shares of common stock underlying stock options. Mr. Dunn resigned from his positions as a Company officer and employee on July 31, 2013. The address of Mr. Dunn is 1829 El Camino del Teatro, La Jolla, California 92037.

(12) Includes 189,583 shares of common stock underlying stock options.

DESCRIPTION OF CAPITAL STOCK

General

Our amended and restated certificate of incorporation, which will be in effect upon the completion of this offering, authorizes us to issue up to _____ shares of common stock, par value $0.0001 per share, and _____ shares of preferred stock, par value $0.0001 per share. We effected a 1-for-3 reverse common stock split on November 3, 2011 and will effect a 1-for-_____ reverse common stock split before the completion of this offering. All common stock share numbers in this prospectus give effect to these reverse common stock splits.

As of July 31, 2013, there were 2,553,783 shares of common stock outstanding, held of record by _____ stockholders. The number of shares of common stock outstanding as of July 31, 2013 does not include (i) an estimated 4,241,872 shares of common stock issuable upon the exercise of our outstanding warrants to purchase common stock as of July 31, 2013, (ii) 2,692,128 common stock equivalents issuable upon the exercise of our outstanding warrants to purchase preferred stock as of July 31, 2013, (iii) 4,445,331 shares of common stock issuable upon the exercise of outstanding options to purchase common stock, (iv) 1,875,684 shares of common stock issuable upon the settlement of outstanding restricted stock units expressed in common stock, (v) 464,234 common stock equivalents issuable upon the settlement of outstanding restricted stock units expressed in preferred stock, (vi) approximately _____ shares of common stock which would underlie a "1% true-up" stock option to be granted to David F. Hale upon the completion of this offering, (vii) the shares of common stock that will be issued in this offering, (viii) the shares of common stock underlying the underwriters' over-allotment option, and (ix) the shares of common stock that will underlie the representative's warrant. The above figures assume that we will sell in this offering _____ shares of common stock (as stated on the cover page of this prospectus) at a public offering price of $_____ per share (the midpoint of the price range listed on the cover page of this prospectus).

As of July 31, 2013, there were 69,421,047 shares of our Series A preferred stock outstanding. Before the consummation of this offering, all of our outstanding Series A preferred stock will be converted into an aggregate of 23,140,332 shares of our common stock.

The following descriptions of our capital stock and provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the amended and restated bylaws that will be in effect upon completion of this offering, and applicable law. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of the common stock and preferred stock reflect (i) changes to our capital structure that will occur upon, or immediately before or after, the closing of our initial public offering and (ii) Delaware law.

Common Stock

The holders of our common stock are entitled to the following rights:

Voting Rights

Holders of our common stock are entitled to one vote per share in the election of directors and on all other matters on which stockholders are entitled or permitted to vote. Holders of our common stock are not entitled to cumulative voting rights.

Dividend Rights

Subject to the terms of any outstanding series of preferred stock, the holders of our common stock are entitled to dividends in the amounts and at times as may be declared by the board of directors out of funds legally available therefor.

Liquidation Rights

Upon liquidation or dissolution, holders of our common stock are entitled to share ratably in all net assets available for distribution to stockholders after we have paid, or provided for payment of, all of our debts and liabilities, and after payment of any liquidation preferences to holders of our preferred stock.

Other Matters

Holders of our common stock have no redemption, conversion or preemptive rights. There are no sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to the rights of the holders of shares of any series of preferred stock that we may issue in the future.

Preferred Stock

Our board of directors has the authority to issue preferred stock in one or more classes or series and to fix the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, including dividend rights, conversion right, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any class or series, without further vote or action by the stockholders. Although we have no present plans to issue any other shares of preferred stock, the issuance of shares of preferred stock, or the issuance of rights to purchase such shares, could decrease the amount of earnings and assets available for distribution to the holders of common stock, could adversely affect the rights and powers, including voting rights, of the common stock, and could have the effect of delaying, deterring or preventing a change of control of us or an unsolicited acquisition proposal. The preferred stock provides for an adjustment of the conversion price in the event of an issuance or deemed issuance at a price less than the applicable conversion price, subject to certain exceptions.

Our currently outstanding Series A preferred stock will all be converted before the completion of this offering, and all references to the Series A preferred stock will be removed from the amended certificate of incorporation which will be in effect the completion of this offering.

Stock Options

As of July 31, 2013, we had outstanding options to purchase an aggregate of 4,445,331 shares of our common stock with exercise prices ranging from $0.33 to $0.37 per share, with an approximate weighted average exercise price of $0.36 per share. The shares of our common stock underlying all such options will be registered for sale with the SEC as promptly as practicable following the completion of this offering.

Warrants

We have outstanding warrants to purchase shares of our common stock as follows:

- Warrants to purchase 333,333 shares of our common stock at an exercise price to be determined in accordance with the warrant agreement, issued to Goodman Co. Ltd. in connection with the June 28, 2013 conversion of its secured promissory note into shares of our Series A preferred stock. The exercise price will be set at the price per share of our common stock sold in our initial public offering. The warrants will be exercisable for a two-year period beginning on the closing of this offering.
- Warrants exercisable for an indeterminate number of shares of our common stock issued to investors pursuant to our June 2013 note and warrant purchase agreement. The number of shares subject to the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the investor's respective note principal amount, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. At July 31, 2013, the aggregate note principal amount under the June 2013 note and warrant purchase agreement was approximately $____ million. Assuming the aggregate principal amount of the notes does not increase and assuming a

public offering price of $____ per share (the midpoint of the price range listed on the cover page of this prospectus), the investors will have an aggregate of _____ common stock warrants, with an exercise price of $____ per share, in connection with our June 2013 note and warrant purchase agreement. The warrants will be exercisable for a five-year period beginning on the closing of this offering.

- Warrants exercisable for an indeterminate number of shares of our common stock issued to guarantors of our July 2013 revolving line of credit from UBS Bank USA. The number of shares underlying the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by the respective guarantors to secure their respective guaranty obligations to UBS Bank USA, by the exercise price, which will be set at the price per share of our common stock sold in our initial public offering. Assuming the aggregate fair market value of such collateral was approximately $1.5 million and assuming a public offering price of $____ per share (the midpoint of the price range listed on the cover page of this prospectus), the guarantors will have _____ common stock warrants, with an exercise price of $____ per share, in connection with this guaranty. The warrants will be exercisable for a two-year period beginning on the closing of this offering.

In addition, as of July 31, 2013, we have outstanding warrants to purchase an aggregate of 8,076,430 shares of our Series A preferred stock as follows (all but 66,666 of these warrants will terminate upon the closing of this offering):

- Warrants to purchase an aggregate of 233,333 shares of our Series A preferred stock at an exercise price of $0.60 per share, issued to an investor in connection with our December 2008 note and warrant purchase agreement. These warrants will terminate upon the closing of this offering.
- Warrants to purchase an aggregate of 1,000,000 shares of our Series A preferred stock at an exercise price per share to be determined in accordance with the warrant agreement, issued to Goodman Co. Ltd. in connection with our January 2009 amended and restated loan agreement. These warrants will terminate upon the closing of this offering.
- Warrants to purchase an aggregate of 4,569,030 shares of our Series A preferred stock at an exercise price of $0.54 per share, issued to investors in connection with our February 2011 note and warrant purchase agreement. These warrants will terminate upon the closing of this offering.
- Warrants to purchase an aggregate of 2,207,401 shares of our Series A preferred stock at an exercise price of $0.54 per share, issued to investors in connection with our January 2012 note and warrant purchase agreement. These warrants will terminate upon the closing of this offering.
- Warrants to purchase an aggregate of 66,666 shares of our Series A preferred stock at an exercise price of $0.60 per share, issued to our landlord in connection with our September 2012 lease amendment. These warrants are exercisable through September 2019 and, in connection with the closing of this offering, will become exercisable for 22,222 shares of our common stock at an exercise price of $1.80 per share.

Convertible Promissory Notes

We executed a note and warrant purchase agreement as of June 2013 with several affiliates to reflect certain prior and possible future borrowings under a series of notes, totaling up to $7.0 million. We had borrowed $0.72 million under this arrangement before December 31, 2012 and we have borrowed another $3.8 million under it in 2013 through July 31, 2013. The principal amount of and accrued interest on each note automatically convert into common stock upon the closing of an underwritten initial public offering resulting in at least $8.0 million of gross proceeds to us, at a conversion price equal to the price per share of our common stock sold in our initial public offering.

In December 2008, we issued a $1.4 million secured convertible promissory note to an affiliated trust of Claire K. T. Reiss, our major shareholder and at the time a director. In July 2013 the note was amended to provide that the principal amount of and accrued interest on the note automatically convert into common stock upon the closing of an initial public offering, at a conversion price equal to the price per share of our common stock sold in the initial public offering.

Representative's Warrants

We have agreed to issue to the representative of the underwriters in this offering warrants to purchase up to [_____] shares of our common stock at a per share price of 125% of the public offering price. A complete description of the representative's warrants is included in the "Underwriting – Representative's Warrants" section of this prospectus.

Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

The provisions of Delaware law, our certificate of incorporation and our bylaws described below may have the effect of delaying, deferring or discouraging another party from acquiring control of us.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years before the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

Certificate of Incorporation and Bylaws

Our certificate of incorporation and/or bylaws provide that:

- our board of directors is classified into three classes of equal (or roughly equal) size, with all directors serving for a three-year term and the directors of only one class being elected at each annual meeting of stockholders, so that the terms of the classes of directors are "staggered";
- the authorized number of directors can be changed only by resolution of our board of directors;
- our bylaws may be amended or repealed by our board of directors or our stockholders;
- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent, unless the stockholders amend the certificate of incorporation to provide otherwise;
- stockholders may not call special meetings of the stockholders or fill vacancies on the board;
- our board of directors will be authorized to issue, without stockholder approval, preferred stock, the rights of which will be determined at the discretion of the board of directors and that, if issued, could operate as a "poison pill" to dilute the stock ownership of a potential hostile acquirer to prevent an acquisition that our board of directors does not approve;
- our stockholders do not have cumulative voting rights, and therefore our stockholders holding a majority of the shares of common stock outstanding will be able to elect all of our directors; and
- our stockholders must comply with advance notice provisions to bring business before or nominate directors for election at a stockholder meeting.

Potential Effects of Authorized but Unissued Stock

We have shares of common stock and preferred stock available for future issuance without stockholder approval. We may utilize these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, to facilitate corporate acquisitions or payment as a dividend on the capital stock.

The existence of unissued and unreserved common stock and preferred stock may enable our board of directors to issue shares to persons friendly to current management or to issue preferred stock with terms that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management. In addition, the board of directors has the discretion to determine designations, rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of each series of preferred stock, all to the fullest extent permissible under the Delaware General Corporation Law and subject to any limitations set forth in our certificate of incorporation. The purpose of authorizing the board of directors to issue preferred stock and to determine the rights and preferences applicable to such preferred stock is to eliminate delays associated with a stockholder vote

on specific issuances. The issuance of preferred stock, while providing desirable flexibility in connection with possible financings, acquisitions and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from acquiring, a majority of our outstanding voting stock.

Limitations of Director Liability and Indemnification of Directors, Officers and Employees

Our amended and restated certificate of incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- breach of their duty of loyalty to us or our stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- transaction from which the directors derived an improper personal benefit.

These limitations of liability do not apply to liabilities arising under the federal or state securities laws and do not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by law, and may indemnify employees and other agents. Our amended and restated bylaws also provide that we are obligated to advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding.

We have obtained a policy of directors' and officers' liability insurance.

We enter into separate indemnification agreements with our directors and officers. These agreements, among other things, require us to indemnify our directors and officers for any and all expenses (including reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by such directors or officers or on his or her behalf in connection with any action or proceeding arising out of their services as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request provided that such person follows the procedures for determining entitlement to indemnification and advancement of expenses set forth in the indemnification agreement. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might provide a benefit to us and our stockholders. Our results of operations and financial condition may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

At present, there is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Transfer Agent

The transfer agent and registrar for our common stock is _____. Its address is _____ and its telephone number is _____.

Listing

We have applied to list our common stock on The NASDAQ Capital Market under the symbol "BIOC."

SHARES ELIGIBLE FOR FUTURE SALE

Immediately before this offering, there was no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely affect the market price of our common stock. Although we have applied to have our common stock listed on The NASDAQ Capital Market, we cannot assure you that there will be an active public market for our common stock.

Based on the number of shares of our common stock outstanding as of June 30, 2013 and assuming (1) the issuance of _____ shares in this offering, (2) the conversion of all outstanding shares of our Series A preferred stock into _____ shares of our common stock, which will occur immediately before the closing of the offering, (3) no exercise of the underwriters' option to purchase additional shares of common stock, and (4) no exercise of outstanding options or warrants, we will have outstanding an aggregate of approximately _____ shares of common stock.

Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. Shares purchased by our affiliates would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement.

The remaining shares of common stock will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or 701 under the Securities Act, each of which is summarized below. We expect that substantially all of these shares will be subject to the 180-day lock-up period under the lock-up agreements described below.

In addition, of the 738,999 shares of our common stock that were subject to outstanding stock options as of June 30, 2013, options to purchase _____ of such shares of common stock were vested and, upon exercise, these shares will be eligible for sale subject to the lock–up agreements described below and Rules 144 and 701 under the Securities Act.

Lock-Up Agreements

We and each of our directors and executive officers and holders of substantially all of our outstanding capital stock have agreed that we and they will not, subject to limited exceptions that are described in more detail in the section in this prospectus entitled "Underwriting," during the period ending 180 days after the date of this prospectus:

- sell, offer, contract or grant any option to sell (including any short sale), pledge or transfer any shares of our common stock;
- otherwise dispose of any shares of our common stock, options or warrants to acquire shares of our common stock, or securities exchangeable or exercisable for or convertible into shares of our common stock, currently or hereafter owned either of record or beneficially; or
- publicly announce an intention to do any of the foregoing.

Aegis Capital Corp. may, in its sole discretion and at any time or from time to time before the termination of the 180-day period, without public notice, release all or any portion of the securities subject to lock-up agreements. There are no existing agreements between the underwriters and any of our stockholders who will execute a lock-up agreement providing consent to the sale of shares before the expiration of the restricted period.

Upon the expiration of the lock-up period, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above.

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our common stock for at least six months would be entitled to sell in "broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately _____ shares immediately after this offering; or
- the average weekly trading volume in our common stock on The NASDAQ Capital Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the Securities and Exchange Commission and The NASDAQ Capital Market concurrently with either the placing of a sale order with the broker or the execution of a sale directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

Equity Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to outstanding stock options and common stock issued or issuable under our equity incentive plans and employee stock purchase plan. We expect to file the registration statement covering shares offered pursuant to our stock plans shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market subject to compliance with the resale provisions of Rule 144.

Registration Rights

We and two trusts affiliated with our major stockholder Claire K. T. Reiss are parties to an amended and restated investor rights agreement dated October 31, 2011. Under the agreement, the trusts are entitled to piggyback registration rights with respect to the shares of common stock issued or issuable upon conversion of their Series A preferred stock, which currently amounts to approximately _____shares of common stock. The piggyback registration rights expire on the third anniversary of the closing of an initial public offering. In addition, our landlord has the right to partake in such piggyback registration rights with respect to the shares of common stock issued or issuable upon conversion of the shares of Series A preferred stock for which its warrant is exercisable, which currently amounts to 22,222 shares of common stock. Registration of these shares under the Securities Act would result in these shares becoming (subject to the expiration of or release from the terms of any applicable lock-up agreement) fully tradable without restriction under the Securities Act immediately upon the effectiveness of the resale registration statement.

UNDERWRITING

Aegis Capital Corp. is acting as the sole manager of the offering and as representative of the underwriters. Subject to the terms and conditions set forth in an underwriting agreement dated the date of this prospectus among us and the representative of the underwriters named below, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase from us, the number of shares of common stock listed next to its name in the following table.

Underwriters	Number of Shares
Aegis Capital Corp.	
Total	

The underwriters are committed to purchase all the shares of common stock offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of nondefaulting underwriters may be increased or the offering may be terminated. The underwriters are not obligated to purchase the shares of common stock covered by the underwriters' over-allotment option described below. The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Discounts and Commissions

The underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering of the shares, the public offering price and other selling terms may be changed by the representative.

The following table shows the public offering price, underwriting discounts and commissions and proceeds before expenses to us. The information assumes either no exercise or full exercise of the over-allotment option we granted to the representative of the underwriters.

	Per Share	Total Without Over-Allotment Option	Total With Over-Allotment Option
Public offering price	$	$	$
Underwriting discounts and commissions			
Non-accountable expense allowance			
Proceeds, before expenses, to us			

We have agreed to pay a non-accountable expense allowance to the representative of the underwriters equal to 1% of the gross proceeds received in the offering; provided, however, that an allowance shall not be paid in connection with the over-allotment option if the over-allotment option is exercised. We have paid an expense deposit of $50,000 to the representative of the underwriters, which will be applied against accountable expenses that will be paid by us to the representative in connection with this offering, which advance will be refunded to us to the extent not actually incurred by the representative in the event this offering is terminated.

We have also agreed to pay the representative's expenses relating to the offering, including (a) all actual filing fees incurred in connection with the review of this offering by FINRA and all fees and expenses relating to the listing of our shares of common stock on the NASDAQ Capital Market; (b) all fees, expenses and disbursements relating to background checks of our officers and directors in an amount not to exceed $2,000 per individual; and not to exceed $15,000 in the aggregate; (c) all actual fees, expenses and disbursements relating to the registration or qualification of securities offered under state securities laws, or "blue sky" laws, or under the securities laws of foreign jurisdictions designated by the representative; (d) all actual fees, expenses and disbursements relating to the registration, qualification or exemption of our shares of common stock under the securities laws of such foreign jurisdictions as the representative may reasonably designate; (e) the costs of all mailing and printing of the underwriting documents as the representative may reasonably deem necessary; (f) the costs associated with bound volumes of the public offering materials as well as commemorative mementos and Lucite tombstones; (g) the fees and expenses of the representative's legal counsel not to exceed $50,000, (h) $21,775 for the underwriters' use of Ipreo's book-building, prospectus tracking and compliance software for this offering; and (i) up to $20,000 of the representative's actual accountable road show expenses for the offering.

The total estimated expenses of the offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding underwriting discounts and commissions, are approximately $ million and are payable by us.

Over-Allotment Option

We have granted to the underwriters an option to purchase up to [____] additional shares of common stock at the public offering price, less underwriting discounts and commissions. The underwriters may exercise this option for 45 days from the date of this prospectus solely to cover sales of shares of common stock by underwriters in excess of the total number of shares set forth in the table above. If any of these additional shares are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered. We will pay the expenses associated with the exercise of the over-allotment option.

Representative's Warrants

We have agreed to issue to the representative of the underwriters warrants to purchase up to [____] shares of common stock, which is 5% of the shares sold in this offering, excluding the over-allotment option, for $100 as additional compensation. The shares issuable upon exercise of these warrants are identical to those offered by this prospectus. We are registering hereby the warrants and the shares of common stock issuable upon exercise of the warrants. The warrants are exercisable for cash or on a cashless basis at per share exercise price equal to 125% of the public offering price per share in this offering commencing on a date which is one year from the date of effectiveness and expiring on a date which is no more than five years from the date of effectiveness in compliance with

FINRA Rule 5110(f)(2)(H)(i). The warrants and the shares of common stock underlying the warrants have been deemed compensation by FINRA and are, therefore, subject to a 180-day lock-up pursuant to Rule 5110(g)(1) of FINRA. The representative (or permitted assignees under the Rule) will not sell, transfer, assign, pledge or hypothecate these warrants or the securities underlying these warrants, nor will it engage in any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of these warrants or the underlying securities for a period of 180 days after the effective date. In addition, the warrants provide for registration rights upon request, in certain cases. The demand registration right provided will not be greater than five years from the date of effectiveness in compliance with FINRA Rule 5110(f)(2)(H)(iv). The piggyback registration right provided will not be greater than seven years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(H)(v). We will bear all fees and expenses attendant to registering the securities issuable on exercise of the warrants, other than underwriting commissions incurred and payable by the holders. The exercise price and number of shares issuable upon exercise of the warrants may be adjusted in certain circumstances including in the event of a stock dividend, extraordinary cash dividend or our recapitalization, reorganization, merger or consolidation. However, the warrant exercise price or underlying shares will not be adjusted for issuances of common stock at a price below the warrant exercise price.

Determination of Offering Price

Before this offering, there has been no public market for our common stock. The initial public offering price will be negotiated between us and the representative. Among the factors to be considered in these negotiations are:

- the prospects for our Company and the industry in which we operate;
- our past and present financial and operating performance;
- financial and operating information and market valuations of publicly traded companies engaged in activities similar to ours;
- the prevailing conditions of U.S. securities markets at the time of this offering; and
- other factors deemed relevant.

Lock-Up Agreements

We, our officers and directors and holders of all of our outstanding stock and options have entered into lock-up agreements with the underwriters. Under these agreements, we and these other individuals have agreed, subject to specified exceptions, not to sell or transfer any common stock or securities convertible into, or exchangeable or exercisable for, common stock, during a period ending 180 days after the date of this prospectus, without first obtaining the written consent of representative of the underwriters.

Specifically, we and these other individuals have agreed not to:

- offer, pledge, sell or contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock;
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock, whether any such transaction described above is to be settled by delivery of common stock or other securities, in cash or otherwise;
- make any demand for or exercise any right with respect to the registration of any shares of our common stock or any securities convertible into or exchangeable or exercisable for shares of our common stock; or

- publicly announce an intention to do any of the foregoing.

The restrictions described above do not apply to:

- the sale of shares of common stock to the underwriters pursuant to the underwriting agreement;
- the issuance by us of shares of common stock upon the exercise of an option or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing or that is described in this prospectus;
- the grant by us of stock options or other stock-based awards, or the issuance of shares of common stock upon exercise thereof, to eligible participants pursuant to employee benefit or equity incentive plans described in this prospectus, provided that, before the grant of any such stock options or other stock-based awards that vest within the restricted period, each recipient of such grant shall sign and deliver a lock-up agreement agreeing to be subject to the restrictions on transfer described above;
- the establishment of a 10b5-1 trading plan under the Exchange Act by a security holder for the sale of shares of common stock, provided that such plan does not provide for the transfer of common stock during the restricted period;
- transfers by security holders of shares of common stock or other securities as a bona fide gift or by will or intestacy;
- transfers by distribution by security holders of shares of common stock or other securities to partners, members, or shareholders of the security holder; or
- transfers by security holders of shares of common stock or other securities to any trust for the direct or indirect benefit of the security holder or the immediate family of the security holder;

provided that in the case of each of the preceding three types of transactions, the transfer does not involve a disposition for value and each transferee or distributee signs and delivers a lock-up agreement agreeing to be subject to the restrictions on transfer described above.

The 180-day restricted period is subject to extension if (1) during the last 17 days of the restricted period we issue an earnings release or material news or a material event relating to us occurs or (2) before the expiration of the restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the restricted period, in which case the restrictions imposed in the lock-up agreements will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Right of First Refusal

Subject to certain conditions, we granted the representative of the underwriters in this offering, for a period of twelve months after the date of effectiveness, a right of first refusal to act as sole book-running manager for each and every future public and private equity and public debt offerings.

Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make for these liabilities.

NASDAQ Listing

We have applied to list our shares of common stock for trading on The NASDAQ Capital Market under the symbol “BIOC.” No assurance can be given that such listing will be approved.

Price Stabilization, Short Positions and Penalty Bids

In order to facilitate the offering of our common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock. In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in the offering. "Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares of common stock in the offering. The underwriters may close out any covered short position by either exercising the over-allotment option or purchasing shares of common stock in the open market. In determining the source of shares of common stock to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. "Naked" short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market before the completion of the offering.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As result, the price of our common stock may be higher than the price that might otherwise exist in the open market.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act, they may also engage in other activities that stabilize, maintain or otherwise affect the price of our common stock, including the imposition of penalty bids. This means that if the representative of the underwriters purchases common stock in the open market in stabilizing transactions or to cover short sales, the representative can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

The underwriters make no representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Offer, Sale and Distribution of Shares

A prospectus in electronic format may be made available on the websites maintained by one or more underwriters or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of shares of common stock to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representative to underwriters and selling group members that may make Internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on the underwriters' websites and any information contained in any other website maintained by the underwriters is not part of this prospectus or the registration statement of which this prospectus forms a part.

Notice to Non-U.S. Investors

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive, each of which we refer to as a relevant member state, with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state, or the relevant implementation date, an offer of securities described in this prospectus may not be made to the public in that relevant member state other than:

- to legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

- to any legal entity that has two or more of (i) an average of at least 250 employees during the last financial year; (ii) a total balance sheet of more than €43,000,000 and (iii) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of representative for any such offer; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive;

provided that no such offer of securities shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of shares to the public" in relation to any shares of common stock in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe for the shares, as the same may be varied in that member state by any measure implementing the Prospectus Directive in that member state and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

Other Relationships

From time to time, certain of the underwriters and their affiliates have provided, and may provide in the future, various advisory, investment and commercial banking and other services to us in the ordinary course of business, for which they have received and may continue to receive customary fees and commissions. However, except as disclosed in this prospectus, we have no present arrangements with any of the underwriters for any further services.

Offer Restrictions Outside the United States

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Australia

This prospectus is not a disclosure document under Chapter 6D of the Australian Corporations Act, has not been lodged with the Australian Securities and Investments Commission and does not purport to include the information required of a disclosure document under Chapter 6D of the Australian Corporations Act. Accordingly, (i) the offer of the securities under this prospectus is only made to persons to whom it is lawful to offer the securities without disclosure under Chapter 6D of the Australian Corporations Act under one or more exemptions set out in section 708 of the Australian Corporations Act, (ii) this prospectus is made available in Australia only to those persons as set forth in clause (i) above, and (iii) the offeree must be sent a notice stating in substance that by accepting this offer, the offeree represents that the offeree is such a person as set forth in clause (i) above, and, unless permitted under the Australian Corporations Act, agrees not to sell or offer for sale within Australia any of the securities sold to the offeree within 12 months after its transfer for the offeree under this prospectus.

China

The information in this document does not constitute a public offer of the securities, whether by way of sale or subscription, in the People's Republic of China (excluding, for purposes of this paragraph, Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan). The securities may not be offered or sold directly or indirectly in the PRC to legal or natural persons other than directly to "qualified domestic institutional investors."

European Economic Area—Belgium, Germany, Luxembourg and Netherlands

The information in this document has been prepared on the basis that all offers of securities will be made pursuant to an exemption under the Directive 2003/71/EC ("Prospectus Directive"), as implemented in Member States of the European Economic Area (each, a "Relevant Member State"), from the requirement to produce a prospectus for offers of securities.

An offer to the public of securities has not been made, and may not be made, in a Relevant Member State except pursuant to one of the following exemptions under the Prospectus Directive as implemented in that Relevant Member State:

(a) to legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

(b) to any legal entity that has two or more of (i) an average of at least 250 employees during its last fiscal year; (ii) a total balance sheet of more than €€ 43,000,000 (as shown on its last annual unconsolidated or consolidated financial statements) and (iii) an annual net turnover of more than €€ 50,000,000 (as shown on its last annual unconsolidated or consolidated financial statements);

(c) to fewer than 100 natural or legal persons (other than qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive) subject to obtaining the prior consent of the Company or any underwriter for any such offer; or

(d) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall result in a requirement for the publication by the Company of a prospectus pursuant to Article 3 of the Prospectus Directive.

France

This document is not being distributed in the context of a public offering of financial securities (offre au public de titres financiers) in France within the meaning of Article L.411-1 of the French Monetary and Financial Code (Code monétaire et financier) and Articles 211-1 et seq. of the General Regulation of the French Autorité des marchés financiers ("AMF"). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.

This document and any other offering material relating to the securities have not been, and will not be, submitted to the AMF for approval in France and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in France.

Such offers, sales and distributions have been and shall only be made in France to (i) qualified investors (investisseurs qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-1 to D.411-3, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation and/or (ii) a restricted number of non-qualified investors (cercle restreint d'investisseurs) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-4, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation.

Pursuant to Article 211-3 of the General Regulation of the AMF, investors in France are informed that the securities cannot be distributed (directly or indirectly) to the public by the investors otherwise than in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code.

Ireland

The information in this document does not constitute a prospectus under any Irish laws or regulations and this document has not been filed with or approved by any Irish regulatory authority as the information has not been prepared in the context of a public offering of securities in Ireland within the meaning of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005 (the "Prospectus Regulations"). The securities have not been offered or sold, and will not be offered, sold or delivered directly or indirectly in Ireland by way of a public offering, except to (i) qualified investors as defined in Regulation 2(l) of the Prospectus Regulations and (ii) fewer than 100 natural or legal persons who are not qualified investors.

Israel

The securities offered by this prospectus have not been approved or disapproved by the Israeli Securities Authority, or the ISA, nor have such securities been registered for sale in Israel. The shares may not be offered or sold, directly or indirectly, to the public in Israel, absent the publication of a prospectus. The ISA has not issued permits, approvals or licenses in connection with the offering or publishing the prospectus; nor has it authenticated the details included herein, confirmed their reliability or completeness, or rendered an opinion as to the quality of the securities being offered. Any resale in Israel, directly or indirectly, to the public of the securities offered by this prospectus is subject to restrictions on transferability and must be effected only in compliance with the Israeli securities laws and regulations.

Italy

The offering of the securities in the Republic of Italy has not been authorized by the Italian Securities and Exchange Commission (Commissione Nazionale per le Società e la Borsa, "CONSOB" pursuant to the Italian securities legislation and, accordingly, no offering material relating to the securities may be distributed in Italy and such securities may not be offered or sold in Italy in a public offer within the meaning of Article 1.1(t) of Legislative Decree No. 58 of 24 February 1998 ("Decree No. 58"), other than:

- qualified investors, as defined in Article 100 of Decree no. 58 by reference to Article 34-ter of CONSOB Regulation no. 11971 of 14 May 1999 ("Regulation no. 1197l") as amended ("Qualified Investors"); and
- in other circumstances that are exempt from the rules on public offer pursuant to Article 100 of Decree No. 58 and Article 34-ter of Regulation No. 11971 as amended.

Any offer, sale or delivery of the securities or distribution of any offer document relating to the securities in Italy (excluding placements where a Qualified Investor solicits an offer from the issuer) under the paragraphs above must be:

- made by investment firms, banks or financial intermediaries permitted to conduct such activities in Italy in accordance with Legislative Decree No. 385 of 1 September 1993 (as amended), Decree No. 58, CONSOB Regulation No. 16190 of 29 October 2007 and any other applicable laws; and
- in compliance with all relevant Italian securities, tax and exchange controls and any other applicable laws.

Any subsequent distribution of the securities in Italy must be made in compliance with the public offer and prospectus requirement rules provided under Decree No. 58 and the Regulation No. 11971 as amended, unless an exception from those rules applies. Failure to comply with such rules may result in the sale of such securities being declared null and void and in the liability of the entity transferring the securities for any damages suffered by the investors.

Japan

The securities have not been and will not be registered under Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948), as amended (the "FIEL") pursuant to an exemption from the registration requirements applicable to a private placement of securities to Qualified Institutional Investors (as defined in and in accordance with Article 2, paragraph 3 of the FIEL and the regulations promulgated thereunder). Accordingly, the securities may not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan other than Qualified Institutional Investors. Any Qualified Institutional Investor who acquires securities may not resell them to any person in Japan that is not a Qualified Institutional Investor, and acquisition by any such person of securities is conditional upon the execution of an agreement to that effect.

Portugal

This document is not being distributed in the context of a public offer of financial securities (oferta pública de valores mobiliários) in Portugal, within the meaning of Article 109 of the Portuguese Securities Code (Código dos Valores Mobiliários). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in Portugal. This document and any other offering material relating to the securities have not been, and will not be, submitted to the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários) for approval in Portugal and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in Portugal, other than under circumstances that are deemed not to qualify as a public offer under the Portuguese Securities Code. Such offers, sales and distributions of securities in Portugal are limited to persons who are "qualified investors" (as defined in the Portuguese Securities Code). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Sweden

This document has not been, and will not be, registered with or approved by Finansinspektionen (the Swedish Financial Supervisory Authority). Accordingly, this document may not be made available, nor may the securities be offered for sale in Sweden, other than under circumstances that are deemed not to require a prospectus under the Swedish Financial Instruments Trading Act (1991:980) (Sw. lag (1991:980) om handel med finansiella instrument). Any offering of securities in Sweden is limited to persons who are "qualified investors" (as defined in the Financial Instruments Trading Act). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Switzerland

The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering material relating to the securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering material relating to the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority.

This document is personal to the recipient only and not for general circulation in Switzerland.

United Arab Emirates

Neither this document nor the securities have been approved, disapproved or passed on in any way by the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates, nor has the Company received authorization or licensing from the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates

to market or sell the securities within the United Arab Emirates. This document does not constitute and may not be used for the purpose of an offer or invitation. No services relating to the securities, including the receipt of applications and/or the allotment or redemption of such shares, may be rendered within the United Arab Emirates by the Company.

No offer or invitation to subscribe for securities is valid or permitted in the Dubai International Financial Centre.

United Kingdom

Neither the information in this document nor any other document relating to the offer has been delivered for approval to the Financial Services Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended ("FSMA")) has been published or is intended to be published in respect of the securities. This document is issued on a confidential basis to "qualified investors" (within the meaning of section 86(7) of FSMA) in the United Kingdom, and the securities may not be offered or sold in the United Kingdom by means of this document, any accompanying letter or any other document, except in circumstances which do not require the publication of a prospectus pursuant to section 86(1) FSMA.

This document should not be distributed, published or reproduced, in whole or in part, nor may its contents be disclosed by recipients to any other person in the United Kingdom.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) received in connection with the issue or sale of the securities has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) of FSMA does not apply to us.

In the United Kingdom, this document is being distributed only to, and is directed at, persons (i) who have professional experience in matters relating to investments falling within Article 19(5) (investment professionals) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 ("FPO"), (ii) who fall within the categories of persons referred to in Article 49 (2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the FPO or (iii) to whom it may otherwise be lawfully communicated (together "relevant persons"). The investments to which this document relates are available only to, and any invitation, offer or agreement to purchase will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

LEGAL MATTERS

The validity of the shares offered hereby will be passed upon for us by Stradling Yocca Carlson & Rauth, P.C., San Diego, California. Certain legal matters in connection with this offering will be passed upon for the underwriters by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., New York, New York.

EXPERTS

Mayer Hoffman McCann P.C., our independent registered public accounting firm, has audited our balance sheets as of December 31, 2012 and 2011, and the related statements of operations and comprehensive loss, changes in shareholders' deficit and cash flows for each of the two years in the period ended December 31, 2012, as set forth in their report, which report expresses an unqualified opinion and includes an explanatory paragraph relating to our ability to continue as a going concern. We have included our financial statements in this prospectus and in this registration statement in reliance on the report of Mayer Hoffman McCann P.C. given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1, including exhibits and schedules, under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all the information contained in the registration statement and the exhibits and schedules filed as part of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and the exhibits and schedules filed as part of the registration statement. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copies of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit.

We will be subject to reporting requirements pursuant to the Exchange Act and we will file annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act. You can read our SEC filings, including the registration statement, at the SEC's website at www.sec.gov.

You may read and copy this information at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. You may obtain information regarding the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website (http://www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

Our website address is www.biocept.com. The information contained in, and that can be accessed through, our website is not incorporated into and is not part of this prospectus.

GLOSSARY OF SCIENTIFIC AND HEALTHCARE-RELATED ACRONYMS

ACA	Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act
ALK1	Anaplastic lymphoma kinase
CAP	College of American Pathologists; the leading organization of board-certified pathologists, serving patients, pathologists, and the public by fostering and advocating excellence in the practice of pathology and laboratory medicine worldwide
CE	Conformité Européenne; a conformity mark which is placed on all products including medical devices marketed in the European Economic Area
CLIA	Clinical Laboratory Improvement Amendments of 1988; federal regulatory standards that apply to all clinical laboratory testing performed on human samples in the United States
CMS	Centers for Medicare & Medicaid Services; a U.S. federal agency that administers Medicare, Medicaid and the Children's Health Insurance Program
CPT	Current Procedure Terminology
CTC	Circulating tumor cell
ctDNA	Circulating tumor DNA
DTC	Disseminated tumor cell
EGFR	Epidermal growth factor receptor
EML4	Echinoderm microtubule-associated protein-like 4
EMT	Epithelial-to-mesenchymal transition
EpCAM	Epithelial cell adhesion molecule
FDA	United States Food and Drug Administration
FISH	Fluorescence in situ Hybridization; a molecular cytogenetic technique that is used to detect chromosomal aberrations that include deletions, amplifications and translocations; DNA FISH probes are fluorescently labeled segments of DNA that are complementary to specific sequences on a chromosome
HER2	Human epidermal growth factor receptor 2
HHS	United States Department of Health and Human Services
HIPAA	Health Insurance Portability and Accountability Act of 1996
HITECH	Health Information Technology for Economic and Clinical Health Act
IHC	Immunohistochemistry
IVD	In vitro diagnostic

LDTs	Laboratory Developed Tests; assays developed in the laboratory for diagnostic or prognostic purposes
MAC	Medicare Administrative Contractor
MCTRJCA	Middle Class Tax Relief and Job Creation Act of 2012
NSCLC	Non-small cell lung cancer
PCR	Polymerase chain reaction
PMA	Pre-Market Approval; the FDA process of scientific and regulatory review to evaluate the safety and effectiveness of Class III medical devices
ROS1	c-ros oncogene 1, receptor tyrosine kinase

INDEX TO FINANCIAL STATEMENTS

BIOCEPT, INC.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Biocept, Inc.

We have audited the accompanying balance sheets of **Biocept, Inc.** as of December 31, 2012 and 2011, and the related statements of operations and comprehensive loss, shareholders' deficit and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Biocept, Inc.** as of December 31, 2012 and 2011, and the results of its operations and its cash flows the years then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has incurred recurring losses from operations and, as of December 31, 2012, has liabilities significantly in excess of assets. These conditions, among others as discussed in Note 2 to the financial statements, raise substantial doubt about its ability to continue as a going concern. Management's plan regarding these matters is also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Mayer Hoffman McCann P.C.
San Diego, California
August 16, 2013

Biocept, Inc.

Balance Sheets

	December 31, 2012	December 31, 2011	June 30, 2013 (unaudited)	Pro Forma June 30, 2013 (unaudited)
Current assets:				
Cash & cash equivalents	$ 185,256	$ 435,292	$ 4,483	
Accounts receivable	18,885	5,251	38,758	
Inventories	61,283	—	81,029	
Prepaid expenses	310,442	367,610	109,549	
Total current assets	575,866	808,153	233,819	
Fixed assets, net	624,730	982,253	488,674	
Other non-current assets	269,083	269,083	269,083	
Total assets	$ 1,469,679	$ 2,059,489	$ 991,576	
Current liabilities:				
Accounts payable	$ 1,387,677	$ 1,033,124	$ 1,547,664	
Notes payable	21,631,427	12,039,694	3,816,323	
Warrant liability	981,747	923,325	1,384,106	
Supplier financings - current	251,146	314,445	97,260	
Accrued liabilities	3,346,806	1,201,279	1,852,957	
Total current liabilities	27,598,803	15,511,867	8,698,310	
Notes payable, net of current portion	745,000	1,575,000	—	
Supplier financings, net of current portion	—	81,191	—	
Deferred rent	510,771	268,934	508,527	
Total liabilities	28,854,574	17,436,992	9,206,837	
Commitments and contingencies (see note 15)				
Shareholders' deficit:				
Series A convertible preferred stock, $0.0001 par value, 36,460,000 authorized; 27,175,213 issued and outstanding at December 31, 2012 and 2011 and June 30, 2013; $16,305,127 liquidation preference. (see note 8)	2,718	2,718	2,718	
Series A convertible preferred stock, $0.0001 par value, 42,245,834 to be issued for conversion of debt and accrued interest. (see note 8)	—	—	4,225	
Common stock, $0.0001 par value, 14,600,000 authorized; 2,246,730 issued and outstanding at December 31, 2012 and 2011. 14,600,000 authorized; 2,553,783 issued and outstanding at June 30, 2013. (see note 8)	225	225	255	
Additional paid-in capital	85,799,955	85,547,821	108,866,317	
Accumulated deficit	(113,187,793)	(100,928,267)	(117,088,776)	
Total shareholders' deficit	(27,384,895)	(15,377,503)	(8,215,261)	
Total liabilities and shareholders' deficit	$ 1,469,679	$ 2,059,489	$ 991,576	

The accompanying notes are an integral part of these financial statements

Biocept, Inc.

Statements of Operations and Comprehensive Loss

	For the year ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
Revenues	$ 109,289	$ 1,052	$ 83,523	$ 64,393
Cost of revenues	1,201,694	17,322	1,140,488	465,126
Gross profit/(loss)	(1,092,405)	(16,270)	(1,056,965)	(400,733)
Operating expenses				
Research and development expenses	6,562,152	8,853,350	1,400,788	3,797,509
General and administrative expenses	2,063,199	2,728,442	929,320	1,165,134
Sales and marketing expenses	785,319	672,934	124,336	401,807
Loss from operations	(10,503,075)	(12,270,996)	(3,511,409)	(5,765,183)
Other income/(expense)				
Interest expense, net	(2,187,499)	(1,699,607)	(977,837)	(1,020,484)
Change in fair value of warrant liability	454,389	361,186	601,012	355,862
Other income/(expense)	(22,541)	(19,069)	(11,949)	(11,913)
Total other income/(expense)	(1,755,651)	(1,357,490)	(388,774)	(676,535)
Loss before income taxes	(12,258,726)	(13,628,486)	(3,900,183)	(6,441,718)
Income tax expense	800	800	800	800
Net loss & comprehensive loss	$(12,259,526)	$(13,629,286)	$ (3,900,983)	$ (6,442,518)
Weighted average shares outstanding used in computing net loss per share attributable to common shareholders:				
Basic	2,246,730	1,593,777	2,527,530	2,246,730
Diluted	2,246,730	1,593,777	2,527,530	2,246,730
Net loss per common share:				
Basic	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)
Diluted	$ (5.46)	$ (8.55)	$ (1.54)	$ (2.87)
Weighted average shares outstanding used in computing pro forma net loss per share attributable to common shareholders (unaudited):				
Basic				
Diluted				
Pro forma net loss per share attributable to common shareholders:				
Basic				
Diluted				

The accompanying notes are an integral part of these financial statements

Biocept, Inc.

Statements of Shareholders' Deficit

	Preferred Stock						Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Series A		Series AA		Series BB						
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2010	—	$ —	20,442,883	$ 2,044	8,939,990	$ 894	1,469,868	$ 147	$ 85,365,423	$ (87,298,981)	$ (1,930,473)
Shares surrendered as part of investor settlement	—	—	(143,140)	(14)	—	—	(16,703)	(2)	16	—	—
Conversion from Series AA preferred stock to common stock	—	—	(2,064,520)	(206)	—	—	688,173	69	137	—	—
Conversion from Series AA and Series BB preferred stock to Series A preferred stock	27,175,213	2,718	(18,235,223)	(1,824)	(8,939,990)	(894)	—	—	—	—	—
Exercise of stock options	—	—	—	—	—	—	142,973	14	47,169	—	47,183
Retirement of common stock	—	—	—	—	—	—	(37,581)	(3)	3	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	135,073	—	135,073
Net loss	—	—	—	—	—	—	—	—	—	(13,629,286)	(13,629,286)
Balance at December 31, 2011	27,175,213	2,718	—	—	—	—	2,246,730	225	85,547,821	(100,928,267)	(15,377,503)
Stock-based compensation expense	—	—	—	—	—	—	—	—	252,134	—	252,134
Net loss	—	—	—	—	—	—	—	—	—	(12,259,526)	(12,259,526)
Balance at December 31, 2012	27,175,213	2,718	—	—	—	—	2,246,730	225	85,799,955	(113,187,793)	(27,384,895)
Stock-based compensation expense (unaudited)	—	—	—	—	—	—	—	—	21,019	—	21,019
Stock issuance for RSU (unaudited)	—	—	—	—	—	—	305,856	30	(30)	—	—
Exercise of stock options (unaudited)	—	—	—	—	—	—	1,197	—	395	—	395
Shares to be issued for conversion of notes payable and accrued interest of $20.2 million and $2.6 million, respectively (unaudited)	42,245,834	4,225	—	—	—	—	—	—	22,808,179	—	22,812,404
Reclassification of warrant liability derivative due to triggering	—	—	—	—	—	—	—	—	236,799	—	236,799

event (unaudited)											
Net loss (unaudited)	—	—	—	—	—	—	—	—	—	(3,900,983)	(3,900,983)
Balance at June 30, 2013 (unaudited)	69,421,047	$6,943	—	$ —	—	$ —	2,553,783	$ 255	$108,866,317	$(117,088,776)	$ (8,215,261)

The accompanying notes are an integral part of these financial statements

Biocept, Inc.

Statements of Cash Flows

	For the year ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
Cash Flows From Operating Activities				
Net loss	$(12,259,526)	$(13,629,286)	$ (3,900,983)	$ (6,442,518)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	365,568	369,312	136,768	218,338
Inventory reserve	56,004	44,854	36,146	3,539
Stock-based compensation	252,134	135,073	21,019	174,010
Non-cash interest expense related to convertible debt and other financing activities	2,159,234	1,617,074	977,837	1,003,932
Change in fair value of warrant liabilities	(454,389)	(361,186)	(601,012)	(355,862)
Loss on sale of fixed assets	—	1,899	—	—
Increase/(decrease) in cash resulting from changes in:				
Accounts receivable	(13,634)	(5,251)	(19,872)	(21,552)
Inventory	(117,287)	(44,854)	(55,891)	(148,614)
Prepaid expenses	77,654	(146,584)	93,121	(16,360)
Other assets	—	5,000	—	—
Accounts payable	354,553	854,748	159,988	201,965
Accrued expenses	730,836	195,408	109,290	198,041
Deferred rent	241,837	(20,580)	(2,244)	238,327
Net cash used in operating activities	(8,607,016)	(10,984,373)	(3,045,833)	(4,946,754)
Cash Flows From Investing Activities				
Purchases of fixed assets	(8,046)	(295,373)	(711)	(8,046)
Net cash used in investing activities	(8,046)	(295,373)	(711)	(8,046)
Cash Flows From Financing Activities				
Principal payments on capital lease obligations	—	(37,813)	—	—
Proceeds from exercise of stock options	—	47,182	395	—
Payments on supplier and other third party financings	(164,974)	(135,704)	(46,118)	(109,430)
Proceeds from issuance of notes payable	5,960,000	—	—	3,940,000
Principal payments on note payable	—	(180,000)	—	—
Proceeds from issuance of convertible notes and warrants	2,570,000	10,511,427	2,911,494	1,050,000
Net cash provided by financing activities	8,365,026	10,205,092	2,865,771	4,880,570
Net (decrease) in Cash and Cash Equivalents	(250,036)	(1,074,654)	(180,773)	(74,230)
Cash and Cash Equivalents at Beginning of Year	435,292	1,509,946	185,256	435,292
Cash and Cash Equivalents at End of Year	$ 185,256	$ 435,292	$ 4,483	$ 361,062
Supplemental Disclosures of Cash Flow Information:				
Cash paid during the period for:				
Interest	$ 28,276	$ 84,866	$ —	$ 16,561
Taxes	$ 800	$ 800	$ 800	$ 800

Biocept, Inc.

Statements of Cash Flows

Non-cash Investing and Financing Activities:

During 2011, the Company financed additions to fixed assets of $399,812 through supplier financings.

For the years ended December 31, 2012 and 2011, the Company financed insurance premiums of $128,929 and $131,528, respectively, through third party financings. Such financings occur on an annual basis during the three months ended December 31 of each year.

During the six months ended June 30, 2013, 305,856 shares of common stock, with a par value of $30, were issued for restricted stock units.

During the six months ended June 30, 2013, convertible notes with a principal balance of $20,231,000 and accrued interest of $2,581,000 were converted into 42,245,834 shares of preferred stock. In conjunction with this conversion, $236,799 of derivative warrant liabilities were reclassified to additional paid-in capital, as the underlying exercise prices on the warrants were determined by the debt conversion (unaudited).

The accompanying notes are an integral part of these financial statements

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

1. The Company and Business Activities

Biocept, Inc. ("the Company") was founded in California in May 1997 and is a commercial-stage cancer diagnostics company developing and commercializing proprietary circulating tumor cell (CTC) and circulating tumor DNA (ctDNA) tests utilizing a standard blood sample to improve the treatment that oncologists provide to their patients by providing better, more detailed information on the characteristics of their tumor.

The Company operates a clinical laboratory that is CLIA-certified (under the Clinical Laboratory Improvement Amendment of 1988) and CAP-accredited (by the College of American Pathologists), and manufactures microfluidic CEE microchannels, related equipment and certain reagents to perform the Company's diagnostic tests in a facility located in San Diego, California. CLIA certification and accreditation are required before any clinical laboratory may perform testing on human specimens for the purpose of obtaining information for the diagnosis, prevention, treatment of disease, or assessment of health. The tests the Company offers are classified as laboratory developed tests (LDTs), under the CLIA regulations.

In July 2013, the Company effected a reincorporation to Delaware by merging itself with and into Biocept, Inc., a Delaware corporation, which had been formed to be and was a wholly-owned subsidiary of the Company since July 23, 2013.

2. Going Concern

At December 31, 2012 and 2011 and June 30, 2013, the Company had an accumulated deficit of approximately $113,188,000, $100,928,000, and $117,089,000, respectively. For the years ended December 31, 2012 and 2011 and the six months ended June 30, 2013, the Company incurred net losses of approximately $12,260,000, $13,629,000 and $3,901,000, respectively. In addition, as of June 30, 2013, the Company had notes payable of approximately $5,056,000 due within one year. These factors raise substantial doubt about the Company's ability to continue as a going concern.

In order to continue operations, the Company will need additional operating funds. The Company borrowed a total of $8,530,000, $10,511,000, and $2,911,000 during the years ended December 31, 2012 and 2011 and during the six months ended June 30, 2013, respectively, under note agreements with certain shareholders. However, additional funding will be required to sustain operations in the second half of 2013 and throughout 2014.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the possible inability of the Company to continue as a going concern.

Management's Plan to Continue as a Going Concern

In order to continue as a going concern, the Company will need, among other things, additional capital resources. Management's plans to obtain such resources for the Company include (1) obtaining capital from the sale of its equity securities, (2) laboratory service revenue, and (3) short-term borrowings from banks, shareholders or other related party(ies) when needed. Management cannot provide any assurance that the Company will be successful in accomplishing any of its plans.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

3. Summary of Significant Accounting Policies

Basis of Presentation

The financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States of America.

Use of Estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates these estimates and judgments, including those related to inventories, long-lived assets, convertible debt, derivative liabilities, income taxes, and stock-based compensation. The Company bases its estimates on various assumptions that it believes are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Unaudited Interim Financial Information

The accompanying balance sheet as of June 30, 2013, statements of operations and comprehensive loss and cash flows for the six months ended June 30, 2013 and 2012, and the statement of shareholders' deficit for the six months ended June 30, 2013 are unaudited. The unaudited financial statements have been prepared on a basis consistent with the audited financial statements and, in the opinion of management, reflect all adjustments (consisting of normal recurring adjustments) considered necessary to fairly state the Company's financial position as of June 30, 2013 and results of operations and cash flows for the six months ended June 30, 2013 and 2012. The financial data and other information disclosed in the notes to the financial statements related to June 30, 2013 and the six months ended June 30, 2013 and 2012 are unaudited.

Unaudited Pro Forma Information

The unaudited pro forma balance sheet information as of June 30, 2013 gives effect to (i) the sale of [ ] shares of common stock in this offering less offering costs of $[ ] million and underwriting discounts, expenses, and commissions of $[ ] million, of which $[ ] million was previously paid, (ii) the automatic conversion of all outstanding shares of the Company's Series A preferred stock (including shares issued in July 2013 which, as of June 30, 2013, were classified as to-be-issued for conversion of debt and accrued interest) into 23,140,332 shares of common stock, (iii) the conversion of convertible promissory notes and accrued interest in the amount of $[ ] million into an aggregate of [ ] shares of the Company's common stock in connection with the closing of the Company's initial public offering, (iv) the issuance of shares of common stock upon such initial public offering pursuant to the settlement of certain restricted stock units (which are currently expressed in shares of preferred stock) in accordance with their terms, (v) the termination of certain warrants upon the closing of the Company's initial public offering in accordance with their terms and (vi) the reclassification to shareholders' deficit of the fair value of certain warrants the exercise price and/or exercisability period length of which will be fixed upon the closing of the Company's initial public offering in accordance with their terms, assuming for all such items an initial public offering price of $[ ] per share, the midpoint of the price range listed on the cover page of the Company's prospectus. Each $1.00 increase (decrease) in the assumed initial public offering price of $[ ] per share would increase (decrease) the pro forma amount of each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[ ], assuming that the number of shares offered by the Company, as set forth on the cover page of the Company's prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by the Company. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by the Company at the assumed initial public offering price would increase (decrease) each of cash and cash equivalents, total assets and total shareholders' deficit by approximately $[ ]. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of the Company's initial public offering determined at pricing.

Reverse Stock Split and Change in Par Value of Common Stock and Preferred Stock

In November 2011, the Company effected a one-for-three reverse stock split of the Company's common shares. In addition, in July 2013, in conjunction with its reincorporation in the state of Delaware, the Company initiated par values for preferred and common shares equal to $0.0001. As such, all references to share and per share amounts in the financial statements and accompanying notes to the financial statements have been retroactively restated to reflect the 1:3 reverse stock split and the change in par value.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Revenue Recognition

Revenue is recognized in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 605, *Revenue Recognition*, and ASC 954-605 *Health Care Entities, Revenue Recognition* which requires that four basic criteria must be met before revenue can be recognized: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred and title and the risks and rewards of ownership have been transferred to the client or services have been rendered; (3) the price is fixed or determinable; and (4) collectability is reasonably assured. For contract partners, revenue is recorded based upon the contractually agreed upon fee schedule. When assessing collectability, the Company considers whether there is sufficient payment history to reliably estimate a payor's individual payment patterns. For new tests where there is limited evidence of payment history at the time the tests are completed, the Company recognizes revenue equal to the amount of cash received until such time as reimbursement experience can be established.

The Company's main source of revenue for the year ended December 31, 2012 and the six months ended June 30, 2013 is through contracted partners. This revenue is derived from clinical laboratory testing performed in our laboratories under our agreements with such partners. As there is a contractually agreed upon price, and collectability from our partners is reasonably assured, revenues for these tests are earned at the time the test is completed and the results are delivered to our partners or a third party.

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. The Company places its cash and cash equivalents with reputable financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC). At times, deposits held may exceed the amount of insurance provided by the FDIC. The Company has not experienced any losses in its cash and cash equivalents and believes they are not exposed to any significant credit risk.

Fair Value Measurement

The Company uses a three-tier fair value hierarchy to prioritize the inputs used in the Company's fair value measurements. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets for identical assets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. The Company believes the carrying amount of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate their estimated fair values due to the short-term maturities of these financial instruments.

As of December 31, 2012 and 2011 and June 30, 2013, the Company classified the fair value measurements of the Company's warrant liability derivative as Level 3. See Note 6 for further details about the inputs and assumptions used to determine the fair value of the warrant liability at each balance sheet date.

The values attributed to such warrants as of December 31, 2011 and 2012, and June 30, 2013 were as follows:

	Fair Value Measurements Using		
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Liabilities			
Warrant Liability at December 31, 2011	—	—	$ 923,325
Warrant Liability at December 31, 2012	—	—	$ 981,747
Warrant Liability at June 30, 2013 (unaudited)	—	—	$ 1,384,106

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The following table includes a summary of changes in the fair value of the warrants for the years ended December 31, 2012 and 2011, and for the six months ended June 30, 2013:

	Fair Value Measurements at Reporting Date Using Significant Unobservable Inputs (Level 3)
Balance at December 31, 2010	$ —
Warrant liability incurred in 2011	1,284,511
Change in fair value in 2011	(361,186)
Balance at December 31, 2011	923,325
Warrant liability incurred in 2012	512,811
Change in fair value in 2012	(454,389)
Balance at December 31, 2012	981,747
Warrant liability incurred during the six months ended June 30, 2013 (unaudited)	1,240,170
Warrant liability reclassified to additional paid-in capital during the six months ended June 30, 2013 (unaudited)	(236,799)
Change in fair value during the six months ended June 30, 2013 (unaudited)	(601,012)
Balance at June 30, 2013 (unaudited)	$ 1,384,106

Concentration of Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of temporary cash investments. The Company has not experienced losses in such accounts. Management believes that the Company is not exposed to any significant credit risk with respect to its cash and cash equivalents.

In 2012, the Company launched commercial operations in partnership with a commercial partner, Clarient Diagnostic Services, Inc. (“Clarient”), a GE Healthcare Company. For the year ended December 31, 2012, 79% of the revenue earned was billed through this relationship. In addition, at December 31, 2012, 100% of the receivables were due from Clarient. As of June 30, 2013, three customers made up 68%, 19% and 13% of accounts receivable. For the six months ended June 30, 2013, two customers made up 75% and 16% of total revenues.

All of the Company’s sales for all periods presented were generated in the United States of America.

Certain components used in the Company’s current or planned products are available from only one supplier, and substitutes for these components cannot be obtained easily or would require substantial design or manufacturing modifications or identification and qualification of alternative sources.

Accounts Receivable

Accounts receivable are carried at original invoice amounts, less an estimate for doubtful receivables, based on a review of all outstanding amounts on a periodic basis. The estimate for doubtful receivables is determined from an analysis of the accounts receivable on a quarterly basis, and is recorded as bad debt expense. As the Company only recognizes revenue to the extent collection is expected and reasonably assured, bad debt expense related to receivables from patient service revenue is recorded in general and administrative expense in the statement of operations and comprehensive loss. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received. As of December 31, 2012 and 2011 and June 30, 2013, management determined that all of the amounts recorded as accounts receivable were collectible, and no allowance for doubtful accounts was needed.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Inventories

Inventories are valued at the lower of cost or market value. Cost is determined by the average cost method. The Company records adjustments to its inventory for estimated obsolescence or diminution in market value equal to the difference between the cost of the inventory and the estimated market value. At the point of a loss recognition, a new cost basis for that inventory is established, and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

Fixed Assets

Fixed assets consist of machinery and equipment, furniture and fixtures, computer equipment and software, leasehold improvements, capital leased equipment and construction in process. Fixed assets are stated at cost less accumulated depreciation and amortization. Additions, improvements, and major renewals are capitalized. Maintenance, repairs, and minor renewals are expensed as incurred. Depreciation is determined using the straight-line method over the estimated useful lives of the assets, which range from three to five years. Leasehold improvements are amortized over the life of the lease or the asset, whichever is shorter. Depreciation expense for the years ended December 31, 2012 and 2011 and for the six months ended June 30, 2013 (unaudited) and 2012 (unaudited) was approximately $366,000, $369,000, $137,000, and $218,000, respectively.

Upon sale, retirement or disposal of fixed assets, the accounts are relieved of the cost and the related accumulated depreciation or amortization with any gain or loss recorded to the statement of operations.

Fixed assets are reviewed for impairment whenever changes in circumstances indicate that the carrying amount of an asset may not be recoverable. These computations utilize judgments and assumptions inherent in the estimates of future cash flows to determine recoverability of these assets. If the assumptions about these assets were to change as a result of events or circumstances, the Company may be required to record an impairment loss.

Warrant Liability

Warrants for shares that are contingently redeemable and for which the exercise price is not fixed are classified as liabilities on the accompanying balance sheets and carried at their estimated fair value, determined through use of a Black-Scholes valuation model. As of and for the years ended December 31, 2011 and 2012, and as of and for the six months ended June 30, 2013 and June 30, 2012, the Company evaluated and concluded that the fair value obtained from the Black-Scholes method of valuing the warrant liability does not materially differ from the valuation of such warrants using the Monte Carlo or binomial lattice simulation models, and therefore the use of the Black-Scholes valuation model was considered a reasonable method to value the warrants. At the end of each reporting period, any changes in fair value are recorded as a component of other income (expense). The Company will continue to adjust the carrying value of the warrants until the earlier of the exercise of the warrants or the completion of a liquidation event, including the completion of an initial public offering under the Securities Act (“IPO”), at which time the exercise price will be fixed for the surviving warrants, and the fair value of those warrants will be reclassified to shareholders’ deficit.

Stock-based Compensation

The Company accounts for stock-based compensation under the provisions of FASB ASC Topic 718, *Compensation—Stock Compensation*, which requires the measurement and recognition of compensation expense for all stock-based awards made to employees and directors based on estimated fair values on the grant date. The Company estimates the fair value of stock-based awards on the date of grant using the Black-Scholes option pricing model (“Black-Scholes valuation model”). The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service periods using the straight-line method. The Company estimates forfeitures at the time of grant and revises these estimates in subsequent periods if actual forfeitures differ from those estimates. See additional information in Note 9.

The Company accounts for stock-based compensation awards to non-employees in accordance with FASB ASC Topic 505-50, *Equity-Based Payments to Non-Employees* (“ASC 505-50”). Under ASC 505-50, the Company determines the fair value of the warrants or stock-based compensation awards granted as either the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measurable. All issuances of equity instruments issued to non-employees as consideration for goods or services received by the Company are accounted for based on the fair value of the equity instruments issued. These awards are recorded in expense and additional paid-in capital in shareholders’ equity over the applicable service periods based on the fair value of the options at the end of each period.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Calculating the fair value of stock-based awards requires the input of highly subjective assumptions into the Black-Scholes valuation model. Stock-based compensation expense is calculated using the Company's best estimates, which involves inherent uncertainties, and the application of management's judgment. Significant estimates include the fair value of the Company's common stock at the date of grant, the expected life of the stock option, stock price volatility, risk-free interest rate and forfeiture rates.

Research and Development

Research and development costs are expensed as incurred. The amounts expensed in the years ended December 31, 2012 and 2011 and the six months ended June 30, 2013 (unaudited) and 2012 (unaudited) were approximately $6,562,000, $8,853,000, $1,401,000, and $3,798,000, respectively, which includes salaries of research and development personnel.

Income Taxes

The Company provides for income taxes utilizing the liability method. Under the liability method, current income tax expense or benefit is the amount of income taxes expected to be payable or refundable for the current year. A deferred income tax asset or liability is computed for the expected future impact of differences between the financial reporting and tax bases of assets and liabilities and for the expected future tax benefit to be derived from tax credits. Tax rate changes are reflected in the computation of the income tax provision during the period such changes are enacted.

Deferred tax assets are reduced by a valuation allowance when, in management's opinion, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. The Company's valuation allowance is based on available evidence, including its current year operating loss, evaluation of positive and negative evidence with respect to certain specific deferred tax assets including evaluation sources of future taxable income to support the realization of the deferred tax assets. The Company has established a full valuation allowance on the deferred tax assets as of December 31, 2012 and 2011 and June 30, 2013, and therefore has not recognized any income tax benefit or expense in the periods presented.

ASC 740, *Income Taxes* ("ASC 740"), clarifies the accounting for uncertainty in income taxes recognized in the financial statements. ASC 740 provides that a tax benefit from uncertain tax positions may be recognized when it is more-likely-than-not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits of the position. Income tax positions must meet a more-likely-than-not recognition threshold to be recognized. ASC 740 also provides guidance on measurement, derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

The Company recognizes interest and/or penalties related to income tax matters in income tax expense. There is no accrual for interest or penalties for income taxes on the balance sheets at December 31, 2012 and 2011 and June 30, 2013 (unaudited), and the Company has not recognized interest and/or penalties in the statements of operations for the years ended December 31, 2012 and 2011 and for the six months ended June 30, 2013 (unaudited) and 2012 (unaudited).

Recent Accounting Pronouncements

In May 2011, the FASB amended its authoritative guidance on the measurement and disclosure for fair value measurements. The amendment clarifies the application of certain existing fair value measurement guidance and expands the disclosures for fair value measurements that are estimated using significant unobservable (Level 3) inputs. The guidance is effective prospectively for fiscal years and interim periods within those years, beginning after December 15, 2011 and was effective for the Company's fiscal year beginning January 1, 2012. The Company adopted this amendment on January 1, 2012. The adoption of this new standard did not have a material impact on the Company's financial statements.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

In June 2011, the FASB amended its authoritative guidance on the presentation of comprehensive income. Under the amendment, companies have the option to present the components of net income and other comprehensive income either in a single continuous statement of comprehensive income or in separate but consecutive statements. This amendment eliminates the option to present the components of other comprehensive income as part of the statement of changes in shareholders' equity. The amendment does not change the items that companies must report in other comprehensive income or when companies must reclassify an item of other comprehensive income to net income. In December 2011, the FASB issued an update that defers the presentation requirement for other comprehensive income reclassifications on the face of the financial statements. The guidance is effective retrospectively for fiscal years, and interim periods within those years beginning after December 15, 2011, and was effective for the Company's fiscal year beginning January 1, 2012. The Company adopted this amendment on January 1, 2012. As this guidance relates to presentation only, the adoption of this guidance did not have any other effect on the Company's financial statements.

4. Balance Sheet Details

The following provides certain balance sheet details:

	December 31,		June 30,
	2012	2011	2013 (unaudited)
Fixed Assets			
Machinery and equipment	$2,761,560	$2,753,379	$2,761,560
Furniture and office equipment	209,844	209,844	209,844
Computer equipment and software	681,508	681,508	681,508
Leasehold improvements	373,653	373,653	373,653
Capital lease equipment	677,000	677,000	677,000
Construction in process	11,588	11,724	12,300
	4,715,153	4,707,108	4,715,865
Accumulated depreciation and amortization	4,090,423	3,724,855	4,227,191
Total fixed assets, net	$ 624,730	$ 982,253	$ 488,674
Accrued Liabilities			
Accrued interest	$1,963,007	$ 577,233	$ 307,856
Accrued payroll	185,150	252,363	99,104
Deferred wages	972,405	67,656	1,195,073
Accrued vacation	224,187	292,834	250,564
Other	2,057	11,193	360
Total accrued liabilities	$3,346,806	$1,201,279	$1,852,957

As of December 31, 2012 and 2011, and June 30, 2013, other non-current assets of $269,000 consisted solely of deposits for the San Diego building, which is leased under a non-cancelable operating lease.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

5. Notes Payable

Below is a summary of the Company's short-term and long-term debt obligations as of December 31, 2012 and 2011 and June 30, 2013:

	December 31, 2012	December 31, 2011	June 30, 2013 (unaudited)
Note payable to shareholder; principal and interest payable in quarterly installments until maturity on April 2015, bearing interest at a per annum fixed rate of 3.25%. As of June 28, 2013, the note payable was converted into preferred shares. ("Goodman Note") (See Note 6)	$ 1,935,000	$ 1,935,000	$ —
Secured convertible note to a major shareholder, net of discount related to a beneficial conversion of $0 and $45,398 and $0 at December 31, 2012 and 2011 and June 30, 2013, respectively. ("2008 Convertible Note") (See Note 6)	1,400,000	1,354,602	1,400,000
Secured convertible notes, net of discounts related to warrants aggregating to $0 and $186,335 and $0 at December 31, 2012 and 2011 and June 30, 2013, respectively. Total includes convertible notes due to a major shareholder of $11,250,000 and $10,000,000 at December 31, 2012 and 2011, respectively. As of June 28, 2013, the notes payable were converted into preferred shares. ("2011 Convertible Bridge Notes") (See Note 6)	12,336,427	10,325,092	—
Notes payable to shareholders issued in 2012, net of discounts related to warrants aggregating to $0 and $0 at December 31, 2012 and June 30, 2013, respectively. Includes notes of $5,810,000 to a major shareholder at December 31, 2012. As of June 28, 2013, the notes payable were converted into preferred shares. ("2012 Revolver Notes") (See Note 6)	5,960,000	—	—
Unsecured convertible notes, issued under a note and warrant purchase agreement dated as of June 2013, net of discounts related to warrants aggregating $0, and $1,240,170 at December 31, 2012 and June 30, 2013, respectively. (See Note 6). Includes notes of $720,000 and $2,455,000 to a major shareholder at December 31, 2012 and June 30, 2013, respectively. ("2013 Convertible Bridge Notes") (See Note 6)	745,000	—	2,416,323
Total notes payable	22,376,427	13,614,694	3,816,323
Less current portion	21,631,427	12,039,694	3,816,323
Long-term portion	$ 745,000	$ 1,575,000	$ —

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Except for the non-current balance of the 2013 Convertible Bridge Notes, all outstanding notes payable and convertible notes payable are classified as current as of December 31, 2012, as the Company was unable to make principal and interest payments on these notes during the year ended December 31, 2012, or prior to the conversion of the notes as of June 28, 2013. None of the lenders had sought any remedy for this default as of December 31, 2012 or prior to the conversion of the notes as of June 28, 2013.

As of June 28, 2013, approximately $20,231,000 of outstanding notes payable and $2,581,000 of accrued interest were converted into 42,245,834 preferred shares, in accordance with the provisions of the debt conversion agreements of that date. As of June 30, 2013, all remaining principal payments for outstanding notes payable and convertible notes are due within one year.

Total interest expense incurred for all notes and convertible notes, including amortization of debt discounts, for the year ended December 31, 2012 and 2011 and the six months ended June 30, 2013 (unaudited) was approximately $2,125,000, $1,683,000 and $926,000, respectively, of which approximately $1,957,000, $577,000 and $302,000 was recorded as accrued interest as of December 31, 2012 and 2011 and June 30, 2013 (unaudited), respectively.

6. Convertible Notes and Warrants

Outstanding Warrants – Preferred Shares

Goodman Note

During April 2005, the Company entered into an unsecured loan agreement for $15,000,000. The note required interest payments and principal settlement upon maturity at the earliest of (a) April 20, 2010, (b) the Company being acquired, or (c) the Company having a change in control, other than through the sale of preferred shares.

During January 2009, the Company entered into an amendment and restatement of the unsecured amended loan, whereby the parties agreed that the principal amount would be reduced to $3,000,000. The amended and restated unsecured note bears interest at a variable rate per annum based on prime plus 25 basis points. 25% of the accrued interest was due and payable quarterly in arrears on the last business day of each three-month quarter beginning February 1, 2009. The remaining 75% of the accrued interest was not to be compounded by becoming part of the principal, and was due and payable in a lump-sum payment on the maturity date. The principal and any interest amounts that remain outstanding was set to mature at the earlier of (a) April 20, 2010, or (b) the date immediately prior to the Company's closing of an acquisition or asset transfer as defined by the Company's amended and restated articles of incorporation.

In conjunction with the 2009 amendment, the Company issued a warrant to purchase preferred shares issued in the first equity financing to occur subsequent to the execution of the convertible note, and in which the Company receives at least $2,000,000 in gross aggregate proceeds. The exercise price of the warrant is equal to the per share price of preferred shares sold in that equity financing, and the number of shares that may be exercised is equal to 10% of the principal amount of the convertible loan divided by the exercise price. Early termination of the warrant can occur upon an IPO, or if the Company is acquired. The holder of the warrant is to be given 20 days advance notice of such an event, and the warrant will terminate if not exercised before the date of the event.

A qualifying equity financing occurred during February 2009, which set the note conversion price and the warrant exercise price at $0.60 per share.

During May 2010, the Company entered into a second amendment and restatement of the Goodman Note in order to extend the maturity date and amend the timing of payments to be made to the lender and to secure the Company's obligations under the note. The secured amended and restated note bears interest at a per annum fixed rate of 3.25% and is due and payable quarterly in arrears on the last business day of each three-month quarter

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

beginning May 1, 2010. On the effective date of the second amendment, the Company paid the lender $750,000 which was applied to the principal balance of $3,000,000. Beginning May 1, 2010, principal payments are due and payable quarterly in advance. For principal payments due and payable during the period of May 1, 2010 through January 31, 2011, the quarterly principal payment was equal to $45,000; for principal payments due and payable during the period of February 1, 2012 through January 31, 2014, the quarterly principal payment is equal to $90,000; and for principal payments due and payable during the period of February 1, 2014 through the maturity date, the quarterly principal payment is equal to $150,000. In addition to the $750,000 principal paid on the effective date of the amendment, the Company paid principal payments of $135,000 and $180,000 during the years ended December 31, 2010 and 2011, respectively. No principal payments were made during the year ended December 31, 2012 or the six months ended June 30, 2013. As of June 28, 2013 the holder of the Goodman Note agreed to convert the total principal balance owed under the Goodman Note of $1,935,000 and accrued interest of approximately $105,000 into 3,777,324 preferred shares at a conversion price of $0.54 per share.

2008 Convertible Note

In December 2008, the Company issued a convertible note in the principal amount of $1,400,000 which is secured by all assets of the Company to an affiliate of a major shareholder. The 2008 Convertible Note bears interest at a variable rate based on prime per annum payable at maturity, and matures at the earliest occurrence of, (a) the passing of 48 months from inception of the note, (b) the closing date of an acquisition or asset transfer as defined by the note, or (c) the closing date of the issuance and sale of shares of common stock of the Company in the Company's IPO.

Upon the closing of a sale by the Company of its preferred shares in which the Company receives an aggregate of at least $20,000,000 in cumulative gross proceeds, including conversion of the convertible loan amount before the maturity date, the unpaid principal and accrued interest shall automatically be converted into the number of preferred shares, of the series sold by the Company in such sale, equal to the unpaid principal and accrued interest divided by the per share purchase price of the preferred shares in such sale. The 2008 Convertible Note may also be converted before the maturity date at the option of the holder at the closing of an equity financing involving the sale of the Company's preferred shares in which the Company receives an aggregate of at least $2,000,000 in cumulative gross proceeds, with a conversion price equal to the per share price included in that equity financing.

Issued with the 2008 Convertible Note was a warrant to purchase preferred shares issued in the first equity financing to occur subsequent to the execution of the 2008 Convertible Note, and in which the Company receives at least $2,000,000 in gross aggregate proceeds. The exercise price of the warrant is equal to the per share price of preferred shares sold in that equity financing, and the number of shares that may be exercised is equal to 10% of the principal amount of the convertible loan divided by the exercise price. Early termination of the warrant can occur upon an IPO or if the Company is acquired. The holder of the warrant is to be given 20 days advance notice of such an event, and the warrant will terminate if not exercised before the date of the event.

A qualifying equity financing occurred during February 2009, which set the 2008 Convertible Note conversion price and the warrant exercise price at $0.60 per share. The 2008 Convertible Note remains outstanding at December 31, 2011 and 2012, and June 30, 2013.

2011 Convertible Bridge Notes

In February 2011, the Company executed a note and warrant purchase agreement with a major shareholder's affiliates. In exchange for a series of loans in an aggregate amount equal to $5,000,000 over a period through June 1, 2011, the Company issued secured convertible promissory notes and warrants to purchase preferred shares. The aggregate amount was subsequently raised to $6,000,000 and then $15,000,000 during the year and the funding period was first extended to February 2012 and then to December 2012. Other investors, including related parties, also became party to this arrangement and purchased 2011 Convertible Bridge Notes and warrants.

All unpaid principal and interest outstanding was initially payable on December 31, 2011. During 2012, the maturity date was extended to December 31, 2012. The 2011 Convertible Bridge Notes are secured by virtually all of the assets of the Company. The 2011 Convertible Bridge Notes bear interest at 8%, payable at maturity. The number of preferred shares for which the warrants are exercisable is determined by dividing the warrant coverage amount, which is 20% of the principal amount of the notes issued under the agreement, by the exercise price.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Upon the closing of the sale by the Company of its preferred stock in which the Company receives an aggregate of at least $20,000,000 in cumulative gross proceeds, including conversion of the 2011 Convertible Bridge Notes, before the maturity date, the unpaid principal and accrued interest shall automatically be converted into the number of preferred shares, of the series sold by the Company in such sale, equal to the unpaid principal and accrued interest divided by the per share purchase price of the preferred shares in such sale. At any time before the maturity date the investor may elect to convert all or any amount of the unpaid principal and accrued interest into the Company's Series A preferred shares at $0.54 per share. Early termination of the warrants can occur upon an IPO or if the Company is acquired. The holders of the warrants are to be given 20 days advance notice of such an event, and the warrants will terminate if not exercised before the date of the event.

In accordance with guidance applicable to accounting for derivative financial instruments that are accounted for as liabilities, the warrants are initially recorded at their fair value and are then re-valued at each reporting date, with changes in the fair value reported in the statements of operations. For stock-based derivative financial instruments issued under the note and warrant purchase agreement dated February 2011, the Company used the Black-Scholes valuation model. The Company recorded approximately $1,400,000 related to the fair value of the warrants at the date of issuance, as a discount to the carrying value of the 2011 Convertible Bridge Notes, accreted as interest expense over the life of the debt. The Company valued the warrants at the date of each issuance using the Black-Scholes valuation model with the following underlying assumptions: contractual term of 5 years, an underlying preferred share price between $0.25 and $0.54, an exercise price of $0.54, an average risk-free interest rate between 0.70% and 2.26%, a dividend yield of 0%, and volatilities between 100.0% and 105.0%. Approximately $302,000 and $1,098,000 related to accretion of the discount was recognized as interest expense during the years ended December 31, 2012 and 2011, respectively. The discount was fully accreted as of December 31, 2012.

As of December 31, 2012 and 2011, the Company had issued the 2011 Convertible Bridge Notes with an aggregate principal amount of approximately $12,336,000 and $10,511,000, respectively. No further note or warrant issuances were made under this agreement during the six months ended June 30, 2013. As of December 31, 2012, the Company was in default for payment on the 2011 Convertible Bridge Notes, and no principal payments were made in 2013 prior to their conversion. As of June 28, 2013 the investors under these notes elected to convert the total principal balance owed under the 2011 Convertible Bridge Notes of approximately $12,336,000 and accrued interest of approximately $1,832,000 into 26,237,611 preferred shares at a conversion price of $0.54 per share. Upon the conversion, the exercise price of the related warrants was set at $0.54 per share, and the $236,799 fair value of the warrants was reclassified into additional paid-in capital as of June 28, 2013.

2012 Revolver Notes

On January 13, 2012, the Company executed a note and warrant purchase agreement with several shareholders, including a major shareholder, calling for (in addition to the issuance of certain related warrants) the issuance of a series of notes to be issued between January 13, 2012 and April 5, 2012 totaling up to $1,750,000, with an original maturity date in April 2012. The 2012 Revolver Notes were amended on April 5, 2012 to extend the maturity date to May 31, 2012 or July 31, 2012, depending on certain milestones, and to allow the Company to issue up to $5,000,000 in notes payable under this agreement, as needed. The 2012 Revolver Notes were amended again on November 8, 2012 to increase the amount of notes payable the Company can issue to $8,000,000, and to provide that all notes issued under this agreement shall have the same maturity date of either November 30, 2012 or December 31, 2012, depending on certain milestones. The 2012 Revolver Notes bear interest at 10%, payable at maturity.

Beginning on the closing of the sale by the Company of its preferred shares in which the Company receives an aggregate of at least $20,000,000 in cumulative gross proceeds, the warrants are exercisable for preferred shares of the series sold by the Company in such sale, at an exercise price equal to the purchase price per share of the preferred shares sold by the Company in such sale. The number of preferred shares for which the warrants are exercisable is determined by dividing the warrant coverage amount, which is 20% of the principal amount of the notes issued under the agreement on the issuance date of such 2012 Revolver Notes, by the exercise price. At any

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

time prior to the maturity date, the investor may elect to convert all or any amount of the unpaid principal and accrued interest into the Company's Series A preferred stock at $0.54 per share, or if a qualified financing has occurred, at the purchase price per share of the preferred shares sold by the Company in such qualified financing. Early termination of the warrant can occur upon an IPO, or if the Company is acquired. The holders of the warrants are to be given 20 days advance notice of such an event, and the warrants will terminate if not exercised before the date of the event.

In accordance with guidance applicable to accounting for derivative financial instruments that are accounted for as liabilities, the warrants are initially recorded at their fair value and are then re-valued at each reporting date, with changes in the fair value reported in the statements of operations. For the 2012 Revolver Notes and warrants issued under the note and warrant purchase agreement dated January 13, 2012, the Company used the Black-Scholes valuation model. The Company recorded approximately $396,000 related to the fair value of the warrants issued, as a discount to the carrying value of the debt, accreted as interest expense over the life of the debt. The Company valued the warrants at the date of each issuance using the Black-Scholes valuation model with the following underlying assumptions: contractual term of 5 years, an underlying preferred share price between $0.24 and $0.30, an exercise price of $0.54, an average risk-free interest rate between 0.62% and 1.02%, a dividend yield of 0%, and volatility of 105.0%. Approximately $396,000 and $0 related to accretion of the discount was recognized as interest expense during the years ended December 31, 2012 and 2011, respectively.

As of December 31, 2012, the Company had issued $5,960,000 in notes payable under the 2012 Revolver Notes agreement. The Company was in default for payment of these notes as of December 31, 2012, and no principal payments were made in 2013 prior to conversion. As of June 28, 2013 the investors under the 2012 Revolver Notes elected to convert the total principal balance of approximately $5,960,000 owed under the 2012 Revolver Notes and accrued interest of approximately $645,000 into 12,230,899 preferred shares at a conversion price of $0.54 per share, pursuant to note conversion agreements of that date.

Other

On September 10, 2012, the Company issued a warrant to its landlord in exchange for a rent deferral through December 31, 2012. The number of Series A preferred shares exercisable under the warrant agreement is determined by dividing the warrant coverage amount of $40,000 by the exercise price. The exercise price of the warrants is $0.60, or, upon the closing of the sale by the Company of its preferred stock in which the Company receives an aggregate of at least $15,000,000 in cumulative gross proceeds, the warrant's exercise price will be the price per share for which the Company sells its preferred shares in such sale. The term of the warrant is seven years. Early termination of the warrant can occur if the Company is acquired. The holder of the warrant is to be given 20 days advance notice of such an event, and the warrant will terminate if not exercised before the date of the event. The value of the warrant liability is not material to the financial statements.

The warrants to issue preferred stock are reflected as a liability on the balance sheet, which is adjusted to estimated fair value at the end of each reporting period over the term of the warrants. The fair value of the warrant liability for warrants to issue preferred stock as of December 31, 2012 and 2011 and June 30, 2013, of approximately $982,000, $923,000 and $144,000, respectively, was estimated using the Black-Scholes valuation model with the following assumptions:

	As of December 31,		As of June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
Stock price	$ 0.25	$ 0.35	$ 0.13	$ 0.26
Exercise price	$ 0.54	$ 0.54	$ 0.54	$ 0.54
Expected dividend yield	0.00%	0.00%	0.00%	0.00%
Discount rate-bond equivalent yield	0.35% - 0.70%	0.64% - 0.89%	0.58% - 1.20%	0.55% - 0.71%
Expected life (in years)	3.08 - 4.92	4.08 - 4.92	2.58 - 4.42	3.58 - 4.98
Expected volatility	105.0%	105.0%	105.0%	105.0%

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Outstanding Warrants – Common Shares

2013 Convertible Bridge Notes

The Company executed a convertible note and warrant purchase agreement as of June 28, 2013 with several shareholders, including a major shareholder, relating to the Company's borrowing as needed of, and issuance of a series of unsecured convertible notes for, up to $7,000,000. The Company had borrowed $745,000 and $3,656,000 as of December 31, 2012 and June 30, 2013 (unaudited), respectively, against the 2013 Convertible Bridge Notes, including $720,000 and $2,455,000, respectively, from a major shareholder. The maturity date of the 2013 Convertible Bridge Notes is May 31, 2014 and may be extended at the option of the respective note holders for two successive six month periods. The 2013 Convertible Bridge Notes bear interest at 8.0% per annum, payable at maturity.

The 2013 Convertible Bridge Notes automatically convert into the Company's common stock upon the closing of an IPO of at least $8,000,000 in cumulative gross proceeds, at a price equal to the price per share of the Company's common stock sold in the IPO. The number of common shares for which the warrants are exercisable is determined by dividing the warrant coverage amount, which is 50% of the principal amount of the notes issued under the agreement, by the exercise price, which is the price per share of the Company's common stock sold in the IPO. The warrants will be exercisable for a five-year period beginning with the closing of the Company's IPO. Early termination of the warrants can occur upon any capital reorganization, any reclassification of the capital stock, or an asset transfer or acquisition of the Company. The holders of the warrants are to be given 20 days advance notice of such an event, and the warrants will terminate if not exercised prior to the date of the event.

In accordance with guidance applicable to accounting for derivative financial instruments that are accounted for as liabilities, the warrants are initially recorded at their fair value and are then re-valued at each reporting date, with changes in the fair value reported in the statements of operations. For the warrants for common shares issued under the 2013 Convertible Bridge Notes agreement, the Company used a probability weighted Black-Scholes valuation model. The Company recorded approximately $1,240,000 related to the fair value of the warrants issued, as a discount to the carrying value of the debt, accreted as interest expense from the date of issuance over the life of the debt. The warrants to issue common stock were valued as of June 28, 2013, their date of issuance, using the following assumptions: exercise price of between $0.21 and $0.77 per share, contractual term of 5 years, a risk-free interest rate of 1.20%, a dividend yield of 0%, and volatility of 105.0%. The value of the warrants using the probability weighted Black-Scholes valuation model accounted for a probability of 85%, while a fair value of $0 was weighted 15%. The fair value of the warrants is recorded as a liability of approximately $1,240,000 at June 30, 2013.

Change in estimated fair value of warrant liability

The change in the estimated fair value of the total liability outstanding for all outstanding warrants was approximately $454,000, $361,000, $601,000 and $356,000 was recognized as a noncash gain and included in total other income/(expense) in the Company's statements of operations and comprehensive loss for the years ended December 31, 2012 and 2011 and for the six months ended June 30, 2013 (unaudited) and 2012 (unaudited), respectively.

7. Supplier Financing

In 2011, the Company purchased certain laboratory equipment under financing agreements with a supplier, a business owned by a member of the Company's board of directors, totaling approximately $256,000. Financing was granted for the purchase of the equipment at a stated interest rate of 0.0%. The Company has utilized its average interest rate for 2011 and 2012 of 8.0% to amortize the payments and record interest expense of approximately $17,000, $10,000, $3,000, and $10,000 for the years ended December 31, 2012 and 2011 and the six months ended June 30, 2013 (unaudited) and 2012 (unaudited), respectively. The remaining balance owed under these financing agreements was approximately $60,000, $138,000 and $60,000 as of December 31, 2012 and 2011 and June 30, 2013 (unaudited), respectively. The remaining balance owed under these financing agreements is due in 2013.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

In 2011, the Company purchased laboratory software under a financing agreement with a supplier for approximately $177,000. This software financing agreement bears an interest rate of 7.4% per annum. The remaining balance owed under these financing agreements was approximately $62,000, $149,000 and $16,000 as of December 31, 2012 and 2011 and June 30, 2013, respectively. The remaining balance owed under this financing agreement is due in 2013.

In 2011 and 2012, the Company obtained third-party financing for certain business insurance premiums. The financing bears an interest rate of 5.95% per annum, and all financing is due within one year. The remaining balances under these annual financing arrangements were approximately $129,000, $108,000, and $21,000 as of December 31, 2012 and 2011 and June 30, 2013, respectively.

8. Shareholders' Deficit

(a) Common Stock

In November of 2011, the Company amended and restated its articles of incorporation to decrease the number of authorized shares of common stock from 44,260,000 to 14,600,000. The authorized number shares of common stock at December 31, 2012 and 2011 and June 30, 2013 was 14,600,000. In conjunction with the amendment, the Company declared a 1:3 reverse stock split for all common shares. All references to share and per share amounts in the financial statements and accompanying notes to the financial statements have been retroactively restated to reflect the 1:3 reverse stock split and the change in par value.

On July 22, 2013, the Company amended its articles of incorporation to increase the number of authorized shares of common stock from 14,600,000 to 53,000,000. In addition, on July 30, 2013, the Company assigned a par value to its common shares of $0.0001 in conjunction with its reincorporation in Delaware. The new par value per common share has been retroactively reflected in the financial statements for all periods presented.

(b) Preferred Stock

In November of 2011, the Company amended and restated its articles of incorporation so that each share of the issued and outstanding Series AA preferred stock and each share of the issued and outstanding Series BB preferred stock of the Company was converted into one share of Series A preferred stock. As of December 31, 2012 and 2011, all 36,460,000 authorized shares of preferred stock are designated as Series A preferred stock. On July 22, 2013, the Company amended its articles of incorporation to increase the number of authorized preferred shares from 14,600,000 to 100,000,000. In addition, on July 30, 2013, the Company assigned a par value to its preferred shares of $0.0001 in conjunction with its reincorporation in Delaware. The new par value per preferred share has been retroactively reflected in the financial statements for all periods presented.

Holders of the Company's preferred shares are entitled to receive, when and as declared by the board of directors and in preference to common shareholders, non-cumulative cash dividends at the rate of 8% per annum of the applicable original issue price on each outstanding preferred share. The original issue price of each share of Series A preferred stock was $0.60. No dividends were declared during 2012 or 2011 or in the first six months of 2013. Dividends cannot be granted for common shareholders while shares of preferred stock remain outstanding.

The holders of preferred shares have the right to one vote for each common share into which the preferred shares are convertible. Upon the liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, the preferred shareholders will be paid out an amount equal to the original issue price plus all declared and unpaid dividends. If, upon any liquidation, distribution, or winding up of the Company, and the assets of the Company are insufficient to make payment in full to all holders of preferred shares of the liquidation preference, then such assets shall be distributed among the holders of preferred shares ratably in proportion to the full amounts to which they would be entitled.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The convertible preferred shares may be converted into common shares at any time at the option of the holder utilizing the then effective Series A preferred conversion price. All preferred shares shall be automatically converted into common shares utilizing the then effective Series A preferred conversion price upon a) the election of the holders of a majority of the outstanding shares of Series A preferred stock, or b) the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933 covering the sale of the Company's common stock if gross proceeds are at least $20,000,000 and the per share price is at least $1.80.

The effective conversion price is equal to the original issue price divided by $1.80, as may be adjusted for dilutive issuances of common shares, common share rights or options, common share splits and combinations, dividends, and distributions. The effective conversion rate is not adjusted for issuances of common share options, warrants or rights to employees, directors, or non-employee service providers.

In October 2011, a major shareholder elected to convert 2,064,520 shares of the Company's preferred stock into an equal number of shares of the Company's common shares. No such conversions occurred in the year ended December 31, 2012 or in the first six months of 2013.

As of June 30, 2013 (unaudited), 42,245,834 preferred shares are classified as "to be issued" as a result of the conversion of debt and accrued interest as of June 28, 2013.

9. Accounting for Stock-Based Compensation Expense

The 2007 Equity Incentive Plan ("2007 Plan") authorizes the grant of the following types of awards: (i) nonstatutory stock options, or NSOs, (ii) incentive stock options, or ISOs, (iii) restricted stock awards, (iv) restricted stock unit awards, or RSUs, (v) stock appreciation rights, or SARs, (vi) performance awards, and (vii) other stock awards. Awards may be granted to employees, officers, non-employee board members, consultants, and other service providers of the Company. However, ISOs may not be granted to non-employees.

Prior to November 2011, the Company was authorized to issue 7,500,000 options under the 2007 Plan. In conjunction with the 1:3 reverse common stock split in November 2011, the number of shares authorized under the 2007 Plan decreased to 2,500,000 shares. Shares available for grant under the 2007 Plan were 701,786 and 852,194 as of December 31, 2012 and June 30, 2013, respectively.

Options granted vest over a maximum period of four years and expire ten years from the date of grant. Options generally vest either (i) over four years, 25% on the one year anniversary of the date of grant and monthly thereafter for the remaining three years; or (ii) over four years, monthly vesting beginning month-one after the grant and monthly thereafter.

The fair value of stock options is determined on the date of grant using the Black-Scholes valuation model. Such value is recognized as expense over the requisite service period, net of estimated forfeitures, using the straight-line method. The determination of the fair value of stock options is affected by the Company's stock price, as well as assumptions regarding a number of complex and subjective variables. The volatility assumption is based on a combination of the historical volatility of the Company's common stock and the volatilities of similar companies over a period of time equal to the expected term of the stock options. The volatilities of similar companies are used in conjunction with the Company's historical volatility because of the lack of sufficient relevant history for the Company's common stock equal to the expected term. The expected term of employee stock options represents the weighted-average period the stock options are expected to remain outstanding. The expected term assumption is estimated based primarily on the options' vesting terms and remaining contractual life and employees' expected exercise and post-vesting employment termination behavior. The risk-free interest rate assumption is based upon observed interest rates on the grant date appropriate for the term of the employee stock options. The dividend yield assumption is based on the expectation of no future dividend payouts by the Company.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The assumptions used in the Black-Scholes pricing model for options granted during the year ended December 31, 2012 and 2011 are as follows:

	For the years ended December 31, 2012	2011
Volatility	96.8%	106.9% - 107.7%
Risk-free interest rate	0.79% - 1.15%	1.03% - 2.62%
Dividend yield	0.00%	0.00%
Expected term (years)	6.08	6.02 - 6.08
Expected forfeiture rate	0.00%	0.00%

No options were granted during the six months ended June 30, 2013. Using the assumptions described above, the weighted average estimated fair value of options granted in 2012 and 2011 was $0.13 and $0.24, respectively.

A summary of stock option activity for 2012 and 2011 and the six months ended June 30, 2013 is as follows:

	Number of Shares	Weighted Average Exercise Price Per Share	Average Remaining Contractual Term in Years
Outstanding at December 31, 2010	912,160	$ 1.32	
Granted	507,655	0.33	
Exercised	(142,970)	0.33	
Cancelled/forfeited/expired	(169,553)	5.51	
Outstanding at December 31, 2011	1,107,292	0.35	8.3
Granted	4,665	0.33	
Exercised	—	—	
Cancelled/forfeited/expired	(221,355)	0.35	
Outstanding at December 31, 2012	890,602	0.35	6.2
Granted	—	—	
Exercised	(1,197)	0.33	
Cancelled/forfeited/expired	(150,406)	0.41	
Outstanding at June 30, 2013 (unaudited)	738,999	0.35	5.6

The total intrinsic value of options exercised during the years ended December 31, 2012 and 2011 and the six months ended June 30, 2013 was zero due to the difference between the exercise price and the Company’s share value at each exercise date.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Further information about the options outstanding and exercisable at December 31, 2012 and June 30, 2013 is as follows:

Options Outstanding and Exercisable at December 31, 2012

Exercise Price	Total Shares Outstanding	Weighted Average Contractual Life (in years)	Weighted Average Exercise Price	Total Shares Exercisable
$ 0.33	462,883	7.2	$ 0.33	226,866
$ 0.36	426,606	5.1	$ 0.36	396,305
$ 8.97	1,113	1.1	$ 8.97	1,113
	890,602			624,284

Options Outstanding and Exercisable at June 30, 2013 (unaudited)

Exercise Price	Total Shares Outstanding	Weighted Average Contractual Life (in years)	Weighted Average Exercise Price	Total Shares Exercisable
$ 0.33	396,943	7.6	$ 0.33	214,728
$ 0.36	342,056	3.2	$ 0.36	341,131
	738,999			555,859

As of December 31, 2012 and June 30, 2013, there was approximately $72,000 and $53,000, respectively, of total unrecognized compensation cost related to unvested stock-based awards granted. As of December 31, 2012 and June 30, 2013, the unrecognized compensation cost is expected to be recognized over a weighted-average period of approximately 1.63 years and 1.05 years, respectively.

Restricted Stock Units ("RSUs")

In November 2010, the Company issued to a member of the board of directors a restricted stock unit award for 390,000 shares of Series BB preferred stock. In November 2011, these RSUs were modified to be redeemable for Series A preferred stock under the same terms and conditions of the original grant. The shares will not vest unless a change in control, as defined, or IPO occurs within 10 years of the vesting commencement date of October 2010. There will be no expense to record for these awards unless and until it becomes probable that the award will vest. As of December 31, 2012 and June 30, 2013, it is not probable that these awards will vest and therefore, no expense was recorded during the year ended December 31, 2012 or the six months ended June 30, 2013.

In March 2011, the Company awarded a restricted stock unit award to a member of the board of directors for 428,597 shares of Series BB preferred stock. Also in March 2011, the Company awarded an additional performance-based restricted stock unit award for an estimated 574,108 shares of Series BB preferred stock to the same member. In November 2011, these RSUs were modified to be redeemable for Series A preferred stock under the same terms and conditions of the original grant. The number of shares in the restricted stock units is based on certain milestones to be achieved. None of the shares under either award vest unless a change in control or IPO occurs within 10 years after January 1, 2011. There will be no expense to record for these awards until it becomes probable that an award will vest. As of December 31, 2012 and June 30, 2013, it is not probable that these awards will vest and therefore, no expense was recorded during the year ended December 31, 2012 or the six months ended June 30, 2013.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The board of directors approved a resolution in December 2010, that each January 1 each person (other than two identified individuals) who is serving as a non-employee director on such January 1 shall be automatically granted an annual restricted stock unit award covering a number of common shares equal to 0.25% of the fully diluted outstanding common stock of the Company as of the December 31 immediately preceding such January 1. These restricted stock unit awards will be granted automatically on each January 1 and will vest in equal monthly installments over 12 months from the date of the grant. Additionally, in January 2012, each person (other than two identified individuals) who is serving as a non-employee director is to be granted a "true up grant" in addition to the annual grant covering a number of common shares equal to 0.25% of the fully diluted outstanding common shares of the Company as of the immediately preceding December 31. These grants will vest 100% on the date of the grant. In January 2012 and 2011, five restricted stock unit awards for a total of 293,030 and 178,580 common shares, respectively, were granted in accordance with this resolution. In addition, on January 1, 2012, an additional five restricted stock unit awards were granted to non-employee directors for a total of 293,030 common shares, vesting immediately upon grant. Although vested, shares are only delivered on the earlier of (i) the date that is 10 years from the grant date, (ii) the date of a change in control, (iii) the date of termination of the holder from the Company, (iv) the date of death or disability, or (v) the date of an unforeseeable emergency as described in Internal Revenue Code section 409A.

The RSU awards due to be granted on January 1, 2013 were not granted during the six months ended June 30, 2013. In lieu of this issuance, RSU awards for 122,300 shares of common stock each were granted to certain directors and an RSU award for 200,000 shares of common stock was granted to another director, on July 31, 2013. All RSUs issued in July 2013 vest in equal monthly installments over five months beginning August 1, 2013. The shares underlying the 2013 awards, if vested, would be distributed no later than August 20, 2014.

Stock-based Compensation Expense

The following table presents the effects of stock-based compensation related to stock option awards to employees and nonemployees on the statement of operations during the periods presented:

	For the years ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
Stock Options				
Research and development expenses	$ 32,210	$ 27,392	$ 7,515	$ 15,948
General and administrative expenses	22,530	44,615	13,504	11,016
Sales and marketing expenses	3,994	4,134	—	1,996
Total expenses related to stock options	58,734	76,141	21,019	28,960
RSUs				
General and administrative expenses	193,400	58,932	—	145,050
Total stock-based compensation	$ 252,134	$ 135,073	$ 21,019	$ 174,010

10. Net Loss per Common Share

Basic and diluted net loss per common share is determined by dividing net loss applicable to common shareholders by the weighted average common shares outstanding during the period. Because there is a net loss attributable to common shareholders for the years ended December 31, 2012 and 2011 and the six months ending June 30, 2013 and 2012, the outstanding shares of Series A preferred stock, RSUs, convertible debt, warrants, and common stock options have been excluded from the calculation of diluted loss per common share because their effect would be anti-dilutive. Therefore, the weighted average shares used to calculate both basic and diluted loss per share are the same.

In November 2011, the Company effected a 1:3 reverse stock split of all common shares outstanding. The calculation of weighted average shares outstanding has been adjusted for this reverse split as if it had occurred on January 1, 2011.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding for the periods presented, as they would be anti-dilutive:

	For the years ended December 31,		For the six months ended June 30,	
	2012	2011	2013 (unaudited)	2012 (unaudited)
Series A preferred (number of common stock equivalents)	9,058,391	9,058,391	23,140,332	9,058,391
Preferred warrants outstanding (number of common stock equivalents)	2,692,128	1,708,808	2,692,128	2,324,845
Notes payable convertible into preferred shares (number of common stock equivalents)	9,229,949	7,699,195	892,047	8,541,868
Preferred share RSUs (number of common stock equivalents)	464,234	464,234	464,234	464,234
Common warrants outstanding	—	—	4,241,872	—
Notes payable convertible into common shares	6,805,385	—	8,525,153	—
Common share RSUs	764,640	178,580	458,784	764,640
Common options outstanding	890,602	1,107,292	738,999	980,133
Total anti-dilutive common share equivalents	29,905,329	20,216,500	41,153,549	22,134,111

The Series A preferred common share equivalent figure as of June 30, 2013 includes preferred shares issued and to be issued.

11. 401(k) Plan

The Company sponsors a 401(k) savings plan for all eligible employees. The Company may make discretionary matching contributions to the plan to be allocated to employee accounts based upon employee deferrals and compensation. To date, the Company has not made any matching contributions into the savings plan.

12. Income Taxes

For the year ended December 31, 2012 and 2011, the provision for income taxes was calculated as follows:

	For the years ended December 31,	
	2012	2011
Current:		
Federal	$ —	$ —
State	800	800
Total	800	800
Deferred		
Federal	—	—
State	—	—
Total	—	—
Provision for income tax	$ 800	$ 800

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The following table provides a reconciliation between income taxes computed at the federal statutory rate and the Company's provision for income taxes:

	For the years ended December 31,	
	2012	2011
Income tax at statutory rate	$ (4,167,967)	$ (4,633,685)
State liability	(602,296)	(710,970)
Permanent items	543,993	436,228
Expiration of net operating losses	146,175	116,651
Book to provision and other	80	339,880
Research and development credit	(215,502)	(229,897)
Valuation allowance	4,296,317	4,682,593
Provision for income tax	$ 800	$ 800

Deferred income taxes are provided for temporary differences in recognizing certain income and expense items for financial and tax reporting purposes. The deferred tax assets consisted primarily of the income tax benefits from net operating loss carryforwards, deferred rent, and research and development credits. Valuation allowances have been recorded to fully offset deferred tax assets at December 31, 2012 and 2011, as it is more likely than not that the assets will not be utilized.

At December 31, 2012, the Company has federal net operating loss carryforwards of approximately $104,456,000 expiring beginning in 2020 and California net operating loss carryforwards of approximately $95,735,000 expiring beginning in 2013. Additionally, at December 31, 2012, the Company has research and development credits of approximately $2,887,000 and $3,047,000 for federal and California purposes, respectively. The federal research and development tax credits will begin to expire in 2018. The California research and development tax credits do not expire.

For the years ended December 31, 2012 and 2011, the Company has evaluated the various tax positions reflected in their income tax returns for both federal and state jurisdictions, and all open tax years in these jurisdictions, to determine if the Company has any uncertain tax positions on the historical tax returns. The Company recognizes the impact of an uncertain tax position on an income tax return at the largest amount that the relevant taxing authority is more-likely-than not to sustain upon audit. The Company does not recognize uncertain income tax positions if they have less than 50 percent likelihood of being sustained. Based on this assessment, the Company believes there are no tax positions for which a liability for unrecognized tax benefits should be recorded as of December 31, 2012 or 2011. The Company is subject to taxation in the United States and California. The Company's federal filings prior to 2009 and the Company's California filings prior to 2008 are no longer subject to examination.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

The tax effects of carryforwards that give rise to deferred tax assets consist of the following:

	For the years ended December 31, 2012	2011
Net operating loss carryforward	$ 41,100,511	$ 37,255,099
Research and development credits	4,898,055	4,682,553
Accruals and other	688,089	549,022
Deferred rent	203,463	107,129
	46,890,118	42,593,803
Less valuation allowance	(46,890,118)	(42,593,803)
Net deferred tax assets	$ —	$ —

The Company has not completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since its formation, due to the complexity and cost associated with such a study, and the fact that there may be additional ownership changes in the future. Based on a preliminary assessment, the Company believes that an ownership change occurred in 2010. The Company estimates that if such a change did occur, the federal and state net operating loss carryforwards and research and development credits that can be utilized in the future will be significantly limited.

The American Taxpayer Relief Act of 2012 was enacted on January 2, 2013. Included with this legislation was an extension of the research and development credit which had previously expired on December 31, 2011. This legislation retroactively reinstates and extends the credit from the previous expiration date through December 31, 2013. As the legislation was not enacted until after the close of the year ended December 31, 2012, the income tax impact of the retroactive reinstatement and extension will not be recognized until 2013. If the tax impact of the research and development credit was recognized, the Company does not anticipate any federal income tax benefit due to the existence of the valuation allowance offsetting any deferred tax asset which may have arose.

13. Collaborative Agreement

On August 17, 2011, the Company entered into a three year exclusive collaboration agreement with Clarient Diagnostic Services, Inc. to collaborate to promote and maximize the commercialization of the Company's or jointly developed diagnostic tests (together, the "Diagnostic Tests") in the United States. Clarient is responsible for marketing, providing customer service, and for third party billing on all Diagnostic Tests performed under the agreement, and for performing the professional component of the Diagnostic Tests. The Company is responsible for promoting sales of the Diagnostic Tests in the United States, as well as performing all technical components of all Diagnostic Tests sold by either party.

Under this agreement, the Company invoices Clarient for the performance of each of the Diagnostic Tests at a contractually agreed-upon rate. Clarient is responsible for billing the patient, provider and/or payer for each completed test, and bears all collection risk related to such billings. Sales of Diagnostic Tests under this agreement did not commence until 2012, and thus no revenue related to this collaboration was recognized for the year ended December 31, 2011. The total amount of revenue the Company earned under this agreement was approximately $86,000 for the year ended December 31, 2012 and $13,000 for the six months ended June 30, 2013 (unaudited).

The agreement was replaced as of May 2013 to remove exclusivity provisions and to modify the performance obligations of the parties. As a result of the replacement agreement, the Company will be responsible for billing third party payors for tests performed under the Clarient agreement. Revenue derived from the Clarient arrangement after the replacement date is recognized as collected, provided all other revenue recognition criteria are met.

14. Related Party Transactions

During 2005, the Company executed the Goodman Note in favor of an investor which became a beneficial owner of more than 5% of the Company's common stock. As of December 31, 2011 and 2012, the Company had $1,935,000 outstanding on this note. In June 2013, the investor converted the entire principal amount of $1,935,000 and accrued interest of approximately $105,000 due on the Goodman Note into 3,777,324 shares of Series A preferred stock.

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

During 2008, the Company executed the 2008 Convertible Note with an affiliate of a major shareholder who is a member of the board of directors in the amount of $1,400,000. A warrant to purchase preferred shares was issued along with the convertible promissory note (see Notes 5 and 6). This note and warrant remain outstanding as of June 30, 2013, and the loan is in default due to non-payment by the Company.

As of December 31, 2012 and 2011 and June 30, 2013, the Company had $17,780,000, $10,000,000, and $3,855,000, respectively, of notes payable outstanding to affiliates of a major shareholder who is a member of the board of directors under several note and warrant purchase agreements (see Notes 5 and 6). As of June 28, 2013, $17,060,000 of principal and $2,339,000 of interest due on a portion of these notes was converted into shares of 35,923,845 Series A preferred stock. These shares were issued subsequent to June 30, 2013, and are classified as “to be issued” as of June 30, 2013.

As of December 31, 2012 and 2011 and June 30, 2013, the Company had approximately $1,000,000, $250,000 and $1,201,000, respectively, of notes payable outstanding with other board members under several different note and warrant purchase agreements (see Notes 5 and 6). As of June 28, 2013, approximately $975,000 of principal and $101,000 of interest due on a portion of these notes were converted into 1,993,591 preferred shares. These shares were issued subsequent to June 30, 2013, and are classified as “to be issued” as of June 30, 2013.

During 2011, the Company entered into two supplier financing arrangements with a business owned by a member of the board of directors totaling $256,000, of which $60,000, $138,000 and $60,000 is outstanding as of December 31, 2012 and 2011 and June 30, 2013, respectively.

A member of the Company’s management is the controlling person of Aegea Biotechnologies, Inc. On June 2, 2012, the Company entered into an Assignment and Exclusive Cross-License Agreement with Aegea Biotechnologies, Inc.

The Company believes that these transactions were on terms at least as favorable to the Company as could have been obtained from unrelated third parties.

15. Commitments and Contingencies

Operating Leases

The Company leases office, laboratory, and warehouse space at its San Diego, California facility under a non-cancelable operating lease. The initial lease was for an eight-year term expiring in 2012. In November 2011, the Company extended the lease term through October 31, 2018 and expanded the original premises by 9,849 square feet. Under the amended lease, the landlord delivered the expanded premises in May 2013. The Company records rent expense on a straight-line basis over the life of the lease and records the excess of expense over the amounts paid as deferred rent.

For the years ended December 31, 2012 and 2011 and for the six months ended June 30, 2013 and 2012, rent expense was approximately $937,000, $901,000, $513,000 and $469,000, respectively. As of December 31, 2012 and June 30, 2013, the Company owed rent in arrears of approximately $185,000 and $229,000, respectively. This amount is included in accounts payable on the balance sheet.

Future minimum lease payments for the operating lease are as follows:

2013	$ 601,934
2014	1,233,846
2015	1,270,861
2016	1,308,987
2017	1,348,257
Thereafter	1,151,496
Total	$6,915,381

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

Employment Agreements

Under the terms of certain employment agreements with executive officers, the Company would incur additional cash compensation expense of $150,000 immediately, and $225,000 annually, upon the closing of an initial public offering or the Company's receipt of aggregate proceeds of $15,000,000 or more from the sales of equity securities.

Legal Proceedings

In the normal course of business, the Company may be involved in legal proceedings or threatened legal proceedings. The Company is not party to any legal proceedings or aware of any threatened legal proceedings which are expected to have a material adverse effect on its financial condition, results of operations or liquidity.

The Company's former Vice President of Operations filed an administrative proceeding against the Company with the California Labor Commissioner in June 2013, seeking approximately $62,000 in damages for alleged unpaid wages and penalties. A hearing is scheduled for August 19, 2013.

16. Subsequent Events

In July 2013, the Company satisfied its commitment to issue 42,245,834 shares of Series A preferred stock upon conversion of the Goodman Note, the 2011 Convertible Bridge Notes and the 2012 Revolver Notes, when its articles of incorporation were amended to increase the authorized number of shares of Series A preferred stock from 36,460,000 to 100,000,000. These shares are reflected on the balance sheet as of June 30, 2013 as shares of Series A preferred stock to be issued.

In July 2013, the Company amended the 2008 Convertible Note with a principal balance of $1,400,000, held by a related party, to provide that all principal of and accrued interest on the note would automatically convert into common stock upon the closing of an IPO at the price per share at which common stock is sold in such IPO.

In July 2013, the Company entered into a revolving line of credit with UBS Bank USA in the initial amount of $1,500,000. Interest accrues daily on the outstanding balance and is paid monthly at a variable rate which, as of July 31, 2013, is 2.75% over the 30 day LIBOR rate or a current effective annual interest rate of 2.942%. As of August 15, 2013, the amount outstanding under this revolving line of credit is $1.0 million. Three of the Company's related parties guaranteed the loan and pledged financial assets to the bank to secure their guaranties, as approved by the Company's board of directors. In return, the Company issued common stock warrants to the guarantors. The number of shares subject to the common stock warrants will be determined by dividing the warrant coverage amount, which is 50% of the fair market value of the collateral provided by the respective guarantors to secure their respective guaranty obligations to the bank, by the exercise price, which will be set at the price per share of the Company's common stock sold in its IPO. The Company has entered into an agreement with the guarantors that provides for reimbursement of any amounts paid by them on their guaranties. This reimbursement obligation is secured by a security interest in the Company's assets.

In July 2013, the Company effected a reincorporation to Delaware by merging itself with and into Biocept, Inc., a Delaware corporation, which had been formed to be and was a wholly-owned subsidiary of the Company since July 23, 2013.

In June 2013, a beneficial owner of more than 5% of the Company's common stock converted the entire principal amount of $1,935,000 and accrued interest of approximately $105,000 due on a secured promissory note held by it (the Goodman Note) into 3,777,324 shares of Series A preferred stock. (These shares of Series A preferred stock are included in the number of shares of Series A preferred stock issued in July 2013, as described in the first paragraph of this Note 16.) In July 2013, in connection with this conversion, the Company issued to such beneficial owner a warrant to purchase 333,333 shares of common stock at an exercise price which will be set at the price per share of the Company's common stock sold in the Company's IPO. The warrants will be exercisable for a two-year period beginning with the closing of the Company's IPO.

In July 2013, the Company adopted a new stock-based compensation plan entitled the 2013 Equity Incentive Plan ("2013 Plan"). The 2013 Plan authorizes the grant of the following types of awards: (i) nonstatutory stock options, (ii) ISOs, (iii) restricted stock awards, (iv) restricted stock unit awards, (v) stock

BIOCEPT, INC.
NOTES TO FINANCIAL STATEMENTS

appreciation rights, and (vi) performance compensation awards. Awards may be granted to employees, officers, non-employee board members, consultants, and other service providers of the Company. However, ISOs may not be granted to non-employees. The Company has authorized a total of 5,650,000 shares of common stock for issuance pursuant to all awards granted under the 2013 Equity Incentive Plan, subject to an increase of 800,000 shares upon the completion of an IPO, and subject to additional increases every January 1 equal to the lesser of (i) 5% of the Company's outstanding common stock on such January 1, or (ii) a number of shares determined by the Company's board of directors in its discretion for use on such particular January 1. As of July 31, 2013, no shares have been issued under the 2013 Plan, 5,123,232 stock options and RSUs have been granted under the 2013 Plan, and 526,768 shares are available for grant under the 2013 Plan.

Shares
Common Stock

PROSPECTUS

Aegis Capital Corp

Through and including , 2013 (the 25th day after the date of this offering), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable in connection with the sale and distribution of the securities being registered. All amounts are estimated except the SEC registration fee, the FINRA filing fee and the NASDAQ listing fee.

Item	Amount
SEC registration fee	
FINRA filing fee	
NASDAQ listing fee	
Legal fees and expenses	
Accounting fees and expenses	
Printing and engraving expenses	
Transfer agent and registrar fees and expenses	
Non-accountable expense allowance	
Miscellaneous fees and expenses	
Total	$

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

The Company's amended certificate of incorporation provides for indemnification of its directors and executive officers to the maximum extent permitted by the Delaware General Corporation Law, and the Company's amended and restated bylaws provide for indemnification of its directors and executive officers to the maximum extent permitted by the Delaware General Corporation Law.

In addition, the Company has entered into indemnification agreements with each of its current directors and executive officers. These agreements will require the Company to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Company and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Company also intends to enter into indemnification agreements with its future directors and executive officers.

In any underwriting agreement the Company enters into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, the Company's directors, the Company's officers and persons who control us, within the meaning of the Securities Act, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Since July 1, 2010, the Registrant made sales of the unregistered securities discussed below. All common stock share, option, warrant and RSU amounts (and the exercise price of all common stock options and warrants) reflect (i) the 1-for-3 reverse common stock split effected on November 3, 2011, and (ii) the 1-for- reverse common stock split to be effected before the closing of this offering. The offers, sales and issuances of the securities described below were exempt from registration under the Securities Act by virtue of Section 4(a)(2) of the Securities Act and/or, in the case of compensatory issuances, Securities Act Rule 701, and/or, in the case of conversions, Section 3(a)(9) of the Securities Act. No commissions were paid.

Preferred Stock Financing

From August 2010 to September 2010, the Company sold shares of its Series BB preferred stock (convertible, post-recapitalization and post-reverse-splits, into shares of the Company's common stock), to approximately accredited investors, for aggregate gross proceeds of $5.364 million.

Note/ Warrant Financings

In closings from February 2011 to 2012, the Company sold secured convertible promissory notes with an aggregate principal amount of $, together with warrants to purchase shares of its preferred stock (convertible, post-reverse-splits, into shares of the Company's common stock), to approximately accredited investors, for aggregate gross proceeds of approximately $ million.

In closings from January 2012 to 2012, the Company sold promissory notes with an aggregate principal amount of $, together with warrants to purchase shares of its preferred stock (convertible, post-reverse-splits, into shares of the Company's common stock) to approximately accredited investors, for aggregate gross proceeds of approximately $ million.

In closings from December 2012 to 2013, the Company sold promissory notes with an aggregate principal amount of $, together with warrants to purchase an indeterminate number of shares of the Company's common stock, to approximately accredited investors, for aggregate gross proceeds of approximately $ million.

Compensatory Issuances

In the last six months of 2010 the Company issued common stock options (at exercise prices ranging from $ to $ per share), common stock restricted stock units and preferred stock restricted stock units to approximately service providers.

In 2011 the Company issued common stock options (at exercise prices ranging from $ to $ per share), common stock restricted stock units and preferred stock restricted stock units to approximately service providers.

In 2012 the Company issued common stock options (at exercise prices ranging from $ to $ per share), common stock restricted stock units and preferred stock restricted stock units to approximately service providers.

In 2013 to date, the Company has issued 3,706,332 common stock options (at exercise prices ranging from $ to $ per share) and 1,916,900 common stock restricted stock units to approximately 32 service providers.

Inducement Warrants

In September 2012, the Company issued 66,666 Series A preferred stock warrants, at an exercise price of $0.60 per share, to its landlord in exchange for certain real estate ease accommodations.

In June 2013, the Company issued 333,333 common stock warrants, at an exercise price to be determined in accordance with contract, to a lender (a 5% beneficial shareholder) in connection with a note conversion.

In July 2013, the Company issued an indeterminate number of common stock warrants, at an exercise price to be determined in accordance with contract, to three guarantors in connection with their guaranties of our UBS Bank USA revolving line of credit.

Recapitalization

In November 2011, the Company effected a recapitalization in which all outstanding shares of, and warrants to purchase and restricted stock units to obtain, the Company's outstanding Series AA preferred stock and Series BB preferred stock were converted into the same number of shares of, warrants to purchase and restricted stock units to obtain, Series A preferred stock. At the same time, the Company effected the 1-for-3 reverse split of its common stock.

Conversions and Exercises

In 2011, the Company's Executive Chairman exercised 142,970 common stock options, paying an aggregate exercise price of $47,183.

In October 2011, a major shareholder converted 2,064,520 shares of Series AA preferred stock into 2,064,520 shares of common stock.

In June 2013, the holders of promissory notes with an aggregate principal balance of approximately $20,231,000 and accrued but unpaid interest of approximately $2,591,000 voluntarily converted such principal and interest into 42,245,834 shares of the Company's Series A preferred stock.

In March and April 2013, two employees exercised 1,197 common stock options, paying an aggregate exercise price of $395.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

EXHIBITS

Exhibit No.	Description of Exhibit
1.1*	Form of Underwriting Agreement between us and Aegis Capital Corp., as representative of the several underwriters.
3.1	Certificate of Incorporation.
3.1.1	Certificate of Ownership and Merger, filed July 30, 2013.
3.1.2	Certificate of Ownership, filed July 30, 2013.
3.1.3*	Certificate of Amendment of Certificate of Incorporation, comprising amended Certificate of Incorporation, to be in effect upon closing of this offering.
3.2	Bylaws.
3.2.1	Amended and Restated Bylaws, to be in effect upon closing of this offering.
4.1*	Specimen Common Stock certificate of Biocept, Inc.

Exhibit No.	Description of Exhibit
4.2*	Form of Representative's Warrant.
5.1*	Opinion of Stradling Yocca Carlson & Rauth, P.C.
10.1+	2007 Equity Incentive Plan.
10.1.1+	Form of Stock Option Grant Notice and Option Agreement under 2007 Equity Incentive Plan.
10.1.2+*	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under 2007 Equity Incentive Plan.
10.2+	2013 Equity Incentive Plan.
10.2.1+*	Form of Notice of Stock Option Grant under 2013 Equity Incentive Plan.
10.2.2+	Form of Stock Option Agreement under 2013 Equity Incentive Plan.
10.2.3+*	Form of Restricted Stock Unit Agreement under 2013 Equity Incentive Plan (for senior officers: as used July 31, 2013).
10.2.4+*	Form of Restricted Stock Unit Agreement under 2013 Equity Incentive Plan (for employees other than senior officers).
10.2.5+*	Form of Restricted Stock Unit Agreement under 2013 Equity Incentive Plan (for non-employee directors: as used July 31, 2013).
10.3+*	Form of Indemnification Agreement between us and our officers and directors.
10.4+	Form of Indemnity Agreement between Biocept, Inc., a California corporation, and its officers and directors.
10.5+*	Employment Agreement, between us and David F. Hale, dated March 10, 2011.

Exhibit No.	Description of Exhibit
10.6+*	Employment Agreement, between us and Michael W. Nall, effective as of August 26, 2013.
10.7+*	Employment Agreement, between us and Lyle J. Arnold, dated April 30, 2011.
10.8+*	Employment Agreement, between us and William G. Kachioff, dated August 1, 2011.
10.9+*	Employment Agreement, between us and Michael J. Dunn, dated February 15, 2011.
10.10+*	Form of Amended and Restated Salary Reduction and Contingent Payment Agreement.
10.11	Lease, between us and Nexus Equity VIII LLC, dated March 31, 2004.
10.11.1	First Amendment to Lease, between us and ARE-SD Region No. 18, LLC, dated November 1, 2011.
10.11.2	Second Amendment to Lease, between us and ARE-SD Region No. 18, LLC, dated September 10, 2012.
10.11.3	Warrant to Purchase Preferred Stock, dated September 10, 2012, issued by us in favor of ARE-SD Region No. 18, LLC.
10.11.4	Third Amendment to Lease, between us and ARE-SD Region No. 18, LLC, dated as of January 31, 2013, and effective as of January 1, 2013
10.12*	Amended and Restated Investor Rights Agreement, dated as of October 31, 2011, among us and certain investors named therein.
10.13	Collaboration Agreement dated as of November 2, 2012 between us and Life Technologies Corporation.
10.14	Collaboration Agreement dated as of August 17, 2011 between us and Clarient Diagnostic Services, Inc.
10.14.1*	Letter agreement dated November 14, 2012 between us and Clarient Diagnostic Services, Inc.
10.14.2	Laboratory Services Agreement dated July 29, 2013, effective as of May 1, 2013, between us and Clarient Diagnostic Services, Inc.
10.15	Master Laboratory Research Support and Services Agreement dated as of July 9, 2012 between us and Dana Farber Partners Cancer Center, Inc.
10.16	Note and Warrant Purchase Agreement dated as of December 22, 2008 between us and The Reiss Family GST Exempt Marital Deduction Trust.
10.16.1	Secured Convertible Promissory Note (original principal amount of $1,400,000), dated December 22, 2008, issued by us in favor of The Reiss Family GST Exempt Marital Deduction Trust.
10.16.1.1	Amendment of Secured Convertible Promissory Note, dated July 15, 2013.
10.16.2	Warrant to Purchase Preferred Stock dated December 22, 2008, issued by us in favor of The Reiss Family GST Exempt Marital Deduction Trust.
10.17	Amended and Restated Loan Agreement dated as of May 18, 2010 between us and Goodman Co. Ltd.
10.17.1	Warrant to Purchase Preferred Stock dated as of January 21, 2009, issued by us in favor of Goodman Co. Ltd.

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10.17.2	Loan Conversion Agreement dated as of June 28, 2013 between us and Goodman Co. Ltd.
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10.18.5*	Amendment to Note and Warrant Purchase Agreement, dated as of November 8, 2012
10.18.6	Form of Secured Convertible Promissory Note, issued by us in favor of various investors under the Note and Warrant Purchase Agreement dated as of February 1, 2011.
10.18.6.1	Form of Note Conversion Agreement dated as of June 28, 2013.
10.18.6.2	Note Conversion Agreement dated as of June 28, 2013, among us, The Reiss Family Survivor's Trust UDT dated December 19, 1988 and The Reiss Family GST Exempt Marital Deduction Trust.
10.18.7	Form of Warrant to Purchase Preferred Stock, issued by us in favor of various investors under the Note and Warrant Purchase Agreement dated as of February 1, 2011.
10.19	Note and Warrant Purchase Agreement dated as of January 13, 2012 between us and various investors.
10.19.1*	Omnibus Amendment Agreement dated as of November 8, 2012 between us and various investors.
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10.21	Reimbursement Agreement dated as of July 11, 2013 among us, The Reiss Family Survivor's Trust UDT dated December 19, 1988, Edward Neff and Hale Biopharma Ventures, LLC.
10.21.1*	Amendment of Reimbursement Agreement, dated , 2013.
10.21.2*	Form of Warrant to Purchase Common Stock, issued by us in favor of various guarantors under the Reimbursement Agreement dated as of July 11, 2013 (as thereafter amended).
10.21.3*	Subordination Agreement dated as of July 11, 2013 between us and The Reiss Family GST Exempt Marital Deduction Trust UDT dated December 19, 1988.
10.22*	Assignment and Exclusive Cross-License Agreement between us and Aegea Biotechnologies, Inc. dated June 2, 2012.
10.23+*	Restricted Stock Unit Grant Notice / Agreement between us and Ivor Royston, dated as of [November 8, 2011], as amended on February 15, 2012.
21.1	List of Subsidiaries.
23.1	Consent of Mayer Hoffman McCann P.C.
23.2*	Consent of Stradling Yocca Carlson & Rauth, P.C. (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page)

* To be filed by amendment.
\+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules

No financial statement schedules are provided because the information is not required or is shown either in the financial statements or the notes thereto.

Item 17. Undertakings

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

The undersigned Registrant hereby undertakes that:

(i) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(ii) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in San Diego, California, on the th day of August, 2013.

BIOCEPT, INC.

By: _____
David F. Hale
Executive Chairman

SIGNATURES AND POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints David F. Hale, Michael W. Nall and William G. Kachioff, and each and either of them, his or her true and lawful agent, proxy and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (i) act on, sign and file with the Securities and Exchange Commission any and all amendments (including post-effective amendments) to this registration statement together with all schedules and exhibits thereto and any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act, together with all schedules and exhibits thereto, (ii) act on, sign and file such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, (iii) act on and file any supplement to any prospectus included in this registration statement or any such amendment or any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act and (iv) take any and all actions which may be necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his substitutes may lawfully do or cause to be done by virtue thereof.

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

Signature	Title	Date
Michael W. Nall	Chief Executive Officer, President and Director (Principal Executive Officer)	August , 2013
William G. Kachioff	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August , 2013
David F. Hale	Executive Chairman and Director	August , 2013
Marsha A. Chandler	Director	August , 2013
Bruce E. Gerhardt	Director	August , 2013
Edward Neff	Director	August , 2013
Ivor Royston	Director	August , 2013
M. Faye Wilson	Director	August , 2013

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23.1	Consent of Mayer Hoffman McCann P.C.
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24.1*	Power of Attorney (included on the signature page)

* To be filed by amendment.
\+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules

No financial statement schedules are provided because the information is not required or is shown either in the financial statements or the notes thereto.

CERTIFICATE OF INCORPORATION
OF BIOCEPT, INC.

I.

The name of the corporation is Biocept, Inc. (the "***Corporation***" or the "***Company***").

II.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

III.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Corporation is authorized to issue is 153,000,000 shares, 53,000,000 shares of which shall be Common Stock (the "***Common Stock***") and 100,000,000 shares of which shall be Preferred Stock (the "***Preferred Stock***"). The par value per share of the Common Stock shall be $0.0001 and the par value per share of the Preferred Stock shall be $0.0001.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Company (the "***Board of Directors***") is hereby authorized, within the limitations and restrictions stated in this Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. 100,000,000 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "***Series A Preferred***" or "***Series Preferred***").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. DIVIDEND RIGHTS.

a. Holders of Series A Preferred, in preference to the holders of any Common Stock, shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Original Issue Price per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits recapitalizations and the like with respect to such shares). The "***Original Issue Price***" of the Series A Preferred is defined to be $0.60. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

b. So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, nor shall any shares of any Common Stock be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1.a. above) on the Series Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1.b. shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Common Stock in exchange for shares of any other Common Stock, or (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Board of Directors. The holders of the Series Preferred expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 and any corresponding rights under Delaware law as they relate to repurchase of shares upon termination of employment.

2. VOTING RIGHTS.

a. General Rights. Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock and not as a separate class, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

b. Separate Vote of Series A Preferred. For so long as any shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation) that alters or changes the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series A Preferred so as to affect them adversely in a manner different than other classes of stock;

(ii) Any increase or decrease in the authorized number of shares of Series A Preferred;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series A Preferred in rights of liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Any voluntary dissolution or liquidation of the Company;

(v) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

(vi) Any increase or decrease in the authorized number of members of the Board of Directors; or

(vii) Any action that results in the payment or declaration of a dividend or other distribution on any shares of Common Stock or Preferred Stock other than dividends required pursuant to Section 1 hereof.

c. The members of the Board of Directors shall be elected as follows:

(i) For so long as any shares of Series A Preferred remain outstanding, the holders of Series A Preferred, voting as a separate class, shall be entitled to elect one member of the Board of Directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors (the "***Series A Director***"), and to remove from office such Series A Director and to fill any vacancy caused by the resignation, death or removal of such Series A Director.

(ii) The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining authorized members of the Board of Directors not described in clause (i) above, at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of any or all such directors.

3. LIQUIDATION RIGHTS.

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall be entitled to be paid out

of the assets of the Company an amount per share of Series A Preferred equal to the Original Issue Price then in effect plus all declared and unpaid dividends on such shares of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred held by them. If, upon any liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3.a., then such assets shall be distributed among the holders of Series A Preferred then outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. After the payment of the full liquidation preference of the Series A Preferred as set forth in Section 3.a. above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series A Preferred on an as-if-converted to Common Stock basis until, with respect to the holders of Series A Preferred, such holders shall have received an aggregate of $1.20 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) of Series A Preferred then held by them plus all declared and unpaid dividends on such shares (inclusive of amounts paid pursuant to Section 3.a above). The remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of Common Stock ratably according to the number of shares of Common Stock held by each such holder.

c. The following events shall be considered a liquidation under this Section:

(i) an "***Acquisition***," which shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred; *provided* that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; or

(ii) an "***Asset Transfer***," which shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets (including the Company's technology or intellectual property) of the Company.

4. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "***Conversion Rights***"):

a. Optional Conversion. Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be

converted pursuant to this Section 4.a at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Preferred Conversion Rate" then in effect (determined as provided in Section 4.b.) by the number of shares of Series A Preferred being converted.

b. Series Preferred Conversion Rate. The conversion rate in effect at any time for conversion of the Series A Preferred (the "***Series A Preferred Conversion Rate***") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Preferred Conversion Price," calculated as provided in Section 4.c.

c. Conversion Price. The conversion price for the Series A Preferred shall initially be $1.80 (the "***Series A Preferred Conversion Price***"). The Series A Preferred Conversion Price (also referred to herein as the "***Series Preferred Conversion Price***") shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

d. Mechanics of Conversion. Each holder of Series Preferred who desires to convert the Series Preferred into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined in good faith by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

e. Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date of the incorporation of the Company in Delaware (the "***Original Filing Date***") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, then the then effective Series Preferred Conversion Price shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Filing Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, then the then effective Series Preferred Conversion Price shall be proportionately increased. Any adjustment under this Section 4.e. shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. Adjustment for Common Stock Dividends and Distributions. If the Company at any time or from time to time after the Original Filing Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the then effective Series A Preferred Conversion Rate shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the then effective Series Preferred Conversion Price by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Series Preferred Conversion Price shall be adjusted pursuant to this Section 4.f. to reflect the actual payment of such dividend or distribution.

g. Adjustments for Other Dividends and Distributions. If the Company at any time or from time to time after the Original Filing Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Company which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series Preferred or with respect to such other securities by their terms.

h. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Filing Date the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3.c. or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

i. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Filing Date there is a capital reorganization of

the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3.c. or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

j. Sale of Shares Below Applicable Series Preferred Conversion Price.

(i) If at any time or from time to time after the Original Filing Date, the Company issues or sells, or is deemed by the express provisions of this subsection j to have issued or sold, Additional Shares of Common Stock (as defined in subsection j(iv) below)), other than as a dividend or other distribution on any class of stock as provided in Section 4.f. above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.e. above, for an Effective Price (as defined in subsection j(iv) below) less than the then effective Series A Preferred Conversion Price, then and in each such case the then existing Series A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection j(ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Preferred Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4.j., the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property

other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection j(iii) below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4.j., if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "***Convertible Securities***") and if the Effective Price of such Additional Shares of Common Stock is less than the applicable Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the applicable Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by

the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of the Series Preferred.

(iv) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4.j., whether or not subsequently reacquired or retired by the Company other than (1) shares of Common Stock issued upon conversion of the Series Preferred; (2) shares of Common Stock (or options, warrants or rights therefor) issued to employees, officers, directors, banks or corporate partners of, or contractors, consultants, advisers or equipment lessors to, the Company or any subsidiary pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board of Directors; (3) shares of Common Stock issued pursuant to any acquisition of another corporation or entity, whether by merger, purchase of assets or otherwise, under any agreement or arrangement approved by the Board of Directors; (4) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Filing Date; (5) shares of Common Stock or Preferred Stock issued to investors pursuant to the first stock purchase agreement entered into by the Company following the Original Filing Date in connection with the sale of Common Stock or Preferred Stock in a bona fide capital raising transaction; (6) shares of Common Stock or Preferred Stock issued upon the conversion and/or termination of outstanding notes or other indebtedness of the Company issued pursuant to that certain Note and Warrant Purchase Agreement, dated as of December 22, 2008, that certain Note and Warrant Purchase Agreement, dated as of January 13, 2012, as amended, that certain Note and Warrant Purchase Agreement, dated as of February 1, 2011, as amended, and that certain Amended and Restated Loan Agreement, dated as of May 18, 2010; or (7) Convertible Securities, and the shares of Common Stock or Preferred Stock issued upon the conversion or exercise thereof, issued to investors pursuant to the first note and warrant purchase agreement entered into by the Company following June 1, 2013 in a bona fide capital raising transaction.

k. Certificate of Adjustment. In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred, as applicable.

l. Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3.c.) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3.c.), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

m. Automatic Conversion.

(i) Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, (A) at any time upon the vote or written consent of the holders of at least a majority of the outstanding shares of the Series A Preferred, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least $1.80, and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least $20,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4.d.

(ii) Upon the occurrence of an event specified in Section 4.m(i) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred the holders of such Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4.d.

n. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

o. Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

p. Notices. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

q. Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

r. No Dilution or Impairment. Without the consent of the holders of the then outstanding Series A Preferred, as required under Section 2.b., the Company shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

5. NO REISSUANCE OF SERIES PREFERRED. No share or shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued; and in addition, the Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Company's authorized stock.

IV.

A. EXCULPATION AND INDEMNIFICATION

1. EXCULPATION.

a. A director of this Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (i) for any breach of his duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derives an improper personal benefit. If the Delaware General Corporation Law is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of the directors of the Corporation shall be limited or eliminated to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

b. To the extent California law is applicable, the liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

2. INDEMNIFICATION.

a. The Corporation is authorized to provide indemnification of directors, officers, employees and agents to the fullest extent permissible under Delaware law.

b. To the extent California law is applicable, the Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions or through agreements with agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

B. SURVIVAL. Any repeal or modification of this Article shall only be prospective and shall not adversely affect the rights (including any limitation on the personal liability of a director) under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability or existing at the time of such repeal or modification.

V.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors and elections of directors need not be by written ballot unless otherwise provided in the Bylaws.

VI.

Meetings of the stockholders may be held within or outside the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) within or outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or by the Bylaws of the Corporation.

VII.

The Board of Directors of the Corporation shall have the power to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.

VIII.

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle. The name of the Corporation's registered agent at that address is Corporation Service Company.

IX.

The name and address of the Incorporator of the Corporation is as follows:

William Kachioff
5810 Nancy Ridge Drive
San Diego, California 92121

I, the Incorporator, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, do certify that the facts herein stated are true, and accordingly, have hereunto set my hand this 28th day of June, 2013.

/s/ William Kachioff
William Kachioff, Incorporator.

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

BIOCEPT, INC.,
a California corporation

INTO

BIOCEPT, INC.,
a Delaware corporation

Pursuant to Section 253 of the Delaware General Corporation Law

Biocept, Inc. ("Parent"), a corporation incorporated on May 12, 1997, pursuant to the provisions of the California Corporations Code, **DOES HEREBY CERTIFY** that

A. Parent owns 100% of the capital stock of Biocept, Inc. ("Subsidiary"), a corporation incorporated on June 28, 2013 pursuant to the provisions of the Delaware General Corporation Law; and

B. Parent's Board of Directors adopted resolutions, by Action by Unanimous Written Consent dated July 23, 2013, to merge Parent with and into said Subsidiary, which resolutions (in pertinent part) are as follows:

"WHEREAS, this Corporation ("Parent") lawfully owns all the issued and outstanding shares of Biocept, Inc., a Delaware corporation ("Subsidiary");

WHEREAS, this Corporation desires to merge the Corporation with and into Subsidiary pursuant to the laws of the state of Delaware and the state of California (the "Merger");

WHEREAS, in connection with such Merger, Subsidiary will be the surviving corporation and shall thereby be possessed of all the assets, estate, property, rights, privileges and franchises of this Corporation and shall thereby assume all of the obligations and liabilities of this Corporation; and

WHEREAS, it is deemed in the best interests of this Corporation to approve the merger of the Corporation with and into Subsidiary;

NOW, THEREFORE, BE IT RESOLVED that subject to prior approval of the principal terms of the Plan of Merger (which is set forth in the following resolution) by the shareholders of this Corporation as required by California law, this Corporation shall merge with and into Subsidiary in accordance with such Plan of Merger and Subsidiary shall assume all this Corporation's liabilities and obligations pursuant to Section 253 of the Delaware General Corporation Law and Section 1110 of the California Corporations Code;

RESOLVED FURTHER, that the following Plan of Merger is hereby approved and adopted:

1. Biocept, Inc., a California corporation ("Parent") owns 100% of the outstanding shares of Biocept, Inc., a Delaware corporation ("Subsidiary").

2. Pursuant to this Plan of Merger, Parent shall be merged with and into Subsidiary (the "Merger"), and Subsidiary shall be the surviving corporation in the Merger and shall thereby be possessed of all the assets, estate, property, rights, privileges and franchises of Parent and shall thereby assume all of the obligations and liabilities of Parent.

3. The Merger shall be effectuated by Parent filing a Certificate of Ownership with the Secretary of State of California and a Certificate of Ownership and Merger with the Secretary of State of Delaware.

4. Upon consummation of the Merger, each outstanding stock option, restricted stock unit, warrant or convertible note of Parent shall become exercisable or convertible, as the case may be, for the same number of shares of Common Stock of Subsidiary as the number of shares of Common Stock of Parent for which it had as of immediately before the Merger been exercisable or convertible or, as applicable, for the same number of shares of Series A Preferred Stock of Subsidiary as the number of shares of Series A Preferred Stock of Parent (or other series of Preferred Stock of Parent) for which it had as of immediately before the Merger been exercisable or convertible; and shall otherwise be unchanged.

5. Upon consummation of the Merger, each stock option plan or other compensatory or benefit plan of Subsidiary shall become a such plan of Subsidiary, and Subsidiary shall assume each such plan, unchanged except to refer to Subsidiary rather than to Parent and to refer to the same number of shares of Common Stock of Subsidiary as the number of shares of Common Stock of Parent which it had referred to as of immediately before the Merger or, as applicable, to refer to the same number of shares of Series A Preferred Stock of Subsidiary as the number of shares of Series A Preferred Stock of Parent (or other series of Preferred Stock of Parent) which it had referred to as of immediately before the Merger.

6. Upon consummation of the Merger, each previously-outstanding share of Subsidiary shall be cancelled without consideration.

7. Upon consummation of the Merger, each outstanding share of Common Stock of Parent shall be converted into one share of Common Stock of Subsidiary and each outstanding share of Series A Preferred Stock of Parent shall be converted into one share of Series A Preferred Stock of Subsidiary.

8. Each holder of shares of Parent shall thereupon surrender the share certificate or certificates theretofore representing such shares to Parent and shall upon such surrender become entitled to receive, in exchange therefor, a certificate or certificates representing (or an uncertificated book entry or entries representing) the number of shares of common stock of Subsidiary into which shares of Parent theretofore represented by the certificate or certificates so surrendered shall have been converted pursuant to this Plan of Merger. Each share of Common Stock or Series A Preferred Stock of Subsidiary shall continue to be subject to all restrictions on transfer to which its predecessor share of Parent Common Stock or Series A Preferred Stock had been subject (including market standoff agreements), and Subsidiary shall be entitled to impose certificate legends, book-entry notations and/or stop-transfer orders to reflect such restrictions.

RESOLVED FURTHER, that the officers of the Corporation be, and each of them hereby is, authorized at any time and from time to time to do and perform any and all acts or things, including, without limitation, the execution, delivery, acknowledgement and/or filing of any and all further agreements, documents, certificates, instruments or papers of whatever kind or nature, which such officers or any of them may consider necessary or appropriate to carry out the purposes of the foregoing resolutions; and the performance of such other acts and things by any of such officers shall evidence conclusively and for all purposes that such officer or officers considered the same to be necessary or appropriate as aforesaid and that such act or thing so done or performed was hereby authorized; and that all such acts or things heretofore performed by the officers of this Corporation are hereby ratified, confirmed and approved."

and

C. Parent's shareholders approved pursuant to applicable California law the principal terms of the Plan of Merger as set forth above in such Board of Directors resolutions; and

D. The proposed Merger has been adopted, approved, certified, executed and acknowledged by Parent in accordance with the laws of the State of California.

IN WITNESS THEREOF, Parent has caused this Certificate of Ownership and Merger to be signed by its duly authorized officer, named below, on this 29th day of July, 2013.

Biocept, Inc.

By: /s/ William Kachioff
William Kachioff, Senior Vice President and Secretary

Exhibit 3.1.2

CERTIFICATE OF OWNERSHIP
OF
BIOCEPT, INC.,
a California corporation

William Kachioff hereby certifies that:

1. He is the Senior Vice President and Secretary of Biocept, Inc., a California corporation ("Parent").

2. Parent owns 100% of the outstanding shares of Biocept, Inc., a Delaware corporation ("Subsidiary).

3. The Board of Directors of Parent has, and the Board of Directors of Subsidiary separately also has, adopted and approved a plan of merger, attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, which provides for Parent to be merged with and into Subsidiary and for Subsidiary to be the surviving corporation in the merger (the "Plan of Merger").

4. The principal terms of the Plan of Merger were approved by the required vote of the shareholders of Parent as required pursuant to Section 1110(c) of the California Corporations Code (i.e., as would, but for the operation of Section 1110, be required pursuant to Section 1201(d)). The total number of outstanding shares of Parent entitled to vote with respect to the principal terms of the Plan of Merger was 2,553,783 shares of Common Stock and 69,421,047 shares of Preferred Stock, all of which shares of Preferred Stock were shares of Series A Preferred Stock. The number of shares voting in favor of the principal terms of the Plan of Merger equaled or exceeded the vote required. The percentage vote required was a majority of the outstanding shares of capital stock, a majority of the outstanding shares of Common Stock, a majority of the outstanding shares of Preferred Stock, and a majority of the outstanding shares of Series A Preferred Stock.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

DATE: July 29, 2013

/s/ William Kachioff
William Kachioff
Senior Vice President

/s/ William Kachioff
William Kachioff
Secretary

EXHIBIT A

PLAN OF MERGER
OF
BIOCEPT, INC., A CALIFORNIA CORPORATION, WITH AND INTO BIOCEPT, INC.,
A DELAWARE CORPORATION

1. Biocept, Inc., a California corporation ("Parent") owns 100% of the outstanding shares of Biocept, Inc., a Delaware corporation ("Subsidiary").

2. Pursuant to this Plan of Merger, Parent shall be merged with and into Subsidiary (the "Merger"), and Subsidiary shall be the surviving corporation in the Merger and shall thereby be possessed of all the assets, estate, property, rights, privileges and franchises of Parent and shall thereby assume all of the obligations and liabilities of Parent.

3. The Merger shall be effectuated by Parent filing a Certificate of Ownership with the Secretary of State of California and a Certificate of Ownership and Merger with the Secretary of State of Delaware.

4. Upon consummation of the Merger, each outstanding stock option, restricted stock unit, warrant or convertible note of Parent shall become exercisable or convertible, as the case may be, for the same number of shares of Common Stock of Subsidiary as the number of shares of Common Stock of Parent for which it had as of immediately before the Merger been exercisable or convertible or, as applicable, for the same number of shares of Series A Preferred Stock of Subsidiary as the number of shares of Series A Preferred Stock of Parent (or other series of Preferred Stock of Parent) for which it had as of immediately before the Merger been exercisable or convertible; and shall otherwise be unchanged.

5. Upon consummation of the Merger, each stock option plan or other compensatory or benefit plan of Subsidiary shall become a such plan of Subsidiary, and Subsidiary shall assume each such plan, unchanged except to refer to Subsidiary rather than to Parent and to refer to the same number of shares of Common Stock of Subsidiary as the number of shares of Common Stock of Parent which it had referred to as of immediately before the Merger or, as applicable, to refer to the same number of shares of Series A Preferred Stock of Subsidiary as the number of shares of Series A Preferred Stock of Parent (or other series of Preferred Stock of Parent) which it had referred to as of immediately before the Merger.

6. Upon consummation of the Merger, each previously-outstanding share of Subsidiary shall be cancelled without consideration.

7. Upon consummation of the Merger, each outstanding share of Common Stock of Parent shall be converted into one share of Common Stock of Subsidiary and each outstanding share of Series A Preferred Stock of Parent shall be converted into one share of Series A Preferred Stock of Subsidiary.

8. Each holder of shares of Parent shall thereupon surrender the share certificate or certificates theretofore representing such shares to Parent and shall upon such surrender become entitled to receive, in exchange therefor, a certificate or certificates representing (or an uncertificated

book entry or entries representing) the number of shares of common stock of Subsidiary into which shares of Parent theretofore represented by the certificate or certificates so surrendered shall have been converted pursuant to this Plan of Merger. Each share of Common Stock or Series A Preferred Stock of Subsidiary shall continue to be subject to all restrictions on transfer to which its predecessor share of Parent Common Stock or Series A Preferred Stock had been subject (including market standoff agreements), and Subsidiary shall be entitled to impose certificate legends, book-entry notations and/or stop-transfer orders to reflect such restrictions.

Exhibit 3.2

BYLAWS
OF
BIOCEPT, INC.

a Delaware corporation

BYLAWS
OF
BIOCEPT, INC.
a Delaware corporation

ARTICLE I
OFFICES

Section 1. Registered Office

The registered office of the Corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices

The Corporation may also have offices at such other places both within and outside of the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 3. Books

The books of the Corporation may be kept within or outside of the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings

All meetings of stockholders for the election of directors shall be held at such place either within or outside of the State of Delaware as may be fixed from time to time by the Board of Directors, or at such other place either within or outside of the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting; provided, however, that the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 of the Delaware General Corporation Law ("**DGCL**"). If no such place is designated by the Board of Directors, the place of meeting will be the principal business office of the Corporation. Meetings of stockholders, if any, for any other purpose may be held at such time and place, within or outside of the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof, or a waiver by electronic transmission by the person or persons entitled to notice.

Section 2. Annual Meetings

Annual meetings of stockholders shall be held at a time and date designated by the Board of Directors for the purpose of electing directors and transacting such other business as may properly be brought before the meeting.

Section 3. Special Meetings

Special meetings of stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer) and shall be called by the Chief Executive Officer or President (in the absence of a Chief Executive Officer) or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of a stockholder or stockholders owning stock of the Corporation possessing at least 10% of the voting power possessed by all of the then outstanding capital stock of any class of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 4. Notification of Business to be Transacted at Meeting

To be properly brought before a meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a stockholder entitled to vote at the meeting.

Section 5. Notice

Unless waived as provided in these Bylaws, whenever stockholders are required or permitted to take any action at a meeting, written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person or by proxy, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, notice shall be given not less than 10 days nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at the meeting. If mailed, the notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation. If electronically transmitted, then notice is deemed given when transmitted and directed to a facsimile number or electronic mail address at which the stockholder has consented to receive notice.

Section 6. Quorum; Meeting Adjournment; Presence by Remote Means

(a) **Quorum; Meeting Adjournment**. Except as otherwise required by law, or provided by the Certificate of Incorporation or these Bylaws, the holders of a majority of the capital stock issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of the stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough votes to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum to conduct that meeting. If less than a majority of the shares entitled to vote at a meeting of stockholders is present in person or represented by proxy at such meeting, a majority of the shares so represented may adjourn the meeting from time to time, to reconvene at the same or another place, if any, or by means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and notice need not be given of any such adjourned meeting if the time, date, place, if any, thereof, and the means of remote communication, if

any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

(b) **Presence by Remote Means**. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(1) participate in a meeting of stockholders; and

(2) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 7. Voting

Except as otherwise required by law, or provided by the Certificate of Incorporation or these Bylaws, when a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting. If the question is one upon which a different vote is required by express provision of an applicable law, the Certificate of Incorporation or these Bylaws, such express provision shall govern and control the decision of such question.

Except as provided in the last paragraph of this Section 7, or as may be otherwise provided in the Certificate of Incorporation, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock having voting power held by such stockholder. Such votes may be cast in person or by proxy, but no proxy shall be voted after three years from its date, unless such proxy provides for a longer period. Elections of directors need not be by ballot unless the Chairman of the meeting so directs or unless a stockholder demands election by ballot at the meeting and before the voting begins.

At a stockholders' meeting at which directors are to be elected, or at elections held under special circumstances, a stockholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes which such stockholder normally is entitled to cast). Each holder of stock, or of any class or classes or of a series or series thereof; who elects to cumulate votes shall be entitled to as many votes as equals the number of votes which (absent this provision as to

cumulative voting) he or she would be entitled to cast for the election of directors with respect to such stockholder's shares of stock multiplied by the number of directors to be elected by such stockholder, and he or she may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as he or she may see fit.

Section 8. Stockholder Action by Written Consent Without a Meeting; Electronic Consent; Notice of Action

(a) **Stockholder Action by Written Consent Without a Meeting**. Except as otherwise provided in the Certificate of Incorporation, any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, is signed in a manner permitted by law by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and delivered (as provided herein) to the Corporation. Every written consent shall bear the date of signature of each stockholder who signs the consent. No written consent shall be effective to take the corporate action referred to in the written consent unless, within 60 days after the earliest dated consent delivered to the Corporation, written consents signed by a sufficient number of stockholders to take action are delivered (as provided herein) to the Corporation.

(b) **Electronic Consent**. An electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(c) **Notice of Action**. Prompt notice of the taking of corporate action without a meeting by less than unanimous consent pursuant to this Section 8 shall be given to those stockholders who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate with any governmental body, if such action had been voted on by stockholders at a meeting thereof, the certificate filed shall state, in lieu of any statement required by law concerning any vote of stockholders, that consent had been given in accordance with the provisions of Section 228 of the DGCL, and that notice has been given as provided in such section.

Section 9. List of Stockholders Entitled to Vote

The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days before the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

Section 10. Stock Ledger

The stock ledger of the Corporation shall be the only evidence as to the stockholders entitled to examine the stock ledger, the list required by Section 9 of this ARTICLE II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 11. Inspectors of Election

In advance of any meeting of stockholders, the Board of Directors may appoint one or more persons (who shall not be candidates for office) as inspectors of election to act at the meeting or any adjournment thereof. The Board of Directors may designate one or more alternate inspectors to replace any inspector who fails to act. If an inspector or inspectors are not so appointed, or if an appointed inspector fails to appear or fails or refuses to act at a meeting, the Chairman of any meeting of stockholders may, to the extent required by law, and on the request of any stockholder or stockholder's proxy shall, appoint an inspector or inspectors of election at the meeting. The duties of such inspector(s) shall include: determining the number of shares outstanding and the voting power of each; the shares represented at the meeting; the existence of a quorum; the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all stockholders. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. In the event of any dispute between or among the inspectors, the determination of the majority of the inspectors shall be binding.

Section 12. Organization

At each meeting of stockholders, the Chairman of the Board, if one shall have been elected (or in his or her absence or if one shall not have been elected, the Chief Executive Officer), shall act as Chairman of the meeting. The Secretary (or in his or her absence or inability to act, the person whom the Chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 13. Order of Business

The order and manner of transacting business at all meetings of stockholders shall be determined by the Chairman of the meeting.

ARTICLE III
DIRECTORS

Section 1. Powers

Except as otherwise required by law or provided by the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number and Election of Directors

Subject to any limitations in the Certificate of Incorporation, the authorized number of directors of the Corporation shall be no less than one and no more than nine, as determined from time to time by the Board of Directors by adopting a resolution to that effect, with the initial number of authorized directors to be set at six. Directors shall be elected at each annual meeting of stockholders to replace directors whose terms then expire, and each director elected shall hold office until his successor is duly elected and qualified, or until his earlier death, resignation or removal. Any director may resign at any time effective upon giving written notice to the Board of Directors, unless the notice specifies a later time for such resignation to become effective. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. If the resignation of a director is effective at a future time, the Board of Directors may elect a successor before such effective time to take office when such resignation becomes effective. Directors need not be stockholders.

Section 3. Removal of Directors

Unless otherwise provided by the Certificate of Incorporation or these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of shares entitled to vote at an election of directors.

Section 4. Vacancies

Unless otherwise provided in the Certificate of Incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

Each director so selected shall hold office for the remainder of the full term of office of the former director which such director replaces and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent directors.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board of Directors (as constituted immediately before any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

Section 5. Time and Place of Meetings

The Board of Directors shall hold its meetings at such place, either within or outside of the State of Delaware, and at such time as may be determined from time to time by the Board of Directors.

Section 6. Annual Meeting

The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place, either within or outside of the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 8 of this ARTICLE III, subject to the provisions of these Bylaws pertaining to waiver of notice of special meetings of the Board of Directors.

Section 7. Regular Meetings

Regular meetings of the Board of Directors may be held at such places within or outside of the State of Delaware at such date and time as the Board of Directors may from time to time determine and, if so determined by the Board of Directors, notices thereof need not be given.

Section 8. Special Meetings

Special meetings of the Board of Directors may be called by the Chairman of the Board, the Chief Executive Officer, or President (in the absence of a Chief Executive Officer), the Secretary or on the written request of two directors. Notice of the date, time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, charges prepaid,

addressed to each director at the director's address as it is shown on the records of the Corporation, or by facsimile transmission or electronic transmission (provided, with respect to electronic transmission, that the director has consented to receive the form of transmission at the address to which it is directed). In case the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone, it shall be given at least 30 hours before the time set for the meeting. If by facsimile transmission or other electronic transmission, such notice shall be transmitted at least 48 hours before such meeting.

Section 9. Quorum; Vote Required for Action; Adjournment

Except as otherwise required by law, or provided in the Certificate of Incorporation or these Bylaws, a majority of the directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors and the affirmative vote of not less than a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present at the meeting may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum to conduct that meeting. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting.

Section 10. Action by Written Consent

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing, writings, electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 11. Telephone Meetings

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee, as the case may be, by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and be heard. Participation in a meeting pursuant to this Section 11 shall constitute presence in person at such meeting.

Section 12. Compensation

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors, shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No

such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. Interested Directors

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose if: (i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV
COMMITTEES

Section 1. Committees of Directors.

The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member of the committee. Any committee, to the extent provided by law and as provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by Section 141 of the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the Corporation.

Section 2. Committee Minutes.

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3. Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of ARTICLE III of these Bylaws and ARTICLE V, Section 2 (Waiver of Notice), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE V
NOTICES

Section 1. Notice.

Unless otherwise provided in these Bylaws, whenever, under the provisions of the DGCL or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to require personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at the address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail.

Section 2. Waiver of Notice

Whenever notice is required to be given under any provision of the DGCL or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person or persons attend a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

Section 3. Electronic Notice

(a) **Electronic Transmission**. Without limiting the manner by which notice otherwise may be given effectively to stockholders and directors, any notice to stockholders or directors given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder or director to whom the notice is given. Any such consent shall be revocable by the stockholder or director by written notice to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other such action.

(b) **Effective Date of Notice**. Notice given pursuant to subsection (a) of this section shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder or director has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder or director has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder or director of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder or director. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) **Form of Electronic Transmission**. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE VI
OFFICERS

Section 1. Officers

The officers of the Corporation shall be a President, a Secretary and a Treasurer (or a Chief Financial Officer). The Corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, a Vice Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries and such other officers as may be appointed in accordance with the provisions of Section 3 of this ARTICLE VI. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. Appointment of Officers

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this ARTICLE VI, shall be appointed by the Board of Directors, and each shall serve at the pleasure of the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers

The Board of Directors may appoint, and may empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors may from time to time determine.

Section 4. Officer Compensation

The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

Section 5. Term of Office; Removal and Resignation of Officers

Each officer of the Corporation shall hold office until such officer's successor is appointed and qualify, or until such officer's earlier death, resignation or removal. Subject to the rights of an officer under any contract, any officer may be removed at any time, with or without cause, upon duly authorized action of the Board of Directors or, except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the Secretary of the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights of the Corporation under any contract to which the officer is a party.

Section 6. Vacancies in Offices

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

Section 7. Chairman of the Board

The Chairman of the Board, if such an officer is elected, shall, if present, preside at meetings of the stockholders and of the Board of Directors. He or she shall, in addition, perform such other functions (if any) as may be prescribed by the Bylaws or the Board of Directors.

Section 8. Vice Chairman of the Board

The Vice Chairman of the Board, if such an officer is elected, shall, in the absence or disability of the Chairman of the Board, perform all duties of the Chairman of the Board and when so acting shall have all the powers of and be subject to all of the restrictions upon the Chairman of the Board. The Vice Chairman of the Board shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

Section 9. Chief Executive Officer

The Chief Executive Officer of the Corporation shall, subject to the control of the Board of Directors, exercise the duties usually vested in the chief executive officer of a Corporation and perform such other powers and duties as may be assigned to him or her from time to time by the Board of Directors or prescribed by the Bylaws. In the absence of the Chairman of the Board, and any Vice Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and of the Board of Directors.

The Chief Executive Officer of the Corporation shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

Section 10. President

The President of the Corporation shall, subject to the control of the Board of Directors and Chief Executive Officer of the Corporation (if there shall be such an officer), have general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws or the Chief Executive Officer of the Corporation. In the absence of the Chairman of the Board, Vice Chairman of the Board, or the Chief Executive Officer, the President shall preside at all meetings of the Board of Directors and stockholders.

Section 11. Vice President

In the absence or disability of the Chief Executive Officer and President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, the Bylaws, the Chief Executive Officer, or the Chairman of the Board.

Section 12. Secretary

The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors and shall perform like duties for the standing committees when required. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and a summary of the proceedings.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by the Bylaws or by law to be given, and he or she shall keep or cause to be kept the seal of the Corporation if one be adopted, in safe custody, and shall have such powers and perform such other duties as may be prescribed by the Board of Directors or by the Bylaws.

Section 13. Treasurer

The Treasurer (or Chief Financial Officer) shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation. The Treasurer (or Chief Financial Officer) shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. The Treasurer (or Chief Financial Officer) shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer (or Chief Financial Officer) shall also have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

Section 14. Approval of Loans to Officers

The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

ARTICLE VII
STOCK

Section 1. Form of Certificates

The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry systems maintained by the registrar of such stock. Subject to the preceding sentence, every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation (i) by the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President and (ii) by the Chief Financial Officer or the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

Certificates may be issued for partly paid shares and, in such case, upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such

class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Signatures

Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still acting as such at the date of issue.

Section 3. Lost Certificates

The Corporation may issue a new certificate to be issued in place of any certificate theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. The Corporation may, in the discretion of the Board of Directors and as a condition precedent to the issuance of such new certificate, require the owner of such lost, stolen, or destroyed certificate, or his, her or its legal representative, to give the Corporation a bond (or other security) sufficient to indemnify it against any claim that may be made against the Corporation (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 4. Transfers

Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws or in any agreement with the stockholder making the transfer. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his or her attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

Section 5. Fixing a Record Date

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix, in advance, a record date, which shall not be more than 60 days nor less than 10 days before the date of such meeting, nor more than 60 days before any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Stockholders on the record date are entitled to notice and to vote or to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the record date, except as otherwise provided by agreement or by applicable law.

Section 6. Record Holders

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the record holder of shares to receive dividends, and to vote as such record holder, and to hold liable for calls and assessments a person registered on its books as the record holder of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

ARTICLE VIII
INDEMNIFICATION

Section 1. Right to Indemnification

The Corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Action by or in the Right of the Corporation

The Corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

Section 3. Successful on the Merits or Otherwise in Defense

To the extent that a director or officer of the Corporation shall be successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this ARTICLE VIII, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Determination of Eligibility

Any indemnification under Section 1 or 2 of this ARTICLE VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 or 2 of this ARTICLE VIII. Such determination shall be made (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (c) by the stockholders. The Corporation, acting through its Board of Directors or otherwise, shall cause such determination to be made if so requested by any person who is indemnifiable under this ARTICLE VIII.

Section 5. Advancement of Expenses

Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this ARTICLE VIII.

Section 6. Not Exclusive

The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this ARTICLE VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 7. Insurance

If so authorized by the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this ARTICLE VIII.

Section 8. Consolidation or Merger

For the purposes of this ARTICLE VIII, references to “the Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this ARTICLE VIII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Other Definitions

For purposes of this ARTICLE VIII, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include service as a director or officer of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this ARTICLE VIII.

Section 10. Survival

The indemnification and advancement of expenses provided by, or granted pursuant to, this ARTICLE VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Only for Defense

The Corporation shall be required to indemnify a person in connection with an action, suit or proceeding (or part thereof) initiated by such person only if the action, suit or proceeding (or part thereof) was authorized by the Board of Directors or as provided in Section 12 of this ARTICLE VIII.

Section 12. Right of Indemnitee to Bring Suit

If a claim under this ARTICLE VIII is not paid in full by the Corporation within 45 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or part in any such suit or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the claimant shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the claimant to enforce a right to indemnification hereunder (but not in a suit brought by the claimant to enforce a right to an advancement of expenses) it shall be a defense that the claimant has not met the applicable standard of conduct set forth in the DGCL. In any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that the claimant has not met the applicable standard of conduct set forth in the DGCL. Neither the failure of the Corporation (including its Board, independent legal counsel, or its stockholders) to have made a determination before the commencement of such suit that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall create a presumption that the claimant has not met the applicable standard of conduct or, in the case of such a suit brought by claimant, be a defense to such suit. In any suit brought by the claimant to enforce a right hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the claimant is not entitled to be indemnified or to such advancement of expenses under this ARTICLE VIII or otherwise shall be on the Corporation.

Section 13. Effect of Amendment

The rights conferred upon indemnitees in this ARTICLE VIII are contract rights. Any amendment, repeal or modification of any provision of this ARTICLE VIII by the stockholders or the directors of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

Section 14. Indemnification of Employees or Agents of the Corporation

The Corporation may (but shall not be obligated hereby to), to the extent authorized from time to time by the Board of Directors, advance expenses to and/or indemnify every person who was or is a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a (non-director, non-officer) employee or agent of the Corporation or, while a (non-director, non-officer) employee or agent of the Corporation, is or was serving at the request of the Corporation as an director, officer, employee, agent, manager or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent permitted by applicable law.

Section 15. Indemnification Contracts

The Board shall have the power to authorize the Corporation to enter into a contract with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification rights equivalent to or, if the Board so determines and applicable law so allows, greater than those provided for in this ARTICLE VIII.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Dividends

Subject to limitations contained in the DGCL and the Certificate of Incorporation, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, securities of the Corporation or other property.

Section 2. Reserve for Dividends

Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in their sole discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any such property of the Corporation, or for such other purposes as the Board of Directors think conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

Section 3. Disbursements

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 4. Fiscal Year

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 5. Corporate Seal

The Corporation may have a corporate seal in such form as shall be prescribed by the Board of Directors.

Section 6. Voting of Stock Owned by the Corporation

The Chairman of the Board, the President, the Chief Executive Officer, and any other officer of the Corporation authorized by the Board of Directors shall have power, on behalf of the Corporation, to attend, vote and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 7. Construction and Definitions

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws.

Section 8. Amendments

Subject to the DGCL, the Certificate of Incorporation and these Bylaws, the Board of Directors may by the affirmative vote of a majority of the entire Board of Directors amend or repeal these Bylaws, or adopt other Bylaws as in their judgment may be advisable for the regulation of the conduct of the affairs of the Corporation. Unless otherwise restricted by the Certificate of Incorporation, these Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, at any annual meeting of the stockholders (or at any special meeting thereof duly called for that purpose) by a majority of the combined voting power of the then outstanding shares of capital stock of all classes and series of the Corporation entitled to vote generally in the election of directors, voting as a single class, provided that, in the notice of any such special meeting, notice of such purpose shall be given. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

ARTICLE X
DISSOLUTION

If it should be deemed advisable in the judgment of the Board of Directors of the Corporation that the Corporation should be dissolved, the Board of Directors, after the adoption of a resolution to that effect by a majority of the entire Board of Directors at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the Corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating that the dissolution has been authorized in accordance with the provisions of Section 275 of the DGCL and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the DGCL. Upon such certificate’s becoming effective in accordance with Section 103 of the DGCL, the Corporation shall be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent to a dissolution in writing (either in person or by duly authorized attorney), no meeting of directors or stockholders shall be necessary. The consent shall be filed and shall become effective in accordance with Section 103 of the DGCL. Upon such consent becoming effective in accordance with Section 103 of the DGCL, the Corporation shall be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the Secretary of State of the State of Delaware shall have attached to it the affidavit of the secretary or some other officer of the Corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there shall be attached to the consent a certification by the secretary or some other officer of the Corporation setting forth the names and residences of the directors and officers of the Corporation.

ARTICLE XI
CUSTODIAN

Section 1. Appointment of a Custodian in Certain Cases

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the Corporation is insolvent, to be receivers, of and for the Corporation when:

(a) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(b) the business of the Corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the Corporation that the required vote for action by the Board of Directors cannot be obtained and the stockholders are unable to terminate this division; or

(c) the Corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

Section 2. Duties of a Custodian

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the DGCL, but the authority of the custodian shall be to continue the business of the Corporation and not to liquidate its affairs and distribute its assets, except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the DGCL.

AMENDED AND RESTATED

BYLAWS

OF

BIOCEPT, INC.,

a Delaware corporation

ARTICLE I
OFFICES

Section 1. Registered Office. The registered office of Biocept, Inc. (the "Corporation") shall be fixed in the Corporation's Certificate of Incorporation, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Certificate").

Section 2. Other Offices. The Corporation may also have offices at such other places within and/or outside the State of Delaware as the Board of Directors (the "Board") may from time to time determine or the business of the Corporation may require.

Section 3. Books. The books of the Corporation may be kept within and/or outside the State of Delaware as the Board may from time to time determine or the business of the Corporation may require. Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to the provisions of these Bylaws or the Delaware General Corporation Law (the "DGCL"). When records are kept in such manner, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper form accurately portrays the record.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of stockholders shall be held at any place within or outside the State of Delaware as designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the DGCL. In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

Section 2. Annual Meetings. Annual meetings of stockholders shall be held at a time and date designated by the Board for the purpose of electing directors and transacting such other business as may properly be brought before the meeting.

Section 3. Special Meetings. Unless otherwise required by law or the Certificate, special meetings of the stockholders may be called at any time, for any purpose or purposes; however, special meetings of the stockholders may be called only by (a) the Board, (b) the Chairman of the Board or (c) the Chief Executive Officer.

No business may be transacted at such special meeting other than the business specified in the notice to stockholders of such meeting.

Section 4. Notice; Waiver of Notice. For each meeting of stockholders, a notice of the meeting shall be given in writing or by electronic transmission, which shall state the place, date and hour of the meeting, the means of remote communication, if any, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Notice shall be deemed to be given (i) if by mail, when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by posting on an electronic network (such as a website) together with a separate notice to the stockholder of such posting, upon the later to occur of (A) such posting or (B) the giving of such separate notice of such posting; or (iv) if by any other form of electronic communication, when directed to the stockholder in the manner consented to by the stockholder. A written waiver of any such notice signed by the person entitled thereto, whenever given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Whenever notice is required to be given, under the DGCL, the Certificate or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to (or waived by) all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given, under any provision of the DGCL, the Certificate or these Bylaws, to any stockholder to whom (A) notice of two consecutive annual meetings, or (B) all, and at least two, payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such person at such person’s address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to

such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL.

The exception in subsection (A) of the above paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 5. Quorum; Adjournment. Except as otherwise required by law, or provided by the Certificate or these Bylaws, the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, and the means of remote communication, if any, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 6. Voting; Proxies. Except as otherwise required by law, or provided by the Certificate or these Bylaws, any question brought before any meeting of stockholders at which a quorum is present shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereat; provided, however, that directors shall by elected by plurality vote. Unless otherwise provided in the Certificate, each stockholder shall be entitled to cast one vote for each share of the capital stock held by such stockholder. Such votes may be cast in person or by proxy, but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. Elections of directors need not be by ballot unless the Chairman of the meeting so directs or unless a stockholder demands election by ballot at the meeting and before the voting begins.

Section 7. No Stockholder Action by Written Consent. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called and held annual or special meeting of such stockholders and may not be effected by a consent in writing by stockholders.

Section 8. Record Date for Stockholder Notice; Voting. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days before any other such action.

If the Board does not fix a record date in accordance with these Bylaws and applicable law:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 9. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days before the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Corporation’s principal place of business.

In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

Section 10. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 9 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders. Any director shall have the right to examine the Corporation's stock ledger, the list of its stockholders required by Section 9 of this Article II, and its other books and records for a purpose reasonably related to his or her position as a director.

Section 11. Advance Notice of Stockholders' Business. Only such business shall be conducted as shall have been properly brought before a meeting of the stockholders of the Corporation. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (b) otherwise properly brought before the meeting by or at the direction of the Board, or (c) a proper matter for stockholder action under the DGCL that has been properly brought before the meeting by a stockholder (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 11 of Article II and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 11. For such business to be considered properly brought before the meeting by a stockholder such stockholder must, in addition to any other applicable requirements, have given timely notice in proper form of such stockholder's intent to bring such business before such meeting. To be timely, such stockholder's notice must be delivered to or mailed and received by the secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, before the anniversary date of the immediately preceding annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first.

To be in proper form, a stockholder's notice to the secretary shall be in writing and shall set forth:

(a) the name and record address of the stockholder of record who intends to propose the business and the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder of record;

(b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to introduce the business specified in the notice;

(c) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting;

(d) any material interest of the stockholder in such business; and

(e) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the Corporation's proxy statement and form of proxy for a stockholder's meeting, stockholders must, in addition to complying with this Section 11, provide notice as required by, and otherwise comply with the requirements of, the Exchange Act and the regulations promulgated thereunder.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 11 of Article II. The Chairman of the meeting may refuse to acknowledge the proposal of any business not made in compliance with the foregoing procedure.

Section 12. Advanced Notice of Director Nominations.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate with respect to the right of holders of Preferred Stock of the Corporation to nominate and elect a specified number of directors, if any. To be properly brought before an annual meeting of stockholders, or any special meeting of stockholders called for the purpose of electing directors, nominations for the election of director(s) must be (a) specified in the notice of meeting (or any supplement thereto), (b) made by or at the direction of the Board (or any duly authorized committee thereof) or (c) made by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 12 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 12.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the secretary of the Corporation. To be timely, a stockholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the Corporation, in the case of an annual meeting, in accordance with the provisions set forth in Section 11 of Article II of these Bylaws, and, in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the secretary must set forth:

(a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation, if any, which are owned beneficially or of record by the person, (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other

person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (v) any other information relating to such person that is required to be disclosed (or which corresponds to the information which would be so required, whether or not such disclosure is actually required in the instance) in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and

(b) as to such stockholder giving notice, the information required to be provided pursuant to Section 11 of Article II of these Bylaws.

Subject to the rights of any holders of Preferred Stock of the Corporation, if any, no person shall be eligible for election as a director of the Corporation (other than pursuant to Section 4 of Article III of these Bylaws) unless nominated in accordance with the procedures set forth in this Section 12. If the Chairman of the meeting properly determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 13. Inspectors of Election. In advance of any meeting of stockholders, the Board may appoint one or more persons (who shall not be candidates for office) as inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, or if an appointed inspector fails to appear or fails or refuses to act at a meeting, the Chairman of any meeting of stockholders may, and on the request of any stockholder or his proxy shall, appoint an inspector or inspectors of election at the meeting. The duties of such inspector(s) shall include: determining the number of shares outstanding and the voting power of each; determining the shares represented at the meeting; determining the existence of a quorum; determining the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all stockholders. In the event of any dispute between or among the inspectors, the determination of the majority of the inspectors shall be binding.

Section 14. Organization. At each meeting of stockholders the Chairman of the Board, if one shall have been elected, (or in his absence or if one shall not have been elected, the Chief Executive Officer) shall act as Chairman of the meeting. The Secretary (or in his absence or inability to act, the person whom the Chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 15. Order of Business. The order and manner of transacting business at all meetings of stockholders shall be determined by the Chairman of the meeting.

ARTICLE III
DIRECTORS

Section 1. Powers. Except as otherwise required by law or provided by the Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

Section 2. Number of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, the authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of at least one member. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Section 3. Election and Term of Office of Directors. Except as provided in Section 4 and Section 15 of Article III of these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting of stockholders. Directors need not be stockholders. The Certificate or these Bylaws may prescribe other qualifications for directors. Each director, including a director elected to fill a vacancy, shall hold office until such director's successor is elected or until such director's earlier death, resignation or removal.

Except as provided in the Certificate or Section 4 of Article III of these Bylaws, directors shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, one class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2014, another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2015, and another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2016, with each class to hold office until its successor is duly elected. At each succeeding annual meeting of stockholders, commencing with the first annual meeting (a) directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (b) if authorized by a resolution of the Board, directors may be elected to fill any vacancy on the Board, regardless of how such vacancy shall have been created (as set forth in Section 4 below).

Section 4. Resignation; Vacancies. Any director may resign at any time upon written notice or by electronic transmission to the Corporation.

Subject to the rights of the holders of any series of Preferred Stock of the Corporation then outstanding, if any, and unless the Board otherwise determines, newly created directorships resulting from any increase in the authorized number of directors, or any vacancies on the Board resulting from the death, resignation, retirement, removal from office or other cause shall, unless otherwise required by law, be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director. A person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected. When one or more directors resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section 4 in the filling of other vacancies. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 5. Time and Place of Meetings. The Board of Director shall hold its meetings at such place, either within or outside the State of Delaware, and at such time as may be determined from time to time by the Board.

Section 6. Annual Meeting. If practicable the Board shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board may be held at such place, either within or outside the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 8 of this Article III or in a waiver of notice thereof.

Section 7. Regular Meetings. Regular meetings of the Board may be held at such places within or outside the State of Delaware at such date and time as the Board may from time to time determine and, if so determined by the Board, notices thereof need not be given.

Section 8. Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, the Chief Executive Officer, or by a majority of the authorized directors. Notice of the date, time and place of special meetings shall be delivered personally or by telephone or electronic mail to each director or sent by first-class mail, charges prepaid, addressed to each director at the director's address as it is shown on the records of the Corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or electronic mail, it shall be so delivered at least 48 hours before the time of the holding of the meeting. The notice need not specify the purpose of the meeting. A written waiver of any such notice signed by the person entitled thereto, whenever given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. Quorum; Vote Required for Action; Adjournment. Except as otherwise required by law or provided in the Certificate or these Bylaws, a majority of the authorized number of directors shall constitute a quorum for the transaction of business at all meetings of the Board and the affirmative vote of not less than a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum to conduct that meeting. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board may transact any business which might have been transacted at the original meeting.

Section 10. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or electronic transmissions are filed with the minutes of proceedings of the Board or committee.

Section 11. Telephonic Meetings. Members of the Board of the Corporation, or any committee designated by the Board, may participate in a meeting of the Board or such committee, as the case may be, by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 11 shall constitute presence in person at such meeting.

Section 12. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of the committee. Any committee, to the extent allowed by law and as provided in the resolution establishing such committee, shall have and may exercise all the power and authority of the Board in the management of the business and affairs of the Corporation, but no such committee shall have the power or authority in reference to amending the Certificate, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation; and, unless the resolution or the Certificate expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Each committee shall keep regular minutes of its meetings and report to the Board when required.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(a) Section 5 (relating to place of meetings);

(b) Section 7 (relating to regular meetings);

(c) Section 8 (relating to special meetings and notice);

(d) Section 9 (relating to quorum, vote required and adjournment); and

(e) Section 10 (relating to action by written consent).

of Article III of these Bylaws, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members.

Notwithstanding the foregoing: (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee; (ii) special meetings of committees may also be called by resolution of the Board; and (iii) notice of special meetings of

committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

Section 13. Compensation. The directors may be paid such compensation for their services on as the Board and/or Board committees as the Board shall from time to time determine. Additional compensation may be paid to the Chairman of the Board, an identified "lead director," and/or committee chairs, as the Board shall from time to time determine.

Section 14. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors, officers or managers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or the committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if: (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

Section 15. Removal. Unless otherwise restricted by statute, the Certificate or these Bylaws, any director, or all of the directors, may be removed from the Board, but only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of all the then outstanding shares of capital stock of the Corporation then entitled to vote at the election of directors, voting together as a single class.

ARTICLE IV
OFFICERS

Section 1. Officers. The officers of the Corporation shall be a Chief Executive Officer, a Secretary and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a President, one or more Vice Presidents, one or more Assistant Financial Officers, one or more Assistant Secretaries and such other officers as may be appointed in accordance with the provisions of this Article IV. Any number of offices may be held by the same person.

Section 2. Appointment of Officers. The officers of the Corporation shall be designated and appointed by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment. At or after the time of the appointment of officers, the directors may by resolution determine the order of their rank.

Section 3. Authority and Duties of Officers. All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as the authority and duties customarily vested by American corporations in the officer of such title or as otherwise may be designated from time to time by the Board.

Section 4. Removal and Resignation of Officers. Subject to the rights of an officer under any contract, any officer may be removed at any time, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies in Offices. A vacancy in any office because of death, resignation, removal, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

ARTICLE V
STOCK

Section 1. Stock Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman of the Board, Chief Executive Officer or the President, and by Chief Financial Officer, or the Secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form.

Section 2. Signatures. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Corporation may issue a new certificate to be issued in place of any certificate theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. The Corporation may, in the discretion of the Board and as a condition precedent to the issuance of such new certificate, require the owner of such lost, stolen, or destroyed certificate, or his legal representative, to give the Corporation a bond (or other security) sufficient to indemnify it against any claim that may be made against the Corporation (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 4. Transfers. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except in the case of uncertificated shares issued in accordance with Section 1 of Article V of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefore. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to (if such transfer does not entail a violation of law) issue a new certificate (which may bear any appropriate legends) to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

Section 5. Record Holders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the record holder of shares to receive dividends, and to vote as such record holder, and to hold liable for any calls and assessments a person registered on its books as the record holder of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

ARTICLE VI
INDEMNIFICATION

Section 1. Right to Indemnification. The Corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Action by or in the Right of the Corporation. The Corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director

or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

Section 3. Successful on the Merits or Otherwise in Defense. To the extent that a director or officer of the Corporation shall be successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Determination of Eligibility. Any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 or 2 of this Article VI. Such determination shall be made (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (c) by the stockholders. The Corporation, acting through its Board of Directors or otherwise, shall cause such determination to be made if so requested by any person who is indemnifiable under this Article VI.

Section 5. Advancement of Expenses. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VI.

Section 6. Not Exclusive. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 7. Insurance. If so authorized by the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of (or in an

equivalent position for) another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VI.

Section 8. Consolidation or Merger. For the purposes of this Article VI, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Other Definitions. For purposes of this Article VI, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include service as a director or officer of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

Section 10. Survival. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Only for Defense. The Corporation shall be required to indemnify a person in connection with an action, suit or proceeding (or part thereof) initiated by such person only if the action, suit or proceeding (or part thereof) was authorized by the Board of Directors or as provided in Section 12 of this Article VI.

Section 12. Right of Indemnitee to Bring Suit. If a claim under this Article VI is not paid in full by the Corporation within 45 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or part in any such suit or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the claimant shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the claimant to enforce a right to indemnification hereunder (but not in a suit brought by the claimant to enforce a right to an advancement of expenses) it shall be a defense that the claimant has not met the applicable standard of conduct set forth in the DGCL. In any suit by the

Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that the claimant has not met the applicable standard of conduct set forth in the DGCL. Neither the failure of the Corporation (including its Board, independent legal counsel, or its stockholders) to have made a determination before the commencement of such suit that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall create a presumption that the claimant has not met the applicable standard of conduct or, in the case of such a suit brought by claimant, be a defense to such suit. In any suit brought by the claimant to enforce a right hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the claimant is not entitled to be indemnified or to such advancement of expenses under this Article VI or otherwise shall be on the Corporation.

Section 13. Effect of Amendment. The rights conferred upon indemnitees in this Article VI are contract rights. Any amendment, repeal or modification of any provision of this Article VI by the stockholders or the directors of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

Section 14. Indemnification of Employees or Agents of the Corporation. The Corporation may (but shall not be obligated hereby to), to the extent authorized from time to time by the Board of Directors, advance expenses to and/or indemnify every person who was or is a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a (non-director, non-officer) employee or agent of the Corporation or, while a (non-director, non-officer) employee or agent of the Corporation, is or was serving at the request of the Corporation as an director, officer, employee, agent, manager or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent permitted by applicable law.

Section 15. Indemnification Contracts. The Board shall have the power to authorize the Corporation to enter into a contract with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of (or in an equivalent position for) another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification rights equivalent to or, if the Board so determines and applicable law so allows, greater than those provided for in this Article VI.

ARTICLE VII
GENERAL PROVISIONS

Section 1. Dividends. Subject to limitations contained in the DGCL and the Certificate, the Board may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, securities of the Corporation or other property.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

Section 4. Corporate Seal. The Corporation shall have a corporate seal in such form as shall be prescribed by the Board.

Section 5. Voting of Stock Owned by the Corporation. The Chief Executive Officer and any other officer of the Corporation authorized by the Board shall have power, on behalf of the Corporation, to attend, vote at and/or grant proxies to be used at any meeting of stockholders or other equity owners of any corporation (except this Corporation) or other entity in which the Corporation may hold stock or other equity securities.

Section 6. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws.

Section 7. Provisions of Certificate Govern. In the event of any inconsistency between the terms of these Bylaws and the Certificate, the terms of the Certificate shall govern.

Section 8. Amendments. The Bylaws of the Corporation may be adopted, amended or repealed by a majority of the voting power of the stockholders entitled to vote; provided, however, that the Corporation may, in its Certificate, also confer the power to adopt, amend or repeal bylaws upon the Board. The fact that such power has been so conferred upon the Board shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws. Notwithstanding the foregoing and any provision of law that might otherwise permit a lesser vote or no vote, a resolution adopted by both the Board and by the affirmative vote of the holders at least 67% of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote shall be required to amend or repeal Section 3 of Article II, Section 7 of Article II, Section 2 of Article III, Section 11 of Article II, Section 12 of Article II, Section 2 of Article III, Section 3 of Article III, Section 4 of Article III, Section 15 of Article III and Section 13 of Article VI of these Bylaws, or this final sentence of this Section 8 of Article VII of these Bylaws.

BIOCEPT, INC.

2007 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD: MARCH 6, 2007
APPROVED BY THE SHAREHOLDERS: MARCH 19, 2007
AMENDED BY THE BOARD: FEBRUARY 6, 2009
AMENDMENT APPROVED BY THE SHAREHOLDERS: FEBRUARY 6, 2009
AMENDED BY THE BOARD: NOVEMBER 8, 2010
AMENDMENT APPROVED BY THE SHAREHOLDERS: NOVEMBER 8, 2010
TERMINATION DATE: MARCH 6, 2017

1. GENERAL.

(a) Successor to Prior Plan. This Plan was adopted by the Board to be effective as provided in Section 12 on the Effective Date. The Plan is intended as the successor to the Biocept, Inc. Amended and Restated 1997 Equity Incentive Plan (the "***Prior Plan***"). Following the Effective Date of this Plan, no additional stock awards shall be granted under the Prior Plan. Any shares remaining available for issuance pursuant to the exercise of options or settlement of stock awards under the Prior Plan shall be added to the share reserve of this Plan and available for issuance pursuant to Stock Awards granted hereunder. All outstanding stock awards granted under the Prior Plan shall remain subject to the terms of the Prior Plan, except that the Board may elect to extend one or more of the features of the Plan to stock awards granted under the Prior Plan. Any shares subject to outstanding stock awards granted under the Prior Plan that expire or terminate for any reason prior to exercise or settlement shall be added to the share reserve of this Plan and become available for issuance pursuant to Stock Awards granted hereunder. All Stock Awards granted subsequent to the Effective Date of this Plan shall be subject to the terms of this Plan.

(b) Eligible Stock Award Recipients. The persons eligible to receive Stock Awards are Employees, Directors and Consultants.

(c) Available Stock Awards. The Plan provides for the grant of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Restricted Stock Awards, (iv) Restricted Stock Unit Awards, (v) Stock Appreciation Rights, (vi) Performance Stock Awards, and (vii) Other Stock Awards.

(d) General Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Stock Awards as set forth in Section 1(b), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Stock Awards.

2. DEFINITIONS. As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) ***"Affiliate"*** means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) ***"Board"*** means the Board of Directors of the Company.

(c) ***"Capitalization Adjustment"*** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.

(d) ***"Cause"*** means with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made in good faith by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated by reason of dismissal without Cause for the purposes of outstanding Stock Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

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

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person from the Company in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange

Act Person (the ***"Subject Person"***) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the shareholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the shareholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur; or

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by shareholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

The term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however,* that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(f) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(g) ***"Committee"*** means a committee of two or more Directors to whom authority has been delegated by the Board in accordance with Section 3(c).

(h) ***"Common Stock"*** means the common stock of the Company.

(i) ***"Company"*** means Biocept, Inc., a California corporation.

(j) ***"Consultant"*** means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) ***"Continuous Service"*** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; *provided, however*, if the corporation for which a Participant is rendering service ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such corporation ceases to qualify as an Affiliate. For example, a change in status from an employee of the Company to a consultant to an Affiliate or to a Director shall not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy or in the written terms of the Participant's leave of absence agreement.

(l) ***"Corporate Transaction"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least 90% of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted

or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) ***"Director"*** means a member of the Board.

(n) ***"Disability"*** means the inability of a Participant to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) ***"Effective Date***" means the effective date of this Plan document, which is the date that this Plan is first approved by the Company's shareholders.

(p) ***"Employee"*** means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) ***"Entity"*** means a corporation, partnership, limited liability company or other entity.

(r) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended.

(s) ***"Exchange Act Person"*** means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date of the Plan as set forth in Section 12, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(t) ***"Fair Market Value"*** means, as of any date, the value of the Common Stock determined by the Board (i) in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations and (ii) in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) ***"Incentive Stock Option"*** means an Option that qualifies as an "incentive stock option" within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) ***"Nonstatutory Stock Option"*** means any Option that does not qualify as an Incentive Stock Option.

(w) ***"Officer"*** means any person designated by the Company as an officer.

(x) ***"Option"*** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) ***"Option Agreement"*** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(z) ***"Optionholder"*** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) ***"Other Stock Award"*** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 7(e).

(bb) ***"Other Stock Award Agreement"*** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(cc) ***"Own," "Owned," "Owner," "Ownership"*** A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(dd) ***"Participant"*** means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ee) ***"Performance Stock Award"*** means a Stock Award granted under the terms and conditions of Section 7(d).

(ff) ***"Plan"*** means this Biocept, Inc. 2007 Equity Incentive Plan.

(gg) ***"Restricted Stock Award"*** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(a).

(hh) ***"Restricted Stock Award Agreement"*** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ii) ***"Restricted Stock Unit Award"*** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(b).

(jj) ***"Restricted Stock Unit Award Agreement"*** means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.

(kk) ***"Securities Act"*** means the Securities Act of 1933, as amended.

(ll) ***"Stock Appreciation Right"*** means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 7(c).

(mm) ***"Stock Appreciation Right Agreement"*** means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(nn) ***"Stock Award"*** means any right granted under the Plan, including an Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, Performance Stock Award, or any Other Stock Award.

(oo) ***"Stock Award Agreement"*** means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(pp) ***"Subsidiary"*** means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(qq) ***"Ten Percent Shareholder"*** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

3. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee, as provided in Section 3(c).

(b) Powers of Board. The Board or the Committee, to the extent delegated to the Committee pursuant to Section 3(c), shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Stock Awards; (B) when and how each Stock Award shall be granted; (C) what type or combination of types of Stock Award shall be granted; (D) the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; and (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan, subject to the limitations, if any, of applicable law. However, except as provided in Section 10(a) relating to Capitalization Adjustments, no amendment shall be effective unless approved by the shareholders of the Company to the extent shareholder approval is necessary to satisfy applicable law. Rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing.

(vii) To submit any amendment to the Plan for shareholder approval.

(viii) To amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options or to bring the Plan or Incentive Stock Options granted under it into compliance therewith.

(ix) To amend the terms of any one or more Stock Awards or stock awards granted under the Prior Plan, including, but not limited to, amendments to provide terms more favorable than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however,* that the rights

under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(xii) To effect, at any time and from time to time, with the consent of any adversely affected Participant, (1) the reduction of the exercise price of any outstanding Option or the strike price of any outstanding Stock Appreciation Right under the Plan; (2) the cancellation of any outstanding Option or Stock Appreciation Right under the Plan and the grant in substitution therefor of (a) a new Option or Stock Appreciation Right under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (b) a Restricted Stock Award, (c) a Restricted Stock Unit Award, (d) an Other Stock Award, (e) cash, and/or (f) other valuable consideration (as determined by the Board, in its sole discretion); or (3) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees of two or more members of the Board. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

4. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of Section 10(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards after the Effective Date shall not exceed (i) 147,733 shares of Common Stock (which is the number of shares remaining available for issuance and not subject to outstanding stock awards under the Prior Plan as of the Effective Date) plus (ii) the number of shares added to the reserve pursuant to subsection 4(b) (which number may not exceed 1,315,686

shares of Common Stock, which is the number of shares subject to outstanding stock awards under the Prior Plan as of the Effective Date) plus (iii) 6,036,581 shares of Common Stock (in the aggregate, the ***"Share Reserve"***).

(b) Additions to the Share Reserve. The Share Reserve shall be increased from time to time by a number of shares equal to the number of shares of Common Stock that (i) are issuable pursuant to options or stock awards outstanding under the Prior Plan as of the Effective Date of the Plan and (ii) but for the termination of the Prior Plan as of the Effective Date, would otherwise have reverted to the share reserve of the Prior Plan pursuant to the provisions thereof.

(c) Reversion of Shares to the Share Reserve. If any (i) Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, (ii) shares of Common Stock issued to a Participant pursuant to a Stock Award are forfeited to or repurchased by the Company pursuant to the Company's reacquisition or repurchase rights under the Plan, including any forfeiture or repurchase caused by the failure to meet a contingency or condition required for the vesting of such shares, or (iii) Stock Award is settled in cash, or (iv) shares of Common Stock are cancelled in accordance with the cancellation and regrant provisions of Section 3(b)(xii), then the shares of Common Stock not issued under such Stock Award, or forfeited to or repurchased by the Company, shall revert to and again become available for issuance under the Plan.

If any shares subject to a Stock Award are not delivered to a Participant because the Stock Award is exercised through a reduction of shares subject to the Stock Award (i.e., "net exercised") or an appreciation distribution in respect of a Stock Appreciation Right is paid in shares of Common Stock, the number of shares subject to the Stock Award that are not delivered to the Participant shall remain available for subsequent issuance under the Plan. If any shares subject to a Stock Award are not delivered to a Participant because such shares are withheld in satisfaction of the withholding of taxes incurred in connection with the exercise of an Option or Stock Appreciation Right or the issuance of shares under a Restricted Stock Award, Restricted Stock Unit Award or Other Stock Award, the number of shares that are not delivered to the Participant shall remain available for subsequent issuance under the Plan. If the exercise price of any Stock Award is satisfied by tendering shares of Common Stock held by the Participant (either by actual delivery or attestation), then the number of shares so tendered shall remain available for subsequent issuance under the Plan.

(d) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section 4, subject to the provisions of Section 10(a) relating to Capitalization Adjustments the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be double the number of shares of Common Stock in the Share Reserve.

(e) Source of Shares. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company.

(f) Share Reserve Limitation. To the extent required by Section 260.140.45 of Title 10 of the California Code of Regulations, the total number of shares of Common Stock

issuable upon exercise of all outstanding Options and the total number of shares of Common Stock provided for under any stock bonus or similar plan of the Company shall not exceed the applicable percentage as calculated in accordance with the conditions and exclusions of Section 260.140.45 of Title 10 of the California Code of Regulations, based on the shares of Common Stock of the Company that are outstanding at the time the calculation is made.

5. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to Employees. Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

(b) Ten Percent Shareholders.

(i) A Ten Percent Shareholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

(ii) A Ten Percent Shareholder shall not be granted a Nonstatutory Stock Option or Stock Appreciation Right (if such award could be settled in shares of Common stock) unless the exercise price of such Option or strike price of such Stock Appreciation Right is at least (i) 110% of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock on the date of grant as is permitted by Section 260.140.41 of Title 10 of the California Code of Regulations at the time of the grant of the Option or Stock Appreciation Right.

(iii) A Ten Percent Shareholder shall not be granted a Restricted Stock Award, Restricted Stock Unit Award or Other Stock Award unless the purchase price of the restricted stock (or the value of the services provided in consideration of such Stock Award) is at least (i) 100% of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock on the date of grant as is permitted by Section 260.140.42 of Title 10 of the California Code of Regulations at the time of the grant of the award.

(c) Consultants. A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or the sale of the Company's securities to such Consultant is not exempt under Rule 701 of the Securities Act ("***Rule 701***") because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options need not be identical; *provided*, *however*, that each Option Agreement shall include (through incorporation of provisions hereof by reference in the Option Agreement or otherwise) the substance of each of the following provisions:

(a) Term. No Option shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Option Agreement; *provided*, *however*, that an Incentive Stock Option granted to a Ten Percent Shareholder shall be subject to the provisions of Section 5(b).

(b) Exercise Price of an Incentive Stock Option. Subject to the provisions of Section 5(b) regarding Ten Percent Shareholders, the exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Section 424(a) of the Code.

(c) Exercise Price of a Nonstatutory Stock Option. Subject to the provisions of Section 5(b) regarding Ten Percent Shareholders, the exercise price of each Nonstatutory Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, a Nonstatutory Stock Option may be granted with an exercise price lower than one hundred percent (100%) of the Fair Market Value of the Common Stock if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Section 424(a) of the Code.

(d) Consideration. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The methods of payment permitted by this Section 6(d) are:

(i) by cash or check;

(ii) bank draft or money order payable to the Company;

(iii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iv) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(v) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided, further, however,* that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(vi) in any other form of legal consideration that may be acceptable to the Board.

(e) Transferability of Options. The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options shall apply:

(i) Restrictions on Transfer. An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option to such extent as permitted by Section 260.140.41(d) of Title 10 of the California Code of Regulations at the time of the grant of the Option and in a manner consistent with applicable tax and securities laws. Additionally, the Board may permit transfer of an Incentive Stock Option only to the extent permitted by sections 421, 422 and 424 of the Code and the regulations and other guidance thereunder.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order; *provided, however*, that if an Option is an Incentive Stock Option, such Option shall be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be the beneficiary of an Option with the right to exercise the Option and receive the Common stock or other consideration resulting from an Option exercise.

In the absence of such a designation, the executor or administrator of the Optionholder's estate shall be entitled to exercise the Option and receive the Common Stock or other consideration resulting from an Option exercise.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section 6(f) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

(g) Minimum Vesting. Notwithstanding the foregoing Section 6(f), to the extent that the following restrictions on vesting are required by Section 260.140.41(f) of Title 10 of the California Code of Regulations at the time of the grant of the Option, then:

(i) Options granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock at a rate of at least 20% per year over five years from the date the Option was granted, subject to reasonable conditions such as continued employment; and

(ii) Options granted to Officers, Directors or Consultants may be made fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Company.

(h) Termination of Continuous Service. In the event that an Optionholder's Continuous Service terminates (other than for Cause or upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than 30 days unless such termination is for cause), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(i) Extension of Termination Date. An Optionholder's Option Agreement may provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than for Cause or upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of a period of three months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such

registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

(j) Disability of Optionholder. In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six months), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(k) Death of Optionholder. In the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death, or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six months), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(l) Termination for Cause. Except as explicitly provided otherwise in an Optionholder's Option Agreement, in the event that an Optionholder's Continuous Service is terminated for Cause, the Option shall terminate upon the termination date of such Optionholder's Continuous Service, and the Optionholder shall be prohibited from exercising his or her Option from and after the time of such termination of Continuous Service.

(m) Non-Exempt Employees. No Option granted to an Employee that is a non-exempt employee for purposes of the Fair Labor Standards Act shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay.

(n) Early Exercise. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate.

(o) Right of Repurchase. Subject to the "Repurchase Limitation" in Section 9(j), the Option may, but need not, include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Optionholder pursuant to the exercise of the Option.

(p) Right of First Refusal. The Option may, but need not, include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Optionholder of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option. Except as expressly provided in this Section 6(p) or in the Stock Award Agreement for the Option, such right of first refusal shall otherwise comply with any applicable provisions of the Bylaws of the Company.

7. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (ii) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical; *provided, however,* that each Restricted Stock Award Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (i) past services actually rendered to the Company or an Affiliate, or (ii) any other form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law. Subject to the provisions of Section 5(b) regarding Ten Percent Shareholders, any price to be paid by the Participant for each share subject to the Restricted Stock Award shall not be less than 85% of the Common Stock's Fair Market Value on the date such Stock Award is made or at the time the purchase is consummated. A Restricted Stock Award may be awarded as a stock bonus (*i.e.*, with no cash purchase price to be paid) to the extent permissible under applicable law.

(ii) Vesting. Shares of Common Stock acquired under a Restricted Stock Award may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Continuous Service. In the event a Participant's Continuous Service terminates, the Company may receive, pursuant to a forfeiture condition, any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical, *provided, however,* that each Restricted Stock Unit Award Agreement shall include (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit

Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.

(c) Stock Appreciation Rights. Each Stock Appreciation Right Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. Stock Appreciation Rights may be granted as stand-alone Stock Awards or in tandem with other Stock Awards. The terms and conditions of Stock Appreciation Right Agreements may change from time to time, and the terms and conditions of separate Stock Appreciation Right Agreements need not be identical; *provided*, *however*, that each Stock Appreciation Right Agreement shall include (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Term. No Stock Appreciation Right shall be exercisable after the expiration of 10 years from the date of its grant or such shorter period specified in the Stock Appreciation Right Agreement.

(ii) Strike Price. Each Stock Appreciation Right will be denominated in shares of Common Stock equivalents. The strike price of each Stock Appreciation Right granted as a stand-alone or tandem Stock Award shall not be less than 100% of the Fair Market Value of the Common Stock equivalents subject to the Stock Appreciation Right on the date of grant.

(iii) Calculation of Appreciation. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of share of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board at the time of grant of the Stock Appreciation Right.

(iv) Vesting. At the time of the grant of a Stock Appreciation Right, the Board may impose such restrictions or conditions to the vesting of such Stock Appreciation Right as it, in its sole discretion, deems appropriate; *provided, however*, that a Stock Appreciation Right that may be settled in shares of Common Stock shall be subject to the provision of Section 9(j).

(v) Exercise. To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(vi) Payment. The appreciation distribution in respect of a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and set forth in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(vii) Termination of Continuous Service. In the event that a Participant's Continuous Service terminates (other than for Cause or upon the Participant's death or Disability), the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (A) the date three months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than 30 days unless such termination is for cause), or (B) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

(viii) Termination for Cause. Except as explicitly provided otherwise in an Participant's Stock Appreciation Right Agreement, in the event that a Participant's Continuous Service is terminated for Cause, the Stock Appreciation Right shall terminate upon the termination date of such Participant's Continuous Service, and the Participant shall be prohibited from exercising his or her Stock Appreciation Right from and after the time of such termination of Continuous Service.

(ix) Extension of Termination Date. A Participant's Stock Appreciation Right Agreement may provide that if the exercise of the Stock Appreciation Right following the termination of the Participant's Continuous Service (other than upon the Participant's death, or Disability, or upon a Change in Control, if applicable) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Stock Appreciation Right shall terminate on the earlier of (i) the expiration of a period of three months after the termination of the Participant's Continuous Service during which the exercise of the Stock Appreciation Right would not be in violation of such registration requirements, or (ii) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement.

(x) Disability of Participant. In the event that a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of

Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than six months), or (ii) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

(xi) Death of Participant. In the event that (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Stock Appreciation Right Agreement after the termination of the Participant's Continuous Service for a reason other than death, the Stock Appreciation Right may be exercised (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Stock Appreciation Right by bequest or inheritance or by a person designated to exercise the option upon the Participant's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than six months), or (ii) the expiration of the term of such Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after the Participant's death, the Stock Appreciation Right is not exercised within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

(xii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Stock Appreciation Rights granted under the Plan that are not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Stock Appreciation Rights will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right. For example, such restrictions may include, without limitation, a requirement that a Stock Appreciation Right that is to be paid wholly or partly in cash must be exercised and paid in accordance with a fixed pre-determined schedule.

(d) Performance Stock Awards. A Performance Stock Award is either a Restricted Stock Award or Restricted Stock Unit Award that may be granted, may vest, or may be exercised based upon the attainment during a period of time selected by the Board of one or more performance goals established by the Board. Performance Stock Awards may also require the completion of a specified period of Continuous Service. The length of any period over which the attainment of performance goals are measured, the performance goals to be achieved during such period, and the measure of whether and to what degree such performance goals have been attained shall be conclusively determined by the Board, in its sole discretion.

(e) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock may be granted either alone or in addition to Stock Awards provided for under Section 6 and the preceding provisions of this Section 7. Subject to the provisions of the Plan, the Board shall have sole and complete authority to

determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

8. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

(c) No Obligation to Notify. The Company shall have no duty or obligation to any holder of a Stock Award to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

9. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting an offer by the Company of Common Stock to any Participant under the terms of a Stock Award shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is actually received or accepted by the Participant.

(c) Shareholder Rights. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms.

(d) No Employment or Other Service Rights. Nothing in the Plan or any Stock Award Agreement shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000, the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (x) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (y) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) Withholding Obligations. To the extent provided by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however,* that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to

be withheld by law (or such lower amount as may be necessary to avoid classification of the Stock Award as a liability); or (iii) by such other method as may be set forth in the Stock Award Agreement.

(h) Information Obligation. To the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall deliver financial statements to Participants at least annually. This Section 9(h) shall not apply to key Employees whose duties in connection with the Company assure them access to equivalent information.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

(j) Repurchase Limitation. The terms of any repurchase option shall be specified in the Stock Award, and the repurchase price may be either the Fair Market Value of the shares of Common Stock on the date of termination of Continuous Service or the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. To the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations at the time a Stock Award is made, any repurchase option contained in a Stock Award granted to a person who is not an Officer, Director or Consultant shall be upon the terms described below:

(i) Fair Market Value. If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of Continuous Service at not less than the Fair Market Value of the shares of Common Stock to be purchased on the date of termination of Continuous Service, then (i) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within 90 days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Stock Awards after such date of termination, within 90 days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock") and (ii) the right terminates when the shares of Common Stock become publicly traded.

(ii) Original Purchase Price. If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of Continuous Service at the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price, then (x) the right to repurchase at the original purchase price shall lapse at the rate of at least 20% of the shares of Common Stock per year over five years from the date the Stock Award is granted (without respect to the date the Stock Award was exercised or became exercisable) and (y) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within 90 days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Options after such date of termination, within 90 days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for

purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock").

(k) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of employment or retirement, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

10. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall appropriately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 4(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 4(d), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

(b) Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase option may be repurchased by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided*, *however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in a written agreement between the Company or any Affiliate and the holder of the Stock Award:

(i) Stock Awards May Be Assumed. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Stock Awards outstanding under the Plan or may substitute similar stock awards for Stock Awards outstanding under the

Plan (including but not limited to, awards to acquire the same consideration paid to the shareholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Stock Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of a Stock Award or substitute a similar stock award for only a portion of a Stock Award. The terms of any assumption, continuation or substitution shall be set by the Board in accordance with the provisions of Section 3.

(ii) Stock Awards Held by Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "***Current Participants***"), the vesting of such Stock Awards (and, with respect to Options and Stock Appreciation Rights, the time at which such Stock Awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Stock Awards shall terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall lapse (contingent upon the effectiveness of the Corporate Transaction). No vested Restricted Stock Unit Award shall terminate pursuant to this Section 10(c)(ii) without being settled by delivery of shares of Common Stock, their cash equivalent, any combination thereof, or in any other form of consideration, as determined by the Board, prior to the effective time of the Corporate Transaction.

(iii) Stock Awards Held by Persons other than Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue any or all outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Stock Awards shall terminate if not exercised prior to the effective time of the Corporate Transaction; *provided, however,* that any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall not terminate and may continue to be exercised notwithstanding the Corporate Transaction. No vested Restricted Stock Unit Award shall terminate pursuant to this Section 10(c)(iii) without being settled by delivery of shares of Common Stock, their cash equivalent, any combination thereof, or in any other form of consideration, as determined by the Board, prior to the effective time of the Corporate Transaction.

(iv) Payment for Stock Awards in Lieu of Exercise. Notwithstanding the foregoing, in the event a Stock Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Stock Award may not exercise such Stock Award but will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

(d) Change in Control. A Stock Award may be subject to acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

11. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. Unless sooner terminated by the Board pursuant to Section 3, the Plan automatically shall terminate on the day before the 10th anniversary of the date the Plan is adopted by the Board or approved by the shareholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

12. EFFECTIVE DATE OF PLAN.

This Plan shall become effective on the Effective Date.

13. CHOICE OF LAW.

The law of the State of California shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.

BIOCEPT, INC.
STOCK OPTION GRANT NOTICE
(2007 EQUITY INCENTIVE PLAN)

Biocept, Inc. (the ***"Company"***), pursuant to its 2007 Equity Incentive Plan (the ***"Plan"***), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder:	_____
Date of Grant:	_____
Vesting Commencement Date:	_____
Number of Shares Subject to Option:	_____
Exercise Price (Per Share):	_____
Total Exercise Price:	_____
Expiration Date:	_____

Type of Grant: ☐ Incentive Stock Option[1] ☐ Nonstatutory Stock Option

Exercise Schedule: ☐ Same as Vesting Schedule ☐ Early Exercise Permitted

Vesting Schedule:

Payment: By one or a combination of the following items (described in the Option Agreement):

☐ By cash or check
☐ By bank draft or money order payable to the Company
☐ Pursuant to a Regulation T Program if the Shares are publicly traded
☐ By delivery of already-owned shares if the Shares are publicly traded
☐ By net exercise, if the Company has established procedures for net exercise

Additional Terms/Acknowledgements: The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder under the Plan or the Company's Amended and Restated 1997 Equity Incentive Plan, and (ii) the following agreements only:

OTHER AGREEMENTS: _____

_____

BIOCEPT, INC.	**OPTIONHOLDER:**
By: _____	_____
Signature	Signature
Title: _____	Date: _____
Date: _____	

ATTACHMENTS: Option Agreement, 2007 Equity Incentive Plan and Notice of Exercise

[1] If this is an Incentive Stock Option, it (plus other outstanding incentive stock options granted to Optionholder by the Company) cannot be first *exercisable* for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

ATTACHMENT I

OPTION AGREEMENT

BIOCEPT, INC.
2007 EQUITY INCENTIVE PLAN

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, Biocept, Inc. (the "***Company***") has granted you an option under its 2007 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. VESTING. Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. In the event that you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (*i.e.*, a "non-exempt employee"), you may not exercise your option until you have completed at least six months of Continuous Service measured from the Date of Grant specified in your Grant Notice, notwithstanding any other provision of your option.

4. EXERCISE PRIOR TO VESTING ("EARLY EXERCISE"). If permitted in your Grant Notice (*i.e.*, the "Exercise Schedule" indicates that "Early Exercise" of your option is permitted) and subject to the provisions of your option, you may elect at any time that is both (i) during the period of your Continuous Service and (ii) during the term of your option, to exercise all or part of your option, including the nonvested portion of your option; *provided, however,* that:

(a) a partial exercise of your option shall be deemed to cover first vested shares of Common Stock and then the earliest vesting installment of unvested shares of Common Stock;

(b) any shares of Common Stock so purchased from installments that have not vested as of the date of exercise shall be subject to the purchase option in favor of the Company as described in the Company's form of Early Exercise Stock Purchase Agreement;

(c) you shall enter into the Company's form of Early Exercise Stock Purchase Agreement with a vesting schedule that will result in the same vesting as if no early exercise had occurred; and

(d) if your option is an Incentive Stock Option, then, to the extent that the aggregate Fair Market Value (determined at the time of grant) of the shares of Common Stock with respect to which your option plus all other Incentive Stock Options you hold are exercisable for the first time by you during any calendar year (under all plans of the Company and its Affiliates) exceeds $100,000, your option(s) or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

5. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any other manner ***permitted by your Grant Notice,*** which may include one or more of the following:

(a) Bank draft or money order payable to the Company.

(b) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(c) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in The Wall Street Journal, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(d) By a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (1) shares are used to pay the exercise price pursuant to the "net exercise," (2) shares are delivered to you as a result of such exercise, and (3) shares are withheld to satisfy tax withholding obligations.

6. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

7. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance

would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

8. TERM. You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three months after the termination of your Continuous Service for any reason other than Cause, Disability or death, provided that if during any part of such three- month period you may not exercise your option solely because of the condition set forth in the preceding paragraph relating to "Securities Law Compliance," your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three months after the termination of your Continuous Service;

(c) 12 months after the termination of your Continuous Service due to your Disability;

(d) 18 months after your death if you die either during your Continuous Service or within three months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the 10th anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or your permanent and total disability, as defined in Section 22(e) of the Code. (The definition of disability in Section 22(e) of the Code is different from the definition of the Disability under the Plan). The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three months after the date your employment with the Company or an Affiliate terminates.

9. EXERCISE.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary

of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of your option, (2) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (3) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two years after the date of your option grant or within one year after such shares of Common Stock are transferred upon exercise of your option.

(d) By exercising your option you agree that you shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any shares of Common Stock or other securities of the Company held by you, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as necessary to permit compliance with NASD Rule 2711 and similar or successor regulatory rules and regulations (the "***Lock-Up Period***"); *provided, however,* that nothing contained in this section shall prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company and/or the underwriter(s) that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9(d) and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. TRANSFERABILITY.

(a) Restrictions on Transfer. Your option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during your lifetime only by you; *provided, however,* that the Board may, in its sole discretion, permit you to transfer your option to such extent as permitted by Section 260.140.41(d) of Title 10 of the California Code of Regulations at the time of the grant of the option and in a manner consistent with applicable tax and securities laws upon your request. Additionally, if your option is an Incentive Stock Option, the Board may permit you to transfer your option only to the extent permitted by Sections 421, 422 and 424 of the Code and the regulations and other guidance thereunder.

(b) Domestic Relations Orders. Notwithstanding the foregoing, your option may be transferred pursuant to a domestic relations order; *provided*, *however*, that if your option is an Incentive Stock Option, your option shall be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) Beneficiary Designation. Notwithstanding the foregoing, you may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option and receive the Common Stock or other consideration resulting from an Option exercise. In the absence of such a designation, the executor or administrator of your estate shall be entitled to exercise the Option and receive the Common Stock or other consideration resulting from an Option exercise.

11. RIGHT OF FIRST REFUSAL. Shares of Common Stock that you acquire upon exercise of your option are subject to any right of first refusal that may be described in the Company's Bylaws in effect at such time the Company elects to exercise its right; *provided, however,* that if your option is an Incentive Stock Option and the right of first refusal described in the Company's Bylaws in effect at the time the Company elects to exercise its right is more beneficial to you than the right of first refusal described in the Company's Bylaws on the Date of Grant, then the right of first refusal described in the Company's Bylaws on the Date of Grant shall apply. The Company's right of first refusal shall expire on the Listing Date. For purposes of this Agreement, Listing Date shall mean the first date upon which any security of the Company is listed (or approved for listing) upon notice of issuance on a national securities exchange or quotation system.

12. RIGHT OF REPURCHASE. To the extent provided in the Company's Bylaws in effect at such time the Company elects to exercise its right, the Company shall have the right to repurchase all or any part of the shares of Common Stock you acquire pursuant to the exercise of your option.

13. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective shareholders, boards of directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

14. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value,

determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein unless such obligations are satisfied.

15. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

16. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

ATTACHMENT II

2007 EQUITY INCENTIVE PLAN

ATTACHMENT III

NOTICE OF EXERCISE

NOTICE OF EXERCISE

BIOCEPT, INC.
5810 NANCY RIDGE DRIVE, SUITE 150
SAN DIEGO, CA 92121

Date of Exercise: _____

Ladies and Gentlemen:

This constitutes notice under my stock option that I elect to purchase the number of shares for the price set forth below.

Type of option (check one):	Incentive ☐ Nonstatutory ☐
Stock option dated:	_____
Number of shares as to which option is exercised:	_____
Certificates to be issued in name of:	_____
Total exercise price:	$_____
Cash, check, bank draft or money order payment delivered herewith:	$_____
Regulation T Program (cashless exercise):	$_____
Value of _____ already-owned shares of Biocept, Inc. common stock delivered herewith[2]:	$_____
Value of _____ shares of Biocept, Inc. common stock pursuant to net exercise[3]:	$_____

[2] Shares must meet the public trading requirements set forth in the option. Shares must be valued in accordance with the terms of the option being exercised, must have been owned for the minimum period required in the option agreement, and must be owned free and clear of any liens, claims, encumbrances or security interests. Certificates must be endorsed or accompanied by an executed assignment separate from certificate.

[3] Biocept, Inc. must have established net exercise procedures at the time of exercise in order to utilize this payment method.

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the 2007 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within 15 days after the date of any disposition of any of the shares of Common Stock issued upon exercise of this option that occurs within two years after the date of grant of this option or within one year after such shares of Common Stock are issued upon exercise of this option.

I hereby make the following certifications and representations with respect to the number of shares of Common Stock of the Company listed above (the "***Shares***"), which are being acquired by me for my own account upon exercise of the Option as set forth above:

I acknowledge that the Shares have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), and are deemed to constitute "restricted securities" under Rule 701 and Rule 144 promulgated under the Securities Act. I warrant and represent to the Company that I have no present intention of distributing or selling said Shares, except as permitted under the Securities Act and any applicable state securities laws.

I further acknowledge that I will not be able to resell the Shares for at least 90 days after the stock of the Company becomes publicly traded (*i.e.*, subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934) under Rule 701 and that more restrictive conditions apply to affiliates of the Company under Rule 144.

I further acknowledge that all certificates representing any of the Shares subject to the provisions of the Option shall have endorsed thereon appropriate legends reflecting the foregoing limitations, as well as any legends reflecting restrictions pursuant to the Company's Articles of Incorporation, Bylaws and/or applicable securities laws.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell or otherwise transfer or dispose of any shares of Common Stock or other securities of the Company for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as necessary to permit compliance with NASD Rule 2711 and similar or successor regulatory rules and regulations (the "***Lock-Up Period***"). I further agree that the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of the Lock-Up Period.

Very truly yours,

_____

Exhibit 10.2

BIOCEPT, INC. 2013 EQUITY INCENTIVE PLAN

1. Purpose; Eligibility.

1.1 General Purpose. The name of this plan is the Biocept, Inc. 2013 Equity Incentive Plan (the "**Plan**"). The purposes of the Plan are to (a) enable Biocept, Inc., a Delaware corporation (the "**Company**"), to attract and retain the types of Employees, Consultants and Directors who will contribute to the Company's long range success; (b) provide incentives that align the interests of Employees, Consultants and Directors with those of the stockholders of the Company; and (c) promote the success of the Company's business.

1.2 Eligible Award Recipients. The persons eligible to receive Awards are the Employees, Consultants and Directors of the Company.

1.3 Available Awards. Awards that may be granted under the Plan include: (a) Incentive Stock Options, (b) Non-qualified Stock Options, (c) Stock Appreciation Rights, (d) Restricted Awards and (e) Performance Compensation Awards.

2. Definitions.

"**Affiliate**" means a corporation or other entity that, directly or through one or more intermediaries, controls, is controlled by or is under common control with, the Company.

"**Annual Increase**" means a number of shares of Common Stock, determined on each and any January 1 after the Effective Date, equal to the lesser of (a) 5% of the outstanding Common Stock of the Company on such January 1, or (b) a number of shares determined by the Board in its discretion for use on such particular January 1.

"**Applicable Laws**" means the requirements related to or implicated by the administration of the Plan under applicable state corporate law, United States federal and state securities laws, the Code, any securities exchange or quotation system on which the shares of Common Stock are listed or quoted, and the applicable laws of any foreign country or jurisdiction where Awards are granted under the Plan.

"**Award**" means any right granted under the Plan, including an Incentive Stock Option, a Non-qualified Stock Option, a Stock Appreciation Right, a Restricted Award, or a Performance Compensation Award.

"**Award Agreement**" means a written agreement, contract, certificate or other instrument or document evidencing the terms and conditions of an individual Award granted under the Plan which may, in the discretion of the Company, be transmitted electronically to any Participant. Each Award Agreement shall be subject to the terms and conditions of the Plan.

"**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular Person, such Person shall be deemed to have beneficial ownership of all securities that such Person has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of any length of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"**Board**" means the Board of Directors of the Company, as constituted at any time.

"**Cause**" means, with respect to any Employee or Consultant: (a) If the Employee or Consultant is a party to an employment or service agreement with the Company or its Affiliates and such agreement provides for a definition of Cause, the definition contained therein; or (b) If no such agreement exists, or if such agreement does not define Cause: (i) the conviction of or plea of guilty or no contest to, a felony or a crime involving moral turpitude; (ii) the commission of a felony or a crime involving moral turpitude for which charges have been filed or the circumstances of which are such that, if sufficient admissible evidence of guilt were available to prosecuting authorities, such authorities would typically elect to prosecute the alleged offender given all the circumstances; (iii) the commission of any other material act involving willful malfeasance or fiduciary breach with respect to the Company or an Affiliate; (iv) conduct that results in or would reasonably be expected or intended to result in material harm to the reputation or business of the Company or any of its Affiliates; (v) gross negligence or willful misconduct with respect to the Company or an Affiliate; or (vi) material violation of state or federal securities laws. For this purpose, a first offense of drunk driving shall be deemed not to involve moral turpitude.

The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to the existence of and whether a Participant has been discharged for Cause.

"**Change in Control**" means: (a) The direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its subsidiaries, taken as a whole, to any Person that is not a subsidiary of the Company; (b) The Incumbent Directors cease for any reason to constitute at least a majority of the Board; (c) The date which is 10 business days before the consummation of a complete liquidation or dissolution of the Company; (d) The acquisition by any Person of Beneficial Ownership of 50% or more of either (i) the then outstanding shares of Common Stock of the Company, taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Common Stock (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (A) any acquisition which complies with clauses, (i), (ii) and (iii) of subsection (e) of this definition, or (B) in respect of an Award held by a particular Participant, any acquisition by the Participant or any group of persons including the Participant (or any entity controlled by the Participant or any group of

persons including the Participant); or (e) The consummation of a reorganization, merger, (whether or not the approval of the Company's stockholders is required for such merger), consolidation, statutory share exchange or similar form of corporate transaction involving the Company that requires the approval of the Company's stockholders, whether for such transaction or the issuance of securities in the transaction (a "Business Combination"), unless immediately following such Business Combination: (i) more than 50% of the total voting power of (A) the entity resulting from such Business Combination (the "Surviving Company"), or (B) if applicable, the ultimate parent entity that directly or indirectly has beneficial ownership of sufficient voting securities eligible to elect a majority of the members of the board of directors (or the analogous governing body) of the Surviving Company (the "Parent Company"), is represented by the Outstanding Company Voting Securities that were outstanding immediately before such Business Combination (or, if applicable, is represented by shares into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately before the Business Combination; (ii) no Person (other than Claire Reiss or her Affiliates or any employee benefit plan sponsored or maintained by the Surviving Company or the Parent Company) is or becomes the Beneficial Owner, directly or indirectly, of 50% or more of the total voting power of the outstanding voting securities eligible to elect members of the board of directors of the Parent Company (or the analogous governing body) (or, if there is no Parent Company, the Surviving Company); and (iii) at least a majority of the members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the Business Combination were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination. Notwithstanding the foregoing, a transaction or event shall not constitute a Change in Control if it does not qualify as a change in control event within the meaning of Section 409A and such failure to qualify would, in the circumstances, cause a Section 409A problem.

"**Code**" means the Internal Revenue Code of 1986, as it may be amended from time to time. Any reference to a section of the Code shall be deemed to include a reference to any regulations promulgated thereunder.

"**Committee**" means a committee of one or more members of the Board appointed by the Board to administer the Plan in accordance with Section 3.3 and Section 3.4.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company, or such other securities of the Company as may be designated by the Committee from time to time in substitution thereof.

"**Company**" means Biocept, Inc., a Delaware corporation, and any successor thereto.

"**Consultant**" means any individual who is engaged by the Company or any Affiliate to render consulting or advisory services.

"**Continuous Service**" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Consultant or Director, is not interrupted or terminated. The Participant's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, *provided that* there is not otherwise any interruption or termination of the Participant's Continuous Service; *provided further that* if any Award is subject to Section 409A, termination of service shall not be deemed to have occurred for purposes of any provision of this Plan or such Award providing for the payment of any amounts or benefits that may be considered nonqualified deferred compensation under Section 409A upon or following a termination of service unless such termination is also a "separation from service" within the meaning of Section 409A, and, for purposes of any such provision of this Plan or such Award, references to a "termination," "termination of service" or like terms shall mean such a separation from service (determined in accordance with the presumptions set forth in Section 1.409A-1(h) of the Treasury Regulations). For example, a change in status from an Employee of the Company to a Director of an Affiliate will not constitute an interruption of Continuous Service.

"**Covered Employee**" has the same meaning as set forth in Section 162(m)(3) of the Code, as interpreted by Internal Revenue Service Notice 2007-49.

"**Director**" means a member of the Board.

"**Disability**" means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; *provided*, *however,* for purposes of determining the term of an Incentive Stock Option pursuant to Section 6.10 hereof, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be conclusively determined under procedures established by the Committee. Except in situations where the Committee is determining Disability for purposes of the term of an Incentive Stock Option pursuant to Section 6.10 hereof within the meaning of Section 22(e)(3) of the Code, the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Affiliate in which a Participant participates.

"**Disqualifying Disposition**" has the meaning set forth in Section 14.11.

"**Effective Date**" shall mean the date on which this Plan is adopted by the Board.

"**Employee**" means any person, not excluding a person who is also an Officer or Director, employed by the Company or an Affiliate; *provided*, *that,* for purposes of determining eligibility to receive Incentive Stock Options, an Employee shall mean an employee of the Company or a parent or subsidiary corporation within the meaning of Section 424 of the Code. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fair Market Value**" means, as of any date, the value of the Common Stock as determined below. If the Common Stock is listed on any US national securities exchange, the Fair Market Value shall be the closing price of a share of Common Stock (or if no sales were reported the closing price on the date immediately preceding such date) as quoted on such exchange on the day of determination, as reported in the *Wall Street Journal* or such other source as the Committee deems reliable. In the absence of an established market for the Common Stock on any US national securities exchange, the Fair Market Value shall be determined (as of the close of business on the date in question) in good faith by the Committee in a manner consistent with the valuation principles of Section 409A and such determination shall be conclusive and binding on all persons.

"**Free Standing Rights**" has the meaning set forth in Section 7.1(a).

"**Good Reason**" means: (a) If an Employee or Consultant is a party to an employment or service agreement with the Company or its Affiliates and such agreement provides for a definition of Good Reason, the definition contained therein; or (b) If no such agreement exists or if such agreement does not define Good Reason, the occurrence of one or more of the following without the Participant's express written consent, which circumstances are not remedied by the Company within 30 days of its receipt of a written notice from the Participant describing the applicable circumstances (which notice must be provided, if ever, by the Participant within 40 days after the Participant's knowledge of the applicable circumstances; if the Participant does not timely deliver such notice, it shall be conclusively deemed that Good Reason is not present): (i) any material, adverse change in the Participant's duties, responsibilities, authority, title, status or reporting structure; (ii) a material reduction in the Participant's base salary; or (iii) an involuntary geographical relocation of the Participant's principal office location by more than 50 miles. In no event shall a Participant's resignation be deemed to be with Good Reason (in relation to any particular circumstances alleged to constitute Good Reason) for purposes of this Plan or any Award Agreement unless the effective date of the Participant's resignation is before the earlier of 100 days after the Participant's knowledge of the applicable circumstances or 20 days after the 30-day remedy period described in the preceding sentence (if applicable) has expired without the circumstances being remedied.

"**Grant Date**" means the date on which the Committee adopts a resolution, or takes other appropriate action, expressly granting an Award to a Participant that specifies the key terms and conditions of the Award or, if a later date is set forth in such resolution, then such date as is set forth in such resolution.

"**Incentive Stock Option**" means an Option designated as and intended to qualify as, and qualifying as, an incentive stock option within the meaning of Section 422 of the Code.

"**Incumbent Directors**" means individuals who, on the Effective Date, constitute the Board, *provided that* any individual becoming a Director after the Effective Date whose election or nomination for election to the Board was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for Director without objection to such nomination) shall be an Incumbent Director. No individual initially

elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to Directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board shall ever be an Incumbent Director.

"**Negative Discretion**" means the discretion authorized by the Plan to be applied by the Committee to eliminate or reduce the size of a Performance Compensation Award in accordance with Section 7.3(d)(iv) of the Plan; *provided*, *that*, the exercise of such discretion would not cause the Performance Compensation Award to fail to qualify as "performance-based compensation" under Section 162(m).

"**Non-Employee Director**" means a Director who is a "non-employee director" within the meaning of Rule 16b-3.

"**Non-qualified Stock Option**" means an Option that by its terms or under the circumstances of its grant does not qualify or is not intended to qualify as an Incentive Stock Option. Without limitation, to the extent that any Option designated as an Incentive Stock Option fails at any time, in whole or in part, to qualify as an Incentive Stock Option, it shall to that extent constitute a Non-qualified Stock Option.

"**Officer**" means a person who is an officer of the Company within the meaning and purposes of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

"**Option**" means an Incentive Stock Option or a Non-qualified Stock Option granted pursuant to the Plan.

"**Optionholder**" means a person to whom an Option is granted pursuant to the Plan or, if applicable, any other person who properly holds an outstanding Option.

"**Option Exercise Price**" means the price at which a share of Common Stock may be purchased upon the exercise of an Option.

"**Outside Director**" means a Director who is an "outside director" within the meaning of Section 162(m) and Treasury Regulations Section 1.162-27(e)(3) or any successor to such statute and regulation.

"**Participant**" means an eligible person to whom an Award is granted pursuant to the Plan or, if applicable, any other person who properly holds an outstanding Award.

"**Performance Compensation Award**" means any Award designated by the Committee as a Performance Compensation Award pursuant to Section 7.3 of the Plan.

"**Performance Criteria**" means the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award under the Plan. The Performance Criteria that will be used to establish the Performance Goal(s) shall be based on the attainment of specific levels of performance of the Company (or of an Affiliate, division, business unit or

operational unit of the Company) and shall be limited to the following: (a) net earnings or net income (before or after taxes); (b) basic or diluted earnings per share (before or after taxes); (c) net revenue or net revenue growth; (d) gross revenue; (e) gross profit or gross profit growth; (f) net operating profit (before or after taxes); (g) return on assets, capital, invested capital, equity, or sales; (h) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital); (i) earnings before or after taxes, interest, depreciation and/or amortization; (j) gross or operating margins; (k) improvements in capital structure; (l) budget and expense management; (m) productivity ratios; (n) economic value added or other value added measurements; (o) share price (including, but not limited to, stock price growth measures and total stockholder return); (p) expense targets; (q) margins; (r) operating efficiency; (s) working capital targets; (t) enterprise value; (u) safety record; (v) regulatory milestones; (w) scientific milestones; (x) customer acquisition; (y) completion of partnering agreement; (z) workforce retention; (aa) completion of acquisitions or business expansion; and (bb) individual business objectives.

Any one or more of the Performance Criteria may be used on an absolute or relative basis to measure the performance of the Company and/or an Affiliate as a whole or any division, business unit or operational unit of the Company and/or an Affiliate or any combination thereof, as the Committee may deem appropriate, or as compared to the performance of a group of comparable companies, or published or special index that the Committee, in its sole discretion, deems appropriate, or the Committee may select Performance Criterion (o) above as compared to various stock market indices. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria specified in this paragraph. To the extent required under Section 162(m), the Committee shall, within the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m)), define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period. In the event that applicable tax and/or securities laws change to permit the Committee discretion to alter the governing Performance Criteria without obtaining stockholder approval of such changes, the Committee shall have sole discretion to make such changes without obtaining stockholder approval.

"**Performance Formula**" means, for a Performance Period, the one or more objective formulas applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Compensation Award has been earned for the Performance Period.

"**Performance Goals**" means, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria. The Committee is authorized at any time during the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m)), or at any time thereafter (but only to the extent the exercise of such authority after such period would not cause the Performance Compensation Awards granted to any Participant for the Performance Period to fail to qualify as "performance-based compensation" under Section 162(m)), in its sole and absolute discretion, to adjust or modify the calculation of a

Performance Goal for such Performance Period to the extent permitted under Section 162(m) in order to prevent the dilution or enlargement of the rights of Participants based on the following events: (a) asset write-downs; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles, or other laws or regulatory rules affecting reported results; (d) any reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No.30 (or any successor or pronouncement thereto) and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; (g) any other specific unusual or nonrecurring events, or objectively determinable category thereof; (h) foreign exchange gains and losses; and (i) a change in the Company's fiscal year.

"**Performance Period**" means the one or more periods of time in duration, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Performance Compensation Award.

"**Person**" means any individual, entity, trust, partnership, organization, association, or (within the meaning of Section 13(d)(3) of the Exchange Act and the rules thereunder) group.

"**Permitted Transferee**" means: (a) a member of the Optionholder's or other Participant's immediate family (child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships), any person sharing the Optionholder's or other Participant's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, a foundation in which these persons (or the Optionholder or other Participant) control the management of assets, and any other entity in which these persons (or the Optionholder or other Participant) own more than 50% of the voting interests; and (b) such other transferees as may be permitted by the Committee in its sole discretion.

"**Plan**" means this Biocept, Inc. 2013 Equity Incentive Plan, as amended from time to time.

"**Related Rights**" has the meaning set forth in Section 7.1(a).

"**Restricted Award**" means any Award granted pursuant to Section 7.2(a).

"**Restricted Period**" has the meaning set forth in Section 7.2(a).

"**Restricted Stock**" has the meaning set forth in Section 7.2(a).

"**Restricted Stock Units**" has the meaning set forth in Section 7.2(a).

"**Rule 16b-3**" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

"**Section 162(m)**" means Section 162(m) of the Code, as in effect from time to time.

"**Section 409A**" means Section 409A of the Code, as in effect from time to time.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Stock Appreciation Right**" means the right pursuant to an Award granted under Section 7.1 to receive, upon exercise, an amount payable in cash or shares equal to the number of shares subject to the Stock Appreciation Right that is being exercised multiplied by the excess of (a) the Fair Market Value of a share of Common Stock on the date the Award is exercised, over (b) the exercise price specified in the Stock Appreciation Right Award Agreement.

"**Ten Percent Stockholder**" means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its parent or subsidiary corporations.

"**Vested Unit**" has the meaning set forth in Section 7.2(e).

3. Administration.

3.1 Authority of Committee. The Plan shall be administered by the Committee or, in the Board's sole discretion, by the Board. (Notwithstanding references herein to the "Committee" and notwithstanding any prior delegation, if the Board generally or in an instance takes action with regard to administration of the Plan, the references herein to the authority or discretion of the Committee shall be read as, for the purpose of such action generally or in such instance (as the case may be), the authority or discretion of the Board.) Subject to the terms of the Plan, the Committee's charter and Applicable Laws, and in addition to other express powers and authorization conferred by the Plan, the Committee shall have the authority:

(a) to construe and interpret the Plan and apply its provisions;

(b) to promulgate, amend, and rescind rules and regulations relating to the administration of the Plan;

(c) to authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;

(d) to delegate (to the extent allowed under Delaware General Corporation Law Section 157 or other Applicable Laws) its authority to one or more Officers of the Company with respect to Awards that do not involve Covered Employees or "insiders" within the meaning of Section 16 of the Exchange Act;

(e) to determine when Awards are to be granted under the Plan and the applicable Grant Date;

(f) from time to time to select, subject to the limitations set forth in this Plan, those Participants to whom Awards shall be granted;

(g) to determine the number of shares of Common Stock to be made subject to each Award;

(h) to determine whether each Option is to be an Incentive Stock Option or a Non-qualified Stock Option;

(i) to determine whether each Restricted Award is to be an Award of Restricted Stock or of Restricted Stock Units;

(j) to prescribe the terms and conditions of each Award, including, without limitation, the exercise price and medium of payment and vesting provisions, and to specify the provisions of the Award Agreement relating to such grant;

(k) to designate an Award (including a cash bonus) as a Performance Compensation Award and to select the Performance Criteria that will be used to establish the Performance Goals;

(l) to determine the identity or capacity of any persons who may be entitled to receive anything under or exercise a Participant's rights under any Award Agreement;

(m) to amend any outstanding Awards, including for the purpose of modifying the time or manner of vesting, or the term of any outstanding Award; *provided*, *however*, that if any such amendment impairs a Participant's rights or increases a Participant's obligations under his or her Award or creates or increases a Participant's federal income tax liability with respect to an Award, such amendment shall also be subject to the Participant's consent (and it being understood that these principles shall apply to any modification of the purchase price or the exercise price of any outstanding Award, *provided that* if the modification effects a repricing, stockholder approval shall be required before the repricing is effective);

(n) to determine the duration and purpose of leaves of absences which may be granted to a Participant without constituting termination of their employment for purposes of the Plan;

(o) to make decisions with respect to outstanding Awards that may become necessary upon a change in corporate control or an event that triggers anti-dilution adjustments;

(p) to interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; and

(q) to exercise discretion to make any and all other determinations which it determines to be necessary or advisable for the administration of the Plan.

3.2 Committee Decisions Final. All decisions made by the Committee pursuant to the provisions of the Plan shall be final and binding on the Company and the Participants.

3.3 Delegation. The Committee, or if no Committee has been appointed, the Board, may delegate administration of the Plan to a committee or committees of one or more members of the Board, and the term "**Committee**" shall apply to any person or persons to whom such authority has been delegated. The Committee shall have the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board or the Committee shall thereafter be to the committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. The members of the Committee shall be appointed by and serve at the pleasure of the Board. From time to time, the Board may increase or decrease the size of the Committee, add additional members to, remove members (with or without cause) from, appoint new members in substitution therefor, and fill vacancies, however caused, in the Committee. The Committee shall act pursuant to a vote of the majority of its members, whether present or not, or by the unanimous written consent of its members and minutes shall be kept of all of its meetings and copies thereof shall be provided to the Board. Subject to the limitations prescribed by the Plan and the Board, the Committee may establish and follow such rules and regulations for the conduct of its business as it may determine to be advisable. This Section 3.3 is not in derogation of Section 3.1(d).

3.4 Committee Composition. Except as otherwise determined by the Board, the Committee shall consist solely of two or more Non-Employee Directors who are also Outside Directors and who also meet the independence requirements (if any) under the then applicable rules, regulations, listing requirements or listing maintenance requirements adopted by the principal national securities exchange on which the Common Stock is then listed. The Board shall have discretion to determine whether or not it intends to comply with the exemption requirements of Rule 16b-3 and/or Section 162(m). However, if the Board intends to satisfy such exemption requirements, with respect to Awards to any Covered Employee and with respect to any insider subject to Section 16 of the Exchange Act, the Committee shall be a compensation committee of the Board that at all times consists solely of two or more Non-Employee Directors who are also Outside Directors. Within the scope of such authority, the Board or the Committee may (a) delegate to a committee of one or more members of the Board who are not Outside Directors the authority to grant Awards to eligible persons who are either (i) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Award or (ii) not persons with respect to whom the Company wishes to comply with Section 162(m) or (b) delegate to a committee of one or more members of the Board who are not Non-Employee Directors the authority to grant Awards to eligible persons who are not then subject to Section 16 of the Exchange Act. Nothing herein shall create an inference that an Award is not validly granted under the Plan in the event Awards are granted under the Plan by a compensation committee of the Board that does not at all times consist solely of two or more Non-Employee Directors who are also Outside Directors. This Section 3.4 is not in derogation of Section 3.1(d).

3.5 Indemnification. Service on the Committee is a form of service in the capacity of a member of the Board. In addition to such other rights of indemnification as they may have as Directors or members of the Committee, and to the extent allowed by Applicable Laws, the Committee members shall be indemnified by the Company against the reasonable expenses, including attorney's fees, actually incurred in connection with any action, suit or proceeding or in connection with any appeal therein, to which the Committee members may be party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted under the Plan, and against all amounts paid by the Committee members in settlement thereof (*provided, however*, that the settlement has been approved by the Company, which approval shall not be unreasonably withheld) or paid by the Committee in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Committee member(s) did not act in good faith and in a manner which such person reasonably believed to be in the best interests of the Company, or in the case of a criminal proceeding, had no reason to believe that the conduct complained of was unlawful; *provided, however*, that within 60 days after institution of any such action, suit or proceeding, such Committee member(s) shall, in writing, offer the Company the opportunity at its own expense to handle and defend such action, suit or proceeding.

3.6 Exculpation. No Director, Committee member or Employee shall be subject to any liability with respect to duties under the Plan unless the person acts fraudulently or in bad faith.

4. Shares Subject to the Plan.

4.1 Subject to adjustment in accordance with Section 11, a total of 5,650,000 shares of Common Stock, plus an additional 800,000 shares of Common Stock (such addition of 800,000 shares of Common Stock to be effective upon, but only upon, the close of business on the closing date of the Company's initial public offering of Common Stock), plus the sum of all Annual Increases since the Effective Date, shall be available for the grant of Awards under the Plan; *provided that*, no more than 5,500,000 shares of Common Stock may be granted as Incentive Stock Options. During the terms of the Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Awards.

4.2 Shares of Common Stock available for distribution under the Plan may consist, in whole or in part, of authorized and unissued shares, or shares reacquired by the Company in any manner.

4.3 Subject to adjustment in accordance with Section 11, no Participant shall be granted, during any one year period, Options to purchase Common Stock and Stock Appreciation Rights with respect to more than 5,000,000 shares of Common Stock in the aggregate or any other Awards with respect to more than 500,000 shares of Common Stock in the aggregate. If an Award is to be settled in cash, the number of shares of Common Stock on which the Award is based shall count toward the individual share limit set forth in this Section 4.

4.4 Any shares of Common Stock subject to an Award that is canceled, forfeited or expires before exercise or realization, either in full or in part, shall to that extent again become available for issuance under the Plan. (For this purpose, repurchase of Restrict Stock at a nominal repurchase price is deemed a forfeiture.) Notwithstanding anything to the contrary contained herein: shares subject to an Award under the Plan shall not again be made available for issuance or delivery under the Plan if such shares are (a) shares tendered, or used to effect a "net exercise," in payment of an Option exercise price requirement, (b) shares delivered to or withheld by the Company to satisfy any tax withholding obligation, or (c) shares covered by a stock-settled Stock Appreciation Right that were not issued upon the settlement of the Award.

5. Eligibility.

5.1 Eligibility for Specific Awards. Incentive Stock Options may be granted only to Employees. Awards other than Incentive Stock Options may be granted to Employees, Consultants and Directors.

5.2 Ten Percent Stockholders. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the Option Exercise Price is at least 110% of the Fair Market Value of the Common Stock at the Grant Date and the Option is not exercisable after the expiration of five years from the Grant Date.

6. Option Provisions. Each Option granted under the Plan shall be evidenced by an Award Agreement, and shall be voided if the Award Agreement is not executed and delivered by the Participant within 30 days after the Grant Date. Each Option so granted shall be subject to the conditions set forth in this Section 6, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options shall be separately designated Incentive Stock Options or Non-qualified Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. Notwithstanding the foregoing, the Company shall have no liability to any Participant or any other person if an Option designated as an Incentive Stock Option fails to qualify as such at any time or if an Option (or other Award) is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the terms of such Option (or other Award) do not satisfy the requirements of Section 409A. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

6.1 Term. Subject to the provisions of Section 5.2 regarding Ten Percent Stockholders and a requirement that no Incentive Stock Option shall be exercisable after the expiration of 10 years from the Grant Date, the term of an Incentive Stock Option granted under the Plan shall be determined by the Committee. The term of a Non-qualified Stock Option granted under the Plan shall be determined by the Committee; *provided, however*, no Non-qualified Stock Option shall be exercisable after the expiration of 10 years from the Grant Date.

6.2 Exercise Price of An Incentive Stock Option. Subject to the provisions of Section 5.2 regarding Ten Percent Stockholders, the Option Exercise Price of each Incentive Stock Option shall be not less than 100% of the Fair Market Value on the Grant Date of the Common Stock subject to the Option. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an Option Exercise Price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code and Section 409A.

6.3 Exercise Price of a Non-qualified Stock Option. The Option Exercise Price of each Non-qualified Stock Option shall be not less than 100% of the Fair Market Value on the Grant Date of the Common Stock subject to the Option. Notwithstanding the foregoing, a Non-qualified Stock Option may be granted with an Option Exercise Price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 409A.

6.4 Consideration. The Option Exercise Price of Common Stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (a) in cash or by bank check on the day the Option is exercised or (b) in the discretion (exercised either generally or only for the particular instance) of the Committee, upon such terms as the Committee shall approve, the Option Exercise Price may be paid on the day the Option is exercised: (i) by delivery to the Company of other Common Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the Option Exercise Price (or portion thereof) due for the number of shares being acquired, or by means of attestation whereby the Participant identifies for delivery specific shares of Common Stock that have an aggregate Fair Market Value on the date of attestation equal to the Option Exercise Price (or portion thereof) and receives a number of shares of Common Stock equal to the difference between the number of shares thereby purchased and the number of identified attestation shares of Common Stock; (ii) a “cashless” same-day-sale exercise program established with a broker; (iii) by reduction in the number of shares of Common Stock otherwise deliverable upon exercise of such Option with a Fair Market Value equal to the aggregate Option Exercise Price at the time of exercise; (iv) any combination of the foregoing methods; or (v) in any other form of legal consideration that may be acceptable to the Committee. Unless otherwise specifically provided in the Option, the exercise price of Common Stock acquired pursuant to an Option that is (with Committee approval) paid by delivery (or attestation) to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). Notwithstanding the foregoing, during any time the Common Stock is publicly traded an exercise by a Director or Officer that involves or may involve a direct or indirect extension of credit or arrangement of an extension of credit by the Company, directly or indirectly, in violation of Section 402(a) of the Sarbanes-Oxley Act of 2002 shall be prohibited with respect to any Award under this Plan.

6.5 Transferability of An Incentive Stock Option. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution or pursuant to qualified domestic relations orders under Applicable Laws and shall be exercisable during the lifetime of the Optionholder only by the Optionholder.

6.6 Transferability of a Non-qualified Stock Option. A Non-qualified Stock Option may, in the sole discretion of the Committee, be transferable to a Permitted Transferee, upon approval by the Committee to the extent provided in the Award Agreement. No such transfer which is a "prohibited transfer for value" (within the meaning of the General Instructions to Securities Act Form S-8) shall be allowed. If the Non-qualified Stock Option does not provide for transferability, then the Non-qualified Stock Option shall not be transferable except by will or by the laws of descent and distribution or pursuant to qualified domestic relations orders under Applicable Laws and shall be exercisable during the lifetime of the Optionholder only by the Optionholder.

6.7 Vesting of Options. Each Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Committee may deem appropriate. The vesting provisions of individual Options may vary. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

6.8 Termination of Continuous Service. Unless otherwise provided in an Award Agreement or in an employment agreement the terms of which have been approved by the Committee, in the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination) but only within such period of time ending on the earlier of (a) the date three months following the termination of the Optionholder's Continuous Service or (b) the expiration of the term of the Option as set forth in the Award Agreement; *provided that*, if the termination of Continuous Service is by the Company for Cause, all outstanding Options (whether or not vested) shall immediately terminate and cease to be exercisable. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified in the Award Agreement, the Option shall terminate.

6.9 Extension of Termination Date. An Optionholder's Award Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service for any reason would be prohibited at any time because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act or any other state or federal securities law or the rules of any securities exchange or interdealer quotation system, then the Option shall terminate on the earlier of (a) the expiration of the term of the Option in accordance with Section 6.1 or (b) the expiration of a period after termination of the Participant's Continuous Service that is three months after the end of the period during which the exercise of the Option would be in violation of such registration or other securities law requirements.

6.10 Disability of Optionholder. Unless otherwise provided in an Award Agreement, in the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination), but only within such period of time ending on the earlier of (a) the date 12 months following such termination or (b) the expiration of the term of the Option as set forth in the Award Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Award Agreement, the Option shall terminate.

6.11 Death of Optionholder. Unless otherwise provided in an Award Agreement, in the event an Optionholder's Continuous Service terminates as a result of the Optionholder's death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only within the period ending on the earlier of (a) the date 12 months following the date of death or (b) the expiration of the term of such Option as set forth in the Award Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Award Agreement, the Option shall terminate.

6.12 Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Affiliates) exceeds $100,000, the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Non-qualified Stock Options.

6.13 Fractions. No Option may be exercised for a fraction of a share of Common Stock.

7. Provisions of Awards Other Than Options.

7.1 Stock Appreciation Rights.

(a) **General**

Each Stock Appreciation Right granted under the Plan shall be evidenced by an Award Agreement, and shall be voided if the Award Agreement is not executed and delivered by the Participant within 30 days after the Grant Date. Each Stock Appreciation Right so granted shall be subject to the conditions set forth in this Section 7.1, and to such other conditions (including as to transferability and ability to be pledged or otherwise encumbered) not inconsistent with the Plan as may be reflected in the applicable Award Agreement. Stock Appreciation Rights may be granted alone ("**Free Standing Rights**") or in tandem with an Option granted under the Plan ("**Related Rights**").

(b) **Grant Requirements**

Any Related Right that relates to a Non-qualified Stock Option may be granted at the same time the Option is granted or at any time thereafter but before the exercise or expiration of the Option. Any Related Right that relates to an Incentive Stock Option must be granted at the same time the Incentive Stock Option is granted.

(c) **Term of Stock Appreciation Rights**

The term of a Stock Appreciation Right granted under the Plan shall be determined by the Committee; *provided, however*, no Stock Appreciation Right shall be exercisable later than the tenth anniversary of its Grant Date.

(d) **Vesting of Stock Appreciation Rights**

Each Stock Appreciation Right may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Stock Appreciation Right may be subject to such other terms and conditions on the time or times when it may be exercised as the Committee may deem appropriate. The vesting provisions of individual Stock Appreciation Rights may vary. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Stock Appreciation Right upon the occurrence of a specified event.

(e) **Exercise and Payment**

Upon exercise of a Stock Appreciation Right, the holder shall be entitled to receive from the Company an amount equal to the number of shares of Common Stock subject to the Stock Appreciation Right that is being exercised multiplied by the excess of (i) the Fair Market Value of a share of Common Stock on the date the Award is exercised, over (ii) the exercise price specified in the Stock Appreciation Right or related Option. Payment with respect to the exercise of a Stock Appreciation Right shall be made as of and as soon as practicable after the date of exercise. Payment shall be made in the form of shares of Common Stock, cash or a combination thereof, as determined by the Committee. The Award Agreement may, in the Committee's discretion, provide that a Stock Appreciation Right shall be paid out immediately upon it vesting; and in such case "exercise" shall be deemed to occur automatically upon vesting.

(f) **Exercise Price**

The exercise price of a Free Standing Stock Appreciation Right shall be determined by the Committee, but shall not be less than 100% of the Fair Market Value of one share of Common Stock on the Grant Date of such Stock Appreciation Right. However, a Stock Appreciation Right may be granted with an exercise price lower than that set forth in the preceding sentence if such Stock Appreciation Right is granted pursuant to an assumption or substitution for another stock appreciation right in a manner satisfying the provisions of Section 409A. A Related Right granted simultaneously with or after the grant of an Option and in conjunction therewith or in the alternative thereto shall have the same exercise price as the related Option, shall be transferable only upon the same terms and conditions as the

related Option, and shall be exercisable only to the same extent as the related Option; *provided*, *however*, that a Stock Appreciation Right, by its terms, shall be exercisable only when the Fair Market Value per share of Common Stock subject to the Stock Appreciation Right and related Option exceeds the exercise price per share thereof and no Stock Appreciation Rights may be granted in tandem with an Option unless the Committee determines that the requirements of Section 7.1(b) are satisfied.

(g) **Reduction in the Underlying Option Shares**

Upon any exercise of a Related Right, the number of shares of Common Stock for which any related Option shall be exercisable shall be reduced by the number of shares for which the Stock Appreciation Right has been exercised. The number of shares of Common Stock for which a Related Right shall be exercisable shall be reduced upon any exercise of any related Option by the number of shares of Common Stock for which such Option has been exercised.

(h) **Fractions**

No Stock Appreciation Right may be exercised for a fraction of a share of Common Stock.

7.2 Restricted Awards.

(a) **General**

A Restricted Award is an Award of actual shares of Common Stock ("**Restricted Stock**") or hypothetical Common Stock units ("**Restricted Stock Units**") having a value equal to the Fair Market Value of an identical number of shares of Common Stock, which may, but need not, provide that such Restricted Award may not be sold, assigned, transferred or otherwise disposed of, pledged or hypothecated as collateral for a loan or as security for the performance of any obligation or for any other purpose for such period (the "**Restricted Period**") as the Committee shall determine. Each Restricted Award granted under the Plan shall be evidenced by an Award Agreement, and shall be voided if the Award Agreement is not executed and delivered by the Participant within 30 days after the Grant Date. Each Restricted Award so granted shall be subject to the conditions set forth in this Section 7.2, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement.

(b) **Restricted Stock and Restricted Stock Units**

(i) Each Participant granted Restricted Stock shall execute and deliver to the Company an Award Agreement with respect to the Restricted Stock setting forth the restrictions and other terms and conditions applicable to such Restricted Stock. If the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than delivered to the Participant pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (A) an escrow agreement satisfactory to the Committee, if applicable and (B) the

appropriate blank stock power with respect to the Restricted Stock covered by such agreement. If a Participant fails to execute an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and stock power, the Award shall be null and void. Subject to the restrictions set forth in the Award, the Participant generally shall have the rights and privileges of a stockholder as to such Restricted Stock, including the right to vote such Restricted Stock and the right to receive dividends; *provided that*, any cash dividends and stock dividends with respect to the Restricted Stock shall be withheld by the Company for the Participant's account, and interest may be credited on the amount of the cash dividends withheld at a rate and subject to such terms as determined by the Committee. The cash dividends or stock dividends so withheld by the Committee and attributable to any particular share of Restricted Stock (and earnings thereon, if applicable) shall be distributed to the Participant in cash or, at the discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to the amount of such dividends, if applicable, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends. The consideration for Restricted Stock shall be, as determined by the Committee in its discretion and set forth in the Restricted Award, given in the form of cash, past services rendered to the Company or its Affiliate, and/or (if allowed by Applicable Laws) services to be rendered to the Company or its Affiliate during the Restricted Period.

(ii) The terms and conditions of a grant of Restricted Stock Units shall be reflected in an Award Agreement. No shares of Common Stock shall be issued at the time a Restricted Stock Unit is granted, and the Company will not be required to set aside a fund for the payment of any such Award. A Participant shall have no voting rights with respect to any Restricted Stock Units granted hereunder.

(c) **Restrictions**

(i) Restricted Stock awarded to a Participant shall be subject to the following restrictions until the expiration of the Restricted Period, and to such other terms and conditions as may be set forth in the applicable Award Agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the stock certificate; (B) the shares shall be subject to the restrictions on transferability set forth in the Award Agreement; (C) the shares shall be subject to forfeiture to the extent provided in the applicable Award Agreement; and (D) to the extent such shares are forfeited, the stock certificates shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect to such shares shall terminate without further obligation on the part of the Company.

(A) If applicable state law requires a Participant to pay to the Company in cash at least the par value per share of Restricted Stock in connection with purchase of the Restricted Stock, the Participant shall pay

to the Company in cash an amount equal to the par value per share times the number of shares of Restricted Stock; and all reference herein to forfeiture of Restricted Stock shall instead be read as references to repurchase of such Restricted Stock for a cash amount equal to such par value per share times the number of shares so repurchased. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Committee and set forth in the Award Agreement.

(ii) Restricted Stock Units awarded to any Participant shall be subject to (A) forfeiture until the expiration of the Restricted Period, and satisfaction of any applicable Performance Goals during such period, to the extent provided in the applicable Award Agreement, and to the extent such Restricted Stock Units are forfeited, all rights of the Participant to such Restricted Stock Units shall terminate without further obligation on the part of the Company and (B) such other terms and conditions (including as to transferability and ability to be pledge or otherwise encumbered) as may be set forth in the applicable Award Agreement. No transfer which is a "prohibited transfer for value" (within the meaning of the General Instructions to Securities Act Form S-8) shall be allowed.

(iii) The Committee shall have the authority to remove any or all of the restrictions on the Restricted Stock and Restricted Stock Units whenever it may determine that, by reason of changes in Applicable Laws or other changes in circumstances arising after the date the Restricted Stock or Restricted Stock Units are granted, such action is appropriate.

(d) **Restricted Period**

With respect to Restricted Awards, the Restricted Period shall commence on the Grant Date and end or lapse at the time or times set forth on a schedule established by the Committee in the applicable Award Agreement.

(e) **Delivery of Restricted Stock and Settlement of Restricted Stock Units**

Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in Section 7.2(c) and the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall as soon as practicable deliver to the Participant, or his or her beneficiary, without charge, the stock certificate evidencing the shares of Restricted Stock which have not then been forfeited and with respect to which the Restricted Period has expired (to the nearest full share) and any cash dividends or stock dividends credited to the Participant's account with respect to such Restricted Stock and the interest thereon, if any. Upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall as soon as practicable deliver to the Participant, or his or her

beneficiary, without charge, one share of Common Stock for each such outstanding Restricted Stock Unit ("**Vested Unit**"); *provided*, *however*, that, if explicitly provided in the applicable Award Agreement, the Committee may, in its sole discretion, elect to pay cash or part cash and part Common Stock in lieu of delivering only shares of Common Stock for Vested Units. If a cash payment is made in lieu of delivering shares of Common Stock, the amount of such payment shall be equal to the Fair Market Value of the Common Stock as of the date on which the Restricted Period lapsed with respect to each Vested Unit.

(f) **Stock Restrictions**

Each certificate representing Restricted Stock awarded under the Plan shall bear a legend in such form as the Company deems appropriate. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to the Participant's Restricted Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Company's receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant's unvested shares of Restricted Stock and (ii) such escrow arrangements as the Committee shall deem appropriate.

7.3 Performance Compensation Awards.

(a) **General**

The Committee shall have the authority, at the time of grant of any Award (other than, to the extent that such Options and Stock Appreciation Rights are deemed to constitute "performance-based compensation" under Section 162(m) even in the absence of such designation, any Options and Stock Appreciation Rights granted with an exercise price equal to or greater than the Fair Market Value per share of Common Stock on the Grant Date), to designate such Award as a Performance Compensation Award in order to qualify such Award as "performance-based compensation" under Section 162(m). In addition, the Committee shall have the authority to make an Award of a cash bonus to any Participant and designate such Award as a Performance Compensation Award in order to qualify such Award as "performance-based compensation" under Section 162(m).

(b) **Eligibility**

The Committee will, in its sole discretion, designate within the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m)) which Participants will be eligible to receive Performance Compensation Awards in respect of such Performance Period. However, designation of a Participant eligible to receive an Award hereunder for a Performance Period shall not in any manner entitle the Participant to receive payment in respect of any Performance Compensation Award for such Performance Period. The determination as to whether or not such Participant becomes entitled to payment in respect of any Performance Compensation Award shall be decided solely in accordance with the provisions of this Section 7.3. Moreover, designation of a Participant eligible to receive an Award hereunder for a particular Performance Period shall not require designation of such Participant eligible to receive an Award hereunder in

any subsequent Performance Period and designation of one person as a Participant eligible to receive an Award hereunder shall not require designation of any other person as a Participant eligible to receive an Award hereunder in such period or in any other period.

(c) **Discretion of Committee with Respect to Performance Compensation Awards**

With regard to a particular Performance Period, the Committee shall have full discretion to select the length of such Performance Period (provided any such Performance Period shall be not less than one fiscal quarter in duration), the type(s) of Performance Compensation Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goal(s) that is (are) to apply to the Company and the Performance Formula. Within the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m)), the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence of this Section 7.3(c) and record the same in writing.

(d) **Payment of Performance Compensation Awards**

(i) Condition to Receipt of Payment

Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period.

(ii) Limitation

A Participant shall be eligible to receive payment in respect of a Performance Compensation Award only to the extent that: (A) the Performance Goals for such period are achieved; and (B) the Performance Formula as applied against such Performance Goals determines that all or some portion of such Participant's Performance Compensation Award has been earned for the Performance Period.

(iii) Certification

Following the completion of a Performance Period, the Committee shall review and certify in writing whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, calculate and certify in writing the amount of the Performance Compensation Awards earned for the period based upon the Performance Formula. The Committee shall then determine the actual size of each Participant's Performance Compensation Award for the Performance Period and, in so doing, may apply Negative Discretion in accordance with Section 7.3(d)(iv) hereof, if and when it deems appropriate.

(iv) Use of Discretion

In determining the actual size of an individual Performance Compensation Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Compensation Award earned under the Performance Formula in the Performance Period through the use of Negative Discretion if, in its sole judgment, such reduction or elimination is appropriate. The Committee shall not have the discretion to (A) grant or provide payment in respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained or (B) increase a Performance Compensation Award above the maximum amount payable under Section 7.3(d)(vi) of the Plan.

(v) Timing of Award Payments

Performance Compensation Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following completion of the certifications required by this Section 7.3 but in no event later than 2 1/2 months following the end of the fiscal year during which the Performance Period is completed.

(vi) Maximum Award Payable

Notwithstanding any provision contained in this Plan to the contrary, the maximum number of shares of Common Stock subject to Awards (other than Options and Stock Appreciation Rights) which are Performance Compensation Awards payable to any one Participant under the Plan for a Performance Period is 1,000,000 shares of Common Stock or, in the event such Performance Compensation Award is paid in cash, the equivalent cash value thereof on the first or last day of the Performance Period to which such Award relates, as determined by the Committee. The maximum amount that can be paid in any calendar year to any Participant pursuant to a cash bonus Award described in the last sentence of Section 7.3(a) shall be $1,000,000.

8. Show-Stopper Conditions.

8.1 Securities Law Compliance. Each Award Agreement shall provide (and such provision shall control over any other provision of the Plan or the Award Agreement which would be to the contrary) that no shares of Common Stock shall be purchased, sold, issued or delivered thereunder unless and until (a) any then applicable requirements of state or federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel and (b) if required to do so by the Company, the Participant has executed and delivered to the Company a letter of investment intent in such form and containing such provisions as the Committee may require. The Company shall use reasonable efforts to seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise of the Awards; *provided*, *however*, that this undertaking shall not require the Company to register under

the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Awards unless and until such authority is obtained.

8.2 Withholding Obligations. Each Award Agreement shall provide (and such provision shall control over any other provision of the Plan or the Award Agreement which would be to the contrary) that no shares of Common Stock shall be purchased, sold, issued or delivered thereunder unless and until any then Applicable Laws for the payment of employee-side withholding taxes in connection therewith have been satisfied by (a) a cash payment by the Participant to the Company of 100% of such amount, or (b) as may be allowed by the following sentence. To the extent (if any) provided by the terms of an Award Agreement and subject to the discretion of the Committee, the Participant may satisfy the preceding sentence's requirement for payment of any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under an Award by any of the following means (if so expressly allowed) or by a combination of such means expressly allowed, in any event totaling in value 100% of such amount: (a) authorizing the Company to withhold cash from any cash compensation to be paid to the Participant, provided both the Company and the Participant actually and reasonably believe cash compensation sufficiently large will become payable to the Participant within 45 days; (b) tendering a cash payment; (c) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Award, provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by Applicable Law; or (d) delivering to the Company previously owned and unencumbered shares of Common Stock of the Company. Common Stock so withheld or delivered would be valued at its Fair Market Value as of the date of measurement of the amount of income subject to withholding.

9. Use of Proceeds from Stock. Proceeds from the sale of Common Stock pursuant to Awards, or upon exercise thereof, shall constitute general funds of the Company.

10. Miscellaneous.

10.1 Acceleration of Exercisability and Vesting. The Committee shall have the power to accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest (or restrictions lapse) in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest (or restrictions lapse).

10.2 Stockholder Rights. Except as provided in the Plan or an Award Agreement, no Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and

until such Participant has satisfied all requirements for exercise of the Award pursuant to its terms and no adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions of other rights for which the record date is before the date such Common Stock certificate is issued, except as provided in Section 11 hereof.

10.3 No Employment or Other Service Rights. Nothing in the Plan or any instrument executed or Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted (or in any other capacity) or shall affect the right of the Company or an Affiliate to terminate (a) the employment of an Employee or the service of a Consultant, in either case with or without notice and with or without Cause or (b) the service of a Director pursuant to the Bylaws of the Company or Applicable Laws.

10.4 Freedom to Approve Acquisitions, Etc. The grant of Awards shall in no way affect the right of the Company to effect a Change in Control or a Business Combination or to otherwise adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets; the Board and the Company shall incur no liability to Participants by approving or effecting such a transaction.

10.5 Transfer; Approved Leave of Absence. For purposes of the Plan, no termination of employment or of Continuous Service by an Employee shall be deemed to result from either (a) a transfer to the employment of the Company from an Affiliate or from the Company to an Affiliate, or from one Affiliate to another, or (b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the Employee's right to reemployment is guaranteed either by a statute or by contract or under the express written terms of the policy pursuant to which the leave of absence was granted or if the Committee otherwise so provides in writing, in either case, except to the extent inconsistent with Section 409A if the applicable Award is subject thereto.

11. Adjustments upon Changes in Stock. In the event of changes in the outstanding Common Stock or in the capital structure of the Company by reason of any stock or extraordinary cash dividend, stock split, reverse stock split, an extraordinary corporate transaction such as any recapitalization, reorganization, merger by which the Company is (either by direct merger or reverse triangular merger) acquired, consolidation, combination, exchange, or other relevant change in capitalization occurring after the Grant Date of any Award, Awards granted under the Plan and any Award Agreements, the exercise price of Options and Stock Appreciation Rights, the maximum number of shares of Common Stock subject to all Awards stated in Section 4 and the maximum number of shares of Common Stock with respect to which any one person may be granted Awards during any period stated in Section 4 and Section 7.3(d)(vi) will be equitably adjusted or substituted, as to the number, price or kind of a share of Common Stock or other consideration subject to such Awards to the extent necessary to preserve as near as may be (but not to increase) the economic intent of such Award consistent with the purpose of such transaction. In the case of adjustments made pursuant to this Section 11, unless the Committee specifically determines that such

adjustment is in the best interests of the Company, the Committee shall, in the case of Incentive Stock Options, seek to ensure that any adjustments under this Section 11 will not constitute a modification, extension or renewal of the Incentive Stock Options within the meaning of Section 424(h)(3) of the Code and in the case of Non-qualified Stock Options, seek to ensure that any adjustments under this Section 11 will not constitute a modification of such Non-qualified Stock Options within the meaning of Section 409A. Any adjustments made under this Section 11 shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3. Further, with respect to Awards intended to qualify as "performance-based compensation" under Section 162(m), any adjustments or substitutions will not cause the Company to be denied a tax deduction on account of Section 162(m). The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes. By way of example, and without limitation: if the Company is acquired by merger for cash, all Options exercisable after such merger shall entitle the Optionholder to receive, upon exercise, cash (equal to the per-share cash merger price) and nothing else.

12. Effect of Change in Control.

12.1 Double Trigger: Foreshortening. Unless otherwise provided in an Award Agreement, notwithstanding any provision of the Plan to the contrary:

(a) In the event of a Participant's termination of Continuous Service without Cause or for Good Reason (but excluding termination as a result of resignation in the absence of Good Reason) during the 10-day period before a Change in Control or during the 12-month period following a Change in Control, notwithstanding any provision of the Plan or any applicable Award Agreement to the contrary, all Options and Stock Appreciation Rights shall become immediately exercisable with respect to 100% of the shares subject to such Options or Stock Appreciation Rights, and/or the Restricted Period shall expire immediately with respect to 100% of the shares of Restricted Stock or Restricted Stock Units as of the date of the Participant's termination of Continuous Service.

(b) With respect to Performance Compensation Awards, in the event of a Change in Control, all incomplete Performance Periods in respect of such Award in effect on the date the Change in Control occurs shall end on the date of such change and the Committee shall (i) determine the extent to which Performance Goals with respect to each such Performance Period have been met based upon such audited or unaudited financial information then available as it deems relevant and (ii) cause to be paid to the applicable Participant partial or full Awards with respect to Performance Goals for each such Performance Period based upon the Committee's determination of the degree of attainment of Performance Goals or, if not determinable, assuming that the applicable "target" levels of performance have been attained, or on such other basis determined by the Committee.

To the extent practicable, any actions taken by the Committee under the immediately preceding clauses (a) and (b) shall occur in a manner and at a time which allows affected Participants the ability to participate in the Change in Control with respect to the shares of Common Stock subject to their Awards.

12.2 Acceleration and Termination. In addition, in the event of an anticipated Change in Control, the Committee may in its discretion and upon at least 10 days' advance notice to the affected persons, cancel upon or immediately before the Change in Control (but subject to the condition that the Change in Control actually occur) any outstanding Awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such Awards based upon the value per share of Common Stock received or to be received or deemed received by other stockholders of the Company in the event. In the case of any Option or Stock Appreciation Right with an exercise price that equals or exceeds the price paid for a share of Common Stock in connection with the Change in Control, the Committee may cancel the Option or Stock Appreciation Right without the payment of consideration therefor.

12.3 Variations. The Committee may in its discretion treat differently any Awards or Participants in connection with a Change in Control, either in the terms of the initial Award Agreements or in any actions taken by the Committee after the Grant Date.

12.4 Successors. The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to all or substantially all of the assets and business of the Company and its Affiliates, taken as a whole.

13. Amendment of the Plan and Awards.

13.1 Amendment of Plan. The Board at any time, and from time to time, may amend or terminate the Plan. However, except as provided in Section 11 relating to adjustments upon changes in Common Stock and Section 13.3, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy any Applicable Laws. At the time of such amendment, the Board shall determine, upon advice from counsel, whether such amendment will be contingent on stockholder approval. All provided, that that if the only Applicable Law which stockholder approval is necessary to satisfy pertains to Incentive Stock Options but not to any other Awards, such amendment shall be effective immediately as to all types of Awards other than Incentive Stock Options upon Board approval; but shall additionally become effective as to Incentive Stock Options upon stockholder approval and not before.

13.2 Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) and the regulations thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to certain executive officers.

13.3 Contemplated Amendments. It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees, Consultants and Directors with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated

thereunder relating to Incentive Stock Options or to the nonqualified deferred compensation provisions of Section 409A and/or to bring the Plan and/or Awards granted under it into compliance therewith.

13.4 No Impairment of Rights. Rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (a) the Company requests the consent of the Participant and (b) the Participant consents in writing.

13.5 Amendment of Awards. The Committee at any time, and from time to time, may amend the terms of any one or more Awards; *provided*, *however*, that the Committee may not affect any amendment which would otherwise constitute an impairment of the rights under any Award unless (a) the Company requests the consent of the Participant and (b) the Participant consents in writing.

14. General Provisions.

14.1 Forfeiture Events. The Committee may specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain events, in addition to applicable vesting conditions of an Award. Such events may include, without limitation, breach of non-competition, non-solicitation, confidentiality, or other restrictive covenants that are valid under Applicable Laws and are contained in the Award Agreement or otherwise applicable to the Participant, a termination of the Participant's Continuous Service for Cause, or other conduct by the Participant that is or is intended to be detrimental to the business or reputation of the Company and/or its Affiliates.

14.2 Clawback. Notwithstanding any other provisions in this Plan, any Award which is subject to recovery under any law, government regulation or securities exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or securities exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or securities exchange listing requirement).

14.3 Other Compensation Arrangements. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases.

14.4 Sub-plans. The Committee may from time to time establish sub-plans under the Plan for purposes of satisfying blue sky, securities, tax or other laws of various jurisdictions in which the Company intends to grant Awards. Any sub-plans shall contain such limitations and other terms and conditions as the Committee determines are necessary or desirable. All sub-plans shall be deemed a part of the Plan, but each sub-plan shall apply only to the Participants in the jurisdiction for which the sub-plan was designed.

14.5 Unfunded Plan. The Plan shall be unfunded. Neither the Company, the Board nor the Committee shall be required to establish any special or separate fund or to segregate any assets to assure the performance of its obligations under the Plan.

14.6 Benefits Not Alienable. Other than as provided above or in an Award Agreement, benefits under this Plan or the Award Agreement may not be sold, assigned, transferred or otherwise disposed of or alienated, whether voluntarily or involuntarily, nor be pledged or hypothecated as collateral for a loan or as security for the performance of any obligation or for any other purpose. Any unauthorized attempt at assignment, transfer, pledge or other disposition shall be without effect.

14.7 Delivery. Upon exercise of a right granted under this Plan, the Company shall issue Common Stock or pay any amounts due within a reasonable period of time thereafter. Subject to any statutory or regulatory obligations the Company may otherwise have, for purposes of this Plan, 20 days shall be considered a reasonable period of time.

14.8 No Fractional Shares. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, additional Awards or other securities or property shall be issued or paid in lieu of fractional shares of Common Stock or whether any fractional shares should be rounded, forfeited or otherwise eliminated.

14.9 Other Provisions. The Award Agreements authorized under the Plan may contain such other provisions not inconsistent with this Plan, including, without limitation, restrictions upon the exercise of the Awards, as the Committee may deem advisable.

14.10 Section 409A. (a) The Plan is intended to comply with the requirements of Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan or any Award Agreement that are due within the “short-term deferral period” as defined in Section 409A shall not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding anything to the contrary in the Plan or any Award Agreement, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan or any Award Agreement during the six month period immediately following the Participant’s termination of Continuous Service shall instead be paid in one lump sum on the first payroll date after the six-month anniversary of the Participant’s separation from service (or the Participant’s death, if earlier).

(b) Unless the Committee expresses a conscious and knowing intention to the contrary in the particular instance, all Award Agreements shall be deemed to be intended either to be exempt from the application of or to comply with the requirements of Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, each Award Agreement shall be interpreted and administered and each action of

the Committee with respect thereto shall be interpreted such that grant, payment, settlement or deferral will not be subject to a penalty, tax or interest applicable under or as a result of Section 409A.

(c) Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Participant under Section 409A and neither the Company nor the Committee will have any liability to, or obligation to indemnify or reimburse, any Participant for such tax or penalty.

14.11 Disqualifying Dispositions. Any Participant who shall make a "disposition" (as defined in Section 424 of the Code) of all or any portion of shares of Common Stock acquired upon exercise of an Incentive Stock Option within two years from the Grant Date of such Incentive Stock Option or within one year after the issuance of the shares of Common Stock acquired upon exercise of such Incentive Stock Option (a "**Disqualifying Disposition**") shall be required to immediately advise the Company in writing as to the occurrence of the sale and the price realized upon the sale of such shares of Common Stock.

14.12 Section 16. It is the intent of the Company that the Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, so as not to become subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of the Plan would conflict with the intent expressed in this Section 14.12, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

14.13 Section 162(m). To the extent the Committee issues any Award that is intended to be exempt from the deduction limitation of Section 162(m), the Committee may, without stockholder or Participant approval, amend the Plan or the relevant Award Agreement retroactively or prospectively to the extent it determines necessary in order to comply with any subsequent clarification of Section 162(m) required to preserve the Company's federal income tax deduction for compensation paid pursuant to any such Award.

14.14 Expenses. The costs of administering the Plan shall be paid by the Company.

14.15 Annual Reports. During the term of this Plan, to the extent required by Applicable Law the Company shall furnish to each Participant who does not otherwise receive such materials, copies of all reports, proxy statements and other communications that the Company distributes generally to its stockholders.

14.16 Severability. If any of the provisions of the Plan or any Award Agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions shall not be affected thereby.

14.17 Plan Headings. The headings in the Plan are for purposes of convenience only and are not intended to define or limit the construction of the provisions hereof.

14.18 Non-Uniform Treatment. The Committee's determinations under the Plan and in connection with any respective Award Agreements need not be uniform and may be made by it selectively among persons who are eligible to receive, or actually receive, Awards. Without limiting the generality of the foregoing, the Committee shall be entitled to make non-uniform and selective determinations, amendments and adjustments, and to enter into non-uniform and selective Award Agreements.

15. Effective Date of Plan. The Plan shall become effective as of the Effective Date, but no Award shall be exercised (or, in the case of a stock Award, shall be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within 12 months before or after the date the Plan is adopted by the Board.

16. Termination or Suspension of the Plan. The Plan shall terminate automatically on the tenth anniversary of the Effective Date. No Award shall be granted pursuant to the Plan after such date, but Awards theretofore granted may extend beyond that date. The Board may suspend or terminate the Plan at any earlier date pursuant to Section 13.1 hereof. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated. Unless the Company determines to submit Section 7.3 of the Plan and the definition of "Performance Goal" and "Performance Criteria" to the Company's stockholders at the first stockholder meeting that occurs in the fifth year following the year in which the Plan was last approved by stockholders (or any earlier meeting designated by the Board), in accordance with the requirements of Section 162(m), and such stockholder approval is obtained, then no further Performance Compensation Awards shall be made to Covered Employees under Section 7.3 after the date of such annual meeting, but the Plan may continue in effect for Awards to Participants not in accordance with Section 162(m).

17. Choice of Law. The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of law rules.

As adopted by the Board of Directors of Biocept, Inc. on July 31, 2013.

As approved by the stockholders of Biocept, Inc. on August 6, 2013.

Biocept, Inc.

2013 Equity Incentive Plan

STOCK OPTION AGREEMENT

1. **Grant of Option.** Biocept, Inc., a Delaware corporation (the "Company"), hereby grants to ("Optionee"), an option (the "Option") to purchase the total number of shares of Common Stock (the "Shares") set forth in the Notice of Stock Option Grant (the "Notice"), at the exercise price per Share set forth in the Notice (the "Exercise Price") subject to the terms, definitions and provisions of the Company's 2013 Equity Incentive Plan (the "Plan") adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan or in the Notice.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice, and to the extent it is not so designated or to the extent the Option does not qualify as an Incentive Stock Option under Applicable Laws, then it is intended to be and will be treated as a Nonstatutory Stock Option. "Applicable Laws" means the legal requirements relating to the administration of stock option and restricted stock purchase plans, including under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, other U.S. federal and state laws, the Code, any stock exchange rules or regulations and the applicable laws, rules and regulations of any other country or jurisdiction where Options or other Awards are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Affiliate, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of $100,000, the Shares in excess of $100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 6.12 of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting/Exercise Schedule set out in the Notice and with the provisions of the Plan, including Section 6 thereof, and of this Agreement, including Section 5 hereof, as follows:

(a) **Right to Exercise.**

(i) This Option may not be exercised for a fraction of a share.

(ii) In the event of Optionee's death, disability or other termination of employment, the exercisability of the Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

(iii) In no event may this Option be exercised after the Expiration Date of the Option as set forth in the Notice.

(b) **Method of Exercise.**

(i) This Option shall be exercisable by execution and delivery of the Exercise Notice and Stock Purchase Agreement attached hereto as Exhibit A (the "Exercise Agreement") or of any other form of written notice approved for such purpose by the Company which shall state Optionee's election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the Exercise Price.

(ii) As a condition to the exercise of this Option and as further set forth in Section 8.2 of the Plan, Optionee agrees to make such arrangements as the Administrator may require for the satisfaction of all federal, state or other tax withholding obligations, if any, which arise upon the vesting or exercise of the Option, or disposition of Shares, whether by withholding, direct payment to the Company, or otherwise, as the Administrator may in its discretion determine.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of the Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Optionee on the date on which the Option is exercised with respect to such Shares.

4. **Method of Payment.** Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

(a) cash or check delivered on and dated no later than the date of exercise; or

(b) if the Company (in its sole discretion, at the time) is at such time permitting "same day sale" cashless brokered exercises, delivery of a properly executed exercise notice together with irrevocable instructions to a broker participating in such cashless brokered exercise program to deliver promptly to the Company the amount required to pay the exercise price (and applicable withholding taxes); or

(c) if the Notice expressly authorizes Optionee to use the net-exercise method, delivery of a properly executed net-exercise notice on a form provided by the Company.

5. **Termination of Relationship; Early Termination of Option.** Following the date of cessation of Optionee's Continuous Service Status for any reason (the "Termination Date"), Optionee may exercise the Option only as set forth in the Notice and this Section 5. To the extent that Optionee is not entitled to exercise this Option as of the Termination Date, or if Optionee is not allowed to exercise this Option during the Termination Period set forth in the Notice, or if Optionee does not exercise this Option within the Termination Period set forth in the Notice or the termination periods set forth below, the Option shall terminate in its entirety. In no event may any Option be exercised after the Expiration Date of the Option as set forth in the Notice.

(a) **Termination.** In the event of termination of Optionee's Continuous Service Status other than as a result of Optionee's disability or death or for Cause (as defined in the Plan), Optionee may, to the extent Optionee is vested in the Option Shares at the Termination Date, exercise this Option during the Termination Period set forth in the Notice.

(b) **Other Terminations of Relationship.** In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise the Option only as described below:

(i) **Termination upon Disability of Optionee.** In the event of termination of Optionee's Continuous Service Status as a result of Optionee's disability, Optionee may, but only within twelve months from the Termination Date, exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date.

(ii) **Death of Optionee.** In the event of the death of Optionee (a) during the term of this Option and while an employee (including officers) or Outside Director of, or consultant or advisor to, either the Company or an Affiliate and having been in Continuous Service Status since the date of grant of the Option, or (b) within three months after Optionee's Termination Date (but only if such cessation of services was not as a result of voluntary termination by the Optionee or for Cause), the Option may be exercised at any time within twelve months following the date of death by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent Optionee was vested in the Option as of the Termination Date.

(iii) **Termination for Cause.** In the event Optionee's Continuous Service Status is terminated for Cause, the Option shall terminate immediately upon such termination for Cause as set forth in Section 6.8 of the Plan. In the event Optionee's employment or consulting relationship with the Company is suspended pending investigation of whether such relationship shall be terminated for Cause, all Optionee's rights under the Option, including the right to exercise the Option, shall be suspended during the investigation period. The Administrator shall have authority to effect such procedures and take such actions as are necessary to carry out the legal intent of this Section 5(b)(iii), including such procedures and actions as are required to cause Optionee to return to the Company Shares purchased under the Option that have been purchased or that vested within six months of the events giving rise to the for-Cause termination of Optionee's Continuous Service Status and, if such Shares have been transferred by the Optionee, to remit to the Company the value of such transferred Shares.

(c) **Termination of Option.** This Option may terminate before its Expiration Date and before the dates specified under Section 5(a) and (b) above under certain circumstances as set forth in Section 12.2 of the Plan.

6. **Non-Transferability of Option.** Except as otherwise set forth in the Notice, this Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution or pursuant to qualified domestic relations orders under Applicable Laws and may be exercised during the lifetime of Optionee only by him or her. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Tax Consequences.** The Company has not provided any tax advice with respect to this Option or the disposition of the Shares. Optionee should obtain advice from an appropriate independent professional adviser with respect to the taxation implications of the grant, exercise, assignment, release, cancellation or any other disposal of this Option (each, a "Trigger Event") and on any subsequent sale or disposition of the Shares. Optionee should also take advice in respect of the taxation indemnity provisions under Section 8 below. The per share Exercise Price of the Option is intended to be at least equal to the fair market value of the Company's Common Stock at the date of grant. The Company has attempted in good faith to make the fair market value determination in compliance with applicable tax law although there can be no certainty that the IRS will agree. If the IRS does not agree and asserts the fair market value at the time of grant is higher than the Exercise Price, the IRS could seek to impose greater taxes on Optionee, including interest and penalties under Internal Revenue Code Section 409A; but Optionee absolves and releases the Company and its directors from any claims should there be any such taxes, interest or penalties.

8. **Optionee's Taxation Indemnity.**

(a) To the extent permitted by law, Optionee hereby agrees to indemnify and keep indemnified the Company and the Company as trustee for and on behalf of any affiliate entity, in respect of any liability or obligation of the Company and/or any affiliate entity to account for income tax or any other taxation provisions under the laws of Optionee's country or citizenship and/or residence to the extent arising from a Trigger Event or arising out of the acquisition, retention and disposal of the Shares.

(b) The Company shall not be obliged to allot and issue any of the Shares or any interest in the Shares unless and until Optionee has paid to the Company such sum as is, in the opinion of the Company, sufficient to indemnify the Company in full against any liability the Company has for any amount of, or representing, income tax or any other tax arising from a Trigger Event (the "Option Tax Liability"), or Optionee has made such other arrangement as in the opinion of the Company will ensure that the full amount of any Option Tax Liability will be recovered from Optionee within such period as the Company may then determine.

9. **Data Protection.**

(a) To facilitate the administration of the Plan and this Agreement, it will be necessary for the Company (or its payroll administrators) to collect, hold and process certain personal information about Optionee and to transfer this data to certain third parties such as

brokers with whom Optionee may elect to deposit any share capital under the Plan. Optionee consents to the Company (or its payroll administrators) collecting, holding and processing Optionee's personal data and transferring this data to the Company or any other third parties insofar as is reasonably necessary to implement, administer and manage the Plan.

(b) Optionee understands that Optionee may, at any time, view Optionee's personal data, require any necessary corrections to it or withdraw the consents herein in writing by contacting the Company, but acknowledges that without the use of such data it may not be practicable for the Company to administer Optionee's involvement in the Plan in a timely fashion or at all and this may be detrimental to Optionee.

10. **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

12. **Effect of Agreement**. Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Administrator regarding any questions relating to the Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail. The Option, including the Plan, constitutes the entire agreement between Optionee and the Company on the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties relating to such subject matter.

EXHIBIT A

Biocept, Inc.

2013 Equity Incentive Plan

EXERCISE NOTICE AND STOCK PURCHASE AGREEMENT

This Agreement ("Agreement") is made as of , by and between Biocept, Inc., a Delaware corporation (the "Company"), and ("Purchaser"). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Company's 2013 Equity Incentive Plan (the "Plan").

1. **Exercise of Option.** Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase shares of the Common Stock (the "Shares") of the Company under and pursuant to the Plan and the Stock Option Agreement granted , (the "Option Agreement"). The purchase price for the Shares shall be $ per Share for a total purchase price of $. The term "Shares" refers to the purchased Shares and all securities received in replacement of the Shares or as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Time and Place of Exercise.** The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement subject to the conditions stated in and the other provisions of the Option Agreement, including Section 3(b) thereof. On or forthwith after such date, the Company will deliver to Purchaser a certificate representing the Shares to be purchased by Purchaser (which shall be issued in Purchaser's name) against payment of the exercise price therefor on such date by Purchaser by any method listed in Section 4 of the Option Agreement.

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the provisions below and applicable securities laws.

4. **Repurchase Option on Termination For Cause.** Purchaser acknowledges that in the event of termination of Purchaser's Continuous Service Status for Cause, the Administrator shall have authority to effect such procedures and take such actions as are necessary to carry out the legal intent of Section 9(b)(iv) of the Option Agreement, including such procedures and actions as are required to cause Purchaser to return to the Company Shares purchased under the Option that have been purchased or that vested within six months of the events giving rise to the for-Cause termination of Purchaser's Continuous Service Status and, if such Shares have been transferred by the Purchaser, to remit to the Company the value of such transferred Shares.

5. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following (provided, that the representation in subsections (b), (c), (d), (e) and (f) shall be applicable if and only if the Shares are not registered under the Securities Act on Form S-8):

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares.

(b) Purchaser is purchasing these securities for investment for his or her own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act or under any applicable provision of state law. Purchaser does not have any present intention to transfer the Shares to any person or entity.

(c) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(d) Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the securities. Purchaser understands that the certificate(s) evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

(e) Purchaser is familiar with the provisions of Rule 144 promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144, which rule requires, among other things, that the Company be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, that resales of securities take place only after the holder of the Shares has held the Shares for certain specified time periods, and under certain circumstances, that resales of securities be limited in volume and take place only pursuant to brokered transactions. Notwithstanding this paragraph (e), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (f) below.

(f) Purchaser further understands that in the event all of the applicable requirements of Rule 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(g) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

(h) Purchaser understands that the per share "Exercise Price" for the Shares is intended to be at least equal to the fair market value of the Company's Common Stock at the date of grant and that the Company has attempted in good faith to make the fair market value determination in compliance with applicable tax law although there can be no certainty that the IRS will agree. Purchaser understands that if the IRS does not agree and asserts that the fair market value at the time of grant is higher than the Exercise Price, the IRS could seek to impose greater taxes on Purchaser, including interest and penalties under Internal Revenue Code Section 409A; but Purchaser absolves and releases the Company and its directors from any claims should there be any such taxes, interest or penalties.

6. **Restrictive Legends and Stop-Transfer Orders.**

(a) **Legends.** If the Shares have not been registered under the Securities Act on Form S-8, the certificate or certificates representing the Shares shall bear the following legend (as well as any legends required by applicable state and federal corporate and securities laws):

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED UNLESS EFFECTED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR UNDER ANOTHER EXEMPTION AVAILABLE UNDER THE SECURITIES ACT OF 1933 (AS TO WHICH AVAILABILITY THE COMPANY MAY REQUIRE THE SELLER/TRANSFEROR TO PROVIDE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY).

(b) **Stop-Transfer Notices.** Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

7. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser's employment or consulting relationship, for any reason, with or without Cause.

8. **Tax Consequences.** Purchaser should obtain advice from an appropriate independent professional adviser with respect to the taxation implications of the grant, issuance, purchase, retention, assignment, release, cancellation, sale or any other disposal of the Shares (each, a "Trigger Event"). Participant should also take advice in respect of the taxation indemnity provisions under Section 9 below.

9. **Purchaser's Taxation Indemnity.**

(a) To the extent permitted by law, Purchaser hereby agrees to indemnify and keep indemnified the Company and the Company as trustee for and on behalf of any affiliate entity, in respect of any liability or obligation of the Company and/or any affiliate entity to account for income tax or any other taxation provisions under the laws of Purchaser's country or citizenship and/or residence to the extent arising from a Trigger Event.

(b) The Company shall not be obliged to allot and issue any of the Shares or any interest in the Shares unless and until Purchaser has paid to the Company such sum as is, in the opinion of the Company, sufficient to indemnify the Company in full against any liability the Company has for any amount of, or representing, income tax or any other tax arising from a Trigger Event (the "Shares Tax Liability"), or Purchaser has made such other arrangement as in the opinion of the Company will ensure that the full amount of any Shares Tax Liability will be recovered from Purchaser within such period as the Company may then determine.

10. **Data Protection.**

(a) To facilitate the administration of the Plan and this Agreement, it will be necessary for the Company (or its payroll administrators) to collect, hold and process certain personal information about Purchaser and to transfer this data to certain third parties such as brokers with whom Purchaser may elect to deposit any share capital under the Plan. Purchaser consents to the Company (or its payroll administrators) collecting, holding and processing Purchaser's personal data and transferring this data to the Company or any other third parties insofar as is reasonably necessary to implement, administer and manage the Plan.

(b) Purchaser understands that Purchaser may, at any time, view Purchaser's personal data, require any necessary corrections to it or withdraw the consents herein in writing by contacting the Company, but acknowledges that without the use of such data it may not be practicable for the Company to administer Purchaser's involvement in the Plan in a timely fashion or at all and this may be detrimental to Purchaser.

11. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by email or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(e) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

[Signature Page Follows]

The parties have executed this Exercise Notice and Stock Purchase Agreement as of the date first set forth above.

COMPANY:

BIOCEPT, INC.

By: _____
Name: _____
Title: _____

PURCHASER:

_____
(Signature)

_____
(Printed Name)

Address: _____
_____

RECEIPT

The undersigned hereby acknowledges receipt of Certificate No. for shares of Common Stock of Biocept, Inc.

Dated: _____

_____

Purchaser

RECEIPT

Biocept, Inc. (the "Company") hereby acknowledges receipt of check in the amount of $ given by as consideration for Certificate No. for shares of Common Stock of the Company.

Dated: _____

Biocept, Inc.

By: _____

Name: _____

Title: _____

BIOCEPT, INC.

2013 Equity Incentive Plan

Exhibit 10.4

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "**Agreement") dated as of _____ ____, 20____ is made by and between BIOCEPT, INC.,** a California corporation (the "**Company**"), and _____("**Indemnitee**").

RECITALS

A. The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

B. The Company's Amended and Restated Bylaws (the "**Bylaws**") provide that the Company shall indemnify its directors and executive officers, and empowers the Company to indemnify its other officers, employees and agents, as authorized by the California Corporations Code, as amended (the "**Code**"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

D. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term "agent" of the Company means any person who: (i) is or was a director, officer, employee or other fiduciary of the Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Expenses. For purposes of this Agreement, the term "expenses" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Indemnitee, but shall not include any judgments, fines or penalties actually levied against Indemnitee for such individual's violations of law. The term "expenses" shall also include reasonable compensation for time spent by Indemnitee for which he is not compensated by the Company or any subsidiary or third party (i) for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any subsidiary; and (ii) if the rate of compensation and estimated time involved is approved by the directors of the Company who are not parties to any action with respect to which expenses are incurred, for Indemnitee while an agent of, employed by, or providing services for compensation to, the Company or any subsidiary.

(c) Proceedings. For purposes of this Agreement, the term "proceeding" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, 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 or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director, officer or agent of the Company; (ii) the fact that any action taken by Indemnitee or of any action on Indemnitee's part while acting as director, officer, employee or agent of the Company; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

(d) Subsidiary. For purposes of this Agreement, the term "subsidiary" means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(e) Independent Counsel. For purposes of this Agreement, the term "independent counsel" means a law firm, or a partner (or, if applicable, member) of such 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, 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.

2. Agreement to Serve. Indemnitee will serve, or continue to serve, as a director, officer, employee or agent of the Company or any subsidiary, as the case may be, faithfully and to the best of his ability, at the will of such corporation (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an agent of such corporation, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the bylaws or other applicable charter documents of such corporation, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Company.

3. Indemnification.

(a) Indemnification in Third Party Proceedings. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, for any and all expenses, actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding.

(b) Indemnification in Derivative Actions and Direct Actions by the Company. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings.

(c) Indemnification of Related Parties. If (i) Indemnitee is or was affiliated with one or more entities that has invested in the Company (an "Appointing Shareholder"), (ii) the Appointing Shareholder is, or is threatened to be made, a party to or a participant in any proceeding, and (iii) the Appointing Shareholder's involvement in the proceeding is related to Indemnitee's service to the Company as a director or other agent of the Company or any direct or indirect subsidiaries of the Company, then, to the extent resulting from any claim based on the

Indemnitee's service to the Company as a director or other fiduciary of the Company, the Appointing Shareholder will be entitled to indemnification hereunder for reasonable expenses to the same extent as Indemnitee.

4. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

6. Advancement of Expenses. To the extent not prohibited by law, the Company shall advance the expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within 20 days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such expenses 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 included with the invoice) and upon request of the Company, an undertaking to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses. Advances shall include any and all expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

7. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of expenses covered hereunder. The failure of

Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise, except to the extent such failure is prejudicial to the Company's ability to defend Indemnitee in any proceeding.

(b) Request for Indemnification and Indemnification Payments. Indemnitee shall notify the Company promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the terms of this Agreement, and shall request payment thereof by the Company. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company no later than 60 days after receipt of the written request of Indemnitee. Claims for advancement of expenses shall be made under the provisions of Section 6 herein. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise, except to the extent such failure is prejudicial to the Company's ability to defend Indemnitee in any proceeding.

(c) Application for Enforcement. In the event the Company fails to make timely payments as set forth in Sections 6 or 7(b) above, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, shareholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder.

(d) Indemnification of Certain Expenses. The Company shall indemnify Indemnitee against all expenses incurred in connection with any hearing or proceeding under this Section 7 unless the Company prevails in such hearing or proceeding on the merits in all material respects.

8. Assumption of Defense. In the event the Company shall be requested by Indemnitee to pay the expenses of any proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of expenses provisions of this Agreement.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any subsidiary ("**D&O Insurance**"), 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 such director, officer, employee or agent 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 D&O 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 Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

[Alternative: To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any other Enterprise, 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 such director, officer, employee or agent 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 director and officer 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.]

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (iv) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be

reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its directors, officers, employees or other agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or under any other agreement, provision in the Bylaws or Amended and Restated Articles of Incorporation of the Company or applicable law, or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its shareholders.

(d) Securities Act Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "Act"), or in any registration statement filed with the Securities and Exchange Commission under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Amended and Restated Articles of Incorporation of the Company, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an agent of the Company, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and

duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require 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, expressly to 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.

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 or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Amended and Restated Articles of Incorporation of the Company, Bylaws 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, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Term. This Agreement shall continue until and terminate upon the later of: (a) five years after the date that Indemnitee shall have ceased to serve as a director, officer, employee or agent of the Company; or (b) one year after the final termination of any proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of expenses hereunder.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of five years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such five-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

13. Subrogation. In the event of 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, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law.

15. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of

the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

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

17. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

18. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of California, as applied to contracts between California residents entered into and to be performed entirely within California.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other telecommunications mechanism will be effective as delivery of a manually executed counterpart of this Agreement.

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

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Amended and Restated Articles of Incorporation of the Company, Bylaws, the

Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

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

BIOCEPT, INC.

By: _____

Name: _____

Title: _____

INDEMNITEE

_____

LEASE
(Nexus/Biocept)

THIS LEASE ("Lease"), dated for reference purposes only March 31, 2004, is made by and between NEXUS EQUITY VIII LLC, a California limited liability company ("Landlord"), and BIOCEPT, INC., a California corporation ("Tenant").

1. Lease Premises.

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those certain premises ("Premises") consisting of approximately 38,369 square feet of Rentable Area in the building (the "Building") located at 5810 Nancy Ridge Drive, Suite 100, San Diego, California, on real property legally described as Lot 101 of Lusk Industrial Park Unit No. 4, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10819, filed in the office of the County Recorder of San Diego County, January 13, 1984. The Building consists of approximately 48,218 square feet of Rentable Area, and the building at 5820 Nancy Ridge Drive consists of approximately 39,080 square feet of Rentable Area. The two buildings, the real property upon which the buildings are located, and all landscaping, parking facilities, and other improvements and appurtenances related thereto are hereinafter collectively referred to as the "Project." The site plan for the Project is attached hereto as Exhibit "A", and the Premises are outlined on Exhibit "B". All exterior portions of the Project which are for the non-exclusive use of tenants of the Project, including without limitation roadways, driveways, sidewalks, parking areas, and landscaped areas, are hereinafter referred to as "Common Areas".

2. Basic Lease Provisions.

2.1 For convenience of the parties, certain basic provisions of this Lease are set forth herein, which provisions are subject to the remaining terms and conditions of this Lease and are to be interpreted in light of such remaining terms and conditions.

2.1.1 Address of the Project:
5810 and 5820 Nancy Ridge Drive
San Diego, California

2.1.2 Address of Tenant's Building:
5810 Nancy Ridge Drive, Suite 200

2.1.3 Rentable Area:
Approximately 38,369 square feet
(subject to adjustment pursuant to Section 8.3)

2.1.4 Basic Annual Rent:
(subject to Rentable Area adjustment pursuant to Section 8.3)

5/24/04	through 1/23/05	No Basic Annual Rent	
1/24/05	through 5/23/06	$805,749	($ 1.75 per square foot of Rentable Area per month)
5/24/06	through 5/23/07	$897,834	($1.95 per square foot of Rentable Area per month)
5/24/07	through 5/23/08	$943,877	($2.05 per square foot of Rentable Area per month)
5/24/08	through 5/23/09	$989,920	($2.15 per square foot of Rentable Area per month)
5/24/09	through 5/23/10	$1,035,963	($2.25 per square foot of Rentable Area per month)
5/24/10	through 5/23/11	$1,082,005	($2.35 per square foot of Rentable Area per month)
5/24/11	through 5/23/12	$1,128,048	($2.45 per square foot of Rentable Area per month)

2.1.5 Monthly Installment of Basic Annual Rent:
(subject to Rentable Area adjustment pursuant to Section 8.3)

5/24/04	through 1/23/05	No Basic Annual Rent	
1/24/05	through 5/23/06	$67,145	($1.75 per square foot of Rentable Area)
5/24/06	through 5/23/07	$74,819	($1.95 per square foot of Rentable Area)
5/24/07	through 5/23/08	$78,656	($2.05 per square foot of Rentable Area)
5/24/08	through 5/23/09	$82,493	($2.15 per square foot of Rentable Area)
5/24/09	through 5/23/10	$86,330	($2.25 per square foot of Rentable Area)
5/24/10	through 5/23/11	$90,167	($2.35 per square foot of Rentable Area)
5/24/11	through 5/23/12	$94,004	($2.45 per square foot of Rentable Area)

2.1.6 Tenant’s Pro Rata Share: 44% of the Project (subject to Rentable Area adjustment pursuant to Section 8.3, and subject to abatement for first eight (8) months of Operating Expenses pursuant to Section 7.6)

2.1.7 (a) Term Commencement Date: May 24, 2004

(b) Term Expiration Date: May 23, 2012

2.1.8 Permitted Use: Any lawful use permitted in the MIB Zone

2.1.9 Address for Rent Payment and Notices to Landlord:

Nexus Equity VIII LLC
c/o Nexus Properties, Inc.
9381 Judicial Drive, Suite 100
San Diego, CA 92121

Address for Notices to Tenant Prior to Occupancy:

Biocept, Inc.
2151 Las Palmas Drive, Suite C
Carlsbad, CA 92009

Address for Notices to Tenant After Occupancy:

Biocept, Inc.
5810 Nancy Ridge Drive, Suite 200
San Diego, California 92122

2.2. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit "A"	Site Plan of the Project
Exhibit "B"	Outline of the Premises
Exhibit "C"	Rules and Regulations
Exhibit "D"	Landlord's Improvements

3. Term.

3.1 This Lease shall take effect upon the date of execution hereof by each of the parties hereto, and each of the provisions hereof shall be binding upon and inure to the benefit of Landlord and Tenant from the date of execution hereof by each of the parties hereto.

3.2 The term of this Lease will be that period from May 24, 2004 ("Term Commencement Date") through May 23, 2012 (eight [8] years from the Term Commencement Date), subject to earlier termination of this Lease or extension of the term as provided herein.

4. Possession.

4.1 Landlord shall tender possession of the Premises to Tenant upon full execution of the Lease. Prior to entry by Tenant onto the Premises before the Term Commencement Date, Tenant shall furnish to Landlord evidence satisfactory to Landlord that insurance coverages required of Tenant under the provisions of Article 21 are in effect. Occupancy of the Premises prior to the Term Commencement Date shall be subject to all of the terms and conditions of this Lease other than the payment of Basic Annual Rent and Operating Expenses.

4.2 Landlord shall contribute for the cost of Tenant Improvements $473,000 plus $27,678 for architectural fees for a total of $500,678. In addition, Landlord will pay an additional $4,000 if the elevator has to be permitted separately. Further, at Landlord's cost, Landlord shall engage Comfort Systems to perform testing of the HVAC system to insure its ability to support 55% relative humidity and a 68 degree temperature for the Clean Room, and make any necessary modifications. Landlord shall also initialize the RO/DI water system (on-going maintenance to be paid by Tenant). If the cost of Tenant Improvements exceed the Landlord Allowance, Tenant shall pay such excess costs.

4.3 Tenant shall contract with David Begent & Co. and Krenek Design Group to construct and design the Tenant Improvements. Tenant shall prepare a Tenant Improvement Budget, including design fees, costs of processing and obtaining permits from the City of San Diego and any other governmental agency with jurisdiction over the Premises, architect fees and other direct costs incurred in the design and construction of the Tenant Improvements. The Tenant Improvement Budget, and all revisions thereto, shall be subject to Landlord's approval, which shall not be unreasonably withheld or delayed. As work progresses on the Tenant Improvements, Tenant shall submit an application for payment ("Application for Payment") to Landlord no more often than monthly, and by the twentieth (20th) day of the month, for disbursement of the Tenant Improvement Allowance. Applications for Payment may be made only for work actually completed or services actually provided. Applications for Payment shall include copies of the invoices to Tenant by Tenant's contractor(s) or other vendors for the work completed and be certified by both Tenant and Tenant's architect that the described Tenant Improvement work or services have been completed. If the Tenant Improvement Budget, as it may be revised from time to time, exceeds that amount of the Tenant Improvement Allowance, as initially adopted or as revised from time to time because of changes in work, cost overruns, or otherwise, Tenant shall pay the overage on a monthly basis proportionately as the work progresses. Tenant shall, at its expense, install any improvements in addition to those listed on the Tenant Improvement Budget which are necessary to ensure (i) the Premises are completed in accordance with the Tenant Improvement Plans, (ii) the Premises are fully operational, and (iii) a certificate of occupancy is issued for the Premises.

5. Rent.

5.1 Tenant agrees to pay Landlord as Basic Annual Rent for the Premises the sums set forth in Section 2.1.4, subject to adjustment as set forth in Section 8.3. Basic Annual Rent shall be paid in the equal monthly installments set forth in Section 2.1.5, subject to adjustment as set forth in Section 8.3, each in advance on the first day of each and every calendar month during the term of this Lease. Basic Annual Rent shall not be payable, and shall be forgiven, for the period May 24, 2004 through January 23, 2005.

5.2 In addition to Basic Annual Rent, Tenant agrees to pay to Landlord as additional rent ("Additional Rent"), at the times hereinafter specified in this Lease (i) Tenant's Pro Rata Share (as defined in Section 7.3(a) and as set forth in Section 2.1.6, subject to adjustment pursuant to Section 8.1) of Operating Expenses as provided in Article 7, and (ii) all other amounts that Tenant assumes or agrees to pay under the provisions of this Lease, including but not limited to any and all other sums that may become due by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, and Landlord's performance of any obligations of Tenant under this Lease.

5.3 Basic Annual Rent and Additional Rent shall together be denominated "Rent." Except as expressly set forth in this Lease, Rent shall be paid to Landlord, without notice, demand, abatement, suspension, deduction, setoff, counterclaim, or defense, in lawful money of the United States of America, at the office of Landlord as set forth in Section 2.1.9 or to such other person or at such other place as Landlord may from time to time designate in writing.

5.4 In the event the term of this Lease commences or ends on a day other than the first day of a calendar month, then the Rent for such fraction of a month shall be prorated for such period on the basis of a thirty (30) day month and shall be paid at the then current rate for such fractional month prior to the commencement of the partial month.

5.5 The installment of Basic Annual Rent for the period May 1, 2005 through May 31, 2005 in the amount of $67,145 shall be deposited with Landlord by Tenant upon execution of the Lease, and shall be held by Landlord as an additional security deposit under Article 9 hereof unless and until applied to Basic Annual Rent for such period.

6. [Intentionally Left Blank].

7. Operating Expenses.

7.1 As used herein, the term "Operating Expenses" is defined, for purposes of this Lease, as those reasonable operation and maintenance costs incurred in the management of similarly classed buildings which are commonly included as operating expenses in accordance with sound accounting practice used by the commercial real estate industry consistently applied for the applicable time periods, including, but not limited to, the following:

(a) Government impositions including, without limitation, real and personal property taxes and assessments (but excluding personal property taxes and assessments of other tenants of the Project) levied upon the Project or any part thereof; amounts due under any improvement bond upon the Project and assessments levied in lieu thereof (except to the extent they represent costs related to the construction of the Project); any tax on or measured by gross rentals received from the rental of space in the Project or tax based on the square footage of the buildings in the Project to the extent such tax is in lieu of or in the nature of a property tax; and any utilities surcharges or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof promulgated by, any federal, state, regional, municipal or local government authority in connection with the use or occupancy of the Building or Project, and any expenses, including the cost of attorneys or experts, reasonably incurred by Landlord in seeking reduction by the taxing authority of the applicable taxes not to exceed the amount of any such reduction, less tax refunds obtained as a result of an application for review thereof.

(b) Except as set forth in Section 7.2 below, and by way of example and not as a limitation upon the generality of the foregoing, costs of (i) maintenance, repairs and

replacements to improvements within the Project; (ii) utilities furnished to the Project (except those utilities which are separately metered and paid by individual tenants); (iii) sewer fees; (iv) trash collection; (v) cleaning (including windows); (vi) maintenance of landscape and grounds; (vii) maintenance of drives and parking areas, including periodic resurfacing; (viii) reasonable and customary security services; (ix) maintenance, repair, and replacement of reasonable and customary security devices; (x) building supplies; (xi) maintenance, repair, and replacement of equipment utilized for operation and maintenance of the Project; (xii) costs of maintenance, repairs and replacements of heating, ventilation, air condition, plumbing, electrical, elevator and other systems; (xiii) insurance premiums; service contracts for work of a nature before referenced; (xvi) costs of services of independent contractors retained to do work of nature before referenced at reasonable and customary rates; (xvii) costs of compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with the day-to-day operation and maintenance of the Project at reasonable and customary rates; and (xviii) reasonable costs of management services equal to three percent (3.0%) of the Basic Annual Rent.

7.2 Notwithstanding the foregoing, Operating Expenses shall not include, and Tenant shall not be responsible for the payment of, the following costs and expenses:

(a) costs incurred for the repair and maintenance of the structural components of the footings, foundation, ground floor slab, and load bearing walls of the buildings in the Project (but excluding painting and ordinary maintenance and repair of exterior surfaces, which are Operating Expenses under Section 7.1(b));

(b) costs of a capital nature, as defined by generally accepted accounting principles, incurred for the replacement of footings, foundation, ground floor slab, load bearing walls, and roof structure (but excluding membranes), except to the extent caused by Tenant’s negligence;

(c) costs incurred to correct any defects in design, materials or construction of the Project;

(d) costs, expenses and penalties (including without limitation attorneys fees) incurred as a result of the use, storage, removal or remediation of any toxic or hazardous substances or other environmental contamination not caused by Tenant or its employees, contractors, agents, representatives, or invitees;

(e) rentals and other payments by Landlord under any ground lease or other lease underlying the Lease, and interest, principal, points and other fees on debt or amortization of any debt secured in whole or part by all or any portion of the Project (provided that interest upon a government assessment or improvement bond payable in installments is an Operating Expense under Section 7.1(a));

(f) costs incurred in connection with the financing, sale or acquisition of the Project or any portion thereof;

(g) costs, expenses, and penalties (including without limitation attorneys' fees) incurred due to the violation by Landlord of any underlying deed of trust, mortgage or ground lease affecting the Project or any portion thereof;

(h) depreciation and amortization of any type (provided this exclusion is not intended to delete from Operating Expenses actual costs of maintenance, repairs and replacements which are otherwise the responsibility of Tenant);

(i) any costs incurred as a result of Landlord's violation of any statute, ordinance or other source of applicable law, or breach of contract or tort liability to any other party, including without limitation, any unrelated third party, or Landlord's employees, contractors, agents or representatives;

(j) costs incurred in leasing or procuring tenants (including, without limitation, lease commissions, advertising expenses, attorneys' fees and expenses of renovating space for tenants);

(k) advertising, marketing, media and promotional expenditures regarding the Project and costs of signs identifying the owner, lender or any contractor thereof;

(l) any fees or salaries of the principals of Landlord or any employee above the level of property manager;

(m) any rentals and related expenses incurred in leasing equipment which may be classified as capital expenditures under generally accepted accounting principles;

(n) any net income, franchise, capital stock, estate or inheritance taxes or taxes which are the personal obligation of Landlord or of another tenant of the Project;

(o) expenses which relate to preparation of rental space for a tenant;

(p) legal expenses arising out of the initial construction of the Project or any tenant improvements or for the enforcement of the provisions of any tenant leases other than this Lease;

(q) the cost of any work or service performed for or facilities famished to a tenant at such tenant's cost;

(r) any interest or penalties imposed upon Landlord by any taxing authority for late payment or otherwise;

(s) costs for which Landlord is reimbursed; and

(t) any other expense otherwise chargeable as part of the cost of operation and maintenance but which is not of general benefit to the Project but is primarily for the benefit of one or more specific tenants.

7.3 Except as provided in Section 7.6 below, Tenant shall pay to Landlord on the first day of each calendar month of the term of this lease, as Additional Rent, Landlord's good faith estimate of Tenant's Pro Rata Share (as set forth in 2.1.6) of Operating Expenses with respect to the Project for such month.

(a) "Tenant's Pro Rata Share" under this Lease shall mean 44%, determined by dividing the Rentable Area of the Premises by the total Rentable Area of the Project.

(b) Within sixty (60) days after the conclusion of each calendar year, Landlord shall furnish to Tenant a statement (the "Annual Operating Expense Statement") showing in reasonable detail the actual Operating Expenses and Tenant's Pro Rata Share of Operating Expenses for the previous calendar year. Any additional sum due from Tenant to Landlord shall be due and payable within thirty (30) days of Tenant's receipt of such statement. If the amounts paid by Tenant pursuant to this Section 7.3 exceed Tenant's Pro Rata Share of Operating Expenses for the previous calendar year, the difference shall be credited by Landlord against the Rent next due and owing from Tenant; provided that, if the Lease term has expired, Landlord shall accompany said statement with payment for the amount of such difference.

(c) Any amount due under this Section 7.3 for any period which is less than a full month shall be prorated for such fractional month.

(d) Notwithstanding this Section 7.3, Operating Expenses which can fairly and reasonably be allocated to one building or one or more tenants of the Project shall be so allocated, and shall be separately scheduled on the Annual Operating Expense Statement.

7.4 Tenant shall have the right, at Tenant's expense, upon reasonable notice during reasonable business hours, to inspect that portion of Landlord's books which are relevant to preparation of the Annual Operating Expense Statement provided any request for such review shall be furnished within one hundred eighty (180) days after Tenant's receipt of such statement as to a prior year's Operating Expenses. The costs of any such audit shall be borne by Tenant, provided however, that in the event such audit reveals that the amounts charged to Tenant were more than five percent (5%) greater than the amounts permitted by this Lease to be charged to Tenant, then Landlord shall pay the reasonable costs of that audit. In addition, Landlord shall pay to Tenant, within ten (10) days of notice thereof, any amounts determined to be owed to Tenant as a result of such audit.

7.5 Operating Expenses for the calendar year in which Tenant's obligation to pay them commences and in the calendar year in which such obligation ceases shall be prorated. Expenses such as taxes, assessments and insurance premiums which are incurred for an extended time period shall be prorated based upon time periods to which applicable so that the amounts attributed to the Premises relate in a reasonable manner to the time period wherein Tenant has an obligation to pay Operating Expenses.

7.6 Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for payment of Operating Expenses for the period May 24, 2004 through August 23, 2004, and shall not be responsible for payment of 50% of its Pro Rata Share of Operating Expenses for the period August 23, 2004 through January 23, 2005.

8. Rentable Area.

8.1 The Rentable Area of the Project is determined by making separate calculations of the Rentable Area of each floor of both buildings and totalling the Rentable Area of all floors within the buildings. The Rentable Area of a floor is calculated by measuring to the outside finished surface of each permanent outer building wall where it intersects the floor, or where it would have intersected the floor except for recessed entryways, windows and the like (also known as the "drip line", measured from where the outside finished surface of the second floor wall intersects the roof). The full area calculated as set forth above is included as Rentable Area of the Project without deduction for (i) columns or projections, (ii) vertical penetrations such as stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls, (iii) corridors, equipment rooms, rest rooms, entrance ways, elevator lobbies, and the like, and their enclosing walls, (iv) recessed entryways or windows, or (v) any other unusable area of any nature.

8.2 The term "Rentable Area" when applied to Tenant is the approximate area to be occupied by Tenant plus an equitable allocation of Rentable Area within the Project which is not then utilized or expected to be utilized by Tenant or other tenants of the Project, including but not limited to the portions of the buildings devoted to corridors, equipment rooms, rest rooms, elevator lobbies and mailrooms. In making such allocations, consideration will be given to tenants benefited by space allocated such that areas which primarily serve tenants of only one floor, such as corridors and rest rooms upon such floor, shall be allocated to that tenant's Rentable Area. If the Premises are separated from space occupied by another tenant, the Rentable Area shall be measured to the center of any interior demising walls.

8.3 The Rentable Area as set forth in Section 2.1.3 is an estimate of the area which constitutes the Rentable Area of the Premises, which, at the request of either Landlord or Tenant made within ninety (90) days after the Term Commencement Date, shall be adjusted in accordance with measurement and certification of the Project architect. If the Rentable Area as determined hereunder is more or less than the Rentable Area set forth in Section 2.1.3, Basic Annual Rent, the monthly installments of Basic Annual Rent, and Tenant's Pro Rata Share shall be adjusted upward or downward, as the case may be, based on the actual Rentable Area of the Premises.

9. **Security Deposit**.

9.1 Upon execution of this Lease, Tenant shall deposit with Landlord cash in the amount of $268,583 as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term and any extension term hereof If Tenant defaults with respect to any provision of this Lease, including but not limited to any provision relating to the payment of Rent, and subject to any notice requirements and cure periods for Tenant's benefit set forth in Article 24, Landlord may (but shall not be required) to use, apply or retain the security deposit for the payment of any Rent or any other sum in default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. Landlord may use the security deposit without giving notice of default to Tenant as

otherwise required by Article 24 if Landlord is precluded from giving such notice by any provision of the Bankruptcy Code. Tenant hereby grants to Landlord a security interest in the security deposit in accordance with the applicable provisions of the California Commercial Code to secure the obligations of this Lease.

9.2 In the event any or all of the security deposit is used to cure a Tenant default, Tenant shall within fifteen (15) days after request therefore replenish the security deposit to the full amount set forth above.

9.3 In the event of bankruptcy or other debtor/creditor proceedings against Tenant, the security deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the filing of such proceedings.

9.4 Landlord shall deliver the security deposit to any purchaser of Landlord's interest in the Premises, and thereupon Landlord shall be discharged from any further liability with respect thereto provided that such purchaser has agreed to assume in writing the obligations of Landlord hereunder. This provision shall also apply to any subsequent transfers.

9.5 The security deposit shall be returned to Tenant within thirty (30) days following the expiration of this Lease, except for amounts which are actually used to pay or reimburse Landlord for costs incurred by Landlord to cure any default by Tenant.

10. Use.

10.1 Tenant may use the Premises for any use permitted by (i) the MIB Zone, (ii) any other applicable laws, regulations, ordinances, requirements, permits and approvals applicable to the Premises, and (iii) all covenants, conditions and restrictions recorded against the property, and shall not use the Premises, or permit or suffer the Premises to be used for any other purpose without the prior written consent of Landlord.

10.2 Tenant shall conduct its business operations and use the Premises in compliance with all federal, state, and local laws, regulations, ordinances, requirements, permits and approvals applicable to the Premises. Tenant shall not use or occupy the Premises in violation of any law or regulation or the certificate of occupancy issued for the Building, and shall, upon five (5) days' written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof, excluding, however, any duty to make structural or capital improvements, alterations, repairs and replacements to the Premises.

10.3 Tenant shall not do or permit to be done anything which will invalidate or increase the cost (unless Tenant agrees to pay such increased cost) of any fire, extended coverage or any other insurance policy covering the Premises, or which will make such insurance coverage unavailable on commercially reasonable terms and conditions, and shall comply with all rules, orders, regulations and requirements of the insurers of the Premises.

10.4 Subject to the warranties of Landlord in Section 14.2, Tenant shall comply with the Americans with Disabilities Act of 1990 ("ADA"), and the regulations promulgated thereunder, as amended from time to time. All responsibility for compliance with the ADA relating to the Premises, including any alterations to the Premises made by Tenant and the activities conducted by Tenant within the Premises, shall be exclusively that of Tenant and not of Landlord, including any duty to make structural or capital improvements, alterations, repairs and replacements to the Premises but only to the extent triggered by construction of alterations by or for Tenant. Any alterations to the Premises made by Tenant for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with Article 17; provided, that Landlord's consent to such alterations shall not constitute either Landlord's assumption, in whole or in part, of Tenant's responsibility for compliance with the ADA, or representation or confirmation by Landlord that such alterations comply with the provisions of the ADA. However, nothing in this Lease shall be construed to require Tenant to make structural or capital improvements, alterations, repairs or replacements to comply with ADA unless and until required to do so by order of any government entity or court of law exercising proper jurisdiction with regard thereto, subject to any right to appeal or otherwise contest any such order. Furthermore, Landlord shall be responsible for compliance with ADA to the extent of a violation of Landlord's warranties in Section 14.2.

10.5 Tenant may install signage on and about the Building and Project monument to the extent permitted by, and in conformity with, applicable provisions of the City of San Diego Sign Ordinance, and to the extent reasonably approved by Landlord. Tenant acknowledges that it understands that other tenants will occupy space in the Project, and that the maximum allowable signage is to be shared among all of the tenants on a pro rata basis. Tenant further acknowledges it is familiar with the restrictions of the City of San Diego Sign Ordinance, and is not relying on any representations or warranty of Landlord regarding the number, size or location of any signage. The expense of design, permits, purchase and installation of any signs shall be the responsibility of Tenant and the cost thereof shall be borne by Tenant. At the termination of the Lease, all signs shall be the property of Tenant and may be removed from the Premises by Tenant, subject to the provisions of Article 36. Any relocation of Tenant's signage required by Landlord's division of the Project into more than one lot shall be with the consent of Tenant and at Landlord's cost.

10.6 No equipment shall be placed at a location within the Building other than a location designed to carry the load of the equipment. Equipment weighing in excess of floor loading capacity shall not be placed in the Building.

10.7 Tenant shall not use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance or waste in, on, or about the Premises.

11. Brokers.

11.1 Landlord and Tenant represent and warrant one to the other that there have been no dealings with any real estate broker or agent in connection with the negotiation of this Lease other than Phase 3 Properties, Inc., which represented Landlord, and Colliers International, which represented Tenant, each of whose commissions shall be paid by Landlord fifty percent (50%) upon execution of the Lease and fifty percent (50%) on December 1,2004, provided Tenant can provide evidence it has at least $4 million in cash or cash equivalents. Should Tenant not have a cash position of at least $4 million as of December 1, 2004, Landlord will not be responsible to pay the second half of the commission until rent commencement and Tenant's financials demonstrate their ability to continue its lease obligations for a period of 6 months. Each shall indemnify, defend, protect, and hold harmless the other from any claim of any other broker as a result of any act or agreement of the indemnitor.

11.2 Tenant represents and warrants that no broker or agent has made any representation or warranty relied upon by Tenant in Tenant's decision to enter into this Lease other than as contained in this Lease.

12. Holding Over.

12.1 If, with Landlord's consent, Tenant holds possession of all or any part of the Premises after the expiration or earlier termination of this Lease, Tenant shall become a tenant from month to month upon the date of such expiration or earlier termination, and in such case Tenant shall continue to pay in accordance with Article 5 the Basic Annual Rent as adjusted from the Term Commencement Date in accordance with Article 6, together with Operating Expenses in accordance with Article 7 and other Additional Rent as may be payable by Tenant, and such month-to-month tenancy shall be subject to every other term, covenant and condition contained herein.

12.2 If Tenant remains in possession of all or any portion of the Premises after the expiration or earlier termination of the term hereof without the express written consent of Landlord, Tenant shall become a tenant at sufferance upon the terms of this Lease except that monthly rental shall be equal to one hundred twenty five percent (125%) of the Basic Annual Rent in effect during the last twelve (12) months of the Lease term as charged on a per diem basis for the term of the holdover.

12.3 Acceptance by Landlord of Rent after such expiration or earlier termination shall not result in a renewal or reinstatement of this Lease.

12.4 The foregoing provisions of this Article 12 are in addition to and do not affect Landlord's right to re-entry or any other rights of Landlord under Article 24 or elsewhere in this Lease or as otherwise provided by law.

13. Taxes on Tenant's Property

13.1 Tenant shall pay not less than ten (10) days before delinquency taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. Tenant shall not be responsible for taxes levied against any personal property or trade fixtures of other tenants.

13.2 If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or, if the assessed valuation of the Project is increased by the inclusion therein of a value directly attributable to Tenant's personal property or trade fixtures, and if Landlord after written notice to Tenant pays the taxes based upon such increase in the assessed value, then Tenant shall upon demand repay to Landlord the taxes so levied against Landlord.

13.3 If any improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which improvements in other spaces in the Project are assessed, then the real property taxes and assessments levied against Landlord or the Project by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property to Tenant and shall be governed by the provisions of Section 13.2 above. Any such excess assessed valuation due to improvements in or alterations to space in the Project leased by other tenants of Landlord shall not be included in the Operating Expenses defined in Section 7, but shall be treated, as to such other tenants, as provided in this Section 13.3, and shall be allocated to such other tenants. If the records of the County assessor are available and sufficiently detailed to serve as a basis for determining whether said Tenant improvements or alterations are assessed at a higher valuation than improvements in other spaces in the Project, such records shall be binding on both Landlord and Tenant.

14. Condition of Premises.

14.1 Tenant acknowledges that the Premises have been previously occupied, and accepts the Premises in their "AS-IS" condition, except that Landlord, at its cost and expense, shall complete the Landlord's Improvements as provided in Exhibit "D" which is hereby incorporated into this Lease by reference. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty, express or implied, with respect to the condition of the Premises, except as set forth in this Lease, or with respect to their suitability for the conduct of Tenant's business.

14.2 Landlord represents and warrants to Tenant that as of the date of this Lease the Premises, the Project and Common Areas are in compliance with all applicable building code requirements, laws, rules, orders, ordinances, directions, regulations, permits, approvals, and requirements of all governmental agencies, offices, departments, bureaus and boards having jurisdiction, and with the rules, orders, directions, regulations, and requirements of any applicable fire rating bureau; provided, however, with regard to ADA, Landlord only warrants that the Project (excluding improvements installed by or for a previous tenant but including Landlord's Improvements) were in compliance with the ADA, and the regulations promulgated thereunder, at the time of the initial construction of the Project. Landlord further represents and warrants to Tenant that as of the date of this Lease, the Building and Common Area HVAC, plumbing, electrical, roof and structural systems are in good working condition and repair.

15. Common Areas and Parking Facilities.

15.1 Tenant shall have the nonexclusive right, in common with others, to use the Common Areas, subject to the rules and regulations adopted by Landlord and attached hereto as Exhibit "C" together with such other reasonable and nondiscriminatory rules and regulations as are hereafter promulgated by Landlord (the "Rules and Regulations").

15.2 Tenant shall not place any equipment, storage containers or any other property on the surface parking area or otherwise outside of the Premises without the consent of Landlord, which shall not be unreasonably withheld or delayed. In the event Tenant elects to locate Hazardous Material storage facilities, water systems, mechanical equipment, emergency generators, or other improvements in the parking area, the space used for such facilities may be deducted from Tenant's Pro Rata Share of parking described below.

15.3 As an appurtenance to the Premises, Tenant, and its employees and invitees, shall be entitled to use a Pro Rata Share of the available parking without charge during the term of the Lease, including all renewals, which is approximately three and one half (3.5) spaces per 1,000 square feet of Rentable Area, which includes Tenant's pro rata share of visitor and handicapped parking.

16. Utilities and Services.

16.1 Tenant shall pay for all water, gas, electricity, telephone, cable, and other utilities which may be furnished to the Premises during the term of this Lease, together with any taxes thereon. If any such utility is not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with tenants of other premises as part of its share of Operating Expenses. Utilities and services provided to the Premises which are separately metered shall be paid by Tenant directly to the supplier of such utility or service, and Tenant shall pay for such utilities and services prior to delinquency during the term of this Lease.

16.2 Landlord shall not be liable for, nor shall any eviction of Tenant result from, any failure of any such utility or service, and in the event of such failure Tenant shall not be entitled to any abatement or reduction of Rent, nor be relieved from the operation of any covenant or agreement of this Lease, and Tenant waives any right to terminate this Lease on account thereof However, notwithstanding the foregoing, in the event any such failure caused by Landlord persists for more than thirty (30) days, Tenant at its election may terminate this Lease.

16.3 Tenant shall provide and pay for janitors, maintenance personnel, and other persons who perform duties connected with the operation and maintenance of the interior of the Premises.

17. Alterations.

17.1 Tenant shall make no alterations, additions or improvements (hereinafter in this section, "improvements") in or to the Premises, except for non-structural improvements costing less than $25,000, without Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Tenant shall deliver to Landlord final plans and specifications and working drawings for the improvements to Landlord, and Landlord shall have ten (10) days thereafter to grant or withhold its consent. If Landlord does not notify Tenant of its decision within the ten (10) days, Landlord shall be deemed to have given its approval.

17.2 If a permit is required to construct the improvements, Tenant shall deliver a completed, signed-off inspection card to Landlord within ten (10) days of completion of the improvements, and shall promptly thereafter obtain and record a notice of completion and deliver a copy thereof to Landlord.

17.3 The improvements shall be constructed only by licensed contractors. All contractors, except those constructing non-structural improvements costing less than $25,000, shall be approved by Landlord, which approval shall not be unreasonably withheld or delayed. Any such contractor must have in force a general liability insurance policy of not less than $2,000,000 or such higher limits as Landlord may reasonably require, which policy of insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a copy of the contract with the contractor prior to the commencement of construction.

17.4 Tenant agrees that any work by Tenant shall be accomplished in such a manner as to permit any fire sprinkler system and fire water supply lines to remain fully operable at all times except when minimally necessary for building reconfiguration work and following prior written notice to Landlord.

17.5 Tenant covenants and agrees that all work done by Tenant shall be performed in full compliance with all laws, rules, orders, ordinances, directions, regulations, permits, approvals, and requirements of all governmental agencies, offices, departments, bureaus and boards having jurisdiction, and in full compliance with the rules, orders, directions, regulations, and requirements of any applicable fire rating bureau. For work exceeding $25,000.00 in cost, Tenant shall provide Landlord with "as-built" plans showing any change in the Premises within thirty (30) days after completion.

17.6 Before commencing any work exceeding $25,000.00 in cost, other than interior non-structural alterations, additions or improvements, Tenant shall give Landlord at least five (5) days' prior written notice of the proposed commencement.

18. Repairs and Maintenance.

18.1 Landlord shall repair and maintain the structural and exterior portions and Common Areas of the Building and Project, including foundations, exterior walls, load bearing walls, windows, plate glass, roofing, and roofing covering materials, and plumbing, fire sprinkler system, heating, ventilating, air conditioning, elevator, and electrical systems, subject to reimbursement by Tenant as its Pro Rata Share of Operating Expenses to the extent provided by Article 7. However, if such maintenance or repairs are required solely because of any act, neglect, fault of or omissions of any duty by Tenant, its agents, servants, employees or invitees, Tenant shall pay to Landlord the reasonable costs of such maintenance and repairs attributable to Tenant's act, neglect, fault or omission.

18.2 Except as otherwise set forth in Section 18.1, Tenant shall, throughout the term of this Lease, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair, including plumbing, fire sprinkler, heating, ventilating, air conditioning, elevator, and electrical systems existing in the Premises as of the Term Commencement Date, or installed thereafter by Landlord as part of Landlord's Improvements, or installed by Tenant with the permission of Landlord, except for damage thereto from causes beyond the reasonable control of Tenant and ordinary wear and tear. Tenant shall upon the expiration or earlier termination of the term hereof surrender the Premises to Landlord in the same condition as when received, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof except as provided in Section 18.1 and Exhibit D.

18.3 Tenant hereby waives Civil Code Sections 1941 and 1942 relating to a landlord's duty to maintain the Premises in a tenantable condition, and the under said sections or under any law, statute or ordinance now or hereafter in effect to make repairs at Landlord's expense.

18.4 Subject to Section 20.3 below, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, or in or to improvements, fixtures, equipment and personal property therein. If repairs or replacements become necessary which by the terms of this Lease are the responsibility of Tenant and Tenant fails to make the repairs or replacements, and Landlord delivers written demand upon Tenant to perform and Tenant fails to do so within the next ten (10) days, Landlord may make the repairs or replacements and Tenant shall upon demand pay to Landlord the reasonable costs thereof.

19. Liens.

19.1 Tenant shall keep the Premises, the Building and the property upon which the Building is situated free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, will be promptly discharged by Tenant within thirty (30) days after Landlord makes written demand thereof, or as soon as possible, provided that Tenant takes all actions as expeditiously as possible to remove such lien. However, nothing herein provided shall prevent Tenant from contesting, in good faith and at its own expense, any such lien.

19.2 Should Landlord, acting in good faith, include in Landlord's written notice to Tenant the information that an existing lien must be immediately removed in order to facilitate a pending sale or refinancing, Tenant shall, at its expense, immediately post a bond or otherwise provide security to eliminate the lien as a claim against title.

20. Indemnification and Exculpation.

20.1 As used in this Article 20, the term "Landlord" means Landlord and the term "Landlord's Indemnitees" means its partners and affiliates, and their respective members, shareholders, directors, officers, agents, contractors and employees. As used in this Article 20, the term "Tenant" means Tenant and the term "Tenant's Indemnitees" means its partners and affiliates, and their respective members, shareholders, directors, officers, agents, contractors and employees.

20.2 Tenant agrees to indemnify and hold harmless Landlord and Landlord's Indemnitees from and against any and all demands, claims, causes of actions, fines, penalties, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) which are caused by any negligent or intentional act by Tenant arising from or out of any occurrence in, upon or about the Premises, the Building, the Project or the Common Areas and which results in or causes harm or damage to any person or property. Tenant's obligations under this Section 20.2 shall survive the expiration or earlier termination of the term of this Lease.

20.3 Landlord agrees to indemnify and hold harmless Tenant and Tenant's Indemnitees from and against any and all demands, claims, causes of actions, fines, penalties, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) which are caused by any negligent or intentional act by Landlord arising from or out of any occurrence in, upon or about the Premises, the Building, the Project or the Common Areas and which results in or causes harm or damage to any person or property. Landlord's obligations under this Section 20.3 shall survive the expiration or earlier termination of the term of this Lease.

20.4 Notwithstanding the provisions of Section 20.3, Landlord shall not be liable to Tenant and Tenant assumes all risk of damage to any records, research, experiments, living organisms, computer software and other intangible property, and Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom relative to such damage, regardless of whether caused by Landlord's or Landlord's Agents' acts or omissions.

20.5 The indemnity obligations of both Landlord and Tenant under this Section 20 shall be satisfied to the extent of proceeds of applicable insurance maintained by the indemnifying party to the extent thereof, and thereafter to proceeds of any applicable insurance maintained by the other party; Landlord and Tenant shall be required to satisfy any such obligation only to the extent it is not satisfied by proceeds of applicable insurance as set forth above.

20.6 Security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and it is agreed that Landlord shall not be liable for injuries or losses caused by criminal acts of third parties and the risk that any security device or service may malfunction or otherwise be circumvented by a criminal is assumed by Tenant. Tenant shall at Tenant's cost obtain insurance coverages to the extent Tenant desires protection against such criminal acts.

20.7 Landlord shall not be liable for any damages arising from any act or neglect of any other tenant in the Building or Project, except to the extent caused by any negligent or intentional act by Landlord.

21. <u>Insurance - Waiver of Subrogation</u>.

21.1 Commencing prior to Tenant's first entry onto the Premises for purposes of installing any improvements, fixtures or personal property, but no later than the Term

Commencement Date, and continuing at all times during the term of this Lease, Tenant shall maintain, at Tenant's expense, commercial general liability insurance, on an occurrence basis, insuring Tenant and Tenant's agents, employees and independent contractors against all bodily injury, property damage, personal injury and other covered loss arising out of the use, occupancy, improvement and maintenance of the Premises and the business operated by Tenant, or any other occupant, on the Premises. Such insurance shall have a minimum combined single limit of liability per occurrence of not less than $ 1,000,000.00 and a general aggregate limit of $2,000,000.00. Such insurance shall: (i) name Landlord, and Landlord's lenders if required by such lenders, and any management company retained to manage the Premises if requested by Landlord, as additional insureds; (ii) include broad form contractual liability coverage insuring Tenant's indemnity obligations under Section 20.1; (iii) include products liability coverage (with limits of $2,000,000.00 on a "claims made" basis), boiler and machinery liability coverage, and products completed operations coverage; (iv) provide that it is primary coverage and noncontributing with any insurance maintained by Landlord or Landlord's lenders, which shall be excess insurance with respect only to losses arising out of Tenant's negligence; and (v) provide for severability of interests or include a cross-liability endorsement, such that an act or omission of an insured shall not reduce or avoid coverage of other insureds.

21.2 At all times during the term of this Lease, Landlord shall maintain, subject to reimbursement by Tenant as an Operating Expense under Section 7.1(b), "all risk" insurance, including, but not limited to, coverage against loss or damage by fire, vandalism, and malicious mischief covering the Project (exclusive of excavations, foundations and footings), and all other improvements and fixtures that may be constructed or installed on the Premises, in an amount equal to one hundred percent (100%) of the full replacement value thereof. If any boilers or other pressure vessels or systems are installed on the Premises, Landlord shall maintain, subject to reimbursement by Tenant as an Operating Expense under Section 7.1(b), boiler and machinery insurance in an amount equal to one hundred percent (100%) of the full replacement value thereof. The insurance described in this Section 21.2 shall: (i) insure Landlord, and Landlord's lenders if required by such lenders, as their interests may appear; (ii) contain a Lender's Loss Payable Form (Form 438 BFU or equivalent) in favor of Landlord's lenders and name Landlord, or Landlord's lender if required by such lender, as the loss payee; (iii) provide for severability of interests or include a cross-liability endorsement, such that an act or omission of an insured shall not reduce or avoid coverage of other insureds; (iv) include a building ordinance endorsement, an agreed amount endorsement and an inflation endorsement; and (v) provide that it is primary coverage and noncontributing with any insurance maintained by Landlord or Landlord's lenders, which shall be excess insurance. The full replacement value of the Project, and other improvements and fixtures insured thereunder shall, for the purpose of establishing insurance limits and premiums only, be determined by the company issuing the insurance policy and shall be redetermined by said company within six (6) months after completion of any material alterations or improvements to the Premises and otherwise at intervals of not more than three (3) years. Landlord shall promptly increase the amount of the insurance carried pursuant to this Section 21.2 to the amount so redetermined. The proceeds of the insurance described in this Section shall be used for the repair, replacement and restoration of the Premises and other improvements and fixtures insured thereunder, as further provided in Article 22; provided, however, if this Lease is terminated after damage or destruction, the insurance policy or policies, all rights thereunder and all insurance proceeds shall be assigned to Landlord.

21.3 At all times during the term of this Lease, Tenant shall maintain, at Tenant's expense, business interruption insurance in order to insure that the Basic Annual Rent and Operating Expenses provided for hereunder will be paid for a period of up to one (1) year after any casualty insured against by all risk policy of insurance described in Section 21.2 above or any restriction of access to the Premises as a result of such casualty.

21.4 At all times during the term of this Lease, Tenant shall maintain, at Tenant's expense, "all risk" insurance against trade fixtures, equipment and merchandise of Tenant or any portion thereof, from time to time, in an amount equal to the full replacement value thereof.

21.5 At all times during the term of this Lease, Tenant shall maintain workers' compensation insurance in accordance with California law, and employers' liability insurance with limits typical for companies similar to Tenant.

21.6 All of the policies of insurance referred to in this Article 21 shall be written by companies authorized to do business in California and rated A+VII or better in Best's Insurance Guide or written by Lloyd's of London. Each insurer of liability coverage referred to in this Article 21 shall agree, by endorsement on the applicable policy or by independent instrument furnished to Landlord, that it will give Landlord, and Landlord's lenders if required by such lenders, at least ten (10) days' prior written notice by registered mail before the applicable policy shall be cancelled for non-payment of premium, and thirty (30) days' prior written notice by registered mail before the applicable policy shall be cancelled or altered in coverage, scope, amount or other material term for any other reason (although any failure of an insurer to give notice as provided herein shall not be a breach of this Lease by Tenant). No policy shall provide for a deductible amount in excess of $100,000, unless approved in advance in writing by Landlord, which approval shall not be unreasonably withheld. Tenant shall deliver to Landlord, and to Landlord's lenders if required by such lenders, certificates evidencing such insurance policies, issued by the insurer, prior to the required date for commencement of such coverage. At least ten (10) days prior to expiration of any such policy, Tenant shall deliver to Landlord, and Landlord's lenders if required by such lenders, a certificate evidencing renewal, or a certified copy of a new policy or certificate evidencing the same. If Tenant fails to provide to Landlord any such certificate by the required date for commencement of coverage, or within ten (10) days prior to expiration of any policy, or to pay the premiums therefor when required, Landlord shall have the right, but not the obligation, to procure said insurance and pay the premiums therefor. Any premiums so paid by Landlord shall be repaid by Tenant to Landlord with the next due installment of rent, and failure to repay the same shall have the same consequences as failure to pay any installment of Rent.

21.7 Landlord may provide the property insurance required under this Article 21 pursuant to a so-called blanket policy or policies of property insurance maintained by Landlord.

21.8 Landlord and Tenant each hereby waive any and all rights of recovery against the other or against the officers, directors, partners, employees, agents, and representatives of the other, on account of loss or damage to such waiving party's property or the property of others under its control, to the extent that such loss or damage is caused by or results from risks insured against under any insurance policy which insures such waiving party's property at the time of such loss or damage, which waiver shall continue in effect as long as the parties' respective insurers permit such waiver under the terms of their respective insurance policies or otherwise in writing.

22. Damage or Destruction.

22.1 In the event of damage to or destruction of all or any portion of the Premises or the Building (collectively, "improvements") arising from a risk substantially covered by the insurance described in Section 21.2, Landlord shall within a reasonable time commence and proceed diligently to repair, reconstruct and restore (collectively, "restore") the Premises and/or the Building to substantially the same condition as they were in immediately prior to the casualty, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Landlord shall be responsible for all costs of restoration of the Premises and/or Building in excess of insurance proceeds. Except as expressly set forth below, this Lease shall continue in full force and effect, notwithstanding such damage or destruction.

22.2 In the event of any damage to or destruction of all or any portion of the Premises or the Building arising from a risk which is not substantially covered by the insurance described in Section 21.2, Landlord shall within a reasonable time, at its expense, commence and proceed diligently to restore the Premises and/or the Building to substantially the same condition as they were in immediately prior to the casualty. This Lease shall continue in full force and effect notwithstanding such damage or destruction; provided, however, that if the damage or destruction occurs during the last year of the term and the expense of restoration exceeds $ 100,000, then either Landlord or Tenant may, at its election, by written notice to the other, terminate the Lease; provided further, that if the damage or destruction occurs at any other time and the expense of restoration exceeds $500,000, then Landlord may, at its election, by written notice to Tenant, terminate the Lease.

22.3 In satisfying its obligations under this Article 22, Landlord shall not be required to fulfill its restoration responsibilities with improvements identical to those which were damaged or destroyed; rather, with the consent of Tenant, which consent will not be unreasonably withheld or delayed, Landlord may restore the damage or destruction with improvements reasonably equivalent to those damaged or destroyed.

22.4 In the event of damage, destruction and/or restoration as herein provided, there shall be no abatement of Rent, and Tenant shall not be entitled to any compensation or damages occasioned by any such damage, destruction or restoration. Notwithstanding the foregoing, in the event restoration of the Premises and/or the Building cannot reasonably be completed within six (6) months following the damage or destruction, Landlord will give notice thereof to Tenant within sixty (60) days following such damage or destruction, and Tenant at its election may by written notice to Landlord terminate this Lease.

22.5 Notwithstanding anything to the contrary contained in this Article, should Landlord be delayed or prevented from completing the restoration of the improvements after the occurrence of such damage or destruction by reason of acts of God, war, government restrictions, inability to procure the necessary labor or materials, strikes, or other causes beyond the control of Landlord (but excluding economic conditions or financial inability to perform), the time for Landlord to commence or complete restoration shall be extended for the time reasonably required as a result of such causes.

22.6 Tenant waives the provisions of Civil Code Section 1932(2) and 1933(4) or any similar statute now existing or hereafter adopted governing destruction of the Premises, so that the parties' rights and obligations in the event of damage or destruction shall be governed by the provisions of this Lease.

23. Eminent Domain.

23.1 In the event the Premises or the Building or any portion thereof shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant or Landlord may terminate this Lease upon the earlier of sixty (60) days after notice of such taking or the date possession is required to be surrendered to said authority.

23.2 In the event of a partial taking of the Premises or the Building for any public or quasi-public purpose by any lawful power or authority by exercise of right of appropriation, condemnation, or eminent domain, or sold to prevent such taking, then Landlord may elect to terminate this Lease if such taking is of a material nature such as to make it uneconomical to continue use of the unappropriated portions for the purposes for which they were intended, and Tenant may elect to terminate this Lease if such taking is of material detriment to, and substantially interferes with, Tenant's use and occupancy of the Premises. In no event shall this Lease be terminated when such a partial taking does not have a material adverse effect upon Landlord or Tenant or both. Termination by either party pursuant to this section shall be effective upon the earlier of sixty (60) days after notice of such partial taking or as of the date possession is required to be surrendered to said authority.

23.3 If upon any taking of the nature described in this Article 23 this Lease continues in effect, then Landlord shall promptly proceed to restore the remaining portion of the Premises and the Building to substantially their same condition prior to such partial taking. Basic Annual Rent shall be abated proportionately on the basis of the rental value of the Premises as restored after such taking compared to the rental value of the Premises prior to such taking.

24. Defaults and Remedies.

24.1 Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within ten (10) days of the date such payment is due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid within thirty (30) days of the date such payment is due shall bear interest from thirty (30) days after the date due until paid at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate permitted by law.

24.2 No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord, Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to institute suit for recovery of the payment paid under protest.

24.3 If Tenant fails to pay any sum of money (other than Basic Annual Rent) required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, Landlord may, without waiving or releasing Tenant from any obligations of Tenant, but shall not be obligated to, make such payment or perform such act; provided, that such failure by Tenant continued for thirty (30) days after written notice from Landlord demanding performance by Tenant was delivered to Tenant. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to ten percent (10%) per annum or highest rate permitted by law, whichever is less, shall be payable to Landlord on demand as Additional Rent.

24.4 The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(a) The failure by Tenant to make any payment of Rent, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant. Such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161;

(b) The failure by Tenant to observe or perform any obligation other than described in Section 24.4(a) to be performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure the default, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion. Such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161;

(c) Tenant makes an assignment for the benefit of creditors;

(d) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Tenant's assets; or

(e) Tenant's interest in this Lease is attached, executed upon, or otherwise judicially seized and such action is not released within ninety (90) days of the action.

Notices given under this Section shall specify the alleged default and shall demand that Tenant perform the provisions of this Lease or pay the Rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice, and in no event shall a forfeiture or termination occur without such written notice.

24.5 In the event of a default by Tenant, and at any time thereafter, and without limiting Landlord in the exercise of any right or remedy which Landlord may have, Landlord shall be entitled to terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In the event that Landlord shall elect to so terminate this Lease, then Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligation under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of restoring the Premises to the condition required under the terms of this Lease; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Subsections (a), (b) and (c), the "time of award" shall mean the date upon which the judgment in any action brought by Landlord against Tenant by reason of such default is entered or such earlier date as the court may determined. As used in Subsections (a) and (b), the "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 24.1. As used in Subsection (c) above, the "worth at the time of award" shall be computed by taking the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

24.6 In the event of a default by Tenant, and if Landlord does not elect to terminate this Lease as provided in Section 24.5 or otherwise terminate Tenant's right to possession of the Premises, Landlord shall have the remedy described in Section 1951.4 of the Civil Code. Landlord may continue this Lease in effect for so long as Landlord does not terminate Tenant's right to possession of the Premises, and may enforce all of its rights and remedies under the Lease, including the right from time to time to recover Rent as it becomes due under the Lease. At any time thereafter, Landlord may elect to terminate this Lease and to recover damages to which Landlord is entitled.

24.7 Notwithstanding anything herein to the contrary, Landlord's reentry to perform acts of maintenance or preservation of, or in connection with efforts to relet, the Premises, or any portion thereof, or the appointment of a receiver upon Landlord's initiative to protect Landlord's interest under this Lease, shall not terminate Tenant's right to possession of the Premises or any portion thereof and, until Landlord does elect to terminate this Lease, this Lease shall continue in full force and Landlord may pursue all its remedies hereunder, including, without limitation, the right to recover from Tenant as they become due hereunder all Rent and other charges required to be paid by Tenant under the terms of this Lease.

24.8 All rights, options, and remedies of Landlord contained in this Lease shall be construed and held to be nonexclusive and cumulative. Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or by any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

24.9 Termination of this Lease or Tenant's right to possession by Landlord shall not relieve Tenant from any liability to Landlord which has theretofore accrued or shall arise based upon events which occurred prior to the last to occur of (i) the date of Lease termination or (ii) the date possession of Premises is surrendered.

24.10 Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

24.11 In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises whose address shall have been furnished to Tenant, and such beneficiary and/or mortgagee shall have a reasonable opportunity to cure the default, including time to obtain possession of the Premises by a judicial action if such should prove necessary to effect a cure, so long as such beneficiary and/or mortgagee acts within the same time limits afforded Landlord in Section 24.10.

25. Assignment or Subletting.

25.1 Except as hereinafter provided, Tenant shall not, either voluntarily or by operation of law, sell, hypothecate or transfer this Lease, or sublet the Premises or any part thereof, or permit or suffer the Premises or any part thereof to be used or occupied as work space, storage space, concession or otherwise by anyone other than Tenant or Tenant's employees and contractors, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld or delayed.

25.2 If Tenant desires to assign this Lease or sublet all or any portion of the Premises to any entity into which Tenant is merged, with which Tenant is consolidated, which acquires all or substantially all of the assets of Tenant, or which is an affiliate of Tenant (each a "Permitted Transferee"), Landlord's consent shall not be required, provided that the Permitted Transferee executes, acknowledges and delivers to Landlord an agreement whereby the Permitted Transferee agrees to be bound by all of the covenants and agreements in this Lease arising after the effective date of the transfer.

25.3 In the event Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises to someone other than a Permitted Transferee, then at least ten (10) days, but not more than one hundred eighty (180) days, prior to the date when Tenant desires the assignment or sublease to be effective (the "Assignment Date"). Tenant shall give Landlord a notice (the "Assignment Notice") which shall set forth the name, address and business of the proposed assignee or sublessee, information (including references and financial statements) concerning the financial ability of the proposed assignee or sublessee, the Assignment Date, any ownership or commercial relationship between Tenant and the proposed assignee or sublessee, and the consideration and all other material terms and conditions of the proposed assignment or sublease, all in such detail as Landlord shall reasonably require.

25.4 Landlord in making its determination as to whether consent should be given to a proposed assignment or sublease, may give consideration to whether or not the proposed assignee or subtenant has the financial strength to satisfy the obligations contemplated by this Lease (with consideration of assignor remaining liable for Tenant's performance), and any use which such successor proposes to make of the Premises. If Landlord fails to deliver written notice of its determination to Tenant within ten (10) days following receipt of the Assignment Notice and the information required under Section 25.3, Landlord shall be deemed to have approved the request. As a condition to any assignment or sublease of the entire Premises to which Landlord has given consent, any such assignee or sublessee must execute, acknowledge and deliver to Landlord an agreement whereby the assignee or sublessee agrees to be bound by all of the covenants and agreements in this Lease (except, in the case of a sublease, the payment of Basic Annual Rent).

25.5 Any sale, assignment, hypothecation or transfer of this Lease or subletting of Premises that is not in compliance with the provisions of this Article 25 shall be void and shall, at the option of Landlord, be a breach of this Lease.

25.6 The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignee of this Lease or sublessee of the Premises from obtaining the consent of Landlord to any further assignment or subletting or as releasing Tenant or any assignee or sublessee of Tenant from full and primary liability.

25.7 If Tenant sublets the Premises or any part thereof Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises, and Landlord as assignee of Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant by failing to pay Basic Annual Rent and Operating Expenses for two (2) consecutive months, Tenant shall have the right to collect, enjoy and dispose of such rent.

25.8 Notwithstanding any subletting or assignment, Tenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due hereunder, and for the full performance of all other terms, conditions, and covenants to be kept and performed by Tenant. The acceptance of rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant, or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting or assignment of the Premises. Landlord shall not withhold consent to an assignment back to the original Tenant hereunder from a subsequent assignee.

25.9 Any sublease of the Premises shall be subject and subordinate to the provisions of this Lease, shall not extend beyond the term of this Lease, and shall provide that the sublessee shall attorn to Landlord, at Landlord's sole option, in the event of the termination of this Lease. Landlord and any lender shall upon Tenant's request provide any subtenant of the entirety of the Premises with a recognition and non-disturbance agreement in the form set forth in Article 35 hereof on the condition that the sublessee agrees to attorn to Landlord on terms and conditions materially the same as the ones contained in this Lease.

25.10 In the event Tenant assigns or otherwise transfers this Lease or sublets the Premises to a transferee other than one set forth in Section 25.2, Tenant shall pay to Landlord, as Additional Rent, fifty percent (50%) of the rent and other consideration received from the transferee during the initial and any extended term of this Lease in excess of Rent payable to Landlord under this Lease, after Tenant has recouped any reasonable commission, legal, improvement and other out-of-pocket expenses occasioned by such transfer and payable to third parties, and after Tenant has recouped any capital costs incurred by Tenant for any improvements to the transferred space after the Term Commencement Date.

26. Attorney's Fees.

26.1 If either party becomes a party to any action or proceeding concerning this Lease, the Premises, or the Building or Project in which the Premises are located, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized

representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees, expert witness fees, and court costs incurred by it in the litigation.

26.2 If either party commences an action or proceeding against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, expert witness fees and costs of suit.

27. Bankruptcy.

27.1 In the event a debtor or trustee under the Bankruptcy Code, or other person with similar rights, duties and powers under any other law, proposes to cure any default under this Lease or to assume or assign this Lease, and is obliged to provide adequate assurance to Landlord that (i) a default will be cured, (ii) Landlord will be compensated for its damages arising from any breach of this Lease, or (iii) future performance under this Lease will occur, then adequate assurance shall include any or all of the following, as determined by the Bankruptcy Court: (a) those acts specified in the Bankruptcy Code or other law as included within the meaning of adequate assurance; (b) a cash payment to compensate Landlord for any monetary defaults or damages arising from a breach of this Lease; (c) the credit worthiness and desirability, as a tenant, of the person assuming this Lease or receiving an assignment of this Lease, at least equal to Landlord's customary and usual credit worthiness requirements and desirability standards in effect at the time of the assumption or assignment, as determined by the Bankruptcy Court; and (d) the assumption or assignment of all of Tenant's interest and obligations under this Lease.

28. Definition of Landlord.

28.1 The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only Landlord or the successor-in-interest of Landlord under this Lease at the time in question. In the event of any transfer, assignment or conveyance of Landlord's title or leasehold, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor and any prior grantors) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability for the performance of any covenants or obligations contained in this Lease thereafter to be performed by Landlord and, without further agreement, the transferee of such title or leasehold shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises or this Lease without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on the part of Landlord or the then grantor of any of the terms or conditions of this Lease.

29. Estoppel Certificate.

29.1 Each party shall, within fifteen (15) days of written notice from the other party, execute, acknowledge and deliver to the other party a statement in writing on a form reasonably requested by a proposed lender, purchaser, assignee or subtenant (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not, to each party's knowledge, any uncured defaults on the part of Landlord or Tenant hereunder (or specifying such defaults if any are claimed) and (iii) setting forth such further information with respect to this Lease or the Premises as may be reasonably requested thereon. Any such statement may be relied upon by any prospective lender, purchaser, assignee or subtenant of all or any portion of the Premises.

30. Removal of Property.

30.1 Except as provided below, all trade fixtures and other personal property placed within the Premises at Tenant's cost and expense (and not at the cost and expense of Landlord) shall be and remain the property of Tenant and may be removed by Tenant at the expiration or earlier termination of the term of this Lease.

30.2 All improvements, fixtures and personal property presently existing in the Premises or later installed at Landlord's expense, and any other improvements made to the Premises at Landlord's expense and cost, shall be and remain the property of Landlord, and upon the expiration or earlier termination of this Lease, remain upon and be surrendered with the Premises as a part thereof.

30.3 Notwithstanding Section 30.1, Tenant may not remove any property if such removal would cause material damage to the Premises, unless such damage can be and is repaired by Tenant. Furthermore, Tenant shall repair any damage to the Premises caused by Tenant's removal of any such property, and shall, prior to the expiration or earlier termination of this Lease, restore and return the Premises to the condition they were in when first occupied by Tenant (modified by any other work approved by Landlord), reasonable wear and tear excepted. At a minimum, even if they are determined to be fixtures or personal property owned by Tenant, Tenant shall leave in place and repair any damage to the interior floors, walls, doors and ceilings of the Building, and the heating, ventilation, air conditioning, plumbing, and electrical systems; all such property shall become the property of Landlord upon the expiration or earlier termination of this Lease, and shall remain upon and be surrendered with the Premises as a part thereof. The provisions of Article 17 shall apply to any restoration work under this Article as if the restoration was an alteration, addition or improvement thereunder. Should Tenant require any period beyond the expiration or earlier termination of the Lease to complete such restoration, Tenant shall be a tenant at sufferance subject to the provisions of Section 12.2 hereof.

30.4 If Tenant shall fail to remove any fixtures or personal property which it is entitled to remove under this Article 30 from the Premises prior to termination of this Lease, then Landlord may dispose of the property under the provisions of Section 1980 et seq. of the California Civil Code, as such provisions may be modified from time to time, or under any other applicable provisions of California law.

31. Limitation of Landlord's Liability.

31.1 Tenant agrees that, in the event of any breach or default hereunder by Landlord, Tenant's recourse against Landlord for monetary damages will be limited to Landlord's interest in the Project, Landlord's interest in the rents or other income of the Project, consideration received from the sale or other disposition of all or any part of Landlord's right, title and interest in the Project, and any insurance proceeds payable to Landlord (but not those payable to a mortgagee).

31.2 Landlord shall not be personally liable for any deficiency except to the extent liability is based upon willful and intentional misconduct. If Landlord is a partnership or joint venture, the partners of such partnership shall not be personally liable and no partner of Landlord shall be sued or named as a party in any suit or action, or service of process be made against any partner of Landlord, except as may be necessary to secure jurisdiction of the partnership or joint venture or to the extent liability is caused by willful and intentional misconduct. If Landlord is a corporation, the shareholders, directors, officers, employees, and/or agents of such corporation shall not be personally liable and no shareholder, director, officer, employee, or agent of Landlord shall be sued or named as a party in any suit or action, or service of process be made against any shareholder, director, officer, employee, or agent of Landlord, except as may be necessary to secure jurisdiction of the corporation. If Landlord is a limited liability company, the members, managers, officers, employees, and/or agents of such limited liability company shall not be personally liable and no member, manager, officer, employee, or agent of Landlord shall be sued or named as a party in any suit or action, or service of process be made against any member, manager, officer, employee, or agent of Landlord, except as maybe necessary to secure jurisdiction of the corporation. No partner, shareholder, director, member, manager, employee, or agent of Landlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any partner, shareholder, director, member, manager, employee, or agent of Landlord.

31.3 Each of the covenants and agreements of this Article 31 shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or by common law.

32. Control by Landlord.

32.1 Landlord reserves full control over the Building and Project to the extent not inconsistent with Tenant's quiet enjoyment and use of Premises and non-exclusive use of the Common Areas. This reservation includes the right to establish ownership of the buildings separate from fee title to the real property underlying the Buildings, and to divide the Project into more than one lot.

32.2 Tenant shall, should Landlord so request, promptly join with Landlord in execution of such documents as may be appropriate to assist Landlord to implement any such action provided Tenant need not execute any document which is of a nature wherein liability is created in Tenant or if by reason of the terms of such document Tenant will be deprived of the quiet enjoyment and use of the Premises and non-exclusive use of the Common Areas as granted by this Lease.

33. Quiet Enjoyment.

33.1 So long as Tenant is not in default, Landlord covenants that Landlord or anyone acting through or under Landlord will not disturb Tenant's occupancy of the Premises except as permitted by the provisions of this Lease and that Landlord shall use reasonable efforts to enforce the lease obligations of tenants of the balance of the Building and Project to the extent they might otherwise disturb Tenant's occupancy and non-exclusive use of the Common Areas.

34. [Intentionally Left Blank]

35. Subordination and Attornment.

35.1 Unless the mortgagee or beneficiary elects otherwise at any time prior to or following a default by Tenant, this Lease shall be subject to and subordinate to the lien of any mortgage or deed of trust now or hereafter in force against the Project and Building of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination, provided that the lienholder, beneficiary, or mortgagee has previously executed and delivered to Tenant a non-disturbance, attornment, and subordination agreement in such form as the lienholder, beneficiary, or mortgagee may request and as Tenant may approve, which approval will not be unreasonably withheld, setting forth that so long as Tenant is not in default hereunder, Tenant's rights and obligations hereunder shall remain in force and Tenant's right to possession shall be upheld. Furthermore, Landlord shall provide to Tenant, within forty-five (45) days after execution of this Lease by both parties, such a nondisturbance agreement from the beneficiary of any mortgage presently encumbering the Project.

35.2 Notwithstanding the foregoing, Tenant shall execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgage or deed of trust as may be required by Landlord and in a form reasonably satisfactory to Tenant, provided that the lienholder, beneficiary, or mortgagee has previously executed and delivered to Tenant a non-disturbance agreement in recordable form. However, if any such mortgagee or beneficiary so elects at any time prior to or following a default by Tenant, this Lease shall be deemed prior in lien to any such mortgage or deed of trust regardless of date and Tenant will execute a statement in writing to such effect at Landlord's request in a form reasonably satisfactory to Tenant.

35.3 In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall at the election of the purchaser at such foreclosure or sale attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease in accordance with the terms of the non-disturbance agreement.

36. Surrender.

36.1 No surrender of possession of any part of the Premises shall release Tenant from any of its obligations hereunder unless accepted by Landlord.

36.2 The voluntary or other surrender of this Lease by Tenant shall not work a merger, unless Landlord consents, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies.

37. Waiver and Modification.

37.1 No provision of this Lease may be modified, amended or added to except by an agreement in writing. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

38. Waiver of Jury Trial.

38.1 The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

39. Hazardous Material.

39.1 During the term, Tenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of Hazardous Material (as defined below) in or about the Premises. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors, invitees or subtenants, in a manner or for a purpose prohibited by any federal, state or local agency or authority. The accumulation of Hazardous Material shall be in approved containers and removed from the Premises by duly licensed carriers.

39.2 Tenant shall immediately provide Landlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Material onto or within the Premises of which Tenant becomes aware, including the soils and subsurface waters thereof, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. Further, Tenant shall deliver to Landlord each and every notice or order, when said order or notice identifies a violation which may have the potential to adversely impact the Premises, received from any federal, state or local agency concerning Hazardous Material and the possession, use and/or accumulation thereof promptly upon receipt of each such notice or order by Tenant. Landlord shall have the right, upon reasonable notice, to inspect and copy each and every notice or order received from any federal, state or local agency concerning Hazardous Material and the possession, use and/or accumulation thereof.

39.3 Tenant shall be responsible for and shall indemnify, protect, defend and hold harmless Landlord and Landlord's Indemnitees from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which arise during or after the term of this Lease and which result from Tenant's (or from Tenant's Indemnitees, assignees, subtenants, employees, agents, contractors, licensees, or invitees) receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Premises, including without limitation (i) diminution in value of the Premises or any portion of the Project, (ii) damages for the loss or restriction on use of any portion or amenity of the Premises or Project, (iii) damages arising from any adverse impact on marketing of space in the Premises or the Project, (iv) damages and the costs of remedial work to other property in the vicinity of the Project owned by Landlord or an affiliate of Landlord, and (v) consultant fees, expert fees, and attorneys' fees. Landlord shall be responsible for and shall indemnify, protect, defend and hold harmless Tenant on the same basis as above for any claims which result from Landlord's or from Landlord's Indemnitees receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Project.

39.4 The indemnification obligations pursuant to the preceding Section 39.3 includes, without limiting the generality of Section 39.3, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil, subsoil, ground water, or elsewhere on, under or about the Premises, or on, under or about any other property in the vicinity of the Project owned by Landlord or an affiliate of Landlord. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant results in any contamination of the Premises, or underlying soil or groundwater, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to that condition required by applicable law, provided that Landlord's approval of such action shall first be obtained, which approval shall not be unreasonably withheld, except that Tenant shall not be required to obtain Landlord's prior approval of any action of an emergency nature reasonably required or any action mandated by a governmental authority, but Tenant shall give Landlord prompt notice thereof.

39.5 Landlord acknowledges that it is not the intent of this Article 39 to prohibit Tenant from operating its business as described in Article 10 or to unreasonably interfere with the operation of Tenant's business. Tenant may operate its business according to the custom of the industry so long as the use or presence of Hazardous Material is strictly and properly monitored according to all applicable governmental requirements. Any approval or consent required by this Section 39.5 shall not be unreasonably withheld, conditioned or delayed.

39.6 As a material inducement to Landlord to allow Tenant to use Hazardous Material in connection with its business, Tenant agrees to provide to Landlord a list identifying each type of Hazardous Material to be present in or about the Premises and setting forth all governmental approvals or permits required in connection with the presence of Hazardous Material in or about the Premises ("Hazardous Material Inventory"). Tenant shall deliver a Hazardous Material Inventory to Landlord (i) no later than thirty (30) days prior to the occupancy of any portion of the Premises or the placement of equipment anywhere on the Project, (ii) annually thereafter no later than December 31 of each year, and (iii) thirty (30) days prior to the initiation by Tenant of any changes in the Premises

or elsewhere on the Project which involve any increase in the types or amounts of Hazardous Material. For each type of Hazardous Material listed, the Hazardous Material Inventory shall include the (i) chemical name; (ii) material state (solid, liquid, gas, cryogen); (iii) concentration; (iv) storage amount and storage condition (cabinets or no cabinets); (v) use amount and use condition (open use or closed use); (vi) location (room number/identification); and (vii) chemical abstract service (CAS) number, if known. Landlord may at Tenant's expense cause each Hazardous Material Inventory to be reviewed by a person or firm qualified to analyze Hazardous Material and acceptable to both Landlord and Tenant to confirm compliance with the provisions of this Lease and with applicable building and fire code requirements. In the event that a review of Tenant's Hazardous Material Inventory indicates non-compliance with this Lease or applicable building and fire code requirements, Tenant shall at its expense diligently take steps to bring its storage and use of Hazardous Material into compliance.

39.7 Tenant further agrees to make available to Landlord, upon Landlord's reasonable request, true and correct copies of the following documents ("Hazardous Material Documents"): governmental approvals or permits required in connection with the presence of Hazardous Material on the Premises; a copy of the Hazardous Material business plan prepared pursuant to Health and Safety Code Section 25500 et seq.; documents relating to the handling, storage, disposal and emission of Hazardous Material, including: permits; approvals; reports and correspondence; notice of violations of any laws; plans relating to the installation of any storage tanks to be installed in or under the Premises (provided said installation of tanks shall be permitted only after Landlord has given Tenant its written consent to do so, which consent may not be unreasonably withheld); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks installed in, on or about the Premises for the closure of any such tanks. Tenant shall not be required, however, to provide Landlord with that portion of any document which contains information of a proprietary nature and which, in and of itself, does not contain a reference to any Hazardous Material which is not otherwise identified to Landlord in such documentation, unless any such Hazardous Material Document names Landlord as an "owner" or "operator" of the facility in which Tenant is conducting its business. It is not the intent of this subsection to provide Landlord with information which could be detrimental to Tenant's business should such information become possessed by Tenant's competitors. Landlord shall treat all information furnished by Tenant to Landlord pursuant to this Article 39 as confidential and shall not disclose such information to any person or entity, except as provided in this Article 39, without Tenant's prior written consent, which consent shall not be unreasonably withheld or delayed, except as required by law.

39.8 Notwithstanding other provisions of this Article 39, it shall be a default under this Lease, and Landlord shall have the right to terminate the Lease and/or pursue its other remedies under Article 24, in the event that (i) Tenant's use of the Premises for the generation, storage, use, treatment or disposal of Hazardous Material is in a manner or for a purpose prohibited by applicable law unless Tenant is diligently pursuing compliance with such law, (ii) Tenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises if the contamination resulted from Tenant's action or use of the Premises, unless Tenant is diligently pursuing compliance with such requirement, or (iii) Tenant is subject to an enforcement order issued by any governmental authority in connection with Tenant's use, disposal or storage of a Hazardous Material on the Premises, unless Tenant is diligently seeking compliance with such enforcement order.

39.9 Notwithstanding the provisions of Article 25, if (i) any anticipated use of the Premises by a proposed assignee or subtenant involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited by any applicable law, (ii) the proposed assignee or sublessee has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee or sublessee is subject to a final, unappealable enforcement order issued by any governmental authority in connection with such party's use, disposal or storage of Hazardous Material of a type such proposed assignee or sublessee intends to use in the Premises and shall have failed to comply with such order, it shall not be unreasonable for Landlord to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

39.10 Landlord represents that, to the best of its knowledge, as of the date of this Lease, there is no Hazardous Material on the Premises. Landlord shall provide Tenant with the environmental site assessment for the Premises dated February 25, 2004, and prepared by Occupational Services, Inc. Should the environmental site assessment disclose the presence of Hazardous Material beyond legally permissible levels, Landlord shall correct the deficiencies to Tenant's reasonable satisfaction and shall cause updates to the environmental site assessment(s) to be issued reflecting the remedy. The environmental site assessment and all updates thereto are hereinafter referred to as the "Base Line Report," and shall be deemed conclusive as to the condition of the Premises, unless, within ninety (90) days of receipt, Tenant causes an inspection of its own to be conducted, which inspection discloses the presence of Hazardous Material materially different from that disclosed in the Base Line Report.

39.11 Landlord shall not have the right to enter upon the Premises without the prior consent of Tenant, which shall not be unreasonably withheld. Tenant agrees that it is reasonable for Landlord to enter the Premises at reasonable intervals in order to conduct appropriate tests regarding the presence, use and storage of Hazardous Material, and to inspect Tenant's records with regard thereto. All entries shall be subject to Tenant's security and safety procedures. Tenant will pay the reasonable costs of any such test which demonstrates that contamination in excess of permissible levels has occurred and such contamination was caused by Tenant's use of the Premises during the term of the Lease. Tenant shall correct any deficiencies identified in any such tests in accordance with its obligations under this Article 39 to the extent the result of Tenant's use of the Premises during the term of this Lease.

39.12 Tenant shall at its own expense cause an environmental site assessment of the Premises to be conducted and a report thereof delivered to Landlord upon the expiration or earlier termination of the Lease, such report to be as complete and broad in scope as is necessary to identify any impact on the Premises Tenant's operations might have had (hereinafter referred to as the "Exit Report"). In order to facilitate the Exit Report, Tenant shall install a sampling port on the sewer drain from the Premises. Tenant shall correct any deficiencies identified in the Exit Report in accordance with its obligations under this Article 39 prior to the expiration or earlier termination of this Lease. This Article 39 is the exclusive provision in this Lease regarding clean-up, repairs or maintenance arising from receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Premises, and the provisions of Articles 7, 10, 18, and 20 shall not apply thereto.

39.13 Tenant's obligations under this Article 39 shall survive the termination of the Lease.

39.14 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25515,25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 2, Chapter 6.8 (Carpenter-Presly-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 and defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq. (42 U.S.C. Section 9601).

40. Extension of Term of Lease.

40.1 Landlord hereby grants to Tenant two (2) options (each referred to herein as the "Option" or "Options" as appropriate) to extend the term of this Lease for an additional term of five (5) years each (each referred to as an "Extension", and collectively "Extensions") on the same terms and conditions as set forth in this Lease, except that Basic Annual Rent shall be adjusted as set forth in Section 40.4 below.

40.2 Each Option shall be exercised only by written notice delivered to Landlord at least nine (9) months but not more than fifteen (15) months prior to the expiration of the initial term or first Extension. If Tenant fails to deliver to Landlord written notice of the exercise of the Option within the prescribed time period, the Option shall lapse, and there shall be no further right to extend the term of this Lease.

40.3 Tenant shall not have the right to exercise either Option, notwithstanding anything set forth above to the contrary, (a) During the time commencing from the date Landlord gives to Tenant a written notice that Tenant is in default under any provision of this Lease and continuing until the default alleged in said notice is cured; (b) During the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid without any necessity for notice thereof to Tenant and continuing until the obligation is paid; or (c) After the expiration or earlier termination of this Lease or any extended term. The period of time within which

either Option maybe exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Option because of the foregoing provisions. At the election of Landlord, all rights of Tenant under the provisions of this Article 40 shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Option, if, after such exercise, but prior to the commencement of the Extension, (1) Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without necessity of Landlord to give notice to Tenant), or (2) Tenant fails to commence to cure a default within thirty (30) days after the date Landlord gives notice to Tenant of such default.

40.4 The Basic Annual Rent payable at the commencement of each Extension shall be 103% of the Basic Annual Rent payable during the last year of the initial term or the first extended term, as the case may be. The Basic Annual Rent as adjusted at the commencement of each Extension shall be increased each year thereafter by three percent (3%) on each anniversary of the date of the commencement of each Extension for so long as this Lease continues in effect.

41. **Right of First Refusal to Lease Additional Space.**

41.1 If at any time during the term of this Lease Landlord determines to lease all or any part of the other space in the Project, Landlord shall give written notice to Tenant ("Right of First Refusal Notice") of the economic terms and conditions on which Landlord would be willing to lease all or any part of such space. If Tenant, within fifteen (15) days after receipt of Landlord's Right of First Refusal Notice, agrees in writing to lease all or any part of such space on the terms and conditions stated in the notice, Landlord shall lease the space to Tenant on the economic terms and conditions stated in the notice.

41.2 If Tenant does not agree in writing to lease all or any part of the space within fifteen (15) days after receipt of Landlord's Right of First Refusal Notice, or if Landlord and Tenant have not entered into a lease agreement within thirty (30) days thereafter, Landlord shall have the right to lease the space to a third party on economic terms and conditions no more favorable than the economic terms and conditions stated in the Right of First Refusal Notice. If Landlord does not lease such space to the prospective tenant within one hundred eighty (180) days after the Right of First Refusal Notice, any lease transaction thereafter shall be deemed a new determination by Landlord to lease the space and the provisions of this Section shall again be applicable.

41.3 The Right of First Refusal herein granted to Tenant is not assignable separate and apart from this Lease.

41.4 Tenant shall not have the right to exercise the Right of First Refusal, notwithstanding anything set forth above to the contrary: (a) During the time commencing from the date Landlord gives to Tenant a written notice that Tenant is in default under any provision of this Lease and continuing until the default alleged in said notice is cured; (b) During the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid without any necessity for notice thereof to Tenant and continuing until the obligation is paid; or (c) After the expiration or earlier termination of this Lease. The period of time within which the Right of First Refusal may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Right of First Refusal because of the foregoing provisions. At the election of Landlord,

all rights of Tenant under the provisions of this Article 41 shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Right of First Refusal, if, after such exercise, but prior to the execution of said lease, (1) Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without necessity of Landlord to give notice to Tenant), or (2) Tenant fails to commence to cure a default within thirty (30) days after the date Landlord gives notice to Tenant of such default.

41.5 The Right of First Refusal is continuing, in that if Tenant fails to exercise the Right of First Refusal with regard to any particular space, the Right of First Refusal shall nevertheless apply to that particular space if Landlord determines to lease all or any part of such space at any later time, and to any other space which Landlord determines to lease in the Building.

41.6 The Right of First Refusal shall not apply to space leased by a Tenant of the Project pursuant to an option or right of first refusal granted in a lease executed prior to this Lease.

42. **Miscellaneous.**

42.1 **Terms and Headings.** Where applicable in this Lease, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

42.2 **Examination of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

42.3 **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

42.4 **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

42.5 **Consents.** Whenever consent or approval of either party is required, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth to the contrary.

42.6 **Entire Agreement.** The terms of this Lease are intended by the parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement.

42.7 **Severability.** Any provision of this Lease which shall prove to be invalid, void, or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

42.8 **Recording.** Landlord and Tenant both agree that neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded.

42.9 **Impartial Construction.** The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

42.10 **Inurement.** Each of the covenants, conditions, and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees, or any person who may come into possession of said Premises or any part thereof in any manner whatsoever. Nothing in this Section 42.10 contained shall in any way alter the provisions against assignment or subletting in this Lease provided.

42.11 **Force Majeure.** If either party cannot perform any of its obligations (other than Tenant's obligation to pay Rent), or is delayed in such performance (other than Tenant's obligation to pay Rent), due to events beyond such party's control, the time provided for performing such obligations shall be extended by a period of time equal to the delay attributable to such events. Events beyond a party's control include, but are not limited to, acts of God (including earthquake), war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortage of labor or material, government regulation or restriction and weather conditions, but do not include financial inability to perform.

42.12 **Notices.** Any notice, consent, demand, bill, statement, or other communication required or permitted to be given hereunder must be in writing and may be given by personal delivery, by facsimile transmission, or by mail, and if given by personal delivery or facsimile transmission shall be deemed given on the date of delivery or transmission, and if given by mail shall be deemed sufficiently given three (3) days after time when deposited in United States Mail if sent by registered or certified mail, return receipt requested, addressed to Tenant at the Premises, or to Tenant or Landlord at the addresses shown in Section 2.1.9 hereof. Either party may, by notice to the other given pursuant to this Section, specify additional or different addresses for notice purposes.

42.13 **Authority to Execute Lease.** Landlord and Tenant each acknowledge that it has all necessary right, title and authority to enter into and perform its obligations under this Lease, that this Lease is a binding obligation of such party and has been authorized by all requisite action under the party's governing instruments, that the individuals executing this Lease on behalf of such party are duly authorized and designated to do so, and that no other signatories are required to bind such party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the dates set forth below.

LANDLORD:

Dated: April 21, 2004

NEXUS EQUITY VIII LLC
A California limited liability company
By Nexus Properties, Inc.
a California corporation
Its Manager

By: /s/ Michael J. Reidy
Michael J. Reidy
Chief Executive Officer

TENANT:

Dated: April 20, 2004

BIOCEPT, INC.
a California corporation

By: /s/ GF Janko
Name: GF Janko
Title: Pres/Ceo

By: _____
Name: _____
Title: _____

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this **"First Amendment")** is made as of November 1, 2011, by and between **ARE-SD REGION NO. 18, LLC,** a Delaware limited liability company **("Landlord"),** and **BIOCEPT, INC.,** a California corporation **("Tenant").**

RECITALS

A. Landlord and Tenant are now parties to that certain Lease dated as of March 31, 2004 (the **"Lease").** Pursuant to the Lease, Tenant leases certain premises consisting of approximately 38,369 square feet of Rentable Area **("Original Premises")** in a building located at 5810 Nancy Ridge Drive, San Diego, California **("Building").** The Original Premises are more particularly described in the Lease. Capitalized terms used herein without definition shall have the meanings defined for such terms in the Lease.

B. Landlord and Tenant desire, subject to the terms and conditions set forth below, to amend the Lease to, among other things, (i) expand the size of the Original Premises by adding approximately 9,849 square feet of Rentable Area in the Building, and (ii) extend the base term of the Lease through October 31, 2018.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual promises and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Expansion Premises.** In addition to the Original Premises, commencing on the Expansion Premises Commencement Date (as defined below), Landlord leases to Tenant, and Tenant leases from Landlord, that certain portion of the first floor of the Building known as Suite 100, consisting of approximately 9,849 square feet of Rentable Area, as shown on **Exhibit A** attached hereto (the **"Expansion Premises").**

2. **Delivery.** Landlord shall use reasonable efforts to deliver full possession of the Expansion Premises to Tenant for the construction of the Tenant Improvements in the Expansion Premises on or before the Target Expansion Premises Commencement Date **("Delivery"** or **"Deliver").** If Landlord fails to timely Deliver the Expansion Premises, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, and the Lease with respect to the Expansion Premises shall not be void or voidable except as provided herein. If Landlord does not Deliver the Expansion Premises within 90 days of the Target Expansion Premises Commencement Date for any reason other than Force Majeure delays and delays caused by Tenant, the provisions of this First Amendment with respect to the Expansion Premises only (including without limitation Sections 1, 2, 3, 4, 5(ii), 6(b), 7 and 8 of this First Amendment) (collectively, the **"Expansion Premises Provisions"),** may be terminated by Tenant by written notice to Landlord, and if so terminated, neither Landlord nor Tenant shall have any further rights, duties or obligations under the Expansion Premises Provisions of this First Amendment; provided, however, all terms, conditions and provisions of this First Amendment other than the Expansion Premises Provisions shall remain unmodified and in full force and effect, except that Section 6(d) and Section 5(b) of the Work Letter shall be revised to provide for a maximum TI Allowance of $959,225 in the aggregate. As used herein, the term **"Tenant Improvements"** shall have the meaning set forth for such term in the Work Letter attached to this First Amendment as **Exhibit B.** If Tenant does not elect to void the Expansion Premises Provisions of this First Amendment within 5 business days of the lapse of such 90 day period, such right to void the Expansion Premises Provisions of this First Amendment shall be waived and all provisions of this First Amendment shall remain in full force and effect.

The **"Expansion Premises Commencement Date"** shall be the date that Landlord delivers the Expansion Premises to Tenant with Landlord's Work (as defined below) substantially completed provided that in no event shall the Expansion Premises Commencement Date occur prior to the Target Expansion Premises Commencement Date. The **"Target Expansion Premises Commencement Date"** shall be May 1, 2013. Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Expansion Premises Commencement Date and the expiration date of the Lease in a form substantially similar to the form of the "Acknowledgement of Commencement Date" attached to this First Amendment as **Exhibit C;** provided, however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder. As used herein, **"Landlord's Work"** shall mean the work required in the Building, as reasonably determined by Landlord and agreed upon by Tenant, required to connect the Original Premises with the Expansion Premises. Landlord and Tenant shall work together in good faith to prepare plans and a budget for Landlord's Work mutually acceptable to Landlord and Tenant, each in their reasonable discretion. The cost of Landlord's Work, up to $5.00 per rentable square foot of the Expansion Premises **("Landlord Work Cap")** shall be paid for by Landlord. Tenant shall be responsible for the costs of Landlord's Work in excess of the Landlord Work Cap and shall reimburse Landlord for such costs of Landlord's Work in excess of the Landlord Work Cap within 10 days after delivery to Tenant of an invoice therefor. Landlord and its contractors and agents shall have the right to enter the Original Premises to complete Landlord's Work and Tenant shall cooperate with Landlord in connection with the same. Tenant acknowledges that Landlord's completion of Landlord's Work may adversely affect Tenant's use and occupancy of the Original Premises. Tenant waives all claims against Landlord in connection with Landlord's Work including, without limitation, claims for rent abatement. During Landlord's construction of Landlord's Work, provided that Tenant does not interfere with Landlord's Work, Tenant shall be permitted to access the Expansion Premises to construct any desired Tenant Improvements, to install Tenant's furniture, fixtures, cabling and equipment, and to generally prepare the Expansion Premises for Tenant's occupancy. Upon any interference with Landlord's Work by Tenant, Landlord shall have the right to exclude Tenant from the Premises until substantial completion of Landlord's Work.

Notwithstanding anything to the contrary contained in the Lease, Tenant shall not be required to remove any improvements located in the Original Premises as of the date of this First Amendment or located in the Expansion Premises as of the Expansion Premises Commencement Date. Notwithstanding the foregoing, Landlord may, at the time its approval of any Tenant Improvements is requested, notify Tenant that Landlord requires that Tenant remove such Tenant Improvements upon the expiration or earlier termination of the Term, in which event Tenant shall remove such Tenant Improvements upon the expiration or earlier termination of the Term, at Tenant's cost.

Except as set forth in this First Amendment or in the Work Letter: (i) Tenant shall accept the Expansion Premises in their condition as of the Expansion Premises Commencement Date, subject to all applicable Legal Requirements; (ii) Landlord shall have no obligation for any defects in the Expansion Premises; and (iii) Tenant's taking possession of the Expansion Premises shall be conclusive evidence that Tenant accepts the Expansion Premises and that the Expansion Premises were in good condition at the time possession was taken.

Tenant agrees and acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Expansion Premises, and/or the suitability of the Expansion Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Expansion Premises are suitable for the Permitted Use.

3. **Definition of Premises.** Notwithstanding anything to the contrary contained in the Lease, as of the Expansion Premises Commencement Date, the defined term "Premises," as used in the

Lease, shall mean the entire Building, consisting of approximately 48,218 square feet of Rentable Area.

As of the Expansion Premises Commencement Date, **Exhibit B** to the Lease shall be amended to include the Expansion Premises as shown on **Exhibit A** attached to this First Amendment.

4. **Address of Tenant's Building.** Commencing on the Expansion Premises Commencement Date, the defined term **"Address of Tenant's Building"** in the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"Address of Tenant's Building:
5810 Nancy Ridge Drive, San Diego, California 92122"

5. **Term.** Notwithstanding anything to the contrary contained in the Lease, the base term of the Lease **("Base Term")** shall be the period beginning (i) with respect to the Original Premises, on the Term Commencement Date, and (ii) with respect to the Expansion Premises, on the Expansion Premises Commencement Date, and ending with respect to the entire Premises on October 31, 2018 **("Term Expiration Date").**

6. **Basic Annual Rent.**

a. **Original Premises.** Tenant shall continue to pay Annual Basic Rent for the Original Premises as provided for in the Lease through October 31, 2011. So long as no event of default by Tenant has occurred or is continuing under the Lease (beyond any applicable notice or cure periods), Tenant shall not be required to pay Basic Annual Rent for the Original Premises for the period commencing November 1, 2011, through March 31, 2012. Commencing on April 1, 2012, Tenant shall commence paying Basic Annual Rent for the Original Premises at the rate of $2.00 per square foot of Rentable Area of the Original Premises per month.

b. **Expansion Premises.** Commencing on the Expansion Premises Commencement Date, Tenant shall pay Basic Annual Rent for the Expansion Premises at the same rate per square foot that Tenant is then paying for the Original Premises, as increased pursuant to Section 6(c) below.

c. **Annual Rent Adjustments.** Basic Annual Rent shall be increased on November 1, 2012, and on each November 1st thereafter during the Base Term of the Lease (each an **"Adjustment Date")** by multiplying the Basic Annual Rent payable immediately before such Adjustment Date by 3% **("Rent Adjustment Percentage")** and adding the resulting amount to the Basic Annual Rent payable immediately before such Adjustment Date. Basic Annual Rent, as so adjusted, shall thereafter be due as provided herein. Adjustments of Basic Annual Rent for any fractional calendar month shall be prorated.

d. **TI Allowance Adjustments.** Landlord shall, subject to the terms of the Work Letter, make available to Tenant a tenant improvement allowance **("TI Allowance")** for the construction of the Tenant Improvements of up to $25.00 per rentable square foot of the Premises, or $1,205,450 in the aggregate. In addition to Basic Annual Rent, Tenant shall pay, concurrently with Basic Annual Rent, the amount necessary to fully amortize the portion of the TI Allowance actually funded by Landlord, if any, in equal monthly payments with interest at a rate of 9% per annum over the remainder of the Base Term **("Tl Rent").** Tenant acknowledges that because the Tl Allowance may be disbursed to Tenant in multiple phases through October 31, 2013, the TI Rent payable by Tenant pursuant to this Section 6(d) may be adjusted following each such disbursement. The TI Allowance shall only be available for use by Tenant as part of the construction of the Tenant Improvements, and Tenant shall have no right thereafter to use any undisbursed portion thereof.

7. **Rentable Area.** Commencing on the Expansion Premises Commencement Date, the defined term **"Rentable Area"** in the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"Rentable Area: Approximately 48,218 square feet"

The Rentable Area shall not be subject to re-measurement.

8. **Tenant's Pro Rata Share.**

a. Commencing on the Expansion Premises Commencement Date, the defined term **"Tenant's Pro Rata Share"** in the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"**Tenant's Pro Rata Share**: 55.23% of the Project"

b. Commencing on the Expansion Premises Commencement Date, Section 7.3(a) of the Lease shall be deleted and replaced in its entirety with the following:

"(a) 'Tenant's Pro Rata Share' under this Lease shall mean 55.23%, determined by dividing the Rentable Area of the Premises by the total Rentable Area of the Project."

9. **Early Termination Right.** Tenant shall have the right, subject to the provisions of this Section 9, to terminate the Lease **("Termination Right")** with respect to the entire Premises only as of expiration of October 31, 2016 **("Early Termination Date"),** so long as Tenant delivers to Landlord (i) a written notice **("Termination Notice"),** of its election to exercise its Termination Right on or before February 1, 2016, and (ii) concurrent with Tenant's delivery to Landlord of the Termination Notice delivers, an early termination payment equal to (1) the unamortized amount of the TI Allowance provided to Tenant, (2) all of the unamortized leasing commissions paid by Landlord in connection with this First Amendment, and (3) an amount equal to 6 monthly installments of Basic Annual Rent at the rate payable as of the Early Termination Date (collectively, the **"Early Termination Payment").** If Tenant timely and properly exercises the Termination Right, Tenant shall vacate the Premises and deliver possession thereof to Landlord in the condition required by the terms of this Lease on or before the Early Termination Date and Tenant shall have no further obligations under this Lease except for those accruing prior to the Early Termination Date and those which, pursuant to the terms of this Lease, survive the expiration or early termination of this Lease. In the event that (i) Tenant does not deliver to Landlord the Termination Notice and the Early Termination Payment within the time period provided in this paragraph, or (ii) Tenant exercises its Right of First Refusal under Section 41 of the Lease at any time after December 31, 2012, Tenant shall be deemed to have waived its Termination Right and the provisions of this Section 9 shall have no further force or effect.

10. **Extension of Term of Lease.** Section 40 of the Lease is hereby deleted and replaced in its entirety with the following:

"40. **Right to Extend Term.** Tenant shall have the right to extend the term of the Lease upon the following terms and conditions:

(a) **Extension Rights.** Tenant shall have 2 consecutive rights (each, an **"Extension Right")** to extend the term of this Lease for 5 years each (each, an **"Extension Term")** on the same terms and conditions as this Lease (other than with respect to Basic Annual Rent and the Work Letter) by giving Landlord written notice of its election to exercise each Extension Right at least 9 months prior, and no earlier than 12 months prior, to the expiration of the Base Term of the Lease or the expiration of any prior Extension Term.

Upon the commencement of any Extension Term, Annual Basic Rent shall be payable at the Market Rate (as defined below). Annual Basic Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by the Rent Adjustment Percentage. As used herein, **"Market Rate"** shall mean the then market rental rate as determined by Landlord and agreed to by Tenant for space of comparable size and quality (including all alterations and other improvements) in comparable laboratory buildings in the Sorrento Mesa area for a comparable term, taking into account all relevant factors, including without limitation tenant inducements, leasing commissions, allowances and/or concessions.

If, on or before the date which is 180 days prior to the expiration of the Base Term of this Lease, Tenant has not agreed with Landlord's determination of the Market Rate for the first year of the applicable Extension Term after negotiating in good faith, Tenant shall be deemed to have elected arbitration as described in Section 40(b). Tenant acknowledges and agrees that, if Tenant has elected to exercise the Extension Right by delivering notice to Landlord as required in this Section 40(a), Tenant shall have no right thereafter to rescind or elect not to extend the term of the Lease for the Extension Term.

(b) **Arbitration**.

(i) Within 10 days of Tenant's notice to Landlord of its election (or deemed election) to arbitrate Market Rate, each party shall deliver to the other a proposal containing the Market Rate that the submitting party believes to be correct **("Extension Proposal").** If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Annual Basic Rent for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within 7 days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 10 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's submitted proposal shall determine the Annual Basic Rent for the Extension Term. The 2 Arbitrators so appointed shall, within 5 business days after their appointment, appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent.

(ii) The decision of the Arbitrator(s) shall be made within 30 days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The average of the two closest Arbitrators in a three Arbitrator panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate is not determined by the first day of the Extension Term, then Tenant shall pay Landlord Annual Basic Rent in an amount equal to the Annual Basic Rent in effect immediately prior to the Extension Term and increased by the Rent Adjustment Percentage until such determination is made. After the determination of the Market Rate, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate for the Extension Term.

(iii) An **"Arbitrator"** shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in

the appraisal of improved office and high tech industrial real estate in the greater San Diego metropolitan area, or (B) a licensed commercial real estate broker with not less than 15 years experience representing landlords and/or tenants in the leasing of high tech or life sciences space in the greater San Diego metropolitan area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

(c) **Rights Personal.** Extension Rights are personal to Tenant and are not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned to any Permitted Transferee of this Lease.

(d) **Exceptions.** Notwithstanding anything set forth above to the contrary, Extension Rights shall, at Landlord's option, not be in effect and Tenant may not exercise any of the Extension Rights:

(i) during any period of time that Tenant is in default under any provision of this Lease (beyond all applicable notice and cure periods);

(ii) during any period that Tenant (collectively with its Permitted Transferees, if any) occupies less than 100% of the Premises; or

(iii) if Tenant has been in default (beyond all applicable notice and cure periods) under any provision of this Lease 3 or more times, whether or not the defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise an Extension Right, whether or not the defaults are cured.

(e) **No Extensions.** The period of time within which any Extension Rights may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Rights.

(f) **Termination.** The Extension Rights shall, at Landlord's option, terminate and be of no further force or effect even after Tenant's due and timely exercise of an Extension Right, if, after such exercise, but prior to the commencement date of an Extension Term, (i) Tenant fails, subject to all applicable notice and cure periods, to timely cure any default by Tenant under this Lease; or (ii) Tenant has defaulted (beyond all applicable notice and cure periods) 3 or more times during the period from the date of the exercise of an Extension Right to the date of the commencement of the Extension Term, whether or not such defaults are cured."

11. **Right of First Refusal.** Section 41 of the Lease is hereby deleted and replaced in its entirety with the following:

"41. **Right of First Refusal.**

(a) Each time during the Base Term of the Lease that Landlord intends to agree to a written proposal (the **"Pending Deal")** to lease the Available Space (as hereinafter defined) to a third party, Landlord shall deliver to Tenant written notice (the **"Pending Deal Notice")** of the existence of such Pending Deal. For purposes of this Section 41(a), **"Available Space"** shall mean all or any portion of the building in the Project known as 5820 Nancy Ridge Drive **("5820 Building"),** consisting of approximately 39,080 square feet of Rentable Area, which is not occupied by a tenant or which is occupied by a then existing tenant and such tenant does not wish to renew (whether or not such tenant has a right to renew) its occupancy of such space. Tenant shall be entitled to exercise its right under this Section 41(a) only with respect to the entire Available Space described in such Pending Deal Notice **("Identified Space").** Within 5 business days after Tenant's receipt of the Pending Deal Notice, Tenant shall deliver to Landlord written

notice (the **"Space Acceptance Notice")** if Tenant elects to lease the Identified Space. Tenant's right to receive the Pending Deal Notice and election to lease or not lease the **Available Space** pursuant to this Section 41(a) is hereinafter referred to as the **"Right of First Refusal."** If Tenant elects to lease the Identified Space by delivering the Space Acceptance Notice within the required 5 business day period, Tenant shall be deemed to agree to lease the Identified Space on the same general terms and conditions as this Lease except that the terms of this Lease shall be modified to reflect the terms of the Pending Deal Notice for the rental of the Identified Space. Notwithstanding anything to the contrary contained herein, in no event shall the Work Letter apply to the Available Space. If Tenant fails to deliver a Space Acceptance Notice to Landlord within the required 5 business day period, Tenant shall be deemed to have waived its rights under this Section 41(a) to lease the Identified Space, and Landlord shall have the right to lease the Identified Space to any third party on any terms and conditions acceptable to Landlord; provided, however, that in the event the economic terms as stated in the Pending Deal Notice are altered so as to reduce the Net Effective Rental Rate (as defined below) by more than ten percent (10%), Landlord will again be obligated to offer the Identified Space to Tenant on such revised terms and Tenant will have three (3) business days to deliver the Space Acceptance Notice as set forth above. The term **"Net Effective Rental Rate"** shall mean the rental rate, as adjusted to reflect the value of any free rent, tenant improvement allowance or similar monetary concessions.

(b) **Amended Lease.** If: (i) Tenant fails to timely deliver a Space Acceptance Notice, or (ii) after the expiration of a period of 20 days after Landlord's delivery to Tenant of a lease amendment or lease agreement for Tenant's lease of the Identified Space, no lease amendment or lease agreement for the Identified Space, acceptable to both parties each in their sole and absolute discretion, has been executed, Tenant shall be deemed to have forever waived its right to lease such Identified Space (subject to the terms of Section 41(a) above). Landlord and Tenant agree to negotiate any such lease amendment or lease agreement in good faith.

(c) **Exceptions.** Notwithstanding the above, the Right of First Refusal shall, at Landlord's option, not be in effect and may not be exercised by Tenant:

(i) during any period of time that Tenant is in default under any provision of the Lease (beyond all applicable notice and cure periods);

(ii) during any period that Tenant (collectively with its Permitted Transferees, if any) occupies less than 100% of the Premises; or

(iii) if Tenant has been in default (beyond all applicable notice and cure periods) under any provision of the Lease 3 or more times, whether or not the defaults are cured, during the 12 month period prior to the date on which Tenant seeks to exercise the Right of First Refusal.

(d) **Termination.** The Right of First Refusal shall, at Landlord's option, terminate and be of no further force or effect even after Tenant's due and timely exercise of the Right of First Refusal, if, after such exercise, but prior to the commencement date of the lease of such Identified Space, (i) Tenant fails, subject to all applicable notice and cure periods, to timely cure any default by Tenant under the Lease; or (ii) Tenant has defaulted (beyond all applicable notice and cure periods) 3 or more times during the period from the date of the exercise of the Right of First Refusal to the date of the commencement of the lease of the Identified Space, whether or not such defaults are cured.

(e) **Subordinate.** Tenant's rights in connection with the Right of First Refusal are and shall be subject to and subordinate to any expansion or extension rights granted in the 5820 Building to Celula, Inc.

(f) **Rights Personal.** The Right of First Refusal is personal to Tenant and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned to any Permitted Transferee of this Lease.

(g) **No Extensions.** The period of time within which the Right of First Refusal may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Right of First Refusal.

12. **Brokers.** Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, **"Broker")** in connection with the transaction reflected in this First Amendment and that no Broker brought about this transaction, other than Studley, Inc. Landlord and Tenant each hereby agrees to indemnify and hold the other harmless from and against any claims by any Broker claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

13. **Financial Information.** Upon Landlord's request, Tenant shall furnish Landlord with true and complete copies of (i) Tenant's most recent audited annual financial statements within 90 days of the end of each of Tenant's fiscal years during the Term, (ii) Tenant's most recent unaudited quarterly financial statements within 45 days of the end of each of Tenant's first three fiscal quarters of each of Tenant's fiscal years during the Term, (iii) at Landlord's request from time to time, updated business plans, including cash flow projections and/or pro forma balance sheets and income statements, all of which shall be treated by Landlord as confidential information belonging to Tenant, (iv) corporate brochures and/or profiles prepared by Tenant for prospective investors, and (v) any other financial information or summaries that Tenant typically provides to its lenders or shareholders. Notwithstanding the foregoing, in no event shall Tenant be required to provide any financial information to Landlord which Tenant does not otherwise prepare (or cause to be prepared) for its own purposes.

14. **OFAC.** Tenant, and all beneficial owners of Tenant, are currently (a) in compliance with and shall at all times during the term of the Lease remain in compliance with the regulations of the Office of Foreign Assets Control **("OFAC")** of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the **"OFAC Rules"),** (b) not listed on, and shall not during the term of the Lease be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

15. **Redevelopment of Project.** Tenant acknowledges that Landlord, in its sole discretion, may from time to time expand, renovate and/or reconfigure the Project as the same may exist from time to time and, in connection therewith or in addition thereto, as the case may be, from time to time without limitation: (a) change the shape, size, location, number and/or extent of any improvements, buildings, structures, lobbies, hallways, entrances, exits, parking and/or parking areas relative to any portion of the Project; (b) modify, eliminate and/or add any buildings, improvements, and parking structure(s) either above or below grade, to the Project, the Common Areas and/or any other portion of the Project and/or make any other changes thereto affecting the same; and (c) make any other changes, additions and/or deletions in any way affecting the Project and/or any portion thereof as Landlord may elect from time to time, including without limitation, additions to and/or deletions from the land comprising the Project, the Common Areas and/or any other portion of the Project. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no right to seek damages (including abatement of Rent) or to cancel or terminate this Lease because of any proposed changes, expansion, renovation or reconfiguration of the Project nor shall Tenant have the right to restrict, inhibit or prohibit any such changes, expansion, renovation or reconfiguration; provided, however, Landlord shall not change the size,

dimensions, location or the Permitted Use of the Premises, and Landlord shall use reasonable efforts to minimize interference with Tenant's business operations in the Premises.

16. Miscellaneous.

a. This First Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This First Amendment may be amended only by an agreement in writing, signed by the parties hereto.

b. This First Amendment is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

c. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this First Amendment attached thereto.

d. Except as amended and/or modified by this First Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this First Amendment. In the event of any conflict between the provisions of this First Amendment and the provisions of the Lease, the provisions of this First Amendment shall prevail. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

[Signatures are on the next page.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first above written.

TENANT:

BIOCEPT, INC.,
a California corporation

By: /s/ William Kachioff
Its: CFO

LANDLORD:

ARE-SD REGION NO. 18, LLC,
a Delaware limited liability corporation

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Gary Dean
Its: GARY DEAN
VP - RELEGAL AFFAIRS

EXHIBIT A

The Expansion Premises

5810 Nancy Ridge Drive

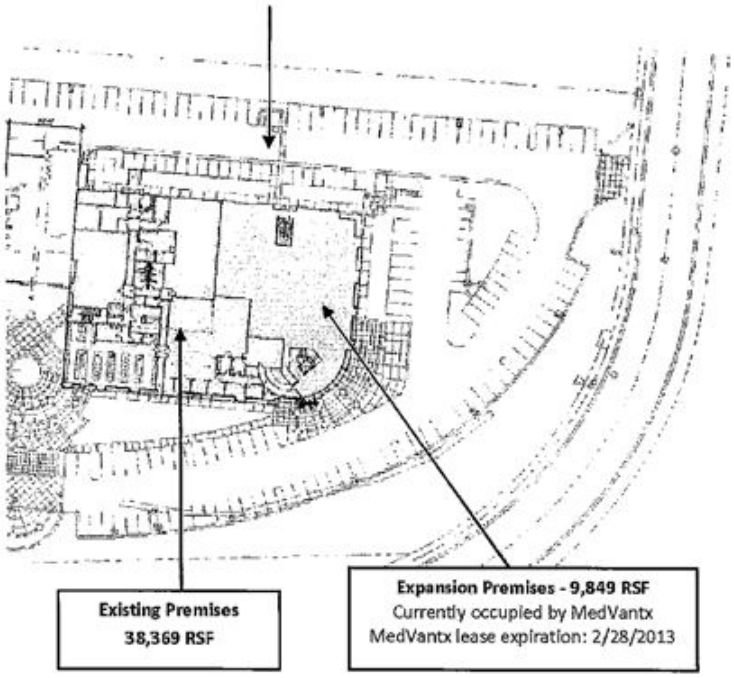

EXHIBIT B

Work Letter

THIS WORK LETTER (this **"Work Letter")** is incorporated into that certain First Amendment to Lease dated Nov 1, 2011 (the **"Amendment"),** by and between **ARE-SD REGION NO. 18, LLC,** a Delaware limited liability company **("Landlord"),** and **BIOCEPT, INC.,** a California corporation **("Tenant").** Any initially capitalized terms used but not defined herein shall have the meanings given them in the Amendment.

1. **General Requirements**.

(a) **Tenant's Authorized Representative.** Tenant designates Tom Burns **("Tenant's Representative")** as the only person authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry or other communication **("Communication")** from or on behalf of Tenant in connection with this Work Letter unless such Communication is in writing from Tenant's Representative. Tenant may change Tenant's Representative at any time upon not less than 5 business days advance written notice to Landlord.

(b) **Landlord's Authorized Representative.** Landlord designates Jay Ingram and Rodney Hunt (either such individual acting alone, **"Landlord's Representative")** as the only persons authorized to act for Landlord pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Work Letter unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than 5 business days advance written notice to Tenant.

(c) **Architects, Consultants and Contractors.** Landlord and Tenant hereby acknowledge and agree that the architect (the **"TI Architect")** for the Tenant Improvements (as defined in Section 2(a) below), the general contractor and any subcontractors for the Tenant Improvements shall be selected by Tenant, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall be named a third party beneficiary of any contract entered into by Tenant with the TI Architect, any consultant, any contractor or any subcontractor, and of any warranty made by any contractor or any subcontractor.

2. **Tenant Improvements**.

(a) **Tenant Improvements Defined.** As used herein, **"Tenant Improvements"** shall mean all improvements to the Premises desired by Tenant of a fixed and permanent nature. Other than (i) funding the TI Allowance (as defined below), and (ii) complying with its obligations as expressly provided herein, Landlord shall not have any obligation whatsoever with respect to the finishing of the Premises for Tenant's use and occupancy. Landlord and Tenant acknowledge and agree that Tenant may elect not to construct all of the Tenant Improvements at one time, and that the process for approval and completion set forth below may need to be repeated on more than one occasion for separate phases of the Tenant Improvements.

(b) **Tenant's Space Plans.** Tenant shall deliver to Landlord schematic drawings and outline specifications (the **"TI Design Drawings")** detailing Tenant's requirements for the Tenant Improvements prior to the commencement of construction of the Tenant Improvements. Not more than 10 days thereafter, Landlord shall deliver to Tenant the written objections, questions or comments of Landlord and the TI Architect with regard to the TI Design Drawings. Tenant shall cause the TI Design Drawings to be revised to address such written comments and shall resubmit said drawings to Landlord for approval within 10 days thereafter. Such process shall continue until Landlord has approved the TI Design Drawings.

(c) **Working Drawings.** Not later than 15 business days following the approval of the TI Design Drawings by Landlord, Tenant shall cause the TI Architect to prepare and deliver to Landlord for review and comment construction plans, specifications and drawings for the Tenant improvements **("TI Construction Drawings"),** which TI Construction Drawings shall be prepared substantially in accordance with the TI Design Drawings. Tenant shall be solely responsible for ensuring that the TI Construction Drawings reflect Tenant's requirements for the Tenant Improvements. Landlord shall deliver its written comments on the TI Construction Drawings to Tenant not later than 10 business days after Landlord's receipt of the same; provided, however, that Landlord may not disapprove any matter that is consistent with the TI Design Drawings. Tenant and the TI Architect shall consider all such comments in good faith and shall, within 10 business days after receipt, notify Landlord how Tenant proposes to respond to such comments. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Provided that the design reflected in the TI Construction Drawings is consistent with the TI Design Drawings, Landlord shall approve the TI Construction Drawings submitted by Tenant. Once approved by Landlord, subject to the provisions of Section 4 below, Tenant shall not materially modify the TI Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(a) below).

(d) **Approval and Completion.** If any dispute regarding the design of the Tenant Improvements is not settled within 10 business days after notice of such dispute is delivered by one party to the other, Tenant may make the final decision regarding the design of the Tenant Improvements, provided (i) Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute, (ii) that all costs and expenses resulting from any such decision by Tenant shall be payable out of the TI Fund (as defined in Section 5(d) below), and (iii) Tenant's decision will not affect the base Building, structural components of the Building or any Building systems (in which case Landlord shall make the final decision). Any changes to the TI Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

3. **Performance of the Tenant Improvements**.

(a) **Commencement and Permitting of the Tenant Improvements.** Tenant shall commence construction of the Tenant Improvements upon obtaining and delivering to Landlord a building permit (the **"TI Permit")** authorizing the construction of the Tenant Improvements consistent with the TI Construction Drawings approved by Landlord. The cost of obtaining the TI Permit shall be payable from the TI Fund. Landlord shall assist Tenant in obtaining the TI Permit. Prior to the commencement of the Tenant Improvements, Tenant shall deliver to Landlord a copy of any contract with Tenant's contractors (including the TI Architect), and certificates of insurance from any contractor performing any part of the Tenant Improvement evidencing industry standard commercial general liability, automotive liability, "builder's risk", and workers' compensation insurance. Tenant shall cause the general contractor to provide a certificate of insurance naming Landlord, Alexandria Real Estate Equities, Inc., and Landlord's lender (if any) as additional insureds for the general contractor's liability coverages required above.

(b) **Selection of Materials, Etc.** Where more than one type of material or structure is indicated on the TI Construction Drawings approved by Tenant and Landlord, the option will be within Tenant's reasonable discretion if the matter concerns the Tenant Improvements, and within Landlord's sole and absolute subjective discretion if the matter concerns the structural components of the Building or any Building system.

(c) **Tenant Liability.** Tenant shall be responsible for correcting any deficiencies or defects in the Tenant Improvements.

(d) **Substantial Completion.** Tenant shall substantially complete or cause to be substantially completed the Tenant Improvements in a good and workmanlike manner, in accordance with the TI Permit subject, in each case, to Minor Variations and normal "punch list" items of a non-material

nature which do not interfere with the use of the Premises **("Substantial Completion"** or **"Substantially Complete").** Upon Substantial Completion of the Tenant Improvements, Tenant shall require the TI Architect and the general contractor to execute and deliver, for the benefit of Tenant and Landlord, a Certificate of Substantial Completion in the form of the American Institute of Architects **("AIA")** document G704. For purposes of this Work Letter, **"Minor Variations"** shall mean any modifications reasonably required: (i) to comply with all applicable Legal Requirements and/or to obtain or to comply with any required permit (including the TI Permit); (ii) to comport with good design, engineering, and construction practices which are not material; or (iii) to make reasonable adjustments for field deviations or conditions encountered during the construction of the Tenant Improvements.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements after the delivery and approval by Landlord of the TI Design Drawings, shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(a) **Tenant's Right to Request Changes.** If Tenant shall request changes **("Changes"),** Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form (a **"Change Request"),** which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall review and approve or disapprove such Change Request within 10 business days thereafter, provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Implementation of Changes.** If Landlord approves such Change and Tenant deposits with Landlord any Excess TI Costs (as defined in Section 5(d) below) required in connection with such Change, Tenant may cause the approved Change to be instituted. If any TI Permit modification or change is required as a result of such Change, Tenant shall promptly provide Landlord with a copy of such TI Permit modification or change.

5. **Costs**.

(a) **Budget For Tenant Improvements.** Before the commencement of construction of the Tenant Improvements, Tenant shall obtain a detailed breakdown, by trade, of the costs incurred or that will be incurred, in connection with the design and construction of The Tenant Improvements (the **"Budget"),** and deliver a copy of the Budget to Landlord for Landlord's approval, which shall not be unreasonably withheld or delayed. The Budget shall be based upon the TI Construction Drawings approved by Landlord and shall include a payment to Landlord of administrative rent **("Administrative Rent")** equal to 4% of the TI Costs (as hereinafter defined) for monitoring and inspecting the construction of the Tenant Improvements, which sum shall be payable from the TI Fund. Such Administrative Rent shall cover, without limitation, all out-of-pocket costs, expenses and fees incurred by or on behalf of Landlord arising from, out of, or in connection with, such monitoring of the construction of the Tenant Improvements. If the Budget is greater than the TI Allowance, Tenant shall deposit with Landlord the difference, in cash, prior to the commencement of construction of the Tenant Improvements, for disbursement by Landlord as described in Section 5(d).

(b) **TI Allowance.** Landlord shall provide to Tenant a tenant improvement allowance **("TI Allowance")** of $25.00 per rentable square foot of the Premises, or $1,205,450 in the aggregate which shall, to the extent used, result in adjustments to the Annual Basic Rent as set forth in the Lease. The TI Allowance, which may be disbursed to Tenant in multiple phases, shall be disbursed in accordance with this Work Letter. Notwithstanding anything to the contrary in this Work Letter or the Amendment, Tenant may in its sole discretion elect not to seek reimbursement from Landlord for the costs associated with some or all of the Tenant Improvements. In the event Tenant makes such an election with respect to all or any portion of the Tenant Improvements, Tenant shall comply with all other terms, conditions and provisions of this Work Letter with respect to such Tenant Improvements except that Tenant shall not

seek reimbursement from Landlord in connection with such Tenant Improvements (and, therefore, shall not be obligated to pay an TI Rent in connection therewith).

Tenant shall have no right to the use or benefit (including any reduction to Annual Basic Rent) of any portion of the TI Allowance not required for the construction of (i) the Tenant Improvements described in the TI Construction Drawings approved pursuant to Section 2(d) or (ii) any Changes pursuant to Section 4. Tenant shall have no right to any portion of the TI Allowance that is not disbursed before October 31, 2013.

(c) **Costs Includable in TI Allowance.** The TI Allowance shall be used solely for the payment of design, permits and construction costs in connection with the construction of the Tenant Improvements, including, without limitation, the cost of electrical power and other utilities used in connection with the construction of the Tenant Improvements, the payment of architectural and other consulting fees and the cost of preparing the TI Design Drawings and the TI Construction Drawings, all costs set forth in the Budget, including Landlord's Administrative Rent, and the cost of Changes, and including the cost of data and phone cabling and other IT infrastructure costs (collectively, **"TI Costs").** Except as set forth above in this Section 5(c), the TI Allowance shall not be used to purchase any furniture, personal property or other non-Building system materials or equipment, including, but not be limited to, non-ducted biological safety cabinets and other scientific equipment not incorporated into the Tenant Improvements.

(d) **Excess TI Costs.** Landlord shall have no obligation to bear any portion of the cost of any of the Tenant Improvements except to the extent of the TI Allowance. If at any time and from time-to-time, the remaining TI Costs under the Budget exceed the remaining unexpended TI Allowance, Tenant shall deposit with Landlord, as a condition precedent to Landlord's obligation to complete the Tenant Improvements, 100% of the then current TI Cost in excess of the remaining TI Allowance **("Excess TI Costs").** If Tenant fails to deposit, or is late in depositing any Excess TI Costs with Landlord, Landlord shall have all of the rights and remedies set forth in the Lease for nonpayment of Rent (including, but not limited to, the right to interest at the Default Rate and the right to assess a late charge). For purposes of any litigation instituted with regard to such amounts, those amounts will be deemed Rent under the Lease. The TI Allowance and Excess TI Costs are herein referred to as the **"TI Fund."** Funds deposited by Tenant shall be the first thereafter disbursed to pay TI Costs. Notwithstanding anything to the contrary set forth in this Section 5(d), Tenant shall be fully and solely liable for TI Costs and the cost of Minor Variations in excess of the TI Allowance. If upon Substantial Completion of the Tenant Improvements and the payment of all sums due in connection therewith there remains any undisbursed portion of the TI Fund, Tenant shall be entitled to such undisbursed TI Fund solely to the extent of any Excess TI Costs deposit Tenant has actually made with Landlord.

(e) **Payment for TI Costs.** During the course of design and construction of the Tenant Improvements, Landlord shall reimburse Tenant for TI Costs once a month against a draw request in Landlord's standard form, containing evidence of payment of such TI Costs by Tenant and such certifications, lien waivers (including a conditional lien release for each progress payment and unconditional lien releases for the prior month's progress payments), inspection reports and other matters as Landlord customarily obtains, to the extent of Landlord's approval thereof for payment, no later than 30 days following receipt of such draw request. Upon completion of the Tenant Improvements (and prior to any final disbursement of the TI Fund), Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and first tier subcontractors who did the work and final, unconditional lien waivers from all such contractors and first tier subcontractors; (ii) as-built plans (one copy in print format and two copies in electronic CAD format) for such Tenant Improvements; (iii) a certification of substantial completion in Form AIA G704, (iv) a certificate of occupancy for the Premises; and (v) copies of all operation and maintenance manuals and warranties affecting the Premises.

6. **Miscellaneous**.

(a) **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth herein to the contrary.

(b) **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

EXHIBIT C

Acknowledgment of Expansion Premises Commencement Date

This **ACKNOWLEDGMENT OF EXPANSION PREMISES COMMENCEMENT DATE** is made this _____ day of _____, _____, between **ARE-SD REGION NO. 18, LLC**, a Delaware limited liability company **("Landlord"),** and **BIOCEPT, INC.,** a California corporation **("Tenant"),** and is attached to and made a part of the Lease dated March 31, 2004, as amended by that First Amendment to Lease dated _____, 2011 (as amended, the **"Lease"),** by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

Landlord and Tenant hereby acknowledge and agree, for all purposes of the Lease, that the Expansion Premises Commencement Date is _____, ____ and the termination date of the Base Term of the Lease shall be midnight on October 31, 2018. In case of a conflict between the terms of the Lease and the terms of this Acknowledgment of Expansion Premises Commencement Date, this Acknowledgment of Expansion Premises Commencement Date shall control for all purposes.

IN WITNESS WHEREOF, Landlord and Tenant have executed this ACKNOWLEDGMENT OF EXPANSION PREMISES COMMENCEMENT DATE to be effective on the date first above written.

TENANT:

BIOCEPT, INC.,
a California corporation

By: _____
Its: _____

LANDLORD:

ARE-SD REGION NO. 18, LLC,
a Delaware limited liability corporation

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: _____
Its: _____

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this **"Second Amendment")** is made as of this 10th day of September, 2012, by and between **ARE-SD REGION NO. 18, LLC,** a Delaware limited liability company **("Landlord"),** and **BIOCEPT, INC.,** a California corporation **("Tenant").**

RECITALS

A. Landlord and Tenant are now parties to that certain Lease dated as of March 31, 2004, as amended by that certain First Amendment to Lease dated as of November 1, 2011 (as amended, the **"Lease").** Pursuant to the Lease, Tenant leases certain premises consisting of approximately 38,369 square feet of Rentable Area **("Premises")** in the building located at 5810 Nancy Ridge Drive, San Diego, California. Capitalized terms used herein without definition shall have the meanings defined for such terms in the Lease.

B. Tenant has requested and Landlord has agreed, subject to the terms and conditions set forth below, to among other things, defer the full Basic Annual Rent and management fees payable by Tenant under the Lease to Landlord and 50% of the Operating Expenses payable by Tenant under the Lease to Landlord for the period commencing on September 1, 2012, through November 30, 2012, in the amount of $272,137.89 **("Deferred Rents").**

C. Concurrently with this Second Amendment, in consideration of the Landlord entering into this Second Amendment, Landlord and Tenant are entering into that certain Warrant to Purchase Preferred Stock dated of even date herewith **("Warrant").**

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual promises and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Basic Annual Rent and Operating Expenses.** Notwithstanding anything to the contrary contained in the Lease, for the period commencing on September 1, 2012, through November 30, 2012 **("Deferral Period"),** Tenant shall not be required to pay Basic Annual Rent or management fees for the Premises but Tenant shall be required to pay Operating Expenses under the Lease to Landlord in the amount of $10,882.09 per month **("Deferral Period Operating Expenses")** during the Deferral Period. Notwithstanding the foregoing, Tenant shall be required to pay for any separately metered Utilities or services furnished to Tenant or the Premises during the Deferral Period in accordance with Section 16 of the Lease. Tenant shall resume paying full Basic Annual Rent, and Operating Expenses as provided under the Lease on December 1, 2012. If Tenant enters into one or more sublease agreements with an unaffiliated third party **("Subtenant")** in compliance with the provisions of the Lease for all or any portion of the Premises, any sublease rent or other payments payable by Subtenant under the sublease **("Pass-Through Amounts")** shall be passed through by Tenant directly to Landlord. During the Deferral Period, (i) Tenant shall continue to pay the full Deferral Period Operating Expenses on a monthly basis, and (ii) Pass-Through Amounts actually delivered by Tenant to Landlord, if any, shall be applied against Deferred Rents. Following the Deferral Period, Pass-Through Amounts actually delivered by Tenant to Landlord shall be applied against Basic Annual Rent and Additional Rent payable by Tenant under the Lease.

   Tenant shall, on or before December 21, 2012, pay to Landlord the sum of $276,952.69 (which is equal to the full amount of the Deferred Rents, together with accrued interest of 8% per annum on the Deferred Rents) less any Pass-Through Amounts actually paid by Tenant to Landlord during the Deferral Period applicable to Deferred Rents.

In consideration of Landlord's agreement to enter into this Second Amendment, as of the date of this Second Amendment, the Deferred Rents (and the accrued interest thereon through December 21, 2012) shall be deemed fully earned by Landlord and shall be paid to Landlord even if the Lease terminates for any reason at any time (including, without limitation, during the Deferral Period).

2. **Default.** In addition to the events of default listed in Section 24.4 of the Lease, a default by Tenant under the Warrant shall constitute a default under the Lease.

3. **Brokers.** Landlord and Tenant each represent that they have had no dealings with any real estate broker, finder or other person, with respect to this Second Amendment in any manner. Landlord and Tenant agree to indemnify and hold each other harmless from and against any claim or demand of any other broker for any brokerage commission or other fees, and all costs, claims, expenses and liabilities in connection therewith (including, without limitation, attorneys' fees, disbursements and actual costs).

4. **Miscellaneous**.

(a) This Second Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof. This Second Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This Second Amendment is binding upon and shall inure to the benefit of the parties hereto, and their respective assigns, heirs, and successors in interest.

(c) This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Second Amendment attached thereto.

(d) Except as amended and/or modified by this Second Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Second Amendment. In the event of any conflict between the provisions of this Second Amendment and the provisions of the Lease, the provisions of this Second Amendment shall prevail. Whether or not specifically amended by this Second Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Second Amendment.

[Signatures are on the next page]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

TENANT:

BIOCEPT, INC.,
a California corporation

By: /s/ William Kachioff
Its: Chief Financial Officer

LANDLORD:

ARE-SD REGION NO. 18, LLC,
a Delaware limited liability corporation

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Gary Dean
Its: Gary Dean
VP - RE Legal Affairs

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN AGREEMENT BY AND BETWEEN THE HOLDER AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

WARRANT TO PURCHASE PREFERRED STOCK

No. PSW-52 **Sept 10, 2012**

THIS CERTIFIES THAT, for value received, **ARE-SD REGION NO. 18, LLC**, a Delaware limited liability corporation or its assigns (collectively, the ***"Holder"),*** is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC.,** a California corporation (the ***"Company"),*** up to such number and series of fully paid and nonassessable shares of Preferred Stock (as defined below) of the Company as set forth herein, during the Exercise Period (as defined below).

This Warrant is issued pursuant to the Second Amendment to Lease, dated Sept 10, 2012, among the Company and the Holder (the ***"Agreement").***

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) ***"Exercise Period"*** shall mean the period commencing on the date hereof and ending seven (7) years thereafter, unless sooner terminated as provided below.

(b) ***"Exercise Price"*** shall mean (a) if the Company has not closed a Qualifying Financing, $0.60 and (b) if the Company has closed a Qualifying Financing, the price per share at which the Company sells its Preferred Stock in such Qualifying Financing.

(c) ***"Exercise Shares"*** shall mean (a) if the Company has not closed a Qualifying Financing, the Company's Series A Preferred Stock and (b) if the Company has closed a Qualifying Financing, the Company's Preferred Stock sold in such Qualifying Financing.

(d) ***"Preferred Stock"*** means shares of the preferred stock of the Company.

(e) **"Qualifying Financing"** means the closing of an equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $15,000,000 in cumulative gross proceeds

(f) ***"Warrant Coverage Amount"*** shall be $40,000.

2. **NUMBER OF SHARES**. The number of Exercise Shares for up to which this Warrant may be exercisable shall be determined by dividing the Warrant Coverage Amount by the Exercise Price, and rounding down to the nearest whole share.

3. **EXERCISE OF WARRANT**. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

Holder, in lieu of exercising this Warrant by the payment of the Exercise Price described above, may elect, at any time on or before the expiration of the Exercise Period, to surrender this Warrant and receive that number of shares of Preferred Stock computed using the following formula:

Where: X = the number of shares of Preferred Stock to be issued to Holder.

Y = the number of shares of Preferred Stock that Holder would otherwise have been entitled to purchase hereunder (or such lesser number of shares as Holder may designate in the case of a partial exercise of this Warrant).

A = the Per Share Price (as defined below) at the time the net issuance election under this Section 3 is made.

B = the Exercise Price then in effect.

Election to "net exercise" may be made by delivering a signed form of subscription to Company via facsimile, to be followed by delivery of this Warrant. Notwithstanding anything to the contrary contained in this Warrant, if as of the close of business on the last business day preceding the expiration of the Exercise Period this Warrant remains unexercised as to all or a portion of the shares of Preferred Stock purchasable hereunder, then effective as 9:00 a.m. (Pacific time) on such expiration Date, Holder shall be deemed, automatically and without need for notice to Company, to have elected to "net exercise" this Warrant in full using the above formula, provided that the application of such formula as of such expiration date yields a positive number for "X". "Per Share Price" means: (i) If this Warrant is exercised on the date of Company's initial public offering of Common Stock, and if Company's registration statement relating to such public offering has been declared effective by the Securities and Exchange Commission, then the Per Share Price shall be the initial "Price to Public" of the Common Stock specified in the final prospectus with respect to the offering; (ii) If this Warrant is exercised after, and not on the date of Company's initial public offering of Common Stock, and if Company's Common Stock is traded on a securities exchange or actively traded over-the-counter: (a) If Company's Common Stock is traded on a securities exchange, the Per Share Price shall be deemed to be the closing price of Company's Common Stock as quoted on any exchange, as published on Yahoo! Finance (or a successor thereto or equivalent publisher) for the trading day immediately prior to the date of Holder's election hereunder and (b) If Company's Common Stock is actively traded over-the-counter, the Per Share Price shall be deemed to be the closing bid or sales price, whichever is applicable, of Company's Common Stock for the trading day immediately prior to the date of Holder's election hereunder; (iii) If neither (i) nor (ii) is applicable, the Per Share Price shall be determined in good faith by the Board of Directors of Company based on relevant facts and circumstances at the time of the net exercise.

4. COVENANTS OF THE COMPANY.

4.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes. The Company shall take all action necessary to cause the Exercise Shares to be included as "Registrable Securities" pursuant to that certain [Investor Rights Agreement], as subsequently amended (the "Rights Agreement") and to have the Holder become a party to the Rights Agreement.

4.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger,

dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

5. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Preferred Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under the Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of the Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however,* that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 8 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

6. ADJUSTMENTS FOR DILUTING ISSUANCES. The Exercise Price and the number of Exercise Shares issuable upon exercise of this Warrant or, if the Exercise Shares are Preferred Stock, the number of shares of common stock issuable upon conversion of the Exercise Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Amended and Restated Articles of Incorporation, as amended from time to time, as if the Exercise Shares were issued and outstanding on and as of the date of any such required adjustment. Any adjustment to the conversion rate of the Exercise Shares issuable upon the exercise of this Warrant effected prior to any exercise of this Warrant shall apply to any Exercise Shares thereafter issued pursuant to the terms hereof.

7. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

8. EARLY TERMINATION. In the event of an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another state), the Company shall provide to the Holder 20 days advance written notice of such event, and this Warrant shall terminate unless exercised prior to the date such transaction is consummated.

9. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing

underwriter(s) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in connection with the Company's initial public offering (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 9. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. No Shareholder Rights. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

11. Transfer of Warrant. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

12. Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

13. Notices, etc. All notices required or permitted hereunder 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 telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company and the Holder at the address set forth on the signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

14. Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

15. Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. **GOVERNING LAW**. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

17. **AMENDMENT; WAIVER**. Any term of this Warrant may be amended or waived with the written consent of (i) the Company and (ii) the Holder.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: /s/ William Kachioff

Name: William Kachioff

Title: CFO

Address: 5810 Nancy Ridge Drive
San Diego, California 92121

Acknowledged and accepted:

ARE-SD Region No. 1D, LLC

By: Alexandria Real Estate Equities, L.P..

By: ARE-QRS Corp.

By: /s/ Gary Dean
GARY DEAN
VP-RE LEGAL AFFAIRS

Address: 385 E. Colorado Blvd. Suite #299
Pasadena CA 91101

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the ***"Company"***) pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the ***"Securities Act"),*** by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____
(Date)

_____
(Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE (this "**Third Amendment**") is made as of this 1/31/13 day of January, 2013, and effective as of January 1, 2013, by and between **ARE-SD REGION NO. 18, LLC**, a Delaware limited liability company ("**Landlord**"), and **BIOCEPT, INC.**, a California corporation ("**Tenant**").

RECITALS

A. Landlord and Tenant are now parties to that certain Lease dated as of March 31, 2004, as amended by that certain First Amendment to Lease dated as of November 1, 2011, and as further amended by that certain Second Amendment to Lease dated as of September 10, 2012 ("**Second Amendment**") (as amended, the "**Lease**"). Pursuant to the Lease, Tenant leases certain premises consisting of approximately 38,369 square feet of Rentable Area ("**Premises**") in the building located at 5810 Nancy Ridge Drive, San Diego, California. Capitalized terms used herein without definition shall have the meanings defined for such terms in the Lease.

B. Pursuant to the Second Amendment, Landlord agreed to defer certain Deferred Rents (as defined in the Second Amendment) until December 21, 2012 ("**Due Date**"), on which date Tenant was required to pay Landlord the sum of $276,952.69 ("**Outstanding Deferred Rents**").

C. Tenant failed to pay the Outstanding Deferred Rents to Landlord on the Due Date.

D. Landlord and Tenant desire, subject to the terms and conditions set forth below, to provide for an alternative schedule for the payment of the Outstanding Deferred Rents by Tenant.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual promises and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Payment of Outstanding Deferred Rents**. In lieu of the payment of the Outstanding Deferred Rents as described in the Second Amendment, Tenant shall pay to Landlord an amount equal to the Outstanding Deferred Rents in three equal installments of $92,317.56 each. The first installment of $92,317.56 has been paid to Landlord. Tenant shall pay Landlord the second installment on or before February 1, 2013, and shall pay Landlord the third and final installment on or before March 1, 2013. Tenant's failure to pay Landlord the Outstanding Deferred Rents in the timeframe provided for pursuant to the Second Amendment shall not constitute a default under the Lease; provided, however, that the failure of Tenant to pay any of the installments due under this Third Amendment as and when due shall constitute a default under the Lease.

2. **Brokers**. Landlord and Tenant each represent that they have had no dealings with any real estate broker, finder or other person, with respect to this Third Amendment in any manner. Landlord and Tenant agree to indemnify and hold each other harmless from and against any claim or demand of any other broker for any brokerage commission or other fees, and all costs, claims, expenses and liabilities in connection therewith (including, without limitation, attorneys' fees, disbursements and actual costs).

3. **Miscellaneous**.

(a) This Third Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof. This Third Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This Third Amendment is binding upon and shall inure to the benefit of the parties hereto, and their respective assigns, heirs, and successors in interest.

(c) This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Third Amendment attached thereto.

(d) Except as amended and/or modified by this Third Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Third Amendment. In the event of any conflict between the provisions of this Third Amendment and the provisions of the Lease, the provisions of this Third Amendment shall prevail. Whether or not specifically amended by this Third Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Third Amendment.

[Signatures are on the next page]

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the day and year first above written.

TENANT:

BIOCEPT, INC.,
a California corporation

By: /s/ David F. Hale
Its: Executive Chairman

LANDLORD:

ARE-SD REGION NO. 18, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Eric S. Johnson
Name: Eric S. Johnson
Its: Vice President Real Estate Legal Affairs

Exhibit 10.13

COLLABORATION AGREEMENT

THIS **COLLABORATION AGREEMENT** (the ***"Agreement"***) is entered into as of November 2, 2012 (the ***"Effective Date"***) by and between **BIOCEPT, INC.,** a California corporation having an address of 5810 Nancy Ridge Drive, Suite 150, San Diego, CA 92121 (***"Biocept"***), and **LIFE TECHNOLOGIES CORPORATION**, a Delaware corporation having an address of 5791 Van Allen Way, Carlsbad, California 92008 (***"Life Technologies"***).

WHEREAS, Life Technologies, through its Medical Sciences Division, is engaged in the development and commercialization of diagnostic systems, tests and laboratory services, including in oncology;

WHEREAS, Biocept has developed expertise and proprietary technology in enrichment, extraction and analysis of circulating tumor cells (CTCs) for use in laboratory developed tests used for the non-invasive and early stage detection and characterization of primary, metastatic or recurrent cancers; and

WHEREAS, Life Technologies and Biocept desire to collaborate so that Biocept will develop and commercialize one or more Tests, as defined herein, for Non-Small Cell Lung Cancer (NSCLC), using their respective technologies and expertise, on the terms and subject to the conditions set forth herein. Life Technologies and Biocept will both promote the test and perform different components of the test, and Life Technologies will provide test results in the form of reports to physicians.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

1.1 "Affiliate" shall mean any company or entity controlled by, controlling, or under common control with a party hereto and shall include any company more than 50% of whose voting stock or participating profit interest is owned or controlled, directly or indirectly, by a party, and any company which owns or controls, directly or indirectly, more than 50% of the voting stock of a party.

1.2 "**Assay**" shall mean Biocept's OncoCEE-LU™ (and OncoCEE-LU™ with Mutation Analysis) laboratory developed assay for characterization and profiling of CTCs from NSCLC patients, which shall incorporate, as Phase 1, CTC enumeration by cytokeratin and CD45 (and CEE-Enhanced™ when available), EML4/Alk1 fusions and EGFR amplification by fluorescence in situ hybridization (determined by Biocept); and as Phase 2, the additional detection of mutations for relevant genes, e.g., K-RAS, EGFR and B-RAF, as agreed by the parties, on captured CTCs and/or cell-free circulating DNA, as agreed by the parties, and employing technologies that potentially may include Biocept's Selector technology, and any improvements or enhancements thereto, exclusive of new analytes (which are discussed in Section 3.5(f) under Collaboration Assays) or applications to primary screening.

1.3 "Biocept Trademarks" shall mean Biocept, Inc., "OncoCEE-LU™", "OncoCEE™", "CEE-Sure™", CEE-Enhanced™", and/or such other trademarks and trade names owned or licensed, and used, by Biocept and/or its Affiliates in the Territory to identify the Tests, in each case, whether or not registered.

1.4 "Life Technologies Trademarks," shall mean Life Technologies™, Life Technologies Medical Sciences and/or such other trademarks and trade names owned or licensed and used by Life Technologies to identify the Tests, in each case, whether or not registered.

1.5 "**CLIA**" shall mean the Clinical Laboratory Improvement Amendments of 1988, as it may be amended from time to time.

1.6 "**Collaboration**" shall have the meaning provided Section 3.1.

1.7 "**Collaboration Assay(s)**" shall have the meaning provided in Section 3.5(e).

1.8 "**CPT Code**" shall mean the American Medical Association's ("AMA") "Current Procedural Terminology" as published in the AMA's CPT Process Manual, Fourth Edition and any such future editions, for procedures used in performance of the Assay, and amounts reimbursed by Medicare for such procedures for location 99, as modified annually.

1.9 "**Designated Executive Officer**" shall mean the executive officers of each party designated in writing be each party as being responsible for resolving disputes related to the Collaboration, which shall initially be David Hale on behalf of Biocept and Ronnie Andrews on behalf of Life Technologies.

1.10 "**FDA**" shall mean the United States Food and Drug Administration, or any successor federal agency thereto.

1.11 "**HIPAA**" shall mean, collectively, the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations promulgated thereunder at 45 C.F.R. parts 160 through 164, and the Health Information Technology for Economic and Clinical Health Act of 2009 and related regulations and guidelines.

1.12 "**Intellectual Property Rights**" means all now or hereafter existing patents, patent applications, copyrights, trademarks (including service marks), trade secrets, know-how, mask work rights and design rights, whether registered or unregistered, and all rights or forms of protection of a similar nature having equivalent or similar effect to any of the foregoing, which may subsist anywhere in the world.

1.13 "**Launch**" shall mean formal commercial availability and offering to physicians of a Test, as mutually agreed upon by the parties.

1.14 "**Laws**" shall mean all federal, state and local laws and regulations that apply to this Agreement including, without limitation, (i) the Bayh-Dole Act (ii) the

Federal Food, Drug, and Cosmetic Act (21 U.S.C § 321 et seq.) (iii) the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)) (iv) the Stark Law (42 U.S.C. § 1395nn) (v) the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)) (vi) the civil False Claims Act (31 U.S.C. §§ 3729 et seq.) (vii) the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)) (viii) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), (ix) the exclusion laws (x) SSA § 1128 (42 U.S.C. § 1320a-7) (xi) Medicare (Title XVIII of the Social Security Act), (xii) Medicaid (Title XIX of the Social Security Act); (xiii) the Clinical Laboratory Improvements Act of 1988 (CLIA); and (xiv) data security, protection and privacy laws in the applicable jurisdictions.

1.15 "**Professional Component**" shall mean the performance of the professional component of the steps of the Assay, which is the interpretation of results (generated in the Technical Component) of an Assay by a pathologist, and is covered by CPT codes from the Professional Fee Schedule with the modifier "26".

1.16 "**Technical Component**" shall mean the performance of the technical component of the steps of the Assay, which is the physical performance of the Assay procedure up to the interpretation of results, and is covered by CPT codes from the Professional Fee Schedule without the modifier "26", and typically with a modifier "TC".

1.17 "Term" shall have the meaning provided in Section 11.1.

1.18 "**Test(s)**" shall mean the Assay, which is a laboratory developed test, and/or any Collaboration Assay which is added to this Agreement pursuant to Section 3.5(e), performed as a clinical reference laboratory test.

1.19 "**Territory**" shall mean the United States of America, and other countries of the world, contingent in the latter case on the parties agreeing in writing on an appropriate strategy to access them in accordance with Section 3.2.

1.20 "Third Party(ies)" shall mean any entity other than Biocept or Life Technologies or an Affiliate of Biocept or Life Technologies.

2. APPOINTMENT; LICENSES

2.1 Appointment. Upon the terms and conditions set forth in this Agreement, Biocept hereby grants Life Technologies during the Term the non-exclusive right, as further defined in Section 2.3, to promote the Tests in the Territory and to perform the Professional Component of the Tests sold by the parties in the Territory, in accordance with the terms of this Agreement.

2.2 Trademark Licenses. The parties hereby grant to each other non-exclusive, fully-paid, royalty-free licenses to utilize the other party's trademarks, as follows:

(a) **Biocept Trademarks.** To facilitate the promotion and performance of Tests, during the Term Biocept hereby grants Life Technologies a non-exclusive, royalty-free, non-transferable license to use the Biocept Trademarks solely for

use in connection with the promotion and performance of the Tests in the Territory. All materials associated with the Tests and used by Life Technologies in connection with the promotion of the Tests, including web-based, shall be co-branded with such Biocept Trademarks as approved by Biocept prior to distribution. All use of Biocept Trademarks by Life Technologies hereunder (including all goodwill arising as a result of such use) shall inure to the benefit of Biocept, and these rights, whether registered or not registered, at all times shall remain the sole property of Biocept. Biocept shall provide Life Technologies with copies of the Biocept Trademarks in an appropriate form for the uses contemplated in this Agreement. Life Technologies shall provide Biocept with samples of all proposed use of the Biocept Trademarks in advance of such proposed use and Biocept shall have the right to approve the appearance and placement of Biocept Trademarks by Life Technologies for the purpose of protecting and maintaining the standards of quality maintained by Biocept for products sold under the Biocept Trademarks and for use of the Biocept Trademarks. If Biocept at any time finds that Life Technologies is not in compliance with this Section, then Biocept may notify Life Technologies in writing of such deficiencies, and if Life Technologies fails to correct such deficiencies within thirty (30) days after receipt of such notice, Biocept may, at its election and in addition to any other remedies, terminate the license granted to Life Technologies with respect to the Biocept Trademarks. Life Technologies shall display the ™ or ® symbol, as directed by Biocept, in connection with Life Technologies' use of the Biocept Trademarks.

(b) **Life Technologies Trademarks.** To facilitate the promotion and performance of Tests, during the Term Life Technologies hereby grants Biocept a non-exclusive, royalty-free, non-transferable license to use the Life Technologies Trademarks solely for use in connection with the promotion and performance of the Tests in the Territory. Materials associated with the Tests and used by Biocept in connection with the promotion of Tests, including web-based materials, may be co-branded with such Life Technologies Trademarks as approved by the parties prior to distribution. All use of Life Technologies Trademarks by Biocept hereunder including all goodwill arising as a result of such use) shall inure to the benefit of Life Technologies, and these rights, whether registered or not registered, at all times shall remain the sole property of Life Technologies. Life Technologies shall provide Biocept with copies of the Life Technologies Trademarks in an appropriate form for the uses contemplated in this Agreement. Biocept shall provide Life Technologies with samples of all proposed use of the Life Technologies Trademarks in advance of such proposed use and Life Technologies shall have the right to approve the appearance and placement of Life Technologies Trademarks by Biocept for the purpose of protecting and maintaining the standards of quality maintained by Life Technologies for products sold under the Life Technologies Trademarks and for use of the Life Technologies Trademarks. If Life Technologies at any time finds that Biocept is not in compliance with this Section, then Life Technologies may notify Biocept in writing of such deficiencies, and if Biocept fails to correct such deficiencies within thirty (30) days after receipt of such notice, Life Technologies may, at its election and in addition to any other remedies, terminate the license granted to Biocept with respect to the Life Technologies Trademarks. Biocept shall display the ™ or ® symbol, as directed by Life Technologies, in connection with Biocept's use of the Life Technologies Trademarks.

2.3 Exclusivity. During the Term, the parties will promote and perform Tests for the clinical testing market on a non-exclusive basis in the Territory, except as otherwise provided for below. Biocept will have sole responsibility for performing the Technical Component of all Tests sold by the parties, until and unless Life Technologies obtains the right from Biocept to independently develop its own Tests in accordance with all applicable FDA regulatory requirements, as provided for in Section 7.1. Life Technologies will be authorized to perform the Professional Component of all Tests sold by the parties, although Biocept may engage other groups in promotion, marketing and performance arrangements for the Tests, at the discretion of Biocept. Biocept shall provide thirty (30) days written notice to Life Technologies before entering into any such promotion, marketing and performance arrangement.

3. COLLABORATION

3.1 Purpose. During the Term, the parties agree to cooperate and collaborate to develop, promote and commercialize the Tests for the clinical testing market in the Territory and in accordance with the terms of this Agreement (the ***"Collaboration"***). The principal objective of the parties hereunder is to maximize the commercialization of the Tests in the Territory. The parties shall deploy each of their respective sales forces in accordance with the terms of this Agreement in an effort to promote the Tests in the Territory in the manner as agreed to by the parties, under the direction of the Joint Steering Committee.

3.2 Commercialization of Tests Outside the USA. At any time for up to two (2) years after the Effective Date, should Life Technologies desire to offer for sale any Test outside the USA, it shall first discuss with Biocept an appropriate strategy and plan for such effort. Such strategy and plan may involve the development of, and obtaining all applicable regulatory authorizations for, an in vitro diagnostic kit, instruments or similar systems, in collaboration with Biocept (with funding support, and more fully described in Section 7.2), such strategy and plan to be reduced to writing and approved by the parties. If such written plan is not approved by the parties within two (2) years of the Effective Date, the Territory shall revert to only the USA, unless otherwise agreed to by the parties.

3.3 Life Technologies Responsibilities. Life Technologies shall use commercially reasonable efforts to promote the Tests in the Territory, in accordance with Section 3.2, using sales channels and methods, and adhering to substantially similar standards that it generally employs with respect to its laboratory developed tests. Without limiting the foregoing, Life Technologies' responsibilities with respect to marketing and promotion of the Tests in the Territory during the Term shall include the following:

(a) **Life Technologies Customers**. Life Technologies shall use commercially reasonable efforts to promote the Tests to the appropriate healthcare professionals.

(b) **Test Performance**. Life Technologies shall have the responsibility, subject to its capacity to support in its reasonable discretion (of which capacity Life Technologies shall notify Biocept in writing at least sixty (60) days before launch of the Assay, and use diligent efforts to notify Biocept at least thirty (30) days before discovery of any decreases or increases in such capacity), for performing the Professional Component of the Assays sold by either party in the Territory. In particular, the laboratory director of the Life Technologies CLIA laboratory will be responsible for issuing and signing off on the report.

(c) **Sales, Marketing and Customer Service**.

(i) Life Technologies shall, at its sole expense and in accordance with Section 2.2, develop and deliver to customers marketing materials for the Tests. Life Technologies shall use, as appropriate, Biocept's "OncoCEE-LU™", OncoCEE™", "CEE-Enhanced™" and "CEE-Sure™" brand and the Biocept corporate name and logo, together with any Life Technologies branding, as part of the marketing materials for the marketing of the Tests and, where appropriate, in its other public presentations and disclosures concerning the Assay or Tests. Biocept shall have the right to review all such materials prior to their initial use.

(ii) Life Technologies shall cause its sales force to use commercially reasonable efforts to promote the Tests.

(iii) Life Technologies shall use commercially reasonable efforts to promote the sale of the Tests by including the Tests in its menu of services and by incorporating marketing materials regarding the Tests into its own marketing materials.

(iv) Life Technologies shall keep Biocept reasonably informed of its planned marketing activities with respect to the Tests to allow Biocept to forecast its needs for reagents, equipment, laboratory space, personnel, computing, and testing reporting capabilities, including at each Joint Steering Committee meeting as indicated in Section 4, and will discuss and consider in good faith Biocept's suggestions for marketing the Tests.

(v) Life Technologies will provide customer service and support for the Professional Component of the Tests using substantially similar methods and adhering to substantially similar standards that it generally employs with respect to its other products and tests.

(d) **Samples and Logistics**.

(i) Life Technologies will be responsible for the logistics associated with its marketing efforts and performance of the Professional Components of the Tests; provided, however, that Biocept will send the sample collection systems directly to customers identified by Life Technologies who order the Test, at Life Technologies' expense. Biocept will further work with Life Technologies to facilitate transport of collected samples from the customer to Biocept's CLIA laboratory. Life

Technologies will work collaboratively with Biocept on patient referral, billing and collections in accordance with Section 3.5(c)(iii), reporting of results and reporting quality control, and insurance or patient reimbursement.

(e) **Demand Forecast**. Within sixty (60) days of the Effective Date, Life Technologies will prepare a draft one-year rolling forecast of Life Technologies' expectation for physician requests for the Assay (the ***"Demand Forecast"***), broken down into quarterly demand for the Assay (with respect to each quarter, the "***Quarterly Forecast***") which will be attached hereto as **Exhibit A**, and will be finalized three (3) months before Launch. Beginning on the first day of the second (2nd) full calendar quarter following the date of Launch, the Demand Forecast shall be updated on a quarterly basis. The Demand Forecast and Quarterly Forecasts shall be a good faith but non-binding forecast. In the event the parties develop a Collaboration Assay under the terms of this Agreement, demand for such Collaboration Assay shall be included in the Demand Forecast at all times following the Launch of such Collaboration Assay. A Performance Standard, mutually agreed to in accordance with Section 3.5(i), shall take effect beginning with the second (2nd) full calendar quarter after the launch of any Test.

(f) **Technical Developments**. Life Technologies shall keep Biocept fully informed as to all discoveries and technical developments (including, without limitations, any inventions) made by Life Technologies during the Term related to the Assay or Tests.

(g) **Billing, Reporting, Auditing.**

(i) In all cases where Life Technologies performs the Professional Component of the Assay, Life Technologies shall be responsible for billing the patient, the provider and/or the payer for the Test, including both the Technical Component and the Professional Component of the Assay, and the collection of such amounts with respect to each Test performed. Biocept shall bill Life Technologies directly once a month for the Technical Component of each Assay (including the cost for sample collection in accordance with Section 3.5(b)), based on pricing and reimbursement as agreed by the parties through the Joint Steering Committee within sixty (60) days of the Effective Date, generally based on each applicable CPT Code actually used in the performance of such Technical Component, employing the Medicare rates for the applicable year as described on **Exhibit B** for the initial one (1) year period, and Life Technologies shall pay Biocept within sixty (60) days following the invoice date. The parties shall disclose actual reimbursement for each Test, and shall reconcile or "true-up" any differences between the amounts actually received by Life Technologies for each billing item or code and amounts paid to Biocept on a quarterly basis. If the allocation of reimbursement is ambiguous with respect to billing codes or a Technical Component/Professional Component split, amounts received by Life Technologies that differ from the amounts agreed by the parties, or Medicare rates, shall be shared by the parties on the same ratio as the Technical Component/Professional Component ratio for Medicare. The Medicare rates used by the parties as the basis for determining the amount Life Technologies will pay Biocept for the Technical Component of the Assay before the quarterly true-up will be adjusted annually at the beginning of the calendar year to reflect

changes to such Medicare rates. Should Medicare change the basis for reimbursement of the Assay, the parties shall agree to negotiate a structure for revenue sharing that generally accomplishes the result achieved above. Both parties agree to strictly adhere to all applicable Laws with respect to billing practices.

(ii) This Section 3.3(g) shall survive any termination or expiration of this Agreement for at least twelve (12) months following the effective date of such termination or expiration.

3.4 Biocept Responsibilities. Biocept shall use commercially reasonable efforts to promote the sale of the Tests in the Territory, using at least the same sales channels and methods and adhering to at least the same standards that it generally employs with respect to its other clinical tests. Without limiting the foregoing, Biocept's responsibilities during the Term shall include the following:

(a) **Biocept Customers**. Biocept shall use commercially reasonable efforts to promote the Tests to appropriate healthcare professionals.

(b) **Assay Performance**. Biocept shall be responsible for performing all Technical Components of all Assays sold by either party unless and until the parties agree to enable Life Technologies to independently develop, validate and perform the Test at Life Technologies' CLIA laboratory, in accordance with all applicable FDA regulatory requirements and Section 7.1. Until such point of transfer, Biocept shall comply with all CLIA requirements, including validation of the Assay.

(c) **Sales, Marketing and Customer Service.**

(i) Biocept shall cause its sales force to promote the Assay.

(ii) Biocept shall keep Life Technologies reasonably informed of its planned marketing activities with respect to the Assay to allow Life Technologies to forecast its needs for equipment, space, personnel, computing, and test reporting capabilities, including at each Joint Steering Committee meeting as indicated in Section 4, and will discuss and consider in good faith Life Technologies' suggestions for marketing the Assay.

(iii) Biocept will provide customer service and support for the Assay using substantially similar methods and adhering to substantially similar standards that it generally employs with respect to its other tests.

(d) **Samples and Logistics**. Biocept will be responsible for the logistics associated with its own marketing efforts and performance of the Technical Component of the Assay, including distribution of shipping materials and sample collection systems by its sales representatives, patient referral and customer service.

(e) **Training and Education**.

(i) Biocept shall provide sales and technical training and technical support, including assistance with customer education and customer consultations, to Life Technologies' personnel, with the frequency and content of the training to be determined by agreement between Biocept and Life Technologies.

(ii) Biocept will share its service educational materials and scientific publications to utilize in patient education with Life Technologies, and hereby grants Life Technologies rights to use such materials as are reasonably necessary for Life Technologies to carry out its obligations under this Agreement. Life Technologies may not alter or revise these materials without the prior written consent of Biocept.

(f) **Regulatory Approval**. Biocept has licenses enabling it to perform and obtain reimbursement for the Assay in all states in the Territory except New York, where it is currently seeking such license. Biocept will maintain all such licenses which are reasonably required to perform the Assay during the Term. For any Collaboration Assay, Biocept will use commercially reasonable efforts to obtain or maintain licenses enabling it to perform such Collaboration Assay and obtain reimbursement therefore, in accordance with each amendment to this Agreement entered in accordance with Section 3.5(f). Life Technologies will cooperate with Biocept so that Life Technologies' marketing and sales efforts are conducted only in those states or regions of the Territory in which Biocept has obtained any necessary regulatory licenses to provide Tests.

(g) **Technical Developments**. Biocept shall keep Life Technologies fully informed as to all discoveries and technical developments (including, without limitations, any inventions) made by Biocept during the Term related to the Tests.

3.5 Joint Responsibilities. The parties shall use commercially reasonable efforts to cooperate and collaborate to develop the market for the Tests in the Territory. Without limiting the generality of the foregoing, the parties shall collaborate to provide the following:

(a) **Test Development.** The parties shall mutually agree on the content and composition of Phase II of the Assay, and any Collaboration Assays as defined in Section 3.5(f), including specific analytes to be included in the Assay. Consideration for selection of analytes shall include medical need, clinical utility, technical feasibility, costs, reimbursement, and intellectual property status, e.g., the need for Third Party licenses to specific analytes. The parties shall agree on the Phase II Assay content at least six (6) months before anticipated Launch.

(b) **Test Materials and Shipping**. Subject to Section 3.3(c)(i), Life Technologies shall design and order all test materials, including test requisition forms, test reports and collateral sales and marketing (advertising and promotional) materials to be used by Life Technologies, which shall be approved by Biocept prior to use. Biocept shall design, order and provide to Life Technologies the collection systems to be used by Life Technologies, and Life Technologies shall pay for such collection systems used by

its sales representatives under this Agreement at cost (direct materials and direct labor) plus ten percent (10%), as well as shipping costs of collection systems from ordering physicians to Biocept.

(c) **Performance of Tests**.

(i) The parties will work together to develop a plan to implement detailed operation protocols for the Test within ninety (90) days of the Effective Date for each aspect of sample logistics, including ordering, shipping, accessioning, sample handling, testing, data generation, data evaluation and reporting. These sample logistics shall be agreed upon by the parties through the Joint Steering Committee and, once agreed upon by the parties in writing, deemed to be attached hereto as Exhibit C without any additional action required on the part of either party. Information, data and images shall be transferred between the parties as indicated for this purpose, and the parties will seek to make their respective laboratory information management systems and data transfer capabilities compatible. Life Technologies' lab director at the CLIA lab will sign off on the reports for Tests.

(ii) If Life Technologies desires to utilize the Tests in support of any clinical trial or research program for a pharmaceutical or biotechnology company(ies) in the Territory, Life Technologies shall notify Biocept in writing of such desired use. The terms and conditions (including pricing and revenue sharing) of each such use shall be covered by a separate written agreement which the parties agree to negotiate in good faith.

(iii) Each party will use commercially reasonable efforts to support the other in the account to best meet the needs and expectations of each customer.

(d) **Communication Plan**. Life Technologies and Biocept shall develop a communications plan through the Joint Steering Committee for the announcement and ongoing promotion of the Tests to customers, with all communication plan materials, including test requisition forms, being co-branded with Biocept and Life Technologies corporate names and logos in accordance with Sections 2.2 and 3.3(c)(i).

(e) **Data Sharing**. Life Technologies and Biocept have entered into this Agreement to, among other things, establish individual databases of results from the Tests performed, which databases will include patient information such as demographic, disease characterization, treatment and outcome information. To that end, to the extent permitted by applicable law and as mutually agreed by the parties, where available each party will share all patient data, Test data and results, and corresponding tissue data with the other party, as well as any follow up or outcome data that may become available or provided by the physician or patient for Tests performed and will cooperate in good faith with the other party to agree upon procedures for sharing such information. Such information may be used only for longitudinal reporting, outcomes correlation and related research, shall be handled in accordance with all applicable Laws, including, without limitation, HIPAA, and applicable institutional review board guidelines, and shall not be used for the purpose of obtaining information about the other party's clients or customers. To the extent feasible, all such information will be properly de-identified.

(f) **Collaboration Assays**. During the Term, Biocept shall keep Life Technologies reasonably apprised of its plans to add analytes to the Assay. In addition, Life Technologies may desire for Biocept to develop a specific new analytes for the Assay (for example, the inclusion of additional mutations to the mutation analysis component of the Assay), to be offered by the parties as an additional Test under this Agreement. In either case, the parties shall negotiate in good faith an amendment to this Agreement that will govern the development (as needed) and commercialization of such Tests with new analytes (each a ***"Collaboration Assay"),*** which amendment may include financial support, contributions of and access to each party's technology and/or clinical samples, milestones, timing of the development effort, exclusivity and ownership rights. Any such agreed upon Collaboration Assay development shall be performed by Biocept or jointly as the parties may agree. Once the parties have agreed upon a plan relating to the development of a particular Collaboration Assay, if development is needed (each, a "***Project***"), the parties shall reduce such agreement to writing, which shall include a project plan which will set forth each party's obligations with respect to the Project (each, a "***Project Plan***") and thereafter, such Collaboration Assay shall be deemed a Test for all purposes under this Agreement and shall be subject to the terms of this Agreement as amended. Each such Project Plan shall be attached as a part of Exhibit D to this Agreement following written acceptance thereof by both parties without any additional action required on the part of either party. Any amendments or revisions to a Project Plan shall be mutually agreed upon by the parties in writing.

(g) **Costs and Expenses**. Unless otherwise specified herein or in a Project Plan attached hereto, each party shall perform its activities under this Agreement at its sole cost and expense.

(h) **Training and Education**.

(i) The parties shall work together to develop and implement a training program for client services and the sales and marketing representatives of each party to ensure that a clear and consistent message is delivered to all prospective customers. Following such implementation, each party agrees to train its client services and sales and marketing representatives in accordance with such training program.

(ii) Representatives of each party, where deployed, shall each educate physicians, clinical and support personnel on the Tests, their applications and benefits, and the procedures for providing samples for the Tests. The Joint Steering Committee will approve all presentation and meeting materials. In addition, the parties will each be responsible for providing customer support related to test logistics, billing and reimbursement, and for establishing a call center to handle inquiries related to the Tests. For purposes of clarity, the parties acknowledge and agree that Life Technologies will not be required to establish a dedicated web portal, but all results of Tests will be made available through an existing Life Technologies portal solution, once commercially available for use, as determined by Life Technologies at its sole discretion. Technical or

process questions regarding the Tests received by Life Technologies can be referred to Biocept. Each party will cover its own costs related to physician education, customer support, and any travel related thereto and comply with all federal and state regulations regarding the same.

(i) **Performance Standards**. Each party shall conduct its activities under this Agreement and any Project Plan in a professional and workmanlike manner, and in compliance in all material respects with the requirements of applicable Laws and regulations, to attempt to achieve the objectives of this Agreement efficiently and expeditiously. Each party shall contribute such personnel and resources, and shall maintain such laboratories and other facilities, as are reasonably necessary to carry out the activities to be performed under this Agreement, including any Project Plans. In conformity with standard industry practices and the terms and conditions of this Agreement, each party shall prepare and maintain, or shall cause to be prepared and maintained, complete and accurate written records, accounts, notes, reports and data with respect to activities conducted by such party under this Agreement, including any Project Plans. In addition, the parties shall work together to establish minimum agreed upon performance standards with respect to the promotion, sales and performance of the Tests, including the Demand Forecast, and the timely supply, accuracy, reliability and reporting of the Tests, as well as responsiveness to customer inquiries related to the Tests throughout the Territory (collectively, "**Performance Standards**"). In the event that one or more Performance Standards are not met by a party, the parties will work quickly and efficiently to (i) identify the cause of the failure, (ii) develop a plan to remediate the issue, and (iii) implement the remediation plan. If the parties are unable to successfully resolve a Performance Standards issue by this procedure, such failure to maintain Performance Standards shall constitute a material breach by the party failing to maintain such Performance Standards, and the other party may terminate this Agreement in accordance with Section 11.2.

(j) **Bundling**. Neither party shall bundle its assays (including the Tests) with any assays of the other party, without the prior written approval of that party.

4. JOINT STEERING COMMITTEE

4.1 Purpose and Membership. Promptly following the Effective Date, Biocept and Life Technologies will create a Joint Steering Committee for the purpose of facilitating communications between the parties regarding, and providing direction and leadership to, the Collaboration. The Joint Steering Committee shall be composed of six (6) representatives, three (3) each from Biocept and Life Technologies, each of whom shall have appropriate experience, knowledge and authority within such party's organization to carry out the duties and obligations of the Joint Steering Committee. Each party will designate one of its representatives as the primary contact for that party with respect to Joint Steering Committee-related matters, and such representatives shall serve as co-chairpersons of the Joint Steering Committee. Each party may change its representatives to the Joint Steering Committee or its primary contact from time to time in its sole discretion, effective upon notice to the other party of such change. These representatives shall have appropriate technical credentials, experience and knowledge. A reasonable number of additional representatives of a party may attend meetings of the Joint Steering Committee in a non-voting capacity.

4.2 Duties. The Joint Steering Committee shall meet in person or by teleconference or videoconference no less than monthly during the Term or as otherwise mutually agreed by the parties from time to time, with attendees other than Joint Steering Committee members permitted to participate in or observe the meetings. The Joint Steering Committee shall be responsible for (a) monitoring the progress of the Collaboration, including discussions relating to Collaboration Assays, (b) physician education with respect to the Tests, (c) marketing, sales and account coordination, (d) any regulatory inquiries or requirements and other issues that affect the availability of the Tests, and (e) reimbursement issues (including annual review of relevant CPT Codes and changes thereto), logistical considerations, and other topics as necessary. The Joint Steering Committee shall serve as the principal forum for each party to (i) keep the other party informed of the results of its Collaboration activities; (ii) to discuss Test commercialization strategies, and (iii) generally to encourage and facilitate ongoing cooperation between the parties with respect to the Collaboration, including the business relationship and/or any other matter relating to the Collaboration and resolving disputes between the parties with respect to Intellectual Property Rights; provided, however, that (A) nothing in this Agreement shall limit either party's right to seek immediate equitable or injunctive relief where appropriate without any obligation to first submit the dispute to the Joint Steering Committee; and (B) any decision concerning medical necessity and patient care with respect to Test sold by or performed on behalf of the parties shall be the responsibility of each party's Medical Director, with the two Medical Directors working together to coordinate efforts and address concerns.

4.3 Decisions; Disputes. Decisions of the Joint Steering Committee shall be made by unanimous vote, with each party's representatives on the Joint Steering Committee collectively having one vote. In the event that the Joint Steering Committee cannot or does not, after good faith efforts, reach agreement on an issue, such issue shall first be referred to the Designated Executive Officers, who shall meet promptly thereafter and shall attempt in good faith to resolve such issue. In the event that the Designated Executive Officers cannot or do not, after good faith efforts, reach agreement on an issue, the issue shall be submitted to voluntary mediation. The Designated Executive Officers of each party shall select a mediator who is an expert with no less than seven years of experience in the subject matter to which the dispute relates. In the event that the Designated Executive Officers of the parties are unable to agree upon a mediator within twenty (20) days, then the Designated Executive Officers shall contact the San Diego County office of JAMS to select a mediator from the JAMS panel. If they are unable to agree, JAMS shall provide a list of three available mediators and each party may strike one. The remaining one will serve as the mediator. The mediation shall be conducted under JAMS rules. The parties agree that they shall share equally the cost of the mediation filing and hearing fees, and the cost of the mediators that constitute the panel. Each party shall bear its own attorneys' and expert fees and all associated costs and expenses**.**

5. REGULATORY COMPLIANCE

5.1 Compliance with Laws. Biocept and Life Technologies and their respective Affiliates each agree to perform their respective obligations under this Agreement in compliance with all applicable Laws, in the Territory, including but not limited to applicable regulations, rules, and policies of third party payers that pay for the Assay.

5.2 Privacy. Biocept and Life Technologies and their respective Affiliates agree to protect the privacy and provide for the security of any information that relates to a patient's past, present, or future physical or mental health or condition in accordance with HIPAA, and any other applicable federal and state privacy laws and regulations in the Territory. Each party agrees to execute one or more Business Associate Agreements (as defined under HIPAA) as the other party, or its providers or payers, may from time to time request.

5.3 Licenses and Certifications. Biocept and, to the extent applicable, Life Technologies shall have at all times during the Term, all necessary federal, state and local licenses, qualifications and certifications to operate a laboratory and perform their respective components of the Test(s), including, but not limited to, state laboratory licenses, CLIA certification, CAP (College of American Pathologists) certification, FDA registration, and any other licenses or certification required by state and/or federal law. All Assays performed by Biocept, and, to the extent applicable, Life Technologies, shall be in accordance with applicable state and federal testing requirements for clinical reference laboratories.

6. MATERIALS TRANSFER

In order to facilitate the Collaboration, either party may provide to the other party certain biological materials or chemical compounds including, but not limited to, samples (collectively, ***"Materials"***) for use by the other party in furtherance of the Collaboration. Except as expressly provided under this Agreement, all such Materials delivered to the other party will remain the sole property of the supplying party, will be used only in furtherance of the Collaboration and solely under the control of the other party, will not be used or delivered to or for the benefit of any Third Party without the prior written consent of the supplying party, and will not be used in research or testing involving human subjects except as permitted by applicable law. The Materials supplied hereunder must be used with prudence and appropriate caution in any experimental work and in accordance with all applicable laws.

7. OPTIONS AND FUTURE DISCUSSIONS

7.1 Option to License Assay. If Biocept does not obtain at least ten million dollars ($10,000,000) in equity financing by December 31, 2012, then Life Technologies shall have the non-exclusive option, exercisable by written notice to Biocept given no later than January 15, 2013, to negotiate with Biocept for a license (unless the parties mutually agree to a different transaction structure) to all necessary Intellectual Property

Rights and know-how to independently commercialize the Assay in accordance with applicable Laws. Biocept will provide notice to Life Technologies on December 31, 2012 if the conditions for the option apply, and if Life Technologies delivers written notice of exercise of such right of negotiation to Biocept on or before January 15, 2013, the parties will negotiate in good faith to conclude a license agreement no later than February 28, 2013. If such license has not been entered into by the parties by February 28, 2013, there are no further obligations for either party under this Section 7.1.

7.2 Option for System Development. The parties have discussed potential adaptation of the Assay to an in vitro diagnostic format, based on a "system" concept that could include specially manufactured equipment, consumables and reagents that would be sold to physicians and laboratories, and linked to the "informatics engine" that Life Technologies is developing. Such systems may be used to commercialize the Assay outside the USA. Biocept grants to Life Technologies a non-exclusive option, exercisable during the two (2) year period beginning on the Effective Date, to develop plans, and negotiate with Biocept, for the co-development with Biocept of such systems for the Assay, employing or based on Biocept technologies. Such agreement is expected to include some or all of the following components: an upfront license fee, R&D funding, development and commercial milestone payments, royalties and/or revenue sharing, and supply/sale to Life Technologies by Biocept of proprietary components and consumables.

8. INTELLECTUAL PROPERTY

8.1 Existing Technology. Each party acknowledges that the other party owns certain technology and Intellectual Property Rights which have been independently developed by, or at the request of, such other party, whether prior to, during or subsequent to the Term. Except as expressly provided in this Agreement, neither this Agreement nor the activities performed hereunder, shall give either party any rights or interest in or to the technology or Intellectual Property Rights of the other party (or of any Materials provided by such party). Each party owns, and shall continue to own, all right, title and interest in and to its respective technology, including, without limitation, all Intellectual Property Rights relating thereto. Without limiting the generality of the foregoing, at all times during and after the Term, Biocept shall own all rights to its CEE™ technology, Selector technology (if utilized) and any improvements related thereto, generated during the performance of this Agreement. Biocept and Life Technologies shall promptly notify the other in writing upon becoming aware of any alleged or threatened third party infringement of any Intellectual Property Rights related to the Tests. Biocept shall have the right to bring and control any action or proceeding with respect to any such infringement at its own expense and by counsel of its own choice. If Biocept elects not to bring any such action or proceeding with respect to such infringement, it shall promptly notify Life Technologies of the same and agrees to consider, in good faith a request by Life Technologies to bring any such action or proceeding. Any agreement allowing Life Technologies to bring such action or proceeding on behalf of Biocept shall be set forth in a separate written agreement between the parties. Except as expressly provided above, the parties shall be under no obligation to enforce any of their Intellectual Property Rights against any actual or threatened Third Party infringements.

8.2 Biocept Technology. Without limiting the generality of the foregoing, Biocept owns, and Life Technologies acknowledges Biocept's ownership of, (i) the Assay and the Selector technology, and (ii) all Intellectual Property Rights in the Assay and the Selector technology, and Life Technologies agrees that it shall not do or suffer to be done any act or thing or undertake any action anywhere that in any manner might infringe, or impair the validity, scope, or title of Biocept in the Assay, the Selector technology or Intellectual Property Rights owned by Biocept. Nothing herein shall limit Life Technologies' ability to prosecute fully any and all Intellectual Property Rights owned by Life Technologies with any patent office or related government agency or to respond fully to any government agency inquiry with respect to its Intellectual Property Rights, products, and services.

8.3 New Technology. In the course of the activities conducted by the parties, Biocept and/or Life Technologies may conceive of inventions or discoveries or create works that constitute intellectual property and may be patentable or registerable as a copyright or other intellectual property right (all of the foregoing, including such intellectual property rights therein, collectively, ***"Developments"***). Inventorship of all inventions and discoveries, whether or not patentable, will be determined in accordance with United States patent laws. Authorship of all copyrightable works will be determined in accordance with United States copyright laws. Subject to Section 8.2, as between the parties, Developments will be owned consistent with such determination of inventorship or authorship. To the extent any Development owned by Life Technologies relates directly to the practice of, or constitutes an improvement to, the Assay, Life Technologies hereby grants to Biocept, during the Term of this Agreement, and, except in the case of termination of this Agreement by Life Technologies for Biocept's uncured material breach, after expiration or termination of this Agreement, a non-exclusive, worldwide, royalty-free, fully-paid license, including the right to sublicense, under Life Technologies' Intellectual Property Rights in such Developments, solely to develop, make, have made, use, sell, have sold, offer for sale, import, perform and provide the Assay. To the extent any Development owned by Biocept relates directly to the practice of, or constitutes an improvement to, the Assay, Biocept hereby grants to Life Technologies, during the Term of this Agreement, a non-exclusive license under Biocept's Intellectual Property Rights in such Development, solely to promote the Assay in the Territory and to perform the Professional Component of the Assay sold by the parties in the Territory, in accordance with the terms of this Agreement.

8.4 Technology Licenses. To the extent that any Third Party Intellectual Property Rights related to the capture and detection of CTCs must be licensed to perform the Assay, such royalty shall be paid by Biocept. To the extent that either party owns Intellectual Property Rights to specific biomarkers, targets, kits, dyes or technology utilized in the Assay other than for the capture and detection of CTCs, it will, to the extent it is able, grant during the Term of the Agreement, a non-exclusive license to the other party to practice these Intellectual Property Rights for the Assay. To the extent that either party has licensed or will license Intellectual Property Rights from Third Parties related to specific biomarkers, targets, kits, dyes or technology utilized in the Assay other than for the capture and detection of CTCs, it will, to the extent it is able, grant, during the Term of the Agreement, a non-exclusive license to the other party, or ensure that the

other party is covered under its license, to practice these Intellectual Property Rights for the Assay. In the event of the foregoing, then, subject to Section 8.5, the parties agree to negotiate in good faith an allocation of expenses for such Third Party licenses directly associated with the Assay.

8.5 Infringement. If any Third Party claims or brings an action alleging that performance of the Assay or Test by Biocept or Life Technologies or their Affiliates under this Agreement infringe (directly or indirectly) any of such Third Party's patent rights, Biocept shall use commercially reasonable efforts to address such claims. If Biocept determines to seek a license or otherwise obtain the right to use such Third Party intellectual property rights on behalf of Biocept and Life Technologies, then (i) if the Third Party intellectual property rights relate to the capture and detection of CTCs or the Phase I Assay analytes, then Biocept shall bear the costs of such licenses, including the payment of licensing fees, royalties or other payments, or (ii) if the Third Party intellectual property rights relate to specific biomarkers, targets, kits, dyes or technologies for the Phase II Assay, then the parties agree to negotiate in good faith an allocation of costs for such licenses, including payment of licensing fees, royalties or other payments that may be due to such Third Party, unless the parties agree otherwise in writing. If Biocept and Life Technologies determine to seek a license or otherwise obtain rights to use Third Party intellectual property rights for any Collaboration Assay(s), the parties similarly agree to negotiate in good faith an allocation of costs for such licenses, including payment of licensing fees, royalties or other payments that may be due to such Third Party, unless the parties agree otherwise in writing.

8.6 Data and Results. All data and results from performance of a Test on samples provided by Life Technologies shall be used by the parties solely to the extent necessary to perform its obligations under this Agreement and in accordance with Section 3.5(d).

8.7 Trademarks.

(a) Biocept shall be responsible for and bear the expense of any filing, prosecution, maintenance and enforcement of the Biocept Trademarks as it may determine in its sole discretion, without obligation. Life Technologies shall not, during the Term or thereafter, use or seek to register the trademarks or any trademark or trade name similar to or confusing with the Biocept Trademarks, or any translation thereof, in any jurisdiction. Life Technologies agrees that, if Life Technologies at any time obtains, in any jurisdiction, any right, title or interest in any mark, symbol or phrase which shall be identical to, similar to or likely to be confused with any Biocept Trademark or any translation thereof, then Life Technologies shall have acted or shall act as an agent and for the benefit of Biocept for the limited purpose of obtaining such registrations and assigning such registration (and all right, title and interest in such mark, symbol or phrase) to Biocept.

(b) Life Technologies shall be responsible for and bear the expense of any filing, prosecution, maintenance and enforcement of the Life Technologies Trademarks as it may determine in its sole discretion, without obligation. Biocept shall

not, during the Term or thereafter, use or seek to register the trademarks or any trademark or trade name similar to or confusing with the Life Technologies Trademarks, or any translation thereof, in any jurisdiction. Biocept agrees that, if Biocept at any time obtains, in any jurisdiction, any right, title or interest in any mark, symbol or phrase which shall be identical to, similar to or likely to be confused with any Life Technologies Trademark or any translation thereof, then Biocept shall have acted or shall act as an agent and for the benefit of Life Technologies for the limited purpose of obtaining such registrations and assigning such registration (and all right, title and interest in such mark, symbol or phrase) to Life Technologies.

9. REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties. Each party represents and warrants to the other that: (a) it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation, and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person or persons executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate action; (c) this Agreement is legally binding upon it, enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement by it does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

9.2 Biocept Warranties on Assay.

(a) As of the Effective Date, the Assay employs Biocept's most current CTC-based technology, and will be validated for performing CTC enumeration and the detection of the indicated analytes in the Assay on a timeline as agreed by the parties within sixty (60) days of the Effective Date.

(b) Biocept represents and warrants to Life Technologies that: (1) the Assay constitutes an original work of Biocept; and (2) except as previously disclosed to Life Technologies, Biocept is the lawful owner or licensee of all materials used in connection with the development of the Assay, and Biocept has the rights to make, use and sell the Assay, and to allow Life Technologies to use the results of the Technical Component of the Assay to perform the Professional Component of the Assay, and to sell the Assay.

(c) Biocept has full power and authority and has obtained all Third Party consents, approvals, assignments and/or other authorizations required to enter into this Agreement and to carry out its obligations hereunder.

(d) There are no existing contracts, agreements, commitments, proposals, offers, or rights with, to, or in any person to acquire any of the rights under the Assay which would prevent or materially and adversely alter the performance of the obligations hereunder.

9.3 Third Party Infringement. In the event that the Tests, or any part thereof becomes the subject of any claim, suit or proceeding for infringement of the Intellectual Property Rights of any Third Party, or if the Test, or any part thereof, is held or otherwise determined to infringe any Intellectual Property Rights of any Third Party such that Biocept can no longer perform its obligations under this Agreement, Biocept shall in its sole discretion either: (1) secure for itself and Life Technologies the right to continue using the Test in accordance with Section 8.4; (2) replace or modify the Test to make it non-infringing without degrading its performance or utility; or (3) notify Life Technologies that it will perform neither (1) nor (2), in which case either party shall thereafter have the right to terminate this Agreement immediately upon written notice to the other party. Notwithstanding the foregoing, and subject to Section 8.5, the indemnification rights of Life Technologies with respect to the Tests as set forth in Section 12.2 shall survive such termination.

9.4 Disclaimer. Except as expressly set forth herein, THE TECHNOLOGY, MATERIALS AND INTELLECTUAL PROPERTY RIGHTS PROVIDED BY EACH PARTY HEREUNDER ARE PROVIDED "AS IS," AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES.

9.5 Limitation of Liability. NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE GRANTED HEREUNDER; provided, however, that this Section shall neither (a) apply to any liability for damages arising from breach of any obligations of confidentiality under Article 10, nor (b) limit the indemnification obligations of the parties arising under Article 12 of this Agreement.

10. CONFIDENTIALITY

10.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, each party agrees that, during the Term and for five (5) years thereafter, such party (the ***"Receiving Party"***) shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose, other than as expressly provided for in this Agreement, any information furnished to it by or on behalf of the other party (the ***"Disclosing Party"***) pursuant to this Agreement (collectively, ***"Confidential Information"***). The Receiving Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement. The Receiving Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own to ensure that its, and its Affiliates', employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

10.2 Exceptions. Confidential Information shall not include any information which the Receiving Party can prove by competent evidence: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its written records; (c) is hereafter furnished to the Receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or (d) is independently discovered or developed by the Receiving Party, without the use of Confidential Information of the Disclosing Party, as evidenced by the Receiving Party's written records maintained in the ordinary course of business.

10.3 Authorized Disclosure. Each party may disclose Confidential Information of the other party as expressly permitted by this Agreement, or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) enforcing such party's rights under this Agreement;

(b) prosecuting or defending litigation as permitted by this Agreement;

(c) complying with applicable court orders or governmental regulations;

(d) disclosure to Affiliates, contractors, employees and consultants who need to know such information for the development and commercialization of the Test in accordance with this Agreement, on the condition that any such Third Parties agree to be bound by confidentiality and non-use obligations that are no less stringent than the terms of this Agreement; and

(e) disclosure to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by reasonable obligations of confidentiality and non-use.

Notwithstanding the foregoing, in the event a party is required to make a disclosure of the other party's Confidential Information pursuant to Section 10.3(b) or Section 10.3(c), it will, except where impracticable, give reasonable advance notice to the other party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

10.4 Confidentiality of this Agreement. Except as otherwise provided in this Section 10, each party agrees not to disclose to any Third Party the terms of this Agreement without the prior written consent of the other party hereto, except that each party may disclose the terms of this Agreement that are otherwise made public prior to the date of such disclosure or to the extent such disclosure is permitted under Section 10.3.

10.5 Press Releases; Public Announcements. Neither party shall make a press release or public announcement that includes information relating to the Collaboration without the approval of the other party. At least five (5) days prior to any such press release or public announcement the party proposing to make such press release or public announcement (the ***"Releasing Party"***) shall provide to the other party a draft copy thereof for its review and approval. The Releasing Party may not distribute such press release or public announcement without obtaining the other party's prior written approval. In addition, the Releasing Party shall, at the other party's request, remove therefrom any Confidential Information of such other party. The contribution of each party shall be noted in all scientific publications or presentations by acknowledgment or co-authorship, whichever is appropriate.

11. TERM AND TERMINATION

11.1 Term. The term of this Agreement will commence on the Effective Date and continue for a period of three (3) years after the Effective Date (the "***Initial Term***"). Thereafter, this Agreement can be renewed by mutual written agreement of the parties for successive one (1) year periods (each, a "***Renewal Term***" and together with the Initial Term, the "***Term***").

11.2 Termination.

(a) **Material Breach**. Either party shall have the right to terminate this Agreement before the end of the Term upon written notice to the other party if such other party is in material breach of this Agreement and has not cured such breach within sixty (60) days (the "**Cure Period**") after notice from the terminating party requesting cure of the breach. Any such termination shall become effective at the end of such Cure Period unless the breaching party has cured such breach prior to the end of such Cure Period. Any right to terminate under this Section 11.2(a) shall be stayed and the Cure Period tolled in the event that, during any Cure Period, the party alleged to have been in material breach shall have initiated dispute resolution in accordance with Article 13 with respect to the alleged breach, which stay and tolling shall continue until such dispute resolution procedures have been completed in accordance with Article 13. Nothing herein is intended to prevent either party from seeking immediate equitable or injunctive relief.

(b) **Termination for Convenience.** Both parties shall have the right to terminate this Agreement at any time, for any or for no reason, upon one hundred twenty (120) days written notice to the other party. In the event a party undergoes a Change of Control Event as defined in Section 14.5, the other party may terminate the Agreement upon thirty (30) days written notice to the party undergoing the Change of Control.

11.3 Effect of Termination; Surviving Obligations.

(a) Upon any termination or expiration of this Agreement, all licenses granted hereunder shall automatically terminate and revert to the granting party and all other rights and obligations of the parties under this Agreement shall terminate, except as provided in Sections 11.3(b) and 11.4.

(b) Upon termination or expiration of this Agreement, each party will use their best efforts to return to the other party or destroy all tangible copies of the other party's Confidential Information in such party's possession or control and will erase from its computer systems all electronic copies thereof; provided, however, that each party may retain one archival copy of the other party's Confidential Information solely for purposes of monitoring compliance with its obligations under Article 10 hereof.

11.4 Survival. Expiration or early termination of this Agreement shall not relieve either party of any obligation accruing prior to such expiration or termination. In addition, Sections 3.3(g), 4.3, 5.1, 5.2 (to the extent required by law) 9.1, 9.2, 9.3, 9.5, 11.3 and 11.4, and Articles 1, 8, 10, 12, 13 and 14 will survive any expiration or termination of this Agreement.

12. INDEMNIFICATION

12.1 Indemnification by Life Technologies. Life Technologies hereby agrees to defend, indemnify and hold harmless Biocept, its Affiliates and their respective officers, directors, employees, consultants and agents (the ***"Biocept Indemnitees"***), from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys' fees resulting from any threat, claim, demand, action or other proceeding by any Third Party ("**Losses**") to the extent such Losses arise directly or indirectly out of: (a) the gross negligence or willful misconduct of any Life Technologies Indemnitee (defined below); (b) the material breach by Life Technologies of any warranty, representation, covenant or agreement made by it in this Agreement; or (c) the performance by Life Technologies of the Professional Component; except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any Biocept Indemnitee or the material breach by Biocept of any warranty, representation, covenant or agreement made by it in this Agreement.

12.2 Indemnification by Biocept. Biocept hereby agrees to defend, indemnify and hold harmless Life Technologies, its Affiliates and their respective officers, directors, employees, consultants and agents (the ***"Life Technologies Indemnitees"***), from and against any and all Losses to the extent such Losses arise directly or indirectly out of: (a) the gross negligence or willful misconduct of any Biocept Indemnitee; (b) the material breach by Biocept of any warranty, representation, covenant or agreement made by it in this Agreement; or (c) the performance by Biocept of the Technical Component of the Assay or Test; except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any Life Technologies Indemnitee or the material breach by Life Technologies of any warranty, representation, covenant or agreement made by it in this Agreement.

12.3 Procedure. In the event a party seeks indemnification under Section 12.1 or 12.2, it shall inform the other party (the ***"Indemnifying Party"***) of a claim as soon as reasonably practicable after such party (the ***"Indemnified Party"***) receives notice of the claim (it being understood and agreed, however, that the failure by an Indemnified Party to give notice of a claim as provided in this Section 12.3 shall not relieve the Indemnifying Party of its indemnification obligation under this Agreement except and only to the extent that such Indemnifying Party is actually damaged as a result of such failure to give notice), shall permit the Indemnifying Party to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and shall cooperate as requested (at the expense of the Indemnifying Party) in the defense of the claim. The Indemnified Party shall not agree to any settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not agree to any settlement of such action, suit, proceeding or claim or consent to any judgment in respect thereof that does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, that imposes any liability or obligation on the Indemnified Party or that acknowledges fault by the Indemnified Party; in each case, without the prior written consent of the Indemnified Party.

12.4 Insurance. Each party, at its own expense, shall maintain product liability and other appropriate insurance (or self-insure) in an amount consistent with industry standards during the Term and shall name the other party as an additional insured with respect to such insurance. Each party shall provide a certificate of insurance (or evidence of self-insurance) evidencing such coverage to the other party upon request.

13. DISPUTE RESOLUTION

13.1 Dispute Resolution. The parties recognize that disputes as to certain matters may arise from time to time during the Term. The parties shall first submit the dispute to the Joint Steering Committee for resolution in accordance with Section 4.3 hereof. In the event that the Joint Steering Committee is unable to resolve the dispute, the parties shall be entitled to seek relief in a court of competent jurisdiction. Notwithstanding the foregoing, to the full extent allowed by law, either party may bring an action in any court of competent jurisdiction for injunctive relief (or any other provisional remedy) to protect the parties' rights or enforce the parties' obligations under this Agreement pending resolution of any claims related thereto by the Joint Steering Committee.

14. GENERAL PROVISIONS

14.1 Governing Law. This Agreement and any disputes, claims, or actions related thereto shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to the conflicts of law provisions thereof.

14.2 Entire Agreement; Modification. This Agreement, including the Exhibits hereto, is both a final expression of the parties' agreement and a complete and exclusive statement with respect to all of its terms. This Agreement supersedes all prior

and contemporaneous agreements and communications, whether oral, written or otherwise, concerning any and all matters contained herein. This Agreement may only be amended, modified or supplemented in a writing expressly stated for such purpose and signed by the parties to this Agreement.

14.3 Relationship Between the Parties. The parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

14.4 Non-Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a party of a particular provision or right shall be in writing, shall be as to a particular matter and, if applicable, for a particular period of time and shall be signed by such party.

14.5 Assignment. Except as expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided, however, that either party may assign this Agreement and its rights and obligations hereunder without the other party's consent in connection with the transfer or sale of all or substantially all of the business of such party to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise (a **"Change of Control Event"**). The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

14.6 No Third Party Beneficiaries. This Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

14.7 Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability or legality of any remaining portions of this Agreement. All remaining portions shall remain in full force and effect as if the original Agreement had been executed without the invalidated, unenforceable or illegal part.

14.8 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address(es) given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earlier of: (a) the date of actual receipt; or (b) if mailed, five calendar days after the date of postmark.

If to Biocept, notices must be addressed to:

Biocept, Inc.
5810 Nancy Ridge Drive, Suite 150
San Diego, CA 92121
Attention: David Hale
Executive Chairman
Telephone: (858) 320-8200
Facsimile: (858) 320-8225

If to Life Technologies, notices must be addressed to:

Life Technologies Corp.
5791 Van Allen Way
Carlsbad, CA 92008
Attention: David Daly
Head of Oncology
Telephone: (760) 268-5556

14.9 Force Majeure. Each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control, including but not limited to, Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, any strike or labor disturbance. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the party has not caused such event(s) to occur. Notice of a party's failure or delay in performance due to force majeure must be given to the other party within five (5) calendar days after its occurrence. All delivery dates under this Agreement that have been affected by force majeure shall be tolled for the duration of such force majeure. In no event shall any party be required to prevent or settle any labor disturbance or dispute. In the event of a force majeure that persists for thirty (30) days or more, then either party may terminate this Agreement upon written notice to the other party.

14.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original document, and all of which, together with this writing, shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

BIOCEPT, INC.	**LIFE TECHNOLOGIES CORPORATION**
By: /s/ Michael J. Dunn	By: /s/ David J. Daly
Name: Michael Dunn	Name: David J. Daly
Title: Senior Vice President, Corp. Dev.	Title: Head of Oncology

Exhibit 10.14

COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the ***"Agreement"***) is entered into as of August 17, 2011 (the ***"Effective Date"***) by and between **BIOCEPT, INC.,** a California corporation having an address of 5810 Nancy Ridge Drive, Suite 150, San Diego, CA 92121 (***"Biocept"***), and **CLARIENT DIAGNOSTIC SERVICES, INC**., a Delaware corporation having an address of 31 Columbia, Aliso Viejo, California 92656 (***"Clarient"***).

WHEREAS, Clarient is engaged in the business of providing oncology laboratory testing services for community hospitals and pathologists and oncologists;

WHEREAS, Biocept has developed expertise and proprietary technology in enrichment, extraction and analysis of circulating tumor cells for use in diagnostic tests used for the non-invasive and early stage detection of metastatic or recurrent cancers; and

WHEREAS, Clarient and Biocept desire to collaborate to develop and commercialize one or more Diagnostic Tests, as defined herein, using their respective technologies and expertise, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

1.1 "Affiliate" shall mean any company or entity controlled by, controlling, or under common control with a party hereto and shall include any company more than 50% of whose voting stock or participating profit interest is owned or controlled, directly or indirectly, by a party, and any company which owns or controls, directly or indirectly, more than 50% of the voting stock of a party. Affiliates of Clarient shall be deemed to include entities forming part of the GE Healthcare business only and shall not include any other entities whose ultimate parent is General Electric Company.

1.2 "**Assay**" shall mean Biocept's OncoCEE-BR™ assay which incorporates circulating tumor cell enumeration by cytokeratin (and CEE-Enhanced™ when available and validated by Biocept), HER2 by fluorescence in situ hybridization, and estrogen receptor / progesterone receptor by immunocytochemistry, and any improvements or enhancements thereto, appropriately validated, exclusive of new analytes.

1.3 "Biocept Trademarks" shall mean Biocept, Inc., "OncoCEE-BR™", "OncoCEE ™", "CEE-Sure™", CEE-Enhanced™", and/or such other trademarks and trade names owned or licensed, and used, by Biocept and/or its Affiliates in the Territory to identify the Diagnostic Tests, in each case, whether or not registered.

1.4 "Clarient Trademarks," shall mean Clarient™, Clarient Diagnostic Services, Inc., and/or such other trademarks and trade names owned or licensed and used by Clarient to identify the Diagnostic Tests, in each case, whether or not registered.

1.5 "**CLIA**" shall mean the Clinical Laboratory Improvement Amendments of 1988, as it may be amended from time to time.

1.6 "**Collaboration**" shall have the meaning provided Section 3.1.

1.7 "**Collaboration Assay(s)**" shall have the meaning provided in Section 3.5(e).

1.8 "**CPT Code**" shall mean the American Medical Association's ("AMA") "Current Procedural Terminology" as published in the AMA's CPT Process Manual, Fourth Edition and any such future editions, for procedures used in performance of the Assay, and amounts reimbursed by Medicare for such procedures for location 26, as modified annually.

1.9 "**Designated Executive Officer**" shall mean the executive officers of each party designated in writing be each party as being responsible for resolving disputes related to the Collaboration, which shall initially be David Hale on behalf of Biocept and Dave Daly on behalf of Clarient.

1.10 "**Diagnostic Test(s)**" shall mean the Assay, and/or any Collaboration Assay which is added to this Agreement pursuant to Section 3.5(e), performed as a clinical reference laboratory test.

1.11 "**FDA**" shall mean the United States Food and Drug Administration, or any successor federal agency thereto.

1.12 "**HIPAA**" shall mean, collectively, the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations promulgated thereunder at 45 C.F.R. parts 160 through 164, and the Health Information Technology for Economic and Clinical Health Act of 2009 and related regulations and guidelines.

1.13 "**Intellectual Property Rights**" means all now or hereafter existing patents, patent applications, copyrights, trademarks (including service marks), trade secrets, know-how, mask work rights and design rights, whether registered or unregistered, and all rights or forms of protection of a similar nature having equivalent or similar effect to any of the foregoing, which may subsist anywhere in the world.

1.14 "**Launch**" shall mean formal commercial availability and offering to physicians of a Diagnostic Test, as mutually agreed upon by the parties.

1.15 "**New Assay(s)**" shall mean any CEE™-based circulating tumor cell assay products developed in accordance with Section 3.5(e).

1.16 "**Professional Component**" shall mean the performance of the professional component of the assay steps of the Assay, and Collaboration Assays as agreed, which are covered by CPT codes from the Professional Fee Schedule with the modifier "26".

1.17 "**Technical Component**" shall mean the performance of the technical component of the assay steps of the Assay, and Collaboration Assays as agreed, which are covered by CPT codes from the Professional Fee Schedule without the modifier "26".

1.18 "Term" shall have the meaning provided in Section 10.1.

1.19 "**Territory**" shall mean the United States of America.

1.20 "Third Party(ies)" shall mean any entity other than Biocept or Clarient or an Affiliate of Biocept or Clarient.

2. APPOINTMENT; LICENSES

2.1 Appointment. Upon the terms and conditions set forth in this Agreement, Biocept hereby grants Clarient during the Term the exclusive right, except as limited by Sec. 2.3 (a), to promote Diagnostic Tests in the Territory, together with Biocept, for the clinical testing market, and to perform the Professional Component of the Diagnostic Tests in the Territory, in accordance with the terms of this Agreement. For purposes of clarity, the clinical testing market means performance of the Assay for patient care excluding testing for pharmaceutical companies.

2.2 Trademark Licenses. The parties hereby grant to each other non-exclusive, fully-paid, royalty-free licenses to utilize the other party's trademarks, as follows:

(a) **Biocept Trademarks.** To facilitate the promotion and performance of Diagnostic Tests, during the Term Biocept hereby grants Clarient a non-exclusive, royalty-free, non-transferable license to use the Biocept Trademarks solely for use in connection with the promotion and performance of the Diagnostic Tests in the Territory. All materials associated with the Diagnostic Tests and used by Clarient in connection with the promotion and performance of the Diagnostic Tests, including web-based, shall be co-branded with such Biocept Trademarks as approved by Biocept prior to distribution. All use of Biocept Trademarks by Clarient hereunder shall inure to the benefit of Biocept, and these rights, whether registered or not registered, at all times shall remain the sole property of Biocept. Biocept shall provide Clarient with copies of the Biocept Trademarks in an appropriate form for the uses contemplated in this Agreement. Clarient shall provide Biocept with specimens of all proposed use of the Biocept Trademarks in advance of such proposed use and Biocept shall have the right to approve the appearance and placement of Biocept Trademarks by Clarient for the purpose of protecting and maintaining the standards of quality maintained by Biocept for products sold under the Biocept Trademarks and for use of the Biocept Trademarks. If Biocept at any time finds that Clarient is not in compliance with this Section, then Biocept may notify Clarient in writing of such deficiencies, and if Clarient fails to correct such deficiencies within thirty (30) days after receipt of such notice, Biocept may, at its election and in addition to any other remedies, terminate the license granted to Clarient with respect to the Biocept Trademarks. Clarient shall display the ™ or ® symbol, as directed by Biocept, in connection with Clarient's use of the Biocept Trademarks.

(b) **Clarient Trademarks.** To facilitate the promotion and performance of Diagnostic Tests, during the Term Clarient hereby grants Biocept a non-exclusive, royalty-free, non-transferable license to use the Clarient Trademarks solely for use in connection with the promotion and performance of the Diagnostic Tests in the Territory. All materials associated with the Diagnostic Tests and used by Biocept in connection with the promotion and performance of the Diagnostic Tests, including web-based, shall be co-branded with such Clarient Trademarks as approved by Clarient prior to distribution. All use of Clarient Trademarks by Biocept hereunder shall inure to the benefit of Clarient, and these rights, whether registered or not registered, at all times shall remain the sole property of Clarient. Clarient shall provide Biocept with copies of the Clarient Trademarks in an appropriate form for the uses contemplated in this Agreement. Biocept shall provide Clarient with specimens of all proposed use of the Clarient Trademarks in advance of such proposed use and Clarient shall have the right to approve the appearance and placement of Clarient Trademarks by Biocept for the purpose of protecting and maintaining the standards of quality maintained by Clarient for products sold under the Clarient Trademarks and for use of the Clarient Trademarks. If Clarient at any time finds that Biocept is not in compliance with this Section, then Clarient may notify Biocept in writing of such deficiencies, and if Biocept fails to correct such deficiencies within thirty (30) days after receipt of such notice, Clarient may, at its election and in addition to any other remedies, terminate the license granted to Biocept with respect to the Clarient Trademarks. Biocept shall display the ™ or ® symbol, as directed by Clarient, in connection with Biocept's use of the Clarient Trademarks.

2.3 Exclusivity.

(a) During the Term, the parties will promote and perform the Diagnostic Tests for the clinical testing market on an exclusive basis in the Territory, except as otherwise provided for below. Biocept will have sole responsibility for performing the Technical Component of all Diagnostic Tests sold by the parties. Clarient will have sole responsibility for performing the Professional Component of Diagnostic Tests sold by the parties. Biocept may engage other groups in promotion and marketing arrangements for the Diagnostic Tests for customers or clients not traditionally called on by Clarient, but such groups shall not perform any aspect of the Diagnostic Tests, including, without limitation, Technical Components or Professional Components. Biocept shall provide thirty (30) days written notice to Clarient before entering into any such promotion and marketing arrangement.

(b) During the Term, neither party nor any Affiliate of a party shall commercialize (including either by license or sale), distribute, promote, market or offer for sale a CTC diagnostic test that is competitive with the Diagnostic Tests in the clinical testing market. The foregoing restriction shall not apply to Clarient's or its Affiliates' use or sale of the CellSearch test that is either requested by name from a customer or client of Clarient or its Affiliates, or in the context of development and commercialization of Clarient's Assist Digital Pathology system.

3. COLLABORATION

3.1 Purpose. During the Term, the parties agree to cooperate and collaborate to promote and commercialize the Diagnostic Tests for the clinical testing market in the Territory and in accordance with the terms of this Agreement (the ***"Collaboration"***). The principal objective of the parties hereunder is to maximize the commercialization of the Diagnostic Tests in the Territory. The parties shall deploy each of their respective sales forces in accordance with the terms of this Agreement in an effort to promote and perform the Diagnostic Tests in the Territory in the manner as agreed to by the parties, under the direction of the Joint Steering Committee.

3.2 Expansion of Territory. At any time during the Term, should Biocept desire to sell, transfer, assign or license the Assay or any Collaboration Assay to one or more Third Parties on an exclusive basis for any country or other area outside of the Territory, it shall first provide written notice thereof to Clarient.

3.3 Clarient Responsibilities. Clarient shall use commercially reasonable efforts to promote the Diagnostic Tests in the Territory, generally using substantially similar sales channels and methods and adhering to substantially similar standards that it generally employs with respect to its other products and tests. Without limiting the foregoing, Clarient's responsibilities with respect to marketing and promotion of the Diagnostic Tests in the Territory during the Term shall include the following:

(a) **Clarient Customers**. Clarient shall use commercially reasonable efforts and be responsible to promote the Diagnostic Tests to its existing customer base, which shall be focused primarily on community hospital pathologists and community oncologists.

(b) **Test Performance**. Clarient shall have responsibility for performing, or having performed on its behalf, all Professional Components of the Diagnostic Tests sold by either party, or by any Third Party in accordance with Section 2.3(a).

(c) **Sales, Marketing and Customer Service**.

(i) Clarient shall, at its sole expense and in accordance with Section 2.2, develop and deliver to customers marketing materials for the Diagnostic Tests. Clarient shall use, as appropriate, Biocept's "OncoCEE-BR™", OncoCEE™", "CEE-Enhanced™" and "CEE-Sure™" brand and the Biocept corporate name and logo, together with any Clarient branding, as part of the marketing materials for the marketing of the Diagnostic Tests and, where appropriate, in its other public presentations and disclosures concerning the Diagnostic Tests. Biocept shall have the right to review all such materials prior to their initial use.

(ii) Clarient shall cause its sales force to promote the Diagnostic Tests.

(iii) Clarient shall promote the sale of the Diagnostic Tests by including the Diagnostic Tests in its menu of services and by incorporating marketing materials regarding the Diagnostic Tests into its own marketing materials.

(iv) Clarient shall keep Biocept reasonably informed of its planned marketing activities with respect to the Diagnostic Tests to allow Biocept to forecast its needs for reagents, equipment, laboratory space, personnel, computing, and testing reporting capabilities, including at each Joint Steering Committee meeting as indicated in Section 4, and will discuss and consider in good faith Biocept's suggestions for marketing the Diagnostic Tests.

(v) Clarient will provide customer service and support for the Diagnostic Tests using substantially similar methods and adhering to substantially similar standards that it generally employs with respect to its other products and tests.

(d) **Samples and Logistics**.

(i) Clarient will be responsible for the logistics associated with its own marketing efforts and performance of Professional Components of the Diagnostic Tests, including distribution of sample shipping kits, sample transport to Biocept, patient referral, billing and collections in accordance with Section 3.5(b)(iii), reporting of results and reporting quality control, and insurance or patient reimbursement.

(ii) Clarient will, at its discretion and to the extent it is able, provide clinical samples to Biocept for the development and validation of the Diagnostic Tests at no cost, and will, at its discretion, test, for comparative purposes in research and validation studies only and not for provision of the results to patients, reasonable numbers of such clinical samples, and samples sourced by Biocept, using the CellSearch technology, at cost plus ten percent (10%).

(e) **Demand Forecast**. Within thirty (30) days of the Launch of the Assay, Clarient shall deliver to Biocept a two-year rolling forecast of Clarient's expectation for physician requests for the Diagnostic Tests (the **"*Demand Forecast*"**), which Demand Forecast shall be broken down into quarterly demand for the Assay (with respect to each quarter, the "***Quarterly Forecast***") and shall be attached hereto as **Exhibit A**. Beginning on the first day of the second (2nd) full calendar quarter following the date of Launch, the Demand Forecast shall be updated on a quarterly basis. During the first two (2) full calendar quarters following the launch of the Assay, the Demand Forecast shall be a good faith but non-binding forecast for Assay demand, and beginning with the third (3rd) full calendar quarter following launch, the Quarterly Forecast for such calendar quarter shall become binding, and the parties shall mutually agree upon a Performance Standard in accordance with Section 3.5(h). In the event the parties develop a Collaboration Assay under the terms of this Agreement, demand for such Collaboration Assay shall be included in the Demand Forecast at all times following the Launch of such Collaboration Assay, and the Quarterly Forecast for such Collaboration Assay shall similarly become binding, and a Performance Standard mutually agreed to in accordance with Section 3.5(h), beginning with the third (3rd) full calendar quarter after the launch of such Collaboration Assay.

(f) **Technical Developments**. Clarient shall keep Biocept fully informed as to all discoveries and technical developments (including, without limitations, any inventions) made by Clarient during the Term related to the Diagnostic Tests.

(g) **Billing, Reporting, Auditing.**

(i) Clarient shall be solely responsible for billing the patient, the provider and/or the payer for the Assay, including both the Technical Component and the Professional Component of the Assay, and the collection of such amounts with respect to each Assay performed. Biocept shall bill Clarient directly up to no more than twice a month for the Technical Component of each Assay, based on each applicable CPT Code actually used in the performance of such Technical Component, employing the Medicare rates for 2008 as described on **Exhibit B** for the initial one (1) year period, and Clarient shall pay Biocept within sixty (60) days following the invoice date. Clarient shall bear all collection risk for reimbursement for the Assay, and shall pay Biocept for the Technical Component of invoiced Assays regardless of whether Clarient receives payment for them. The Medicare rates used for determining the amount Clarient will pay Biocept for the Technical Component of the Assay will be adjusted annually on each anniversary of the date of Launch, i.e. the Medicare rates for each Assay invoiced in each subsequent year of the Agreement will employ the applicable CPT Code rates for the year that is three (3) years prior (e.g., in 2012, the Medicare rates for 2009 will be used).

(ii) This Section 3.3(g) shall survive any termination or expiration of this Agreement for at least twelve (12) months following the effective date of such termination or expiration.

3.4 Biocept Responsibilities. Biocept shall use commercially reasonable efforts to promote the sale of the Diagnostic Tests in the Territory, generally using at least the same sales channels and methods and adhering to at least the same standards that it generally employs with respect to its other products and tests. Without limiting the foregoing, Biocept's responsibilities during the Term shall include the following:

(a) **Biocept Customers**. Biocept shall use commercially reasonable efforts and be responsible to promote the Diagnostic Tests primarily to cancer centers and their associated key opinion leaders, medical oncologists and surgical oncologists.

(b) **Test Performance**. Biocept shall be responsible for performing all Technical Components of all Diagnostic Tests sold by either party, or by any Third Party in accordance with Section 2.3(a).

(c) **Sales, Marketing and Customer Service.**

(i) Biocept shall cause its sales force to promote the Diagnostic Tests.

(ii) Biocept shall keep Clarient reasonably informed of its planned marketing activities with respect to the Diagnostic Tests to allow Clarient to forecast its needs for equipment, space, personnel, computing, and testing reporting

capabilities, including at each Joint Steering Committee meeting as indicated in Section 4, and will discuss and consider in good faith Clarient's suggestions for marketing the Diagnostic Tests.

(iii) Biocept will provide customer service and support for the Diagnostic Tests using substantially similar methods and adhering to substantially similar standards that it generally employs with respect to its other products.

(d) **Samples and Logistics**. Biocept will be responsible for the logistics associated with its own marketing efforts and performance of the Technical Components of the Diagnostic Tests, including shipping materials and kits, patient referral and customer service.

(e) **Training and Education**.

(i) Biocept shall provide sales and technical training and technical support, including assistance with customer education and customer consultations, to Clarient's personnel, with the frequency and content of the training to be determined by agreement between Biocept and Clarient.

(ii) Biocept will share its product and service educational materials and scientific publications to utilize in patient education through Clarient, and hereby grants Clarient rights to use such materials as are reasonably necessary for Clarient to carry out its obligations under this Agreement. Clarient may not alter or revise these materials without the prior written consent of Biocept.

(f) **Regulatory Approval**. Biocept has licenses enabling it to perform and obtain reimbursement for the Assay in all states in the Territory except New York and Rhode Island, where it is currently seeking such licenses. Biocept will maintain all such licenses which are reasonably required to perform the Assay during the Term. For any Collaboration Assay, Biocept will use commercially reasonable efforts to obtain or maintain licenses enabling it to perform such Collaboration Assay and obtain reimbursement therefor, in accordance with each amendment to this Agreement entered in accordance with Section 3.5(e). Clarient will cooperate with Biocept so that Clarient's marketing and sales efforts are conducted only in those states or regions of the Territory in which Biocept has obtained any necessary regulatory licenses to provide the Diagnostic Tests.

(g) **Technical Developments**. Biocept shall keep Clarient fully informed as to all discoveries and technical developments (including, without limitations, any inventions) made by Biocept during the Term related to the Diagnostic Tests.

3.5 Joint Responsibilities. The parties shall use commercially reasonable efforts to cooperate and collaborate to develop the market for the Diagnostic Tests in the Territory. Without limiting the generality of the foregoing, the parties shall collaborate to provide the following:

(a) **Test Materials and Shipping**. Subject to Section 3.3(c)(i), Clarient shall design and order all test materials, including test requisition forms, test reports and collateral sales and marketing (advertising and promotional) materials to be used by Clarient, which shall be approved by Biocept prior to use. Biocept shall design and order sample shipping kits, to be used by the parties and Clarient shall pay fifty percent (50%) of Biocept's actual cost for such sample kits used by the parties under this Agreement.

(b) **Performance of Tests**.

(i) The parties will work together to develop a plan to implement detailed operation protocols within sixty (60) days of the Effective Date for each aspect of sample logistics, including CLIA validation testing, ordering, shipping, accessioning, sample handling, testing, data generation, data evaluation and reporting. These sample logistics shall be agreed upon by the parties through the Joint Steering Committee and, once agreed upon by the parties in writing, deemed to be attached hereto as Exhibit C without any additional action required on the part of either party. Information, data and images shall be transferred between the parties as indicated for this purpose, and the parties will seek to make their respective laboratory information management systems and data transfer capabilities compatible.

(ii) If Clarient desires to utilize any Diagnostic Tests in support of any clinical trial or research program for a pharmaceutical or biotechnology company(ies) in the Territory, Clarient shall notify Biocept in writing of such desired use. The terms and conditions (including pricing) of each such use shall be covered by a separate written agreement which the parties agree to negotiate in good faith.

(iii) Each party will use commercially reasonable efforts to support the other in the account to best meet the needs and expectations of each customer.

(c) **Communication Plan**. Clarient and Biocept shall develop a communications plan through the Joint Steering Committee for the announcement and ongoing promotion of the Diagnostic Tests to customers, with all communications plan materials, including test requisition forms, being co-branded with Biocept and Clarient corporate names and logos in accordance with Sections 2.2 and 3.3(c)(i).

(d) **Data Sharing**. Clarient acknowledges that Biocept has entered into this Agreement to, among other things, establish a database of results from the Diagnostic Tests it performs, which database will include patient information such as disease characterization, treatment and outcome information. To that end, to the extent permitted by applicable law and as mutually agreed by the parties, where available each party will share patient data, Diagnostic Test data and results, and corresponding tissue data with the other party, as well as any follow up or outcome data that may become available or provided by the physician or patient for Diagnostic Tests performed and will cooperate in good faith with the other party to agree upon procedures for sharing such information. Such information may be used only for longitudinal reporting, outcomes correlation and related research, shall be handled in accordance with all applicable laws,

including, without limitation, HIPAA, and applicable institutional review board guidelines, and shall not be used for the purpose of obtaining information about the other party's clients or customers. To the extent feasible, all such information will be properly de-identified.

(e) **New Assays.**

(i) During the Term, Biocept shall keep Clarient reasonably apprised of its plans for New Assays for the clinical testing market. Clarient shall hold any such disclosure regarding such New Assay on a confidential basis and will not disclose such information to any Third Party without the consent of Biocept. If at any time Biocept desires to commercialize a New Assay with one or more Third Parties, either by license, sale, transfer or assignment of any such New Assay, Biocept shall first offer to Clarient the right to negotiate an agreement with respect to the commercialization of such New Assay by delivering written notice thereof to Clarient (each an "***Option Notice***"). Clarient shall have thirty (30) days from the date of such Option Notice to notify Biocept in writing of whether it desires to negotiate an agreement with Biocept to commercialize such New Assay. If Clarient indicates it has no interest in such New Assay, or does not respond within thirty (30) days of the date of such Option Notice, or such longer period as the parties may otherwise mutually agree, Biocept shall be free to pursue the commercialization of such New Assay with one or more Third Parties. Should Clarient indicate it does have interest in the New Assay within the thirty (30) day or other mutually agreed to period, the parties shall negotiate in good faith for up to sixty (60) days, or such longer period as the parties may otherwise mutually agree, an amendment to this Agreement to set forth the terms and conditions that would govern the marketing and commercialization of such New Assay, including regulatory or licensing requirements. If the parties successfully conclude such amendment to this Agreement covering a New Assay, such New Assay shall be deemed a "***Collaboration Assay***" for all purposes under this Agreement and shall be subject to the terms of this Agreement as amended, and if the parties are unsuccessful in concluding such amendment to this Agreement, Biocept shall be free to pursue the commercialization of such New Assay with one or more Third Parties.

(ii) In addition, should Clarient desire for Biocept to develop a specific New Assay to be offered by the parties as a Diagnostic Test under this Agreement, the parties shall negotiate in good faith an amendment to this Agreement that will govern the development and commercialization of such New Assay, which amendment may include financial support, contributions of and access to each party's technology and/or clinical samples, milestones, timing of the development effort, exclusivity and ownership rights. Any such agreed upon New Assay development shall be performed by Biocept or jointly as the parties may agree. Once the parties have agreed upon a plan relating to the improvement or development of a particular New Assay (each, a "***Project***"), the parties shall reduce such agreement to writing, which shall include a project plan which will set forth each party's obligations, with respect to the Project (each, a "***Project Plan***") and thereafter, such New Assay shall be deemed a "***Collaboration Assay***" for all purposes under this Agreement and shall be subject to the terms of this Agreement as amended. Each such Project Plan shall be attached as a part

of Exhibit C to this Agreement following written acceptance thereof by both parties without any additional action required on the part of either party. Any amendments or revisions to a Project Plan shall be mutually agreed upon by the parties in writing.

(f) **Costs and Expenses.** Unless otherwise specified herein or in a Project Plan attached hereto, each party shall perform its activities under this Agreement at its sole cost and expense.

(g) **Training and Education**.

(i) The parties shall work together to develop and implement a training program for client services and the sales and marketing representatives of each party to ensure that a clear and consistent message is delivered to all prospective customers. Following such implementation, each party agrees to train its client services and sales and marketing representatives in accordance with such training program.

(ii) Representatives of each party, where deployed, shall each educate physicians on the Diagnostic Tests, their applications and benefits, and the procedures for providing samples for the Diagnostic Tests. The parties will jointly approve all presentation and meeting materials. In addition, the parties will each be responsible for providing customer support related to test logistics, billing and reimbursement, and for establishing a call center / web portal to handle inquiries related to the Assay. For purposes of clarity, the parties acknowledge and agree that Clarient will not be required to establish a dedicated web portal, but all results of Diagnostic Tests will be made available in its Pathsite portal. Technical or process questions regarding the Assay received by Clarient can be referred to Biocept. Each party will cover its own costs related to physician education, customer support, and any travel related thereto and comply with all federal and state regulations regarding the same.

(h) **Performance Standards**. Each party shall conduct its activities under this Agreement and any Project Plan in a professional and workmanlike manner, and in compliance in all material respects with the requirements of applicable laws and regulations, to attempt to achieve the objectives of this Agreement efficiently and expeditiously. Each party shall contribute such personnel and resources, and shall maintain such laboratories and other facilities, as are reasonably necessary to carry out the activities to be performed under this Agreement, including any Project Plans. In conformity with standard industry practices and the terms and conditions of this Agreement, each party shall prepare and maintain, or shall cause to be prepared and maintained, complete and accurate written records, accounts, notes, reports and data with respect to activities conducted by such party under this Agreement, including any Project Plans. In addition, the parties shall work together to establish minimum agreed upon performance standards with respect to the promotion and performance of the Diagnostic Tests, and the timely supply, accuracy, reliability and reporting of the Diagnostic Tests, as well as responsiveness to customer inquiries related to the Diagnostic Tests throughout the Territory (collectively, "**Performance Standards**"). In the event that one or more Performance Standards are not met, the parties will work quickly and efficiently to (i) identify the cause of the failure, (ii) develop a plan to remediate the issue, and (iii)

implement the remediation plan. If the parties are unable to successfully resolve a Performance Standards issue by this procedure, such failure to maintain Performance Standards shall constitute a material breach, and either party may terminate this Agreement in accordance with Section 10.2.

4. JOINT STEERING COMMITTEE

4.1 Purpose and Membership. Promptly following the Effective Date, Biocept and Clarient will create a Joint Steering Committee for the purpose of facilitating communications between the parties in the course of the Collaboration. The Joint Steering Committee shall be composed of an equal number of representatives of each of Biocept and Clarient, each of whom shall have appropriate experience, knowledge and authority within such party's organization to carry out the duties and obligations of the Joint Steering Committee. Each party will designate one of its representatives as the primary contact for that party with respect to Joint Steering Committee-related matters, which such representatives shall serve as co-chairpersons of the Joint Steering Committee. Each party may change its representatives to the Joint Steering Committee or its primary contact from time to time in its sole discretion, effective upon notice to the other party of such change. These representatives shall have appropriate technical credentials, experience and knowledge. A reasonable number of additional representatives of a party may attend meetings of the Joint Steering Committee in a non-voting capacity.

4.2 Duties. The Joint Steering Committee shall meet in person or by teleconference or videoconference no less than quarterly during the Term or as otherwise mutually agreed by the parties from time to time. The responsibilities of the Joint Steering Committee shall be responsible for (i) monitoring the progress of the collaboration, including discussions relating to New Assays and Collaboration Assays, (b) physician education with respect to the Diagnostic Tests, (c) marketing, sales and account coordination, (d) any regulatory inquiries or requirements and other issues that affect the availability of the Diagnostic Tests, and (e) reimbursement issues (including annual review of actual amounts received by Clarient for relevant CPT Codes), logistical considerations, and other topics as necessary. The Joint Steering Committee shall serve as the principal forum for each party to (i) keep the other party informed of the results of its Collaboration activities; (ii) to discuss Diagnostic Test commercialization strategies, and (iii) generally to encourage and facilitate ongoing cooperation between the parties with respect to the Collaboration, including the business relationship and/or any other matter relating to the Collaboration and resolving disputes between the parties with respect to Intellectual Property Rights; provided, however, that (A) nothing in this Agreement shall limit either party's right to seek immediate equitable or injunctive relief where appropriate without any obligation to first submit the dispute to the Joint Steering Committee; and (B) any decision concerning medical necessity and patient care with respect to Diagnostic Tests sold by or performed on behalf of Clarient shall be the sole responsibility of Clarient's Medical Director.

4.3 Decisions; Disputes. Decisions of the Joint Steering Committee shall be made by unanimous vote, with each party's representatives on the Joint Steering

Committee collectively having one vote. In the event that the Joint Steering Committee cannot or does not, after good faith efforts, reach agreement on an issue, such issue shall first be referred to the Designated Executive Officers, who shall meet promptly thereafter and shall attempt in good faith to resolve such issue. In the event that the Designated Executive Officers cannot or do not, after good faith efforts, reach agreement on an issue, the issue shall be submitted to voluntary mediation. The Designated Executive Officers of each party shall select a mediator who is an expert with no less than seven years of experience in the subject matter to which the dispute relates. In the event that the Designated Executive Officers of the parties are unable to agree upon a mediator within twenty (20) days, then the Designated Executive Officers shall contact the San Diego County office of JAMS to select a mediator from the JAMS panel. If they are unable to agree, JAMS shall provide a list of three available mediators and each party may strike one. The remaining one will serve as the mediator. The mediation shall be conducted under JAMS rules. The parties agree that they shall share equally the cost of the mediation filing and hearing fees, and the cost of the mediators that constitute the panel. Each party shall bear its own attorneys' and expert fees and all associated costs and expenses**.**

5. REGULATORY COMPLIANCE

5.1 Compliance with Laws. Biocept and Clarient and their respective Affiliates each agree to perform their respective obligations under this Agreement in material compliance with applicable federal, state and local laws, rules, and regulations in the Territory, including but not limited to applicable regulations, rules, and policies of third party payers that pay for the Diagnostic Tests.

5.2 Privacy. Biocept and Clarient and their respective Affiliates agree to protect the privacy and provide for the security of any information that relates to a patient's past, present, or future physical or mental health or condition in accordance with HIPAA, and any other applicable federal and state privacy laws and regulations in the Territory. Each party agrees to execute one or more Business Associate Agreements (as defined under HIPAA) as the other party, or its providers or payers, may from time to time request.

5.3 Licenses and Certifications. Biocept and, to the extent applicable, Clarient shall have at all times during the Term, all necessary federal, state and local licenses, qualifications and certifications to operate a laboratory and perform their respective components of the Diagnostic Tests, including, but not limited to, state laboratory licenses, CLIA certification, CAP (College of American Pathologists) certification, FDA registration, and any other licenses or certification required by state and/or federal law. All Diagnostic Tests performed by Biocept, and, to the extent applicable, Clarient, shall be in accordance with applicable state and federal testing requirements for clinical reference laboratories.

6. MATERIALS TRANSFER

In order to facilitate the Collaboration, either party may provide to the other party certain biological materials or chemical compounds including, but not limited to, samples (collectively, ***"Materials"***) for use by the other party in furtherance of the Collaboration. Except as expressly provided under this Agreement, all such Materials delivered to the other party will remain the sole property of the supplying party, will be used only in furtherance of the Collaboration and solely under the control of the other party, will not be used or delivered to or for the benefit of any Third Party without the prior written consent of the supplying party, and will not be used in research or testing involving human subjects except as permitted by applicable law. The Materials supplied hereunder must be used with prudence and appropriate caution in any experimental work and in accordance with all applicable laws.

7. INTELLECTUAL PROPERTY

7.1 Existing Technology. Each party acknowledges that the other party owns certain technology and Intellectual Property Rights which have been independently developed by, or at the request of, such other party, whether prior to, during or subsequent to the Term. Except as expressly provided in this Agreement, neither this Agreement nor the activities performed hereunder, shall give either party any rights or interest in or to the technology or Intellectual Property Rights of the other party (or of any Materials provided by such party). Each party owns, and shall continue to own, all right, title and interest in and to its respective technology, including, without limitation, all Intellectual Property Rights relating thereto. Without limiting the generality of the foregoing, at all times during and after the Term, Biocept shall own all rights to its CEE™ technology and any improvements related thereto, generated during the performance of this Agreement. Biocept and Clarient shall promptly notify the other in writing upon becoming aware of any alleged or threatened infringement of any Intellectual Property Rights related to a Diagnostic Test. Biocept shall have the right to bring and control any action or proceeding with respect to any such infringement at its own expense and by counsel of its own choice. If Biocept elects not to bring any such action or proceeding with respect to such infringement, it shall promptly notify Clarient of the same and agrees to consider, in good faith a request by Clarient to bring any such action or proceeding. Any agreement allowing Clarient to bring such action or proceeding on behalf of Biocept shall be set forth in a separate written agreement between the parties. Except as expressly provided above, the parties shall be under no obligation to enforce any of their Intellectual Property Rights against any actual or threatened Third Party infringements.

7.2 Biocept Technology. Without limiting the generality of the foregoing, Biocept owns, and Clarient acknowledges Biocept's ownership of, (i) the Assay, and (ii) all Intellectual Property Rights in the Assay, and Clarient agrees that it shall not do or suffer to be done any act or thing or undertake any action anywhere that in any manner might infringe, or impair the validity, scope, or title of Biocept in the Assay or Intellectual Property Rights owned by Biocept. Nothing herein shall limit Clarient's ability to prosecute fully any and all Intellectual Property Rights owned by Clarient with any patent office or related government agency or to respond fully to any government agency inquiry with respect to its Intellectual Property Rights, products, and services.

7.3 Infringement. If any Third Party claims or brings an action alleging that any activities of Biocept or Clarient or their Affiliates under this Agreement infringe any of such Third Party's patent rights, Biocept shall use commercially reasonable efforts to address such claims. If Biocept determines to seek a license or otherwise obtain the right to use such Third Party patent rights on behalf of Biocept and Clarient, then Biocept shall be solely responsible for the payment of any reasonable royalties or other payments that may be due to such Third Party, unless the parties agree otherwise in writing.

7.4 Data and Results. All data and results from performance of Diagnostic Tests on samples provided by Clarient shall be owned by the patient for whom the Diagnostic Test was performed, and each party shall be entitled to use such data and results to the extent necessary to perform its obligations under this Agreement and in accordance with Section 3.5(d).

7.5 Trademarks.

(a) Biocept shall be responsible and bear the expense of any filing, prosecution, maintenance and enforcement of the Biocept Trademarks as it may determine in its sole discretion, without obligation. Clarient shall not, during the Term or thereafter, use or seek to register the trademarks or any trademark or trade name similar to or confusing with the Biocept Trademarks, or any translation thereof, in any jurisdiction. Clarient agrees that, if Clarient at any time obtains, in any jurisdiction, any right, title or interest in any mark, symbol or phrase which shall be identical to, similar to or likely to be confused with any Biocept Trademark or any translation thereof, then Clarient shall have acted or shall act as an agent and for the benefit of Biocept for the limited purpose of obtaining such registrations and assigning such registration (and all right, title and interest in such mark, symbol or phrase) to Biocept.

(b) Clarient shall be responsible and bear the expense of any filing, prosecution, maintenance and enforcement of the Clarient Trademarks as it may determine in its sole discretion, without obligation. Biocept shall not, during the Term or thereafter, use or seek to register the trademarks or any trademark or trade name similar to or confusing with the Clarient Trademarks, or any translation thereof, in any jurisdiction. Biocept agrees that, if Biocept at any time obtains, in any jurisdiction, any right, title or interest in any mark, symbol or phrase which shall be identical to, similar to or likely to be confused with any Clarient Trademark or any translation thereof, then Biocept shall have acted or shall act as an agent and for the benefit of Clarient for the limited purpose of obtaining such registrations and assigning such registration (and all right, title and interest in such mark, symbol or phrase) to Clarient.

8. REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other that: (a) it is duly organized and validly existing under the laws of

its jurisdiction of incorporation or formation, and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person or persons executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate action; (c) this Agreement is legally binding upon it, enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement by it does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

8.2 Biocept Warranties.

(a) As of the Effective Date, the Assay is Biocept's most current CTC based technology that has been validated for performing tests for CTC enumeration and the detection of the indicated analytes in breast cancer.

(b) Biocept represents and warrants to Clarient that: (1) the Assay constitutes an original work of Biocept (or is duly licensed by Biocept for the purposes for which it is offered); (2) Biocept is the lawful owner or licensee of all materials used in connection with the development of the Assay and has the rights to use the Assay, and to allow Clarient to use the results of the Technical Component of the Diagnostic Tests and otherwise perform Clarient's responsibilities under this Agreement; (3) to Biocept's knowledge, after a commercially reasonable investigation comprised of a freedom to operate analysis commensurate with its resources, the Assay does not infringe the Intellectual Property Rights of any Third Party.

(c) Biocept has full power and authority and has obtained all Third Party consents, approvals, assignments and/or other authorizations required to enter into this Agreement and to carry out its obligations hereunder.

(d) Biocept owns all right, title and interest in and to the Assay.

(e) There are no existing contracts, agreements, commitments, proposals, offers, or rights with, to, or in any person to acquire any of the rights under the Assay which would prevent or materially and adversely alter the performance of the obligations hereunder.

8.3 Third Party Infringement. In the event that the Assay, or any part thereof becomes the subject of any claim, suit or proceeding for infringement of the Intellectual Property Rights of any Third Party, or if the Assay, or any part thereof, is held or otherwise determined to infringe any Intellectual Property Rights of any Third Party such that Biocept can no longer perform its obligations under this Agreement, Biocept shall in its sole discretion either: (1) secure for Clarient the right to continue using the Assay; (2) replace or modify the Assay to make it non-infringing without degrading its performance or utility; or (3) notify Clarient that it will perform neither (1) nor (2), in which case either party shall thereafter have the right to terminate this Agreement immediately upon written notice to the other party.

8.4 Disclaimer. Except as expressly set forth herein, THE TECHNOLOGY, MATERIALS AND INTELLECTUAL PROPERTY RIGHTS PROVIDED BY EACH PARTY HEREUNDER ARE PROVIDED "AS IS," AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES.

8.5 Limitation of Liability. NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE GRANTED HEREUNDER; provided, however, that this Section shall neither (a) apply to any liability for damages arising from breach of any obligations of confidentiality under Article 9, nor (b) limit the indemnification obligations of the parties arising under Article 11 of this Agreement.

9. CONFIDENTIALITY

9.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, each party agrees that, during the Term and for 10 years thereafter, such party (the ***"Receiving Party"***) shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose, other than as expressly provided for in this Agreement, any information furnished to it by or on behalf of the other party (the ***"Disclosing Party"***) pursuant to this Agreement (collectively, ***"Confidential Information"***). The Receiving Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement. The Receiving Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own to ensure that its, and its Affiliates', employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

9.2 Exceptions. Confidential Information shall not include any information which the Receiving Party can prove by competent evidence: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or (d) is independently discovered or developed by the Receiving Party, without the use of Confidential Information of the Disclosing Party, as evidenced by the Receiving Party's written records maintained in the ordinary course of business.

9.3 Authorized Disclosure. Each party may disclose Confidential Information of the other party as expressly permitted by this Agreement, or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) enforcing such party's rights under this Agreement;

(b) prosecuting or defending litigation as permitted by this Agreement;

(c) complying with applicable court orders or governmental regulations;

(d) disclosure to Affiliates, contractors, employees and consultants who need to know such information for the development and commercialization of the Diagnostic Tests in accordance with this Agreement, on the condition that any such Third Parties agree to be bound by confidentiality and non-use obligations that are no less stringent than the terms of this Agreement; and

(e) disclosure to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by reasonable obligations of confidentiality and non-use.

Notwithstanding the foregoing, in the event a party is required to make a disclosure of the other party's Confidential Information pursuant to Section 9.3(b) or Section 9.3(c), it will, except where impracticable, give reasonable advance notice to the other party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

9.4 Confidentiality of this Agreement. Except as otherwise provided in this Section 9, each party agrees not to disclose to any Third Party the terms of this Agreement without the prior written consent of the other party hereto, except that each party may disclose the terms of this Agreement that are otherwise made public prior to the date of such disclosure or to the extent such disclosure is permitted under Section 9.3.

9.5 Press Releases; Public Announcements. Neither party shall make a press release or public announcement that includes information relating to the Collaboration that has not been previously published without the approval of the other party. At least five days prior to any such press release or public announcement the party proposing to make such press release or public announcement (the ***"Publishing Party"***) shall provide to the other party a draft copy thereof for its review and approval. The Publishing Party may not publish such press release or public announcement without obtaining the other party's prior written approval. In addition, the Publishing Party shall, at the other party's request, remove therefrom any Confidential Information of such other party. The contribution of each party shall be noted in all publications or presentations by acknowledgment or co-authorship, whichever is appropriate.

10. TERM AND TERMINATION

10.1 Term. The term of this Agreement will commence on the Effective Date and continue for a period of three (3) years after the Effective Date (the "***Initial Term***"). Thereafter, this Agreement shall be renewable by mutual written agreement of the parties for successive one (1) year periods thereafter (each, a "***Renewal Term***" and together with the Initial Term, the "***Term***").

10.2 Termination.

(a) **Material Breach**. Either party shall have the right to terminate this Agreement before the end of the Term upon written notice to the other party if such other party is in material breach of this Agreement and has not cured such breach within sixty (60) days (the "**Cure Period**") after notice from the terminating party requesting cure of the breach. Any such termination shall become effective at the end of such Cure Period unless the breaching party has cured such breach prior to the end of such Cure Period. Any right to terminate under this Section 10.2(a) shall be stayed and the Cure Period tolled in the event that, during any Cure Period, the party alleged to have been in material breach shall have initiated dispute resolution in accordance with Article 12 with respect to the alleged breach, which stay and tolling shall continue until such dispute resolution procedures have been completed in accordance with Article 12. Nothing herein is intended to prevent either party from seeking immediate equitable or injunctive relief.

(b) **Termination for Convenience.** Clarient shall have the right to terminate this Agreement at any time, for any or for no reason, upon one hundred twenty (120) days written notice to Biocept.

10.3 Effect of Termination; Surviving Obligations.

(a) Upon any termination or expiration of this Agreement, all licenses granted hereunder shall automatically terminate and revert to the granting party and all other rights and obligations of the parties under this Agreement shall terminate, except as provided elsewhere in Section 10.4.

(b) Upon termination or expiration of this Agreement, each party will use their best efforts to return to the other party or destroy all tangible copies of the other party's Confidential Information in such party's possession or control and will erase from its computer systems all electronic copies thereof; provided, however, that each party may retain one archival copy of the other party's Confidential Information solely for purposes of monitoring compliance with its obligations under Article 9 hereof.

10.4 Survival. Expiration or early termination of this Agreement shall not relieve either party of any obligation accruing prior to such expiration or termination. In addition, Sections 3.3(g), 4.3, 5.1, 5.2 (to the extent required by law) 8.1, 8.2, 8.3, 8.5, 10.3 and 10.4, and Articles 1, 7, 9, 11, 12 and 13 will survive any expiration or termination of this Agreement.

11. INDEMNIFICATION

11.1 Indemnification by Clarient. Clarient hereby agrees to save, defend, indemnify and hold harmless Biocept, its Affiliates and their respective officers, directors, employees, consultants and agents (the ***"Biocept Indemnitees"***), from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys' fees resulting from any claim, demand, action or other proceeding by any Third Party ("**Losses**") to the extent such Losses arise directly or indirectly out of: (a) the gross negligence or willful misconduct of any Clarient Indemnitee (defined below); (b) the material breach by Clarient of any warranty, representation, covenant or agreement made by it in this Agreement; or (c) the performance by Clarient of the material aspects of the Professional Component of a Diagnostic Test; except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any Biocept Indemnitee or the material breach by Biocept of any warranty, representation, covenant or agreement made by it in this Agreement.

11.2 Indemnification by Biocept. Biocept hereby agrees to save, defend, indemnify and hold harmless Clarient, its Affiliates and their respective officers, directors, employees, consultants and agents (the ***"Clarient Indemnitees"***), from and against any and all Losses to the extent such Losses arise directly or indirectly out of: (a) the gross negligence or willful misconduct of any Biocept Indemnitee; (b) the material breach by Biocept of any warranty, representation, covenant or agreement made by it in this Agreement; or (c) the performance by Biocept of the material aspects of the Technical Component of a Diagnostic Test; except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any Clarient Indemnitee or the material breach by Clarient of any warranty, representation, covenant or agreement made by it in this Agreement.

11.3 Procedure. In the event a party seeks indemnification under Section 11.1 or 11.2, it shall inform the other party (the ***"Indemnifying Party"***) of a claim as soon as reasonably practicable after such party (the ***"Indemnified Party"***) receives notice of the claim (it being understood and agreed, however, that the failure by an Indemnified Party to give notice of a claim as provided in this Section 11.3 shall not relieve the Indemnifying Party of its indemnification obligation under this Agreement except and only to the extent that such Indemnifying Party is actually damaged as a result of such failure to give notice), shall permit the Indemnifying Party to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and shall cooperate as requested (at the expense of the Indemnifying Party) in the defense of the claim. The Indemnified Party shall not agree to any settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not agree to any settlement of such action, suit, proceeding or claim or consent to any judgment in respect thereof that does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, that imposes any liability or obligation on the Indemnified Party or that acknowledges fault by the Indemnified Party; in each case, without the prior written consent of the Indemnified Party.

11.4 Insurance. Each party, at its own expense, shall maintain product liability and other appropriate insurance (or self-insure) in an amount consistent with industry standards during the Term and shall name the other party as an additional insured with respect to such insurance. Each party shall provide a certificate of insurance (or evidence of self-insurance) evidencing such coverage to the other party upon request.

12. Dispute Resolution

The parties recognize that disputes as to certain matters may arise from time to time during the Term. The parties shall first submit the dispute to the Joint Steering Committee for resolution in accordance with Section 4.3 hereof. In the event that the Joint Steering Committee is unable to resolve the dispute, the parties shall be entitled to seek relief in a court of competent jurisdiction. Notwithstanding the foregoing, to the full extent allowed by law, either party may bring an action in any court of competent jurisdiction for injunctive relief (or any other provisional remedy) to protect the parties' rights or enforce the parties' obligations under this Agreement pending resolution of any claims related thereto by the Joint Steering Committee.

13. GENERAL PROVISIONS

13.1 Governing Law. This Agreement and any disputes, claims, or actions related thereto shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to the conflicts of law provisions thereof.

13.2 Entire Agreement; Modification. This Agreement, including the Exhibits hereto, is both a final expression of the parties' agreement and a complete and exclusive statement with respect to all of its terms. This Agreement supersedes all prior and contemporaneous agreements and communications, whether oral, written or otherwise, concerning any and all matters contained herein. This Agreement may only be amended, modified or supplemented in a writing expressly stated for such purpose and signed by the parties to this Agreement.

13.3 Relationship Between the Parties. The parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

13.4 Non-Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a party of a particular provision or right shall be in writing, shall be as to a particular matter and, if applicable, for a particular period of time and shall be signed by such party.

13.5 Assignment. Except as expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise

transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided, however, that either party may assign this Agreement and its rights and obligations hereunder without the other party's consent in connection with the transfer or sale of all or substantially all of the business of such party to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise. The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

13.6 No Third Party Beneficiaries. This Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

13.7 Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability or legality of any remaining portions of this Agreement. All remaining portions shall remain in full force and effect as if the original Agreement had been executed without the invalidated, unenforceable or illegal part.

13.8 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address(es) given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earlier of: (a) the date of actual receipt; or (b) if mailed, five calendar days after the date of postmark.

If to Biocept, notices must be addressed to:

Biocept, Inc.
5810 Nancy Ridge Drive, Suite 150
San Diego, CA 92121
Attention: David Hale
Executive Chairman
Telephone: (858) 320-8200
Facsimile: (858) 320-8225

If to Clarient, notices must be addressed to:

Clarient Diagnostic Services, Inc.
31 Columbia
Aliso Viejo, CA 92656
Attention: General Counsel
Telephone: 949 643-7452
Facsimile: 949 425-5863

13.9 Force Majeure. Each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control, including but not limited to, Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, any strike or labor disturbance. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the party has not caused such event(s) to occur. Notice of a party's failure or delay in performance due to force majeure must be given to the other party within five (5) calendar days after its occurrence. All delivery dates under this Agreement that have been affected by force majeure shall be tolled for the duration of such force majeure. In no event shall any party be required to prevent or settle any labor disturbance or dispute. In the event of a force majeure that persists for thirty (30) days or more, then either party may terminate this Agreement upon written notice to the other party.

13.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original document, and all of which, together with this writing, shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

BIOCEPT, INC.

By: /s/ David F. Hale

Name: David Hale

Title: Executive Chairman

CLARIENT DIAGNOSTIC SERVICES, INC.

By: /s/ Ron Andrews

Name: Ron Andrews

Title: CEO

LABORATORY SERVICES AGREEMENT

This LABORATORY SERVICES AGREEMENT (hereinafter referred to as the "Agreement" is made by and between Biocept, Inc. (Biocept), a California Corporation having its principal place of business at 5810 Nancy Ridge Drive, Suite 150, San Diego, CA 92121, and Clarient Diagnostic Services, Inc., a wholly owned subsidiary of Clarient, Inc., a Delaware corporation, having its principal place of business at 31 Columbia, Aliso Viejo, CA, 92656 (hereinafter referred to as the "Clarient"). This Agreement replaces, as of the Effective Date, any former agreements or letters of intent that were previously signed by both parties, including that certain Collaboration Agreement, as amended, by and between Biocept and Clarient dated as of August 17, 2011, which is hereby terminated as of the Effective Date, but excluding the letter agreement between the parties dated December 5, 2012 regarding SOW#01 and the DFPCC Agreement, which shall continue.

WHEREAS, Biocept has developed expertise and proprietary technology in enrichment, extraction and analysis of circulating tumor cells for use in diagnostic tests used for the non-invasive and early stage detection of metastatic or recurrent cancers; and

WHEREAS, Clarient is in the business of providing anatomic and molecular pathology services in oncology to the medical community, the pharmaceutical industry and other markets;

NOW, THEREFORE, it is the intent of both parties to proceed as follows:

AGREEMENT

In consideration of the mutual covenants, agreements, representations, warranties, and conditions contained herein, the Parties hereby agree as follows:

1. Definitions

1.1 **"Assay"** shall mean Biocept's OncoCEE-BR™ assay which incorporates circulating tumor cell enumeration by cytokeratin (and CEE-Enhanced™ when available and validated by Biocept), HER2 by fluorescence in situ hybridization, and any improvements or enhancements thereto, appropriately validated, exclusive of new analytes.

1.2 "Parties" includes Biocept and Clarient, and "Party" refers to either Biocept or Clarient.

1.3 "Sample" refers to a medical sample to be tested with the Assay.

1.4 "Term" shall be as specified in Section 2 of this Agreement.

2. Term of Agreement

2.1 The Effective Date of this Agreement is May 1, 2013.

2.2 This Agreement shall expire two (2) years ("End Date") after the Effective Date unless the Parties agree in writing and prior to the End Date to extend the Term of this Agreement.

2.3 The Term of this Agreement shall begin on the Effective Date and shall end on the End Date, unless earlier terminated pursuant to the provisions of this Agreement.

3. Biocept Services

3.1 Biocept agrees to provide Clarient with the necessary information and training to collect and send test requests for the Assay from its clients to Biocept's CLIA-certified, CAP-accredited laboratory in San Diego, CA per Biocept's pre-determined specimen requirements.

3.2 Biocept's laboratory and contracted medical staff shall perform both the Technical and Professional Components of the Assay. Biocept shall provide the patient report directly to the ordering physician of Clarient's client, with a copy sent to Clarient.

4. Billing & Insurance

4.1 Biocept shall be solely responsible for billing the patient, the provider and/or the payer for the Assay, including both the Technical Component and the Professional Component of the Assay, and the collection of such amounts with respect to each Assay performed. Biocept shall bill for such insurance according to the services provided by Biocept and per Biocept's usual and customary third party insurance billing policy using the appropriate CPT codes. Biocept shall bear all collection risk for reimbursement for the Assay; Clarient shall have neither billing nor collection responsibility and shall have no liability to Biocept for the payment of Biocept's performance of the Assay.

4.2 At all times during the term of this Agreement, Biocept shall maintain comprehensive professional liability insurance covering itself and its employees, contractors, and agents providing testing services pursuant to this Agreement. The insurance coverage maintained by Biocept shall be at least two million dollars ($2,000,000) per occurrence and five million dollars ($5,000,000) in the annual aggregate. At Clarient's request, Biocept shall provide Clarient with a certificate of insurance evidencing that such coverage is in effect during the term of this Agreement.

5. Regulatory Compliance

5.1 Compliance with Laws. Biocept and Clarient and their respective Affiliates each agree to perform their respective obligations under this Agreement in material compliance with applicable federal, state and local laws, rules, and regulations, including but not limited to applicable regulations, rules, and policies of third party payers that pay for the Assay.

5.2 Privacy. Biocept and Clarient and their respective Affiliates agree to protect the privacy and provide for the security of any information that relates to a patient's past, present, or future physical or mental health or condition in accordance with HIPAA, and any other applicable federal and state privacy laws and regulations. Each party agrees to execute one or more Business Associate Agreements (as defined under HIPAA) as the other party, or its providers or payers, may from time to time request.

5.3 Licenses and Certifications. Biocept shall have, at all times during the Term, all necessary federal, state and local licenses, qualifications and certifications to operate a laboratory and perform the components of the Assay, including, but not limited to, state laboratory licenses

(excluding New York, Florida and Rhode Island; Biocept will notify Clarient when licenses in these states are obtained), CLIA certification, CAP (College of American Pathologists) certification, and any other licenses or certification required by state and/or federal law. All Assays performed by Biocept shall be in accordance with applicable state and federal testing requirements for clinical reference laboratories.

6. Termination

6.1 Either party may terminate this Agreement by providing the other party with a written termination notice, and such notice shall terminate this Agreement (a) Sixty (60) days after the date of the notice, or (b) on the End Date, whichever is earlier.

6.2 Any termination or expiration of this Agreement shall be without prejudice to any other right or remedy that has accrued prior to the effective date of such termination or expiration and/or that is afforded to the terminating party under any applicable law. Section 5.2 and Articles 7-10 shall survive termination or expiration of this Agreement.

6.3 Either Party may immediately terminate this Agreement, by providing written notice to the other Party upon the occurrence of any of the following three situations of this Subsection:

(a) if the other Party materially breaches its obligations, warranties, or representations made in this Agreement if such breach continues for thirty (30) days after receiving written notice thereof from the non-breaching Party;

(b) to the extent permitted under applicable law, if a petition is filed against the other Party for an involuntary proceeding under any applicable bankruptcy or other similar law, and (a) such petition has not been dismissed within sixty (60) days after filing or (b) a court having jurisdiction has appointed a receiver, liquidator, trustee, or similar official of the other Party for any substantial portion of its property, or ordered the winding up or liquidation of its affairs, in each of (a) and (b), upon delivery of notice of such termination; or

(c) to the extent permitted under applicable law, if the other Party commences a voluntary proceeding under applicable bankruptcy or other similar law, has made any general assignment for the benefit of creditors, or has failed generally to pay its debts as they become due, upon delivery of notice of such termination.

7. CONFIDENTIALITY

7.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, each party agrees that, during the Term and for five (5) years thereafter, such party (the ***"Receiving Party"***) shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose, other than as expressly provided for in this Agreement, any information furnished to it by or on behalf of the other party (the ***"Disclosing Party"***) pursuant to this Agreement (collectively, ***"Confidential Information"***). The Receiving Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement. The Receiving Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own to ensure that its, and its Affiliates', employees, agents, consultants and other representatives do not disclose or make any

unauthorized use of the Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

7.2 Exceptions. Confidential Information shall not include any information which the Receiving Party can prove by competent evidence: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or (d) is independently discovered or developed by the Receiving Party, without the use of Confidential Information of the Disclosing Party, as evidenced by the Receiving Party's written records maintained in the ordinary course of business.

7.3 Authorized Disclosure. Each party may disclose Confidential Information of the other party as expressly permitted by this Agreement, or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) enforcing such party's rights under this Agreement;

(b) prosecuting or defending litigation as permitted by this Agreement;

(c) complying with applicable court orders or governmental regulations, including any filings with the SEC;

(d) disclosure to Affiliates, contractors, employees and consultants who need to know such information for the development and commercialization of the Assay in accordance with this Agreement, on the condition that any such Third Parties agree to be bound by confidentiality and non-use obligations that are no less stringent than the terms of this Agreement; and

(e) disclosure to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by reasonable obligations of confidentiality and non-use.

Notwithstanding the foregoing, in the event a party is required to make a disclosure of the other party's Confidential Information pursuant to Section 7.3(b) or Section 7.3(c), it will, except where impracticable, give reasonable advance notice to the other party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

7.4 Confidentiality of this Agreement. Except as otherwise provided in this Section 7, each party agrees not to disclose to any Third Party the terms of this Agreement without the prior written consent of the other party hereto, except that each party may disclose the terms of this Agreement that are otherwise made public prior to the date of such disclosure or to the extent such disclosure is permitted under Section 7.3.

7.5 Press Releases; Public Announcements. Neither party shall make a press release or public announcement that includes information relating to the Collaboration that has not been previously published without the approval of the other party. At least five days prior to any such press release or public announcement the party proposing to make such press release or public announcement (the ***"Publishing Party"***) shall provide to the other party a draft copy thereof for its review and approval. The Publishing Party may not publish such press release or public announcement without obtaining the other party's prior written approval. In addition, the Publishing Party shall, at the other party's request, remove therefrom any Confidential Information of such other party. The contribution of each party shall be noted in all publications or presentations by acknowledgment or co-authorship, whichever is appropriate.

8. Warranties; Limitation of Liability

8.1 Each Party hereby represents, warrants, and covenants that: (i) it is a corporation validly organized under the laws of the state of its incorporation and is authorized to do business to the extent necessary to fulfill its obligations hereunder; (ii) it has the full right and authority to enter into this Agreement, and no consent or authorization not obtained prior to the Effective Date is necessary to be obtained; (iii) it is not aware of any impediment that would substantially impair its ability to perform the terms and conditions imposed on it by this Agreement; (iv) it has the legal right and power to fully perform its obligations hereunder; and (v) it has not made nor will it make any commitments to others in conflict with or in derogation of such rights or this Agreement.

8.2 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.3 Limitation of Liability. WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER SECTION 9, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Indemnification

9.1 Clarient indemnifies and holds harmless Biocept and its officers and directors and employees thereof from and against any and all liability, losses, claims, expenses, or damages (including reasonable attorney's fees) of any kind (a "Liability") to a third party resulting directly or indirectly from (i) the negligence or willful misconduct of Clarient, or (ii) breach by Clarient of this Agreement; provided that the foregoing obligation to indemnify and hold harmless Biocept shall not apply to the extent that any Liability of Biocept (A) was sustained as a result of the negligence or willful misconduct of Biocept or (B) is subject to an obligation of Biocept to indemnify and hold harmless Clarient pursuant to Subsection 9.2.

9.2 Biocept indemnifies and holds harmless Clarient and its respective officers and

directors and employees from and against any and all Liabilities to a third party resulting directly or indirectly from (i) negligence or willful misconduct of Biocept, (ii) breach by Biocept of this Agreement, or (iii) a claim brought by a third party that the performance of the Assay by Biocept infringes the intellectual property rights of such third party; provided that the foregoing obligation to indemnify and hold harmless Clarient shall not apply to the extent that any Liability of Clarient (A) was sustained as a result of the negligence or willful misconduct of Clarient or (B) is subject to an obligation of Clarient to indemnify, defend and hold Biocept harmless pursuant to Subsection 9.1.

9.3 A Party seeking indemnification under Subsection 9.1 or 9.2, as applicable, shall promptly notify the other Party of any Liability for which such Party intends to claim such indemnification, and such Party shall cooperate fully with the other Party in the investigation, conduct, and defense of any Liability covered by this Section 9 and provide full information with respect thereto.

10. GENERAL PROVISIONS

10.1 Governing Law. This Agreement and any disputes, claims, or actions related thereto shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to the conflicts of law provisions thereof.

10.2 Entire Agreement; Modification. This Agreement, including any Exhibits hereto, is both a final expression of the parties' agreement and a complete and exclusive statement with respect to all of its terms. This Agreement supersedes all prior and contemporaneous agreements and communications, whether oral, written or otherwise, concerning any and all matters contained herein, including that certain Collaboration Agreement, as amended, dated as of August 17, 2011, by and between the Parties. This Agreement may only be amended, modified or supplemented in a writing expressly stated for such purpose and signed by the parties to this Agreement.

10.3 Relationship Between the Parties. The parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

10.4 Non-Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a party of a particular provision or right shall be in writing, shall be as to a particular matter and, if applicable, for a particular period of time and shall be signed by such party.

10.5 Assignment. Except as expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided, however, that either party may assign this Agreement and its rights and obligations

hereunder without the other party's consent in connection with the transfer or sale of all or substantially all of the business of such party to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise. The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

10.6 No Third Party Beneficiaries. This Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

10.7 Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability or legality of any remaining portions of this Agreement. All remaining portions shall remain in full force and effect as if the original Agreement had been executed without the invalidated, unenforceable or illegal part.

10.8 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address(es) given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earlier of: (a) the date of actual receipt; or (b) if mailed, five calendar days after the date of postmark.

If to Biocept, notices must be addressed to:

Biocept, Inc.
5810 Nancy Ridge Drive, Suite 150
San Diego, CA 92121
Attention: David Hale
Executive Chairman
Telephone: (858) 320-8200
Facsimile: (858) 320-8225

If to Clarient, notices must be addressed to:

Clarient Diagnostic Services, Inc.
31 Columbia
Aliso Viejo, CA 92656
Attention: General Counsel
Telephone: 949 425-5823
Facsimile: 949 425-5863

10.9 Force Majeure. Each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control, including but not limited to, Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, any strike or labor disturbance. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the party has not caused such event(s) to occur. Notice of a party's failure or delay in performance due to force majeure must be given to the other party within five (5) calendar days after its occurrence. All delivery dates under this Agreement that have been affected

by force majeure shall be tolled for the duration of such force majeure. In no event shall any party be required to prevent or settle any labor disturbance or dispute. In the event of a force majeure that persists for thirty (30) days or more, then either party may terminate this Agreement upon written notice to the other party.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original document, and all of which, together with this writing, shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

Biocept:		**Clarient:**	
Biocept, Inc.		Clarient Diagnostic Services, Inc.	
By:	/s/ Michael J. Dunn	By:	/s/ C Eglinton Manner
Name:	Michael J. Dunn	Name:	Carrie Eglinton Manner
Title:	SVP Corp. Dev.	Title:	CEO
Date:	7/23/13	Date:	7/29/13

Exhibit 10.15

MASTER LABORATORY RESEARCH SUPPORT AND SERVICES AGREEMENT

This Master Laboratory Research Support and Services Agreement (the "**Agreement**") is entered into by and between Biocept, Inc., a California corporation ("**Biocept**") and Dana Farber Partners Cancer Care, Inc., a not-for-profit tax-exempt corporation organized under the laws of the Commonwealth of Massachusetts ("**Institution**") for the purpose of establishing the terms and conditions under which Biocept will perform certain laboratory research support services and/or studies or tests ("**Research Support**") on samples to be provided by Institution. Biocept and Institution are referred to here individually as a "Party" and collectively as the "Parties".

WHEREAS, Biocept possesses certain scientific and medical expertise and proprietary technology to be used in providing Research Support services to Institution for one or more clinical research studies (each a "**Study**");

WHEREAS, Institution from time to time may seek to obtain the Research Support and services of Biocept for a Study on the terms and conditions set forth herein;

WHEREAS, Institution and Biocept desire to provide a full statement of their respective rights, obligations and duties in connection with the performance of any such laboratory Research Support and services by Biocept;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. STATEMENT OF WORK (SOW); RESEARCH SUPPORT PERFORMANCE

1.1 This Agreement sets forth the terms for all Research Support and/or services ("**Services**") Biocept shall provide to Institution, except as otherwise agreed in writing by the Parties. Details regarding such Research Support shall be outlined in a written study plan or protocol (as amended or supplemented, the "**Statement of Work**" or "**SOW**") applicable to such Research Support and Services to be provided, which shall be drafted and approved by the Parties. Each SOW shall be individually numbered, titled and signed by the Parties, and is incorporated herein by this reference. Each SOW shall set forth the specific number and type of samples to be tested, and the specific analyses to be performed. SOW BIOCEPT#01, a copy of which has been agreed upon by the Parties, shall apply for purposes of the initial Study.

1.2 This Agreement, together with each individual SOW (including any amendments or supplements), but separate and apart from any other SOW, shall constitute the entire agreement between the Parties for the performance of any Research Support defined in the applicable SOW. Any changes to a SOW shall be in writing, executed by the Parties, attached to the original SOW and incorporated therein.

1.3 The performance of any Research Support and Services shall be controlled by the terms and conditions of this Agreement (including any applicable SOW). Any terms and conditions in any purchase order, invoice, acknowledgment, confirmation or other document provided by either Party to the other Party that are different from or in addition to those set forth in this Agreement are expressly rejected and shall be of no effect, even if signed and returned. In the event of a conflict between the terms and conditions of this Agreement and any SOW, the terms and conditions of this Agreement shall control.

1.4 Biocept shall perform all Research Support and Services in compliance with the applicable SOW and with Biocept's standard practices including standards of good laboratory practices. Further, the Research Support and Services shall be performed by qualified personnel in a professional and competent manner, in compliance with all applicable laws, ordinances, rules regulations and guidelines of the United States Food and Drug Administration ("FDA") and other applicable regulatory authorities and Biocept shall provide data to Institution in a format suitable for use by the FDA if so required. Biocept shall at all times during the term of this Agreement and any SOW maintain all licenses as are necessary for the performance of the Research Support and Services.

1.5 Biocept shall prepare and deliver to Institution, in a timely fashion, all reports and other documentation required under a SOW. In addition, upon completion of any Research Support and Services, Biocept shall prepare and provide to Institution a final written report describing, in a scientific and detailed manner, its activities in the course of performing the Research Support and Services and the results obtained therefrom. Institution shall own and have unrestricted right to use the results generated in connection with the performance by Biocept of the Research Support under this Agreement other than Biocept Technology (defined in Section 10.2). Institution shall have the right to use any information contained in the summary of results and final written report other than Biocept Technology (defined in Section 10.2) for its research, education, and clinical purposes, for inclusion in grant applications, and as necessary to comply with any federal, state or local government laws or regulations.

2. STUDY SAMPLES

2.1 Institution shall provide Biocept with sufficient amounts of samples ("**Samples**"), typically human blood samples, to be tested. Biocept agrees to use the Samples only for the purposes set out in the SOW. Biocept shall not sell or otherwise distribute Samples to a third party for any purpose. This Agreement and the resulting transfer of Samples constitute a non-exclusive license to use the Samples solely for the research purposes described in the specific SOW under which the Samples are transferred. Biocept shall not use Samples for any products or processes for profit-making or commercial purposes. Upon termination or expiration of the Research Support and Services under a specific SOW, Biocept shall either arrange to return to Institution or destroy all unused Samples.

2.2 For each Sample provided to Biocept in connection with Biocept's performance under the SOW, Institution shall provide to Biocept in writing the associated patient staging data for the patient from whom such Sample was obtained, including, but not limited to, such

patient's diagnosis, TNM analysis, the status of such patient's cancer, biomarker analysis performed on the tumor with results, etc. (collectively, the "**Sample Information**"). Institution shall ensure that the informed consent of each patient that is the source of Samples or Sample Information is obtained in compliance with applicable federal, state and local laws, rules and regulations. Biocept will use, store, and disclose any Samples including (i) any blood, serum, urine, saliva, bone marrow or tissue sample/specimen and (ii) any tangible material isolated therefrom, including but not limited to any DNA, RNA and other biological substances it receives only in accordance with the uses set forth in the protocol or SOW and informed consent form signed by study subjects and in compliance with applicable law, and in any event will not use, store, or disclose any individually identifiable health information attached to or contained within the Sample in any manner that would violate the terms of Section 6.4 of this Agreement.

2.3 The Parties agree that Institution owns the Samples and the transfer of such materials to Biocept under the terms of this Agreement shall not affect Institution's ownership interest therein. Institution shall clearly mark and identify all Samples transferred to Biocept. All Samples will be maintained by Biocept so that such materials are readily identifiable. Further, the transfer of Samples to Biocept gives Biocept no rights in such material other than those specifically set forth in this Agreement. Biocept agrees to use the Samples solely for the Research Support and Services as specified in the SOW for which such materials are provided hereunder and shall not transfer, deliver or otherwise release such materials to a third party without the express prior written consent of Institution.

3. STUDY DIRECTOR

3.1 Biocept shall appoint a "**Study Director**" to be responsible for each SOW. The Study Director shall coordinate performance of the Research Support and Services related to a SOW with a representative designated by Institution, which representative shall have responsibility for coordinating performance of the SOW for Institution. The Study Director and Institution's representative shall be named in each SOW.

4. COMPLIANCE; RECORDS

4.1 Biocept shall perform Research Support and Services in accordance with the current state of the laboratory research art and the applicable SOW. Biocept shall comply with those government regulatory requirements, if and as specified within the applicable SOW, and as appropriate to the Research Support and Services. If Institution requires any special procedures to be undertaken by Biocept, such procedures shall be reviewed prior to the start of work and, if accepted, appended to the SOW.

4.2 Biocept shall maintain complete and accurate records, in appropriate detail for regulatory purposes, fully and properly reflecting all tests performed by it and the results thereof, including without limitation, such data and materials as are required to be maintained pursuit to any applicable law, ordinance, rule or regulation, and any applicable SOW ("**Records**").

4.3 Biocept shall maintain the Records for two (2) years or such other longer amount of time as is required by any law, ordinance, rule or regulation, or the applicable SOW. Upon Institution's request, and at Institution's expense, Biocept shall deliver to Institution all original Records, or if requested by Institution, certified or authenticated complete legible copies of such Records.

4.4 Access to all Records, for inspection and copying, shall be made available by Biocept to Institution upon reasonable prior written notice to Biocept during normal business hours; provided, however, that Biocept shall not be obligated to provide Institution with access to information not directly related to the Research Support or, except as expressly set forth in a SOW, access to any Biocept Technology (defined in Section 10.2) or any Confidential Information (defined below) of Biocept, and that Biocept may require that Institution's representatives conducting any such examination or inspection first execute a non-disclosure agreement.

5. LABORATORY VISITS

5.1 Institution's representative(s) shall have the right to conduct inspections, audits and investigations of Biocept's facilities, equipment, record-keeping procedures and records, and to discuss the same with appropriate representatives of Biocept from time to time to determine that any Research Support is being conducted in accordance with this Agreement. Institution shall provide reasonable prior written notice to Biocept, and may at reasonable times and with reasonable frequency, during normal business hours, observe the progress of a SOW and its associated Research Support and Services but in a manner not to unreasonably disturb or impede progress on such SOW. Biocept shall assist Institution in scheduling such visits, but reserves the right to schedule such visits as may be necessary so as not to compromise confidential or proprietary information of other Biocept customers who may have studies ongoing at Biocept at the time of any requested visit. Biocept shall promptly rectify any material noncompliance with the terms of the Agreement, including applicable protocol specifications and standards of good laboratory practices discovered during such inspections, audits and investigations of which Biocept is notified. Biocept shall submit to all inquiries, audits and inspections by the FDA and other applicable regulatory authorities relating specifically to the Research Support and Services. To the extent permitted by applicable law, Biocept shall promptly notify Institution upon receipt of notice of any inspection by the FDA or any applicable regulatory authorities relating specifically to the Research Support and Services provided hereunder, and Biocept shall promptly notify Institution of any findings of such regulatory authorities.

6. CONFIDENTIAL INFORMATION

6.1 "**Confidential Information**" of a Party shall mean all information disclosed or made available by such Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") in connection with this Agreement. Confidential Information of Biocept shall include, without limitation, all Biocept Technology (defined in Section 10.2) disclosed or made available by Biocept to Institution. Confidential Information of Institution shall include, without limitation, the Samples, Sample Information, and, notwithstanding the first sentence of this Section 6.1, all results. Confidential Information shall not include information that the Receiving Party can

demonstrate by competent evidence: (a) is now, or hereafter becomes, through no breach of this Agreement by the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its pre-existing written records; (c) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure; or (d) is hereafter independently developed by the Receiving Party without reference to or reliance upon Confidential Information and without any breach of this Agreement as evidenced by written records.

6.2 Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, the obligations of confidentiality survive for seven (7) years beyond the later of (i) expiration or earlier termination of this Agreement or (ii) the expiration or earlier termination of the SOW under which the Confidential Information was disclosed. The Receiving Party shall: (i) maintain the confidentiality of the Confidential Information; (ii) use Confidential Information only for the purposes expressly contemplated by this Agreement, or a SOW; (iii) treat Confidential Information as it would its own proprietary information, which in no event shall be less than a reasonable standard of care; (iv) take all reasonable precautions to prevent the disclosure of Confidential Information to a third party, and (v) disclose Confidential Information only to those employees who have a need to know such Confidential Information for the purposes expressly contemplated by this Agreement or a SOW, and who are subject to obligations to confidentiality substantially similar to those set forth herein. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, rule, regulation, government requirement or court order, provided that the Receiving Party shall provide reasonable prior written notice to the Disclosing Party of such required disclosure and, at the Disclosing Party's request and expense, shall cooperate with the Disclosing Party's efforts to contest such requirement, or to obtain a protective order covering, or other confidential treatment of, the Confidential Information required to be disclosed.

6.3 Institution shall comply in all material respects with all applicable federal, state and local laws and regulations regarding the privacy of individually identifiable health information (including its collection, use, storage, and disclosure), including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder, as may be amended from time to time. Biocept agrees to use, store, and disclose individually identifiable health information contained or provided with the Samples only for the purpose of the Research Support and Services, and for the purpose of complying with applicable law. Biocept will use all reasonable efforts to protect the privacy and security of any individually identifiable health information contained or provided with the Samples and will require its business partners to do so also. Biocept will not contact any patients whose Samples they have been are provided, unless permitted by the informed consent form. No other provision in this Agreement shall be construed to override the provisions of this Section 6.4

7. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

7.1 Each Party represents and warrants to the other the other Party that (i) it is duly organized, validly existing and in good standing under the laws of their respective state of

incorporation, organization or formation, (ii) it has full corporate or entity power and authority to execute, deliver and perform this Agreement, (iii) this Agreement is enforceable against it in accordance with its terms, and (iv) this Agreement does not conflict with, violate or constitute a breach or default under any other agreement of a material nature or amount to which it is a party or to which it or its assets are subject.

7.2 Except as expressly set forth in this Agreement, THE CONFIDENTIAL INFORMATION, SAMPLES, MATERIALS, WORK PRODUCT AND TECHNOLOGY MADE AVAILABLE BY EACH PARTY TO THE OTHER PARTY HEREUNDER ARE BEING SUPPLIED "AS IS', NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, SAFETY, OR FITNESS FOR A PARTICULAR PURPOSE. THE SAMPLES HAVE NOT BEEN ANALYZED OR TESTED BY INSTITUTION AND MAY, THEREFORE, CONTAIN VIRUSES, BACTERIA OR OTHER POTENTIALLY DANGEROUS COMPONENTS. BIOCEPT ACKNOWLEDGES AND ACCEPTS THE RISKS OF SUCH VIRUSES, BACTERIA OR OTHER POTENTIALLY DANGEROUS COMPONENTS.

8. INDEMNIFICATION

8.1 Each Party shall be solely responsible for such Party's (including its employees, agents and representatives) acts of negligence and/or reckless acts or omissions in the performance of their duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all such acts or omissions. Neither Party shall have any obligation to indemnify the other Party and/or their agents, employees and representatives.

8.2 Each Party shall maintain general liability and malpractice insurance (either on an indemnity or self-insured basis) in an amount not less than $1,000,000 per occurrence, $2,000,000 aggregate, and $2,000,000.00 per occurrence, $2,000,000.00 aggregate, respectively.

8.3 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, IN CONNECTION WITH THIS AGREEMENT.

9. USE OF NAMES

9.1 Except as is required by law or for disclosure by Institution of Biocept's support for a Study in publications, neither Party to this Agreement shall use the name of the other Party or of any staff member, employee, student, or agent of the other Party or any adaptation, acronym or name by which the other Party is commonly known, in any advertising, promotional or sales literature or in any publicity without the prior written approval of the Party or individual whose name is to be used.

10. INVENTIONS AND PATENTS

10.1 Institution will own and have unrestricted free right to use for all purposes the data and information generated or created for Institution in connection with the performance by Biocept of Research Support and Services under this Agreement or a SOW, other than Biocept Technology (defined in Section 10.2). Biocept shall provide notice to Institution of all inventions, technology and discoveries conceived, identified, developed and/or reduced to practice during the course of, and as a direct result of performing, any Research Support and Services or a SOW performed under this Agreement (each, a "**Institution Invention**"), within sixty (60) days of becoming aware of such Institution Invention; *provided, however,* that Institution Inventions shall exclude Biocept Technology, and Biocept shall have no obligation to disclose any Biocept Technology to Institution except as expressly contemplated by a SOW. All Institution Inventions shall be assigned to Institution by Biocept at Institution's request, provided Institution requests such assignment within six (6) months of notification of such invention or discovery. Biocept shall provide Institution with reasonable technical assistance as Institution may request and at Institution's cost to obtain patents on Institution Inventions. Biocept shall ensure that each of its employees, agents, consultants and subcontractors performing any part of the Research Support and Services is contractually obligated to assign all Institution Inventions to Biocept so that Biocept can comply with its obligations under this Section 10.1. Institution hereby grants to Biocept a perpetual, irrevocable, non-exclusive worldwide, royalty-free, fully paid license to use Institution Inventions for its internal research purposes, and otherwise in compliance with Section 6. Neither anything contained herein nor the delivery of any of the Samples or Confidential Information to Biocept shall be deemed to grant to Biocept any right or licenses under any patents or patent applications or under any know-how, technology or inventions of Institution.

10.2 Notwithstanding anything to the contrary in this Agreement, all discoveries and inventions that are conceived or made by Biocept in the course of performing any Research Support and Services or a SOW that relate to microfluidic devices, rare cell capture and analysis technology, and related inventions, processes, know-how, trade secrets, computer software including image analysis and other methodological innovations, whether developed before or after the Effective Date of a SOW (collectively, "**Biocept Technology**"), shall be the sole and exclusive confidential property of Biocept.

10.3 It is expressly agreed that neither Party transfers by operation of this Agreement to the other Party any patent right, copyright, or other proprietary right either Party owns as of the Effective Date, except as expressly set forth in this Agreement.

11. PUBLICATION OF DATA

11.1 By Institution. Institution shall list Biocept's name, and individual Biocept personnel as authors as appropriate, on any scientific manuscript or abstract that is submitted for publication or presentation that includes information that has been either directly or indirectly

derived from the Research Support and Services on the Samples and related to the specific SOW under which the Samples were provided and the Research Support and Services were performed under this Agreement and SOW. Biocept shall be notified of such planned inclusion of its, and its personnel's, name on scientific manuscripts or abstracts, provide permission for such inclusion, and be permitted to review and comment upon any publication or abstract on which its name or personnel are listed prior to submission.

11.2 By Biocept. In compliance with Section 6, Biocept shall not undertake publication of the results of any Research Support and Service without first receiving written permission from Institution. Publication of material relating to Biocept Technology, products or services shall not identify Institution or contain data encompassing Confidential Information belonging to Institution or derived from Samples provided by Institution without first receiving written permission from Institution.

12. TERM AND TERMINATION

12.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and, unless sooner terminated by mutual agreement or pursuant to any other provision of this Agreement, shall terminate five (5) years from the Effective Date.

12.2 Termination of Agreement by Either Party. Either Party may terminate this Agreement for any material breach by the other Party, providing that the terminating Party gives the breaching Party written notice of such breach, and the breach remains uncured after the expiration of thirty (30) days after such written notice was given. In addition, either Party, in its sole discretion, may elect to terminate this Agreement by giving at least thirty (30) days advance written notice thereof to the other Party; *provided, however,* that any SOW ongoing at such time shall be completed pursuant to the terms of this Agreement as if otherwise in effect. A termination of a particular SOW by either Party pursuant to the provisions of Section 12.3 or Section 12.4 below shall not, by itself, have the effect of or be deemed a termination of this Agreement in its entirety.

12.3 Termination of a SOW by Institution. Institution may, in its sole discretion, elect to terminate a SOW being performed under this Agreement by providing written notice thereof to Biocept, whereupon the following shall occur:

a) Biocept shall terminate the work as soon as is reasonably possible, and in any event within ten (10) days of receipt of the notice; and

b) Biocept shall invoice Institution for, and Institution shall promptly pay, all charges up to the effective date of termination, and any Research Support and Services performed within ten (10) days of receipt of notice, such work intended to efficiently terminate the SOW.

12.4 Termination of a SOW by Biocept. In the event of non-payment by Institution of any amount due and owing to Biocept pursuant to the Cost Schedule for a SOW as appropriately invoiced, and upon written notice thereof to Institution, Biocept may (in its sole discretion and in addition to any other remedies that Biocept may have at law or in equity) terminate such SOW in

any reasonable manner (and stop work on other Research Support and Services being performed for Institution, if any, without any adverse effect on Biocept's rights in connection with such Research Support and Services or SOW).

12.5 Effect of Termination or Expiration. Termination or expiration of this Agreement for any reason shall not relieve the Parties of any obligation accruing prior thereto and shall be without prejudice to the rights and remedies of either Party with respect to any antecedent breach of any of the provisions of this Agreement. In the event of termination of this Agreement prior to the completion of Research Support specified in any SOW, Biocept shall be paid for all work completed through the effective date of termination in accordance with this Agreement, and such SOW(s), including reasonable and documented out-of-pocket expenses, and unless this Agreement is terminated by Biocept for convenience or Institution for default, any non-cancellable commitments incurred by Biocept in accordance with this Agreement and such SOW. Except as set forth in the preceding sentence, Biocept shall promptly refund to Institution any prepaid amounts not earned by Biocept prior to the effective date of such termination. Sections 2, 4, 5, 8, 6.4, 8, 9, 10, 11 and 15.2 of this Agreement shall survive expiration or any termination hereof.

13. NOTICES

13.1 All notices given under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission (receipt confirmed), overnight express courier (such as FedEx) or certified mail, return receipt requested, to the Parties at the addresses set forth on the signature page of this Agreement, or such other addresses as the Parties may designate in writing. A notice shall be deemed delivered and effective (i) if sent by facsimile transmission (receipt confirmed), on the business day following the date such facsimile transmission was sent and confirmed, (ii) if sent by overnight express courier, on the business day delivery is confirmed by signature of the receiving party, and (iii) if sent by certified mail, on the second business day following mailing.

14. PAYMENTS TO BIOCEPT PURSUANT TO COST SCHEDULE

14.1 Institution and Biocept shall agree upon a budget for all Research Support and Services to be provided under a SOW by Biocept, which shall specify the fees for individual Samples or a Study. The schedule will be attached to the individual SOW (the "Cost Schedule"), which is hereby incorporated in this Agreement by this reference. Costs specified in the SOW are estimated prior to commencement of a Study, and Institution shall pay Biocept the amounts indicated there, as Research Support and Services are provided. The aggregate fees payable by Institution to Biocept for Research Support and Services shall not exceed the budget for such Research Support as in the SOW, regardless of the number of Samples or transactions processed, unless Institution shall expressly consent in writing to an increase in such budget, although Biocept shall only be responsible for testing the number of Samples indicated in the SOW without such written modification.

14.2 Once each calendar month, Biocept shall submit to Institution a single written invoice detailing amounts due to Biocept for performance of Research Support and Services as detailed in each SOW.

14.3 Institution shall pay Biocept invoiced amounts within forty-five (45) days of receipt of each invoice. Notwithstanding the foregoing, Biocept shall not be entitled to payment for invoiced amounts in excess of the costs for Research Support and Services specified in a SOW unless Biocept has obtained prior written authorization from Institution for such excess cost. Material amendments, deletions or additions to the SOW requested by Institution or by Biocept shall be the subject of separate additional cost estimates and require Institution's and Biocept's written acceptance thereto.

14.4 If any Research Support and Services are improperly performed, or Samples are unusable due to a delay caused by Biocept or as the result of an error, omission, or other wrongdoing or negligence by Biocept in performance of the Research Support and Services, Biocept will re-run the affected Service or portion of the work as promptly as possible at no cost to Institution, provided that Institution sends replacement Samples for testing.

14.5 Test results will be forwarded to Institution or its designee no later than fourteen (14) days after delivery of a Sample to Biocept, unless otherwise agreed by Biocept.

14.6 Biocept will not employ subcontractors to perform the laboratory services contemplated hereby without Institution's prior written consent.

15. MISCELLANEOUS PROVISIONS

15.1 Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld); provided, however, that either Party may assign this Agreement and its rights and obligations hereunder without the other Party's consent in connection with the transfer or sale to a third party of all or substantially all of the business of such Party to which this Agreement relates, whether by merger, sale of stock, sale of assets or otherwise. The rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties, and the name of a Party appearing herein will be deemed to include the name of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this section. Any assignment not in accordance with this Agreement shall be void.

15.2 Applicable Law. The Parties agree to remain silent on applicable law.

15.3 Independent Contractor. Nothing herein shall create any association, partnership, joint venture, fiduciary duty or the relation of principal and agent between the Parties hereto, it being understood that each Party is acting as an independent contractor, and neither Party shall have the authority to bind the other or the other's representatives in any way.

15.5 Remedies. The Parties acknowledge that breach of this Agreement or use of information provided by a Party contrary to the provisions of this Agreement may cause irreparable harm for which damages at law may not be an adequate remedy. Either Party may seek injunctive or other equitable relief from any court of competent jurisdiction as may be necessary to protect the rights or property of that Party

15.6 Force Majeure. Except for the obligation to pay money, a Party shall be excused from performing its obligations under this Agreement if its performance is delayed or prevented by any cause beyond such Party's reasonable control, including, but not limited to, fire, flood, storm, tornado, earthquake, civil commotion, legal prohibition, strike, disease, Act of God, explosion, war, hostilities, vandalism or any catastrophe (a "**Force Majeure Event**"). Performance shall be excused only to the extent of and during the continuance of the Force Majeure Event. Any deadline or time for performance specified in the SOW which falls due during or subsequent to the occurrence of a Force Majeure Event shall be automatically extended for a period of time equal to the period of such Force Majeure Event. Any Party claiming disability of performance due to a Force Majeure Event shall promptly notify the other Party in writing of such Force Majeure Event. If Biocept is rendered practicably incapable of completing a Study or SOW within the time schedule required by Institution as a result of a Force Majeure Event, Biocept shall endeavor to conclude such Study or SOW in such a manner as to secure all possible data and information relevant to the objective of such Study or SOW without engaging in substantial further work. Under such circumstances, neither Party shall have any claims against the other except with respect to Institution's liability to pay all charges accrued or earned up to the date of such termination (on a prorated basis, if appropriate).

15.7 Entire Agreement; Amendments; Severability; Headings. This Agreement represents the entire understanding and agreement between Biocept and Institution with respect to the subject matter hereof, and shall control over any previous or contemporaneous agreements, oral or written, between Institution and Biocept. Changes and additional provisions to this Agreement shall be binding on the Parties only if mutually agreed to, laid down in writing and signed effectively by the Parties. If any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable to any extent in any context, this Agreement shall nevertheless be enforced to the fullest extent allowed by law, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The headings of the paragraphs herein are for convenience only, and they shall not be of any effect in construing the contents of the respective paragraphs.

15.8 Neutral Construction. Each Party acknowledges that in the negotiation and drafting of this Agreement they have been represented by and have relied upon the advice of counsel of their choice. The Parties affirm that they and their counsel have had a substantial role in such negotiation and drafting and, therefore, the Parties agree that this Agreement shall be deemed to have been drafted by all the Parties hereto and the rule of construction to the effect that any contract ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibit hereto.

15.9 Waiver. No delay on the part of either Party hereto in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any

power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right. No waiver of this Agreement or any provision hereof shall be enforceable against any Party hereto unless in writing, signed by the Party against whom such waiver is claimed, and shall be limited solely to the one event. Each Party's rights and remedies hereunder are cumulative and not exclusive.

15.10 Third-Party Beneficiaries. The Parties agree that there are no third-party beneficiaries of any kind to this Agreement.

15.11 Signatures; Counterparts. Each Party agrees that a facsimile of its signature printed by a receiving fax machine or an electronic copy of its signature stored in a PDF software application format shall be regarded as an original signature. Each Party further agrees that this Agreement may be executed in any number of counterparts, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument.

IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND, the Parties have executed and delivered this Agreement by their duly authorized representatives, to be effective as of July 9, 2012.

Signatures on the following page

Biocept, Inc.
5810 Nancy Ridge Drive, Suite 150
San Diego, California 92121
Phone: (858) 320-8200
Fax: (858) 320-

By: /s/ Michael J. Dunn
Name: Michael J. Dunn
Title: SVP of Corporate Development

Dana Farber Partners Cancer Care, Inc.
450 Brookline Avenue, BP319
Boston, Massachusetts 02115
Phone: 617-582-7717
Fax: 617-632-4452

By: /s/ Moira Hayes Waligory
Name: Moira Hayes Waligory, RN, JD
Title: Clin. Res. Contracts Assoc.

Statement of Work – Sample

This Statement of Work ("SOW"), dated and effective [Month, Date, Year], submitted in connection with the Master Laboratory Services Agreement by and between Biocept and Dana Farber Partners Cancer Care, Inc. dated July 9, ("Agreement"), is hereby agreed to by the Parties.

Pursuant to Section 2 of the Agreement, this SOW (including any attachments hereto) shall be governed by the terms and conditions of the Agreement and, if applicable, any modifications to the Agreement agreed to by the Parties and set forth in this SOW under the section below, entitled "Modifications to Agreement." Any modifications shall apply only to this SOW, and not to any previous or subsequent SOWs, unless expressly stated otherwise in such other SOW.

Modifications to Agreement
INSERT MODIFICATIONS:

Study
Biocept shall conduct the following testing for Dana Farber Partners Cancer Care, Inc.:

Study Title and Scope	Total Cost
XXX	XXX

Cost Schedule/Budget
Dana Farber Partners Cancer Care, Inc. shall pay Biocept for the SOW as follows:

Study Directors
Biocept:
Dana Farber Partners Cancer Care, Inc.:

Any invoices provided pursuant to this SOW shall be submitted to Dana Farber Partners Cancer Care, Inc., 450 Brookline Avenue, BP317, Boston, MA 02215 in accordance with the terms and conditions set forth in the Agreement and directed to the attention of: James Huse.

Biocept, Inc.

By: _____

Dana Farber Partners Cancer Care, Inc.

By: _____

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

Exhibit 10.16

BIOCEPT, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of December 22, 2008 (the "***Effective Date***") by and among **BIOCEPT, INC.,** a California corporation (the "***Company***"), and The Reiss Family GST Exempt Marital Deduction Trust (the "***Investor***").

RECITALS

WHEREAS, in exchange for a loan from the Investor, the Company will issue a secured convertible promissory note and a warrant to purchase shares of the Company's Preferred Stock (the "***Preferred Stock***") to the Investor.

AGREEMENT

NOW THEREFORE, the parties to this Agreement, for good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed, hereby agree as follows:

1. LOAN AMOUNT; ISSUANCE OF NOTE AND WARRANT.

1.1 Loan Amount; Issuance of Note. Subject to the terms of this Agreement, the Investor agrees to lend to the Company $1,400,000.00 (the "***Loan Amount***") against the issuance and delivery by the Company to the Investor of a Secured Convertible Promissory Note for the Loan Amount in the form attached hereto as **Exhibit A** (the ***"Note"***).

1.2 Issuance of Warrant. Subject to the terms of this Agreement, the Investor agrees to purchase from the Company, and the Company agrees to issue to the Investor at the Closing (as defined below), a Warrant in the form attached hereto as **Exhibit B** (the "***Warrant***") to purchase the number of shares of Preferred Stock set forth in the Warrant (the ***"Warrant Shares"***).

1.3 Security Interest. The payment obligations evidenced by the Note shall be secured by a security interest as described in the Note and pursuant to a Security Agreement in the form attached hereto as **Exhibit C** (the "***Security Agreement***").

2. CLOSING; DELIVERY.

2.1 Closing. The closing of the issuance of the Note and Warrant (the ***"Closing"***) shall be held on the date hereof at the offices of Cooley Godward Kronish LLP, 4401 Eastgate Mall, San Diego, California 92121, or at such other time and place as the Company and the Investor agree (the "***Closing Date***").

2.2 Delivery. At the Closing, (a) the Investor will deliver to the Company, by check or wire transfer, funds in the amount of the Loan Amount and (b) the Company and the Investor shall deliver to each other a duly executed (i) Note for the Loan Amount, (ii) Warrant to purchase the Warrant Shares, and (iii) Security Agreement.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to the Investor as follows:

3.1 Organization and Standing; Articles and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business, properties, or financial condition.

3.2 Corporate Power. The Company will have at the Closing Date all requisite legal and corporate power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement.

3.3 Authorization. All corporate action on the part of the Company, its directors and its shareholders necessary for the authorization, execution, delivery and performance of this Agreement, the Note, the Warrant and the Security Agreement (collectively, the "***Loan Documents***") by the Company and the performance of the Company's obligations hereunder and thereunder, including the issuance and delivery of the Note and Warrant and the reservation of the equity securities issuable upon conversion of the Note and exercise of the Warrant (collectively, the ***"Conversion Shares"*** and, together with the Note and the Warrant, the ***"Securities"***) has been taken or will be taken prior to the issuance of such Securities, as applicable. The Loan Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies and (c) with respect to rights to indemnity, subject to federal and state securities laws. The Securities, when issued in compliance with the provisions of the Loan Documents, will be validly issued, fully paid and nonassessable. The issuance of the Securities pursuant to the provisions of this Agreement will not violate any preemptive rights or rights of first refusal granted by the Company that will not be validly complied with or waived. The Securities, when issued in compliance with the provisions of the Loan Documents, will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor through no action of the Company; *provided, however*, that the Securities may be subject to restrictions on transfer under the Company's Bylaws and state and/or federal securities laws.

3.4 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of the Loan Documents, the offer, sale or issuance of the Securities, or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at the Closing, except for notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis.

3.5 Offering. Assuming the accuracy of the representations and warranties of the Investor contained in Section 4 hereof, the offer, issue, and sale of the Note and Warrant are and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the ***"Securities Act"***), and have been registered or qualified (or are exempt from registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws.

4. REPRESENTATIONS AND WARRANTIES OF THE INVESTOR.

The Investor hereby represents and warrants to the Company as of the Closing Date as follows:

4.1 Requisite Power and Authority. The Investor has all necessary power and authority to execute and deliver this Agreement and the Loan Documents and to carry out their provisions. All action on the Investor's part required for the lawful execution and delivery of this Agreement and the Loan Documents has been taken. Upon their execution and delivery, this Agreement and the Loan Documents will be valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Purchase for Own Account. The Investor represents that it is acquiring the Securities solely for its own account and beneficial interest for investment only, and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same, and does not presently have reason to anticipate a change in such intention.

4.3 Information and Sophistication. The Investor (i) acknowledges that it has received all the information that it or its qualified purchaser representative has requested from the Company and that it considers necessary or appropriate for deciding whether to acquire the Securities, (ii) represents that it or its qualified purchaser representative has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the accuracy of the information given the Investor and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment. Without limiting the foregoing, the Investor is relying on its own independent investigation of the Company and on its own respective professional advisors in entering into this Agreement and consummating the transactions described herein.

4.4 Ability to Bear Economic Risk. The Investor acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

4.5 Further Limitations on Disposition. Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b)(i) The transferee has agreed in writing to be bound by the terms of this Agreement, (ii) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (iii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances. The Company will not require the transferee to be bound by the terms of this Agreement after the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (the "Initial Offering").

(c) Notwithstanding the provisions of subsections (a) and (b) above, no such restriction shall apply to a transfer by the Investor to an entity affiliated by common control (or other related entity) with the Investor (each such transferee, an "Affiliate" of the Investor); *provided* that in each case the transferee will agree in writing to be subject to the terms of this Agreement to the same extent as if the transferee were an original Investor hereunder.

(d) Each certificate evidencing the Securities to be issued to the Investor shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under the Company's Bylaws and applicable state securities laws):

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(e) The Company shall be obligated to reissue promptly unlegended certificates representing any Securities held by the Investor at the request of the Investor if the Company has completed its Initial Offering and the Investor has obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be disposed of without registration, qualification and legend.

(f) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate state securities authority authorizing such removal.

4.6 Accredited Investor Status. The Investor is an accredited investor or is represented by a purchaser representative within the meaning of Regulation D under the Securities Act.

5. FURTHER ASSURANCES. The Company and the Investor agree and covenant that at any time and from time to time it will promptly execute and deliver to each other such further instruments and documents and take such further action as each of the parties hereto may reasonably require in order to carry out the full intent and purpose of this Agreement.

6. MISCELLANEOUS.

6.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

6.3 Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be as effective as original signatures.

6.4 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the transactions contemplated hereby.

6.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 Notices. All notices required or permitted hereunder or under the Note or the Warrant shall be in writing (including facsimile, electronic mail or similar electronic transmissions), and shall be deemed effectively given: (a) when received by the addressee, if delivered by hand, facsimile, electronic mail or similar form of electronic transmission, (b) five days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) to the Company at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: Stephen Coutts, Ph.D., Facsimile No: (858) 320-8261 or (ii) to the Investor at the address shown on **Exhibit A**, or at such other address as such party may designate by written notice to the other party.

6.7 Amendment; Waiver. Except as otherwise set forth herein, no amendment or waiver of any provision of this Agreement shall be effective unless in writing and approved by the Company and the holders of at least a majority in interest of the outstanding Securities.

6.8 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

6.9 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the Note or the Warrant, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, the Note or the Warrant, or any waiver on such party's part of any provisions or conditions of this Agreement, the Note or the Warrant must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies under this Agreement, the Note or the Warrant, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

6.10 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.11 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF

THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION OR IN THE ABSENCE OF AN EXEMPTION FROM SUCH QUALIFICATION IS UNLAWFUL. PRIOR TO ACCEPTANCE OF SUCH CONSIDERATION BY THE COMPANY, THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED OR AN EXEMPTION FROM SUCH QUALIFICATION BEING AVAILABLE.

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IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

Biocept, Inc.,
a California corporation

By: /s/ Stephen Coutts
Stephen Coutts, Ph.D.
President and Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST:

By: /s/ Claire Reiss

Name: Claire Reiss

Title: Trustee

LIST OF EXHIBITS

Exhibit A: Form of Secured Convertible Promissory Note

Exhibit B: Form of Warrant

Exhibit C: Security Agreement

EXHIBIT A

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

EXHIBIT B

FORM OF WARRANT

EXHIBIT C

FORM OF SECURITY AGREEMENT

THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "*ACT*") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

SECURED CONVERTIBLE PROMISSORY NOTE

$1,400,000.00 December 22, 2008
San Diego, California

FOR VALUE RECEIVED, BIOCEPT, INC., a California corporation (the "***Company***"), hereby promises to pay to the order of **THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST** (the ***"Investor"***), the principal sum of $1,400,000.00 (the ***"Loan Amount"***), together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below.

This Note is issued pursuant to the Note and Warrant Purchase Agreement of even date herewith among the Company and the Investor (the ***"Purchase Agreement"***), and is referred to in the Security Agreement of even date herewith among the Company and the Secured Party set forth therein (the ***"Security Agreement"***). Additional rights and obligations of the Investor are set forth in the Security Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings given them in the Purchase Agreement.

1. Maturity Date. Upon the date of written demand of the Secured Party (as defined in the Security Agreement) at any time on or after the earliest to occur of: (a) the date 48 months after the date hereof; (b) the closing date of an Acquisition or Asset Transfer (each as defined in the Company's Amended and Restated Articles of Incorporation (the ***"Articles"***)) (except that an Acquisition or Asset Transfer shall not include a reincorporation of the Company solely to effect a change of domicile of the Company); or (c) the closing date of an issuance and sale of shares of Common Stock of the Company in the Company's first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the ***"Maturity Date"***), the entire outstanding principal balance and all unpaid accrued interest hereof shall become fully due and payable to the Investor.

2. Interest. Interest shall accrue on the outstanding principal amount hereof from the date of this Note until payment or conversion in full, which interest shall be payable at the variable rate of interest per annum, published as the "prime lending rate" in the Wall Street Journal. Interest shall be due and payable on the Maturity Date, and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

3. Payment. Unless the indebtedness outstanding under this Note is converted in accordance with Section 5 hereof, payment shall be made in lawful money of the United States to the Investor at the Company's principal offices or, at the option of the Investor, at such other place in the United States as Investor shall have designated by written notice to the Company. All payments shall be applied first to accrued interest and thereafter to principal.

4. No Prepayment. Prepayment by the Company of principal or accrued interest outstanding under this Note may be made only with the prior written consent of the Investor.

5. Conversion.

5.1 Automatic Conversion. Upon the closing of a Qualifying Financing (as defined below) before the Maturity Date, all unpaid principal and accrued interest outstanding under this Note (the "***Conversion Amount***") as of the date thereof shall be converted into that number of shares of the Preferred Stock sold by the Company in the Qualifying Financing as is equal to the Conversion Amount divided by the per share purchase price of the Preferred Stock sold in the Qualifying Financing (the "***Qualifying Financing Price***") and on the other terms and conditions provided to investors in the Qualifying Financing. "***Qualifying Financing***" shall mean the first equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $20,000,000 in cumulative gross proceeds, including conversion of the Loan Amount made hereunder and interest hereon.

5.2 Optional Conversion. If the Company closes an equity financing before the Maturity Date involving the sale by the Company of its Preferred Stock (a ***"Next Equity Financing"***), then the Investor may, at any time prior to the payment or conversion of the Conversion Amount in full, upon written notice to the Company, elect to convert the Conversion Amount into that number of shares of the Preferred Stock sold by the Company in the Next Equity Financing as is equal to the Conversion Amount divided by the per share purchase price of the Preferred Stock sold in the Next Equity Financing (the "***Next Equity Financing Price***") and on the other terms and conditions provided to investors in the Next Equity Financing.

6. Termination of Rights. All rights with respect to this Note and the Security Agreement shall terminate upon a payment or conversion of the Conversion Amount in full, whether or not this Note has been surrendered.

7. Default. Each of the following events shall be an "***Event of Default***" hereunder:

(a) The Company commits a material breach of the representations, warranties or covenants in the Purchase Agreement or the Security Agreement which is not cured within 5 calendar days after notice thereof from the Investor;

(b) The Company files a petition or action for relief under any bankruptcy, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any action in furtherance of any of the foregoing; or

(c) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

Upon the occurrence of an Event of Default, all unpaid principal, accrued interest and other amounts owing hereunder shall, at the option of the Investor, and, in the case of an Event of Default pursuant to **(b)** or **(c)** above, automatically, be immediately due, payable and collectible by the Investor pursuant to applicable law. Subject to the provisions hereof and of the Security Agreement, the Investor shall have all rights and may exercise any remedies available to it under law, successively or concurrently.

8. Fractional Shares. No fractional shares shall be issued upon conversion of this Note. In lieu of any fractional shares to which the Investor would otherwise be entitled, after combining any fractional interests of the Investor into as many whole shares as is possible, the Investor shall be paid in cash an amount equal to the product resulting from multiplying such fraction by the then current Qualifying Financing Price or Next Equity Financing Price, as applicable, of one share of Preferred Stock.

9. No Impairment. Except and to the extent as waived or consented to by the Investor in accordance with Section 14 below, the Company will not, by amendment of the Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of any debt or equity securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note in order to protect the rights of Investor hereunder against impairment.

10. Highest Lawful Rate. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges, and other payments or rights which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), the Company shall not be obligated to pay, and the Investor shall not be entitled to charge, collect, receive, reserve, or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. ***"Highest Lawful Rate"*** means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received, or collected by the Investor in connection with this Note under applicable law. In accordance with this section, any amounts received in excess of the Highest Lawful Rate shall be applied towards the prepayment of principal then outstanding.

11. Waiver. Subject to any other provision herein or in the Loan Documents, the Company hereby waives demand, notice, presentment, protest and notice of dishonor.

12. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflict of laws principles.

13. Successors and Assigns. Neither this Note nor any rights hereunder shall be transferable by the Investor without the prior written consent of the Company, except to an Affiliate of the Investor that agrees in writing to be subject to the terms of this Note to the same extent as if such Affiliate were an original Investor hereunder. Subject to the foregoing, the provisions of this Note shall inure to the benefit of and be binding on any successor to the Company and shall extend to any holder hereof.

14. Amendment; Waiver. Any term of this Note may be amended or waived with the written consent of the Company and the Investor.

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

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IN WITNESS WHEREOF, the Company has caused this **SECURED CONVERTIBLE PROMISSORY NOTE** to be executed by its duly authorized officer as of the date first written above.

BIOCEPT, INC.

By: /s/ Stephen Coutts
Stephen Coutts, Ph.D.
President and Chief Executive Officer

Acknowledged and Accepted:

THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST

By: /s/ Claire Reiss

Printed Name: Claire Reiss

Title: Trustee

Exhibit 10.16.1.1

AMENDMENT OF
SECURED CONVERTIBLE PROMISSORY NOTE

This Amendment of Secured Convertible Promissory Note is entered into as of July 15, 2013 between Biocept, Inc., a California corporation ("Biocept") and The Reiss Family GST Exempt Marital Deduction Trust (the "Trust") with respect to the Secured Convertible Promissory Note dated December 22, 2008 in the original principal amount of $1,400,000 issued by Biocept to the Trust (the "Note").

The Note is amended by adding a new Section 5.1.1 thereto, to read in full as follows:

"5.1.1 Effective immediately before the closing of any bona fide firm commitment initial public offering by the Company (or Delaware reincorporation successor of the Company), the Conversion Amount shall automatically be converted into that number of (unregistered) shares of common stock of the Company (or, as the case may be, of the Company's Delaware reincorporation successor) as is equal to the Conversion Amount divided by the public offering price per share to the public of such common stock in such initial public offering."

Except as expressly set forth herein, the Note remains unchanged and in full force and effect.

BIOCEPT, INC.

By: /s/ William Kachioff

Title: CFO

THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST

By: /s/ Claire Reiss, Trustee
Claire Reiss, Trustee

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE HOLDER AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

WARRANT TO PURCHASE PREFERRED STOCK

No. PSW-1 **December 22, 2008**

THIS CERTIFIES THAT, for value received, **THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST**, or its assigns (the "***Holder***"), is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC**., a California corporation (the "***Company***"), up to such number and series of fully paid and nonassessable shares of Preferred Stock of the Company (or such other number, class and kind of shares as may be issuable hereunder pursuant to Section 2 below) (the ***"Exercise Shares"***) as set forth herein, during the Exercise Period (as defined below).

This Warrant is issued pursuant to the Note and Warrant Purchase Agreement of even date herewith among the Company and the Holder (the ***"Purchase Agreement"***). Pursuant to the Purchase Agreement, the Company also issued Holder a Secured Convertible Promissory Note of even date herewith (the ***"Note"***) in the principal amount of $1,400,000.00. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Note.

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "*Exercise Period*" shall mean the period commencing on the date of the Next Equity Financing (as defined below) and ending five (5) years from the date of the Next Equity Financing, unless sooner terminated as provided below.

(b) *"Exercise Price"* shall mean the per share price of the securities sold at the Next Equity Financing.

(c) "***Next Equity Financing"*** shall mean the first equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $2,000,000 in cumulative gross proceeds, including conversion of any outstanding indebtedness of the Company, including the Note.

(d) *"Warrant Coverage Amount"* shall mean the Holder's Loan Amount (as defined in the Purchase Agreement) multiplied by .10.

2. NUMBER OF SHARES. The number of Exercise Shares for which this Warrant may be exercisable shall be determined by dividing the Warrant Coverage Amount by the Exercise Price.

3. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

4. COVENANTS OF THE COMPANY.

4.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes.

4.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

5. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Preferred Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under the Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of the Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however*, that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 8 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

6. ADJUSTMENTS FOR DILUTING ISSUANCES. The Exercise Price and the number of Exercise Shares issuable upon exercise of this Warrant or, if the Exercise Shares are Preferred Stock, the number of shares of common stock issuable upon conversion of the Exercise Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Amended and Restated Articles of Incorporation, as amended from time to time, as if the Exercise Shares were issued and outstanding on and as of the date of any such required adjustment. Any adjustment to the conversion rate of the Exercise Shares issuable upon the exercise of this Warrant effected prior to any exercise of this Warrant shall apply to any Exercise Shares thereafter issued pursuant to the terms hereof.

7. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

8. EARLY TERMINATION. In the event of, at any time during the Exercise Period, an initial public offering of securities of the Company registered under the Securities Act, or any capital reorganization, or any reclassification of the capital stock of the Company (other than a change in par value or from par value to no par value or no par value to par value or as a result of

a stock dividend or subdivision, split-up or combination of shares), or an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another state), the Company shall provide to the Holder 20 days advance written notice of such public offering, reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets, and this Warrant shall terminate unless exercised prior to the date such public offering is closed or the occurrence of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets.

9. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing underwriter(s) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in connection with the Company's initial public offering (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 9. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. NO SHAREHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

11. TRANSFER OF WARRANT. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

12. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

13. NOTICES, ETC. All notices required or permitted hereunder 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 telex or facsimile if sent during normal business hours of the recipient, if not,

then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company and the Holder at the address set forth on the signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

14. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

15. COUNTERPARTS. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. GOVERNING LAW. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

17. AMENDMENT; WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Holder.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: /s/ Stephen Coutts

Name: Stephen Coutts

Title: President & CEO

Address: 5810 Nancy Ridge Dr.
San Diego, CA 92121

Acknowledged and accepted:

THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST

By: /s/ Claire Reiss

Name: Claire Reiss

Title: Trustee

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the "***Company***") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____ _____
(Date) (Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

Exhibit 10.17

AMENDED AND RESTATED LOAN AGREEMENT

BETWEEN

GOODMAN CO. LTD.

AND

BIOCEPT, INC.

WHEREAS, Biocept, Inc., a California corporation ("Borrower") and Goodman Co. Ltd. ("Lender") are parties to that certain Amended and Restated Loan Agreement dated January 29, 2009 (the "Prior Loan Agreement"), which amended and restated that certain Amended and Restated Loan Agreement dated June 26, 2007 (the "First Amended Loan Agreement"), which amended and restated that certain Loan Agreement dated April 20, 2005;

WHEREAS, the Lender has agreed to amend the terms of the Prior Loan Agreement effective on the Effective Date (as defined below) in order to extend the Maturity Date (as defined below), amend the timing of payments made by Borrower to Lender, and to provide for such other amendments as provided for herein; and

WHEREAS, in order to document these amendments, Borrower and Lender desire to amend and restate in its entirety the Prior Loan Agreement and to accept the rights and obligations created pursuant hereto in lieu of the rights and obligations granted them under the Prior Loan Agreement.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties to the Prior Loan Agreement hereby agree that the Prior Loan Agreement shall be superseded and replaced in its entirety by this Amended and Restated Loan Agreement, and the parties hereto further agree as follows:

1. Promise to Pay. Borrower hereby unconditionally promises to pay to the order of Lender in lawful money of the United States of America and in immediately available funds, the principal sum of Three Million Dollars ($3,000,000.00) (the "Loan"), together with accrued and unpaid interest thereon, due and payable as set forth below. Once repaid, amounts under the Loan may not be reborrowed.

2. Funding. On April 20, 2005 (the "Closing Date"), Lender credited by wire transfer the full principal amount of the Loan at such time to Borrower's account with such bank as Borrower specified in writing to Lender.

3. Interest.

(a) From the date of execution of the First Amended Loan Agreement through January 31, 2009, interest accrued in the amount of and was paid in accordance with the First Amended Loan Agreement.

(b) From February 1, 2009 through April 30, 2010, interest began accruing on all amounts outstanding under the Loan at the rate of the variable rate of interest, per annum, published as the "prime lending rate" in the Wall Street Journal (the "Prior Interest Obligation").

The accrued Prior Interest Obligation was due and payable quarterly in arrears on the last business day of each three-month quarter beginning February 1, 2009 through April 30, 2010 and was calculated on the basis of a 365 day year for the actual number of days elapsed.

(c) On the Effective Date, Borrower shall pay Lender all unpaid interest which has accrued under the Loan pursuant to Section 3(a) and 3(b) above.

(d) Following April 30, 2010, interest began accruing on all amounts outstanding under the Loan at the fixed rate of 3.25% per annum (the "Revised Interest Obligation"). The accrued Revised Interest Obligation shall be due and payable quarterly in arrears on the last business day of each three-month quarter beginning May 1, 2010 and shall be calculated on the basis of a 365 day year for the actual number of days elapsed.

4. Effective Date Balloon Payment. On the Effective Date, Borrower shall pay Lender $750,000, which such amount shall be credited towards the principal balance outstanding under the Loan, such that immediately following the Effective Date, the principal sum of $2,250,000 shall be outstanding under the Loan.

5. Quarterly Principal Payments. Beginning May 1, 2010, Borrower shall pay Lender the applicable Quarterly Principal Payment, which such amount shall be due and payable quarterly in advance on the first business day of each three-month quarter beginning on May 1, 2010, which such amount shall be credited towards the principal balance outstanding under the Loan; *provided*, *however*, that the parties hereby agree that the Quarterly Principal Payment otherwise due and payable on May 3, 2010 shall be paid to Lender on the Effective Date. The "Quarterly Principal Payment" shall be an amount equal to:

(a) for payments due and payable during the period between May 1, 2010 through December 31, 2011, the Quarterly Principal Payment shall be an amount equal to $45,000;

(b) for payments due and payable during the period between January 1, 2012 through December 31, 2013, the Quarterly Principal Payment shall be an amount equal to $90,000; and

(c) for payments due and payable during the period between January 1, 2014 through the Maturity Date, the Quarterly Principal Payment shall be an amount equal to $150,000.

6. Maturity. On the earliest to occur of (a) the tenth anniversary of the Closing Date, (b) the date immediately prior to Borrower's closing of an Acquisition or Asset Transfer (each as defined in Borrower's Amended and Restated Articles of Incorporation), or (c) the first business day following the closing of an equity financing transaction involving the sale by the Borrower of its equity securities, or securities that are otherwise convertible into equity securities of the Borrower, in which the Borrower receives an aggregate of at least $25,000,000 in cumulative gross proceeds, any principal and interest amounts that remain outstanding under the Loan shall be fully due and payable (the "Maturity Date").

7. Prepayment. Borrower at any time may prepay any principal amounts in whole or in part, together with the interest on the amount being prepaid up to the date of such payment, without penalty or premium.

8. Place of Payment. Unless another place of payment shall be specified in writing by Lender, all amounts payable hereunder shall be paid by wire transfer to Lender's account with RESONA BANK, LIMITED IMAIKE BRANCH as provided below:

RESONA BANK, LIMITED IMAIKE BRANCH
5-1-5 IMAIKE, CHIKUSA-KU, NAGOYA, JAPAN

Telegraphic Address: N/A

ABA Routing Number (SWIFT Address): DIWAJPT

Beneficiary Name: GOODMAN CO., LTD.
108 Fujigaoka, Meito-ku, Nagoya 465-0032 Japan

Account Number: 103571

Telephone: +81(52)774-4350

9. Application of Payments. Except as otherwise provided for in Section 4 and Section 5, payments under this Amended and Restated Loan Agreement shall be applied first to accrued interest, and thereafter to the outstanding principal balance hereof.

10. Preferred Stock Warrant. In exchange for entering into the Prior Loan Agreement, Borrower issued Lender a Warrant to Purchase Preferred Stock, exercisable for 1,000,000 shares of the Borrower's Series AA Preferred Stock.

11. Security Agreement. In exchange for entering into this Amended and Restated Loan Agreement, Borrower and Lender shall enter into a Subordinated Security Agreement, substantially in the form attached hereto as **Exhibit A** (the "Security Agreement"), pursuant to which any principal and interest amounts that remain outstanding under the Loan shall be secured by a security interest in the assets of the Borrower as provided for in the Security Agreement.

12. Binding Arbitration. Any dispute regarding this Amended and Restated Loan Agreement shall be resolved by binding arbitration. Any such arbitration shall be conducted under the auspices of the International Arbitration Association and such proceedings shall be conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

13. Choice of Law. This Amended and Restated Loan Agreement shall be construed in accordance with the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Loan Agreement to be executed on May 18, 2010 (the "Effective Date").

BORROWER	LENDER
BIOCEPT, INC.	**GOODMAN CO. LTD.**
By: /s/ S. M. Coutts	By: /s/ Takehito Yogo
Name: Stephen M. Coutts	Name: Takehito Yogo
Title: President & CEO	Title: President & CEO

[SIGNATURE PAGE TO AMENDED AND RESTATED LOAN AGREEMENT]

Exhibit 10.17.1

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

BIOCEPT, INC.

WARRANT TO PURCHASE PREFERRED STOCK

No. PSW-2 **January 21, 2009**

THIS CERTIFIES THAT, for value received, **GOODMAN CO. LTD.**, or its assigns (the "***Holder***"), is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC.**, a California corporation (the "***Company***"), up to 1,000,000 fully paid and nonassessable shares of the securities sold at the Next Equity Financing (defined below) (the ***"Exercise Shares"***) as set forth herein (subject to adjustment as provided for herein), during the Exercise Period (as defined below). This Warrant is issued pursuant to the Amended and Restated Loan Agreement of even date herewith among the Company and the Holder.

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "Exercise Period" shall mean the period commencing on the date of the Next Equity Financing and ending five (5) years from the date of the Next Equity Financing, unless sooner terminated as provided below.

(b) "Exercise Price" shall mean the per share price of the securities sold at the Next Equity Financing.

(c) "Next Equity Financing" shall mean the first equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $2,000,000 in cumulative gross proceeds, including conversion of any outstanding indebtedness of the Company.

2. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

3. COVENANTS OF THE COMPANY.

3.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes.

3.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

4. REPRESENTATIONS OF HOLDER.

4.1 The Holder represents and warrants that it is acquiring this Warrant solely for its account for investment and not with a view to or for sale or distribution of said Warrant or any part thereof.

4.2 By reason of its, or of its management's, business or financial experience, the Holder represents and warrants that it has the capacity to protect its own interests in connection with the acquisition of this Warrant.

4.3 The Holder represents and warrants that it is an "accredited investor" within the meaning of Regulation D under the Securities Act.

4.4 The Holder recognizes that this Warrant and the Exercise Shares are not registered under the Securities Act and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The Holder recognizes that the Company currently has no intention to register this Warrant or the Exercise Shares.

4.5 The Holder is aware that neither this Warrant nor the Exercise Shares may be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met, including, among other things, the existence of a public market for the Exercise Shares, the availability of certain current public information about the Company, the resale following the required holding period under Rule 144 and the number of Exercise Shares being sold during any three month period not exceeding specified limitations.

4.6 The Holder further agrees not to make any disposition of all or any part of this Warrant in any event unless and until:

(a) The Company shall have received a letter secured by the Holder from the Securities and Exchange Commission stating that no action will be recommended with respect to the proposed disposition;

(b) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement; or

(c) The Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Company, the Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of this Warrant under the Securities Act or any applicable state securities laws.

5. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Preferred Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under this Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of this Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had this Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however*, that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 7 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

6. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

7. EARLY TERMINATION. In the event of, at any time during the Exercise Period, an initial public offering of securities of the Company registered under the Securities Act, or any capital reorganization, or any reclassification of the capital stock of the Company (other than a change in par value or from par value to no par value or no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another state), the Company shall provide to the Holder 20 days advance written notice of such public offering, reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets, and this Warrant shall terminate unless exercised prior to the date such public offering is closed or the occurrence of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets.

8. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing underwriter(s) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in connection with the Company's initial public offering (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 9. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

9. NO SHAREHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

10. TRANSFER OF WARRANT. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

11. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

12. NOTICES, ETC. All notices required or permitted hereunder 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 telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company and the Holder at the address set forth on the signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

13. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

14. COUNTERPARTS. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. GOVERNING LAW. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

16. AMENDMENT; WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Holder.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: /s/ S. M. Coutts

Name: Stephen Coutts

Title: President & CEO

Address: 5810 Nancy Ridge Dr., #150
San Diego, CA 92121

Acknowledged and accepted:

GOODMAN CO. LTD.

By: /s/ Akira Yamamoto

Name: Akira Yamamoto

Title: President & CEO

Address: 108 Fujigaoka, Meito-Ku
Nagoya-Shi, Japan 465-0032

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the "***Company***") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____
(Date)

_____
(Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

Exhibit 10.17.2

LOAN CONVERSION AGREEMENT

THIS LOAN CONVERSION AGREEMENT (this ***"Agreement"***) is made and entered into as of June 28, 2013, by and between **BIOCEPT, INC.**, a California corporation (the ***"Company"***), and Goodman Co. Ltd (the ***"Lender"***).

RECITALS

WHEREAS, the Company and the Lender previously entered into that certain Amended and Restated Loan Agreement, dated as of May 18, 2010 (the ***"Loan Agreement"***), pursuant to which the Company has promised to pay to the Lender the principal sum of $3,000,000, together with accrued and unpaid interest thereon (collectively, the ***"Loan"***);

WHEREAS, in connection with the execution of the Loan Agreement, the Company and the Lender entered into that certain Subordinated Security Agreement (the ***"Security Agreement"***), pursuant to which the Company granted the Lender a security interest in certain assets of the Company as described in the Security Agreement; and

WHEREAS, the Company and the Lender now desire to convert the Loan into shares of Series A Preferred Stock of the Company (***"Series A Preferred"***) on the terms and conditions set forth in this Agreement, and after such conversion, the Loan, the Loan Agreement and the Security Agreement shall be cancelled.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other valid consideration, the receipt and sufficiency of which the hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT

1. Conversion of Loan. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Loan (the ***"Outstanding Balance"***) shall be automatically converted into 3,777,324 shares of Series A Preferred (the ***"Conversion Shares"***). The parties hereto agree that upon such conversion of the Outstanding Balance, all amounts owed under the Loan Agreement shall be deemed paid in full, the Loan and the Loan Agreement shall be terminated and cancelled in full and no party shall have any further obligations or commitments with respect to the Loan or the Loan Agreement except as expressly provided for under this Agreement. Promptly following the date hereof the Company shall issue to the Lender the Conversion Shares. Other than the Lender's right to receive the Conversion Shares, the Lender hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Loan and the Loan Agreement, including, without limitation, any rights arising from any default or event of default under the Loan Agreement.

2. Security Agreement. Effective immediately, the Security Agreement shall be terminated, and no party shall have any further obligations or commitments with respect thereto, and the security interests granted in and all liens created by the Security Agreement shall be

discharged and released in full.

3. Lender Representations. The Lender hereby represents and warrants to the Company as follows:

(a) The Lender is the sole beneficial owner of the Loan and the Lender has not sold, assigned, transferred, endorsed, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan or otherwise, or disposed of in any manner the Loan or any interest therein, other than in connection with the cancellation of the Loan and the Loan Agreement as contemplated herein.

(b) The Lender is acquiring the Conversion Shares solely for its own account for investment purposes only and not with a view to any sale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the ***"Securities Act"***). The Lender has no pre-existing agreement, arrangement or understanding, formal or informal, with any person to sell, distribute or transfer all or any part of such Conversion Shares.

(c) The Lender understands that (i) the Conversion Shares have not been registered under the Securities Act or any state securities law by reason of their issuance in a transaction which is exempt from the registration requirements of the Securities Act and state securities laws, and that such securities must be held indefinitely unless they are subsequently registered under the Securities Act and such laws or a subsequent disposition thereof is exempt from registration under the applicable provisions of the Securities Act and such laws and (ii) the certificates evidencing such securities will contain a legend to the foregoing effect.

(d) The Lender has sufficient knowledge and expertise in business and financial matters so as to enable it to analyze and evaluate the merits and risks of acquiring the Conversion Shares pursuant to the terms of this Agreement.

(e) The Lender is an accredited investor within the meaning of Regulation D under the Securities Act.

(f) The Lender has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Lender has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(g) The Lender has the requisite power and authority to enter into this Agreement and to agree to the conversion of the Loan under this Agreement.

4. Market Stand-Off Agreement. The Lender hereby agrees that the Lender shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by the Lender (other than those included in the registration) during (i) the 180-day period following the effective date of the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities

Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation), and (ii) the 90-day period following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation); provided, that, with respect to (i) and (ii) above, all officers and directors of the Company are bound by and have entered into similar agreements. The obligations described in this Section 4 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future.

5. Miscellaneous.

5.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California in all respects as such laws are applied to agreements among California residents entered into and to be performed entirely within California, without reference to conflicts of laws or principles thereof. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Diego, California.

5.2 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Facsimile signatures shall be as effective as original signatures.

5.3 Further Assurances. Each party hereto agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other actions as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

5.4 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Conversion Shares from time to time; *provided*, *however*, that prior to the receipt by the Company of adequate written notice of the transfer of any Conversion Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such Conversion Shares in its records as the absolute owner and holder of such Conversion Shares for all purposes.

5.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.6 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this **LOAN CONVERSION AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.

By: /s/ David F. Hale

Name: David F. Hale
Title: Executive Chairman

LENDER:

GOODMAN CO. LTD.

By: /s/ Takehito Yogo

Name: Takehito Yogo
Title: President & CEO

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

BIOCEPT, INC.

WARRANT TO PURCHASE COMMON STOCK

No. CSW-10 **July 31, 2013**

THIS CERTIFIES THAT, for value received, Goodman Co. Ltd. or its assigns (collectively, the "***Holder***"), is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC.**, a Delaware corporation (the "***Company***"), up to such number of fully paid and nonassessable shares of Common Stock of the Company as set forth herein, during the Exercise Period (as defined below).

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "***Exercise Period***" shall mean the period commencing on the date of the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Company's Common Stock for the account of the Company (the "***IPO***") and ending two (2) years thereafter, unless sooner terminated as provided below.

(b) "***Exercise Price***" shall mean the per share purchase price of the Company's Common Stock sold in the IPO.

(c) "***Exercise Shares***" shall mean the Company's Common Stock.

2. NUMBER OF SHARES. The number of Exercise Shares for up to which this Warrant may be exercisable is 333,333, subject to adjustment as provided in Section 6 below.

3. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

4. REPRESENTATIONS OF THE HOLDER.

4.1 Acquisition of Warrant for Personal Account. The Holder represents and warrants that it is acquiring this Warrant and the Exercise Shares solely for its account for investment and not with a view to or for sale or distribution of said Warrant or Exercise Shares or any part thereof. The Holder also represents that the entire legal and beneficial interests of this Warrant and Exercise Shares the Holder is acquiring is being acquired for, and will be held for, its account only.

4.2 Information and Sophistication. Holder hereby: (i) acknowledges that it has received all the information it has requested from the Company and it considers necessary or appropriate for deciding whether to acquire this Warrant and the Exercise Shares, (ii) represents that it has had an opportunity to ask questions and receive answers from the Company regarding the financial condition of the Company and the risks associated with the acquisition of this Warrant and the Exercise Shares and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment.

4.3 Ability to Bear Economic Risk. Holder acknowledges that investment in the securities of the Company involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Exercise Shares for an indefinite period of time and to suffer a complete loss of its investment.

4.4 Securities Are Not Registered.

(a) The Holder understands that this Warrant and the Exercise Shares have not been registered under the Securities Act on the basis that no distribution or public offering of the stock of the Company is to be effected. The Holder realizes that the basis for the exemption may not be present if, notwithstanding its representations, the Holder has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. The Holder has no such present intention.

(b) The Holder recognizes that this Warrant and the Exercise Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The Holder recognizes that the Company has no obligation to register this Warrant or the Exercise Shares, or to comply with any exemption from such registration.

4.5 Disposition of Warrant and Exercise Shares.

(a) The Holder further agrees not to make any disposition of all or any part of this Warrant or Exercise Shares in any event unless and until:

(i) The Company shall have received a letter secured by the Holder from the Securities and Exchange Commission stating that no action will be recommended to the Commission with respect to the proposed disposition;

(ii) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement; or

(iii) The Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Company, the Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, for the Holder to the effect that such disposition will not require registration of this Warrant or Exercise Shares under the Securities Act or any applicable state securities laws. The Company agrees that it will not require an opinion of counsel with respect to transactions under Rule 144 of the Securities Act, except in unusual circumstances.

(b) The Holder understands and agrees that all certificates evidencing the shares to be issued to the Holder may bear the following legend:

> THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

4.6 Accredited Investor Status. The Holder is an accredited investor or is represented by a purchaser representative within the meaning of Regulation D under the Securities Act.

5. COVENANTS OF THE COMPANY.

5.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this

Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes.

5.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

6. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Common Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under the Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of the Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however*, that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 8 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

7. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

8. EARLY TERMINATION. In the event of, at any time during the Exercise Period, any capital reorganization, or any reclassification of the capital stock of the Company (other than a change in par value or from par value to no par value or no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another state), the Company shall provide to the Holder 20 days advance written notice of such

reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets, and this Warrant shall terminate unless exercised prior to the occurrence of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets.

9. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing underwriter(s) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in connection with the IPO (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 9. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. NO SHAREHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

11. TRANSFER OF WARRANT. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

12. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

13. NOTICES, ETC. All notices required or permitted hereunder 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 facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company and the Holder at the address set forth on the

signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

14. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

15. COUNTERPARTS. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. GOVERNING LAW. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

17. AMENDMENT; WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Holder.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: /s/ David F. Hale

Name: David F. Hale

Title: Executive Chairman

Address: 5810 Nancy Ridge Drive
San Diego, California 92121

Acknowledged and accepted:

GOODMAN CO. LTD.

By: _____

Name: _____

Title: _____

Address: _____

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the "***Company***") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____
(Date)

_____
(Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's Signature: _____

Holder's Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

BIOCEPT, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of February 1, 2011 (the "***Effective Date***") by and among **BIOCEPT, INC.,** a California corporation (the "***Company***") and the Investors listed on the Schedule of Investors attached hereto (each an "***Investor*** and collectively, the "***Investors***").

RECITALS

WHEREAS, in exchange for a series of loans in an aggregate amount equal to $5,000,000 from the Investors, the Company will issue secured convertible promissory notes and a warrant to purchase shares of the Company's Preferred Stock (the "***Preferred Stock***") to the Investors.

AGREEMENT

NOW THEREFORE, the parties to this Agreement, for good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed, hereby agree as follows:

1. LOAN AMOUNT; ISSUANCE OF NOTES AND WARRANT.

1.1 Loan Amount; Issuance of Notes. Subject to the terms of this Agreement, the Investors agree, jointly and severally, to lend to the Company at each Closing (as defined below) the amount set forth on the Schedule of Investors attached hereto (each, a "***Loan Amount***" and collectively the "***Total Loan Amount***" or "***Loan***") against the issuance and delivery by the Company of convertible promissory notes for such amounts, in substantially the form attached hereto as **Exhibit A** (each, a "***Note***" and collectively, the "***Notes***").

1.2 Issuance of Warrants. Subject to the terms of this Agreement, the Investors participating in each Closing agree to purchase from the Company, and the Company agrees to issue to such Investors, a Warrant in the form attached hereto as **Exhibit B** (the "***Warrant***") to purchase the number of shares of Preferred Stock set forth in the Warrant (the "***Warrant Shares***").

1.3 Security Interest. The payment obligations evidenced by the Notes shall be secured by a security interest as described in the Notes and pursuant to a Subordinated Security Agreement in the form attached hereto as **Exhibit C** (the ***"Security Agreement")***.

2. CLOSINGS; DELIVERY.

2.1 Initial Closing. The initial closing of the purchase and sale of the Notes (the "***Initial Closing***") shall be held on the date hereof at the offices of Cooley LLP, 4401 Eastgate Mall, San Diego, California 92121, or at such other time and place as the Company and the Investors mutually agree.

(a) Deliveries by the Company. At the Initial Closing, the Company shall deliver (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note") (b) a duly executed Warrant to purchase the Warrant Shares, and (c) the duly executed Security Agreement.

(b) Deliveries by Investors. At the Initial Closing, the Investor participating in the Initial Closing shall deliver to the Company funds, by check or wire transfer, in the amount set forth opposite such Investor's name on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note."

2.2 Second Closing. On March 1, 2011, the second closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Second Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Second Closing***") shall take place.

(a) Deliveries by the Company. At the Second Closing, the Company shall deliver to each Investor participating in the Second Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Second Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Second Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Second Closing Principal Amount of Note."

2.3 Third Closing. On April 1, 2011, the third closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Third Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Third Closing***") shall take place.

(a) Deliveries by the Company. At the Third Closing, the Company shall deliver to each Investor participating in the Third Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Third Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Third Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Third Closing Principal Amount of Note."

2.4 Fourth Closing. On May 2, 2011, the fourth closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Fourth Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Fourth Closing***") shall take place.

(a) Deliveries by the Company. At the Fourth Closing, the Company shall deliver to each Investor participating in the Fourth Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Fourth Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Fourth Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Fourth Closing Principal Amount of Note."

2.5 Fifth Closing. On June 1, 2011, the fifth closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Fifth Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Fifth Closing***" and each of the Fifth Closing, Fourth Closing, Third Closing, Second Closing and Initial Closing, a "***Closing***") shall take place.

(a) Deliveries by the Company. At the Fifth Closing, the Company shall deliver to each Investor participating in the Fifth Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Fifth Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Fifth Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Fifth Closing Principal Amount of Note."

The issuance of the Notes and the Warrants to the Investors at each Closing, as applicable, shall be made on the terms and conditions set forth in this Agreement, provided that (i) the representations and warranties of the Company set forth in Section 3 hereof shall speak as of the date of such Closing and (ii) the representations and warranties of each Investor participating in such Closing set forth in Section 4 hereof shall speak as of the date of such Closing.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to each Investor, as of each Closing, as applicable, as follows:

3.1 Organization and Standing; Articles and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which

the failure to so qualify would have a material adverse effect on its business, properties, or financial condition.

3.2 Corporate Power. The Company will have at each Closing all requisite legal and corporate power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement.

3.3 Authorization. All corporate action on the part of the Company, its directors and its shareholders necessary for the authorization, execution, delivery and performance of this Agreement, the Notes, the Warrant and the Security Agreement (collectively, the "***Loan Documents***") by the Company and the performance of the Company's obligations hereunder and thereunder, including the issuance and delivery of the Notes and Warrant and the reservation of the equity securities issuable upon conversion of the Notes and exercise of the Warrant (collectively, the "***Conversion Shares***" and, together with the Notes and the Warrants, the "***Securities***") has been taken or will be taken prior to the issuance of such Securities, as applicable. The Loan Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies and (c) with respect to rights to indemnity, subject to federal and state securities laws. The Securities, when issued in compliance with the provisions of the Loan Documents, will be validly issued, fully paid and nonassessable. The issuance of the Securities pursuant to the provisions of this Agreement will not violate any preemptive rights or rights of first refusal granted by the Company that will not be validly complied with or waived. The Securities, when issued in compliance with the provisions of the Loan Documents, will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor through no action of the Company; *provided, however*, that the Securities may be subject to restrictions on transfer under (i) that certain Investor Rights Agreement, by and among the Company and the other signatories thereto, dated August 4, 2010 (the "***Investor Rights Agreement***"), (ii) the Company's Bylaws and (iii) state and/or federal securities laws.

3.4 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of the Loan Documents, the offer, sale or issuance of the Securities, or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at the Initial Closing and at each subsequent Closing, except for notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis.

3.5 Offering. Assuming the accuracy of the representations and warranties of the Investor contained in Section 4 hereof, the offer, issue, and sale of the Notes and the Warrant are and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "***Securities Act***"), and have been registered or qualified (or are exempt from registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws.

4. REPRESENTATIONS AND WARRANTIES OF THE INVESTOR.

Each Investor hereby represents and warrants to the Company as of each Closing in which such Investor participates, as applicable, as follows:

4.1 Requisite Power and Authority. The Investor has all necessary power and authority to execute and deliver this Agreement and the Loan Documents and to carry out their provisions. All action on the Investor's part required for the lawful execution and delivery of this Agreement and the Loan Documents has been taken. Upon their execution and delivery, this Agreement and the Loan Documents will be valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Purchase for Own Account. The Investor represents that it is acquiring the Securities solely for its own account and beneficial interest for investment only, and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same, and does not presently have reason to anticipate a change in such intention.

4.3 Information and Sophistication. The Investor (i) acknowledges that it has received all the information that it or its qualified purchaser representative has requested from the Company and that it considers necessary or appropriate for deciding whether to acquire the Securities, (ii) represents that it or its qualified purchaser representative has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the accuracy of the information given the Investor and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment. Without limiting the foregoing, the Investor is relying on its own independent investigation of the Company and on its own respective professional advisors in entering into this Agreement and consummating the transactions described herein.

4.4 Ability to Bear Economic Risk. The Investor acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

4.5 Further Limitations on Disposition. Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) (i) The transferee has agreed in writing to be bound by the terms of this Agreement, (ii) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (iii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances. The Company will not require the transferee to be bound by the terms of this Agreement after the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (the "***Initial Offering***").

(c) Notwithstanding the provisions of subsections (a) and (b) above, no such restriction shall apply to a transfer by the Investor to an entity affiliated by common control (or other related entity) with the Investor (each such transferee, an "***Affiliate***" of the Investor); *provided* that in each case the transferee will agree in writing to be subject to the terms of this Agreement to the same extent as if the transferee were an original Investor hereunder.

(d) Each certificate evidencing the Securities to be issued to the Investor shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under (i) the Investor Rights Agreement, (ii) the Company's Bylaws and (iii) applicable state securities laws):

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE ***"ACT"***) AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.
>
> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(e) The Company shall be obligated to reissue promptly unlegended certificates representing any Securities held by the Investor at the request of the Investor if the Company has completed its Initial Offering and the Investor has obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be disposed of without registration, qualification and legend.

(f) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate state securities authority authorizing such removal.

4.6 Accredited Investor Status. The Investor is an accredited investor or is represented by a purchaser representative within the meaning of Regulation D under the Securities Act.

5. FURTHER ASSURANCES. The Company and each Investor agree and covenant that at any time and from time to time it will promptly execute and deliver to each other such further instruments and documents and take such further action as each of the parties hereto may reasonably require in order to carry out the full intent and purpose of this Agreement.

6. MISCELLANEOUS.

6.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

6.3 Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be as effective as original signatures.

6.4 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the transactions contemplated hereby.

6.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 Notices. All notices required or permitted hereunder or under the Notes or the Warrant shall be in writing (including facsimile, electronic mail or similar electronic transmissions), and shall be deemed effectively given: (a) when received by the addressee, if delivered by hand, facsimile, electronic mail or similar form of electronic transmission, (b) five days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) to the Company at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: Meg McGilley, Facsimile No: (858) 320-8261 or (ii) to the Investors at the address shown on the Schedule of

Investors, or at such other address as such party may designate by written notice to the other party.

6.7 Amendment; Waiver. Except as otherwise set forth herein, no amendment or waiver of any provision of this Agreement shall be effective unless in writing and approved by the Company and the holders of at least a majority in interest of the outstanding Securities.

6.8 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

6.9 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the Notes or the Warrant, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, the Notes or the Warrant, or any waiver on such party's part of any provisions or conditions of this Agreement, the Notes or the Warrant must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies under this Agreement, the Notes or the Warrant, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

6.10 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.11 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION OR IN THE ABSENCE OF AN EXEMPTION FROM SUCH QUALIFICATION IS UNLAWFUL. PRIOR TO ACCEPTANCE OF SUCH CONSIDERATION BY THE COMPANY, THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED OR AN EXEMPTION FROM SUCH QUALIFICATION BEING AVAILABLE.

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IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.,
a California corporation

By: /s/ Faye Wilson
Faye Wilson
Lead Director

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

THE REISS FAMILY GST EX MARITAL DEDUCTION TRUST UDT 12/19/1988:

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

THE REISS FAMILY SURVIVOR'S TRUST UDT DATED DECEMBER 19, 1988:

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

SCHEDULE OF INVESTORS

INVESTOR NAME	INITIAL CLOSING PRINCIPAL AMOUNT OF NOTE	SECOND CLOSING PRINCIPAL AMOUNT OF NOTE	THIRD CLOSING PRINCIPAL AMOUNT OF NOTE	FOURTH CLOSING PRINCIPAL AMOUNT OF NOTE	FIFTH CLOSING PRINCIPAL AMOUNT OF NOTE
The Reiss Family GST Exempt Marital Deduction Trust	$1,000,000	To be determined	To be determined	To be determined	To be determined
Address: 9675 La Jolla Farms Road La Jolla, CA 92037					
The Reiss Family Survivor's Trust UDT dated December 19, 1988	$0	To be determined	To be determined	To be determined	To be determined
Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$0	To be determined	To be determined	To be determined	To be determined
TOTAL:	$1,000,000	$1,000,000[1]	$1,000,000[1]	$1,000,000[1]	$1,000,000[1]

[1] $1,000,000 in the aggregate to be lent by The Reiss Family GST Exempt Marital Deduction Trust and/or The Reiss Family Survivor's Trust UDT dated December 19, 1988.

EXHIBIT A

FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

EXHIBIT B

FORM OF WARRANT

EXHIBIT C

FORM OF SECURITY AGREEMENT

Exhibit 10.18.1

BIOCEPT, INC.

FIRST AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT

This **FIRST AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT** (this ***"Amendment"***), amending the Note and Warrant Purchase Agreement by and among **BIOCEPT, INC.**, a California corporation (the "***Company***") and the investors listed on the Schedule of Investors attached thereto (the ***"Investors"***) dated as of February 1, 2011 (the ***"Purchase Agreement"***), is entered into as of July 1, 2011 by and among the Company and the Investors. Capitalized terms used herein which are not defined herein shall have the definition ascribed to them in the Purchase Agreement.

RECITALS

WHEREAS, the Company and the Investors have previously entered into the Purchase Agreement;

WHEREAS, Section 6.7 of the Purchase Agreement provides that the Purchase Agreement may be amended with the written consent of (i) the Company and (ii) the holders of at least a majority in interest of the outstanding Securities (the "***Required Holders****");* and

WHEREAS, the undersigned constitute (i) the Company and (ii) the Required Holders.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants contained herein and in the Purchase Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals**. The reference to "$5,000,000" in the "whereas" clause contained in the recitals of the Purchase Agreement is hereby amended and restated such that it shall be "$6,000,000."

2. **Section 2.5 of the Purchase Agreement**. The first sentence of Section 2.5 of the Purchase Agreement shall be amended and restated to read in its entirety as follows:

> "On June 1, 2011, the fifth closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Fifth Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Fifth Closing***") shall take place."

3. **Addition of New Section 2.6 of the Purchase Agreement.** A new Section 2.6 shall be added to the Purchase Agreement and shall read in its entirety as follows:

> "**2.6 Sixth Closing**. On June 30, 2011, the sixth closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Sixth Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Sixth Closing***" and each of the Sixth Closing,

Fifth Closing, Fourth Closing, Third Closing, Second Closing and Initial Closing, a "***Closing***") shall take place.

(a) Deliveries by the Company. At the Sixth Closing, the Company shall deliver to each Investor participating in the Sixth Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Sixth Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Sixth Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Sixth Closing Principal Amount of Note."

4. **Section 6.6 of the Purchase Agreement**. The last sentence of Section 6.6 of the Purchase Agreement shall be amended and restated to read in its entirety as follows:

"All communications shall be sent (i) to the Company at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: Chuck Covington, Facsimile No: (858) 320-8261 or (ii) to the Investors at the address shown on the Schedule of Investors, or at such other address as such party may designate by written notice to the other party."

5. **Schedule of Investors attached to the Purchase Agreement**. The Schedule of Investors attached to the Purchase Agreement is hereby amended and restated to read in its entirety as set forth on Exhibit A hereto.

6. **Effect of Amendment**. Except as expressly modified by this Amendment, the Purchase Agreement shall remain unmodified and in full force and effect.

7. **Governing Law**. This Amendment shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

8. **Counterparts**. This Amendment may be executed in any number of counterparts and signatures delivered by facsimile, each of which shall be deemed an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the parties have executed this **FIRST AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY

BIOCEPT, INC.
a California corporation

By: /s/ David F. Hale

Name: David F. Hale

Title: Executive Chairman

INVESTORS:

Reiss Family GST Ex Marital Deduction Trust UDT 12/19/1988

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

The Reiss Family Survivor's Trust UDT dated December 19, 1988:

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

EXHIBIT A

SCHEDULE OF INVESTORS

INVESTOR NAME	INITIAL CLOSING PRINCIPAL AMOUNT OF NOTE	SECOND CLOSING PRINCIPAL AMOUNT OF NOTE	THIRD CLOSING PRINCIPAL AMOUNT OF NOTE	FOURTH CLOSING PRINCIPAL AMOUNT OF NOTE	FIFTH CLOSING PRINCIPAL AMOUNT OF NOTE	SIXTH CLOSING PRINCIPAL AMOUNT OF NOTE
The Reiss Family GST Exempt Marital Deduction Trust Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$1,000,000	$0	$1,000,000	$0	$1,000,000	To be determined
The Reiss Family Survivor's Trust UDT dated December 19, 1988 Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$0	$1,000,000	$0	$1,000,000	$0	To be determined
TOTAL:	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000[1]

[1] $1,000,000 in the aggregate to be lent by The Reiss Family GST Exempt Marital Deduction Trust and/or The Reiss Family Survivor's Trust UDT dated December 19, 1988.

Exhibit 10.18.2

BIOCEPT, INC.

SECOND AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT

This **SECOND AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT** (this ***"Amendment"***), amending the Note and Warrant Purchase Agreement by and among **BIOCEPT, INC.**, a California corporation (the "***Company***"), and the investors listed on the Schedule of Investors attached thereto (the ***"Investors"***), dated as of February 1, 2011, and amended as of July 1, 2011 (as amended, the ***"Purchase Agreement"***), is entered into as of August 1, 2011 by and among the Company and the Investors. Capitalized terms used herein which are not defined herein shall have the definition ascribed to them in the Purchase Agreement.

RECITALS

WHEREAS, the Company and the Investors have previously entered into the Purchase Agreement;

WHEREAS, Section 6.7 of the Purchase Agreement provides that the Purchase Agreement may be amended with the written consent of (i) the Company and (ii) the holders of at least a majority in interest of the outstanding Securities (the "***Required Holders***"); and

WHEREAS, the undersigned constitute (i) the Company and (ii) the Required Holders.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants contained herein and in the Purchase Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals**. The reference to "$6,000,000" in the "whereas" clause contained in the recitals of the Purchase Agreement is hereby amended and restated such that it shall be "$12,000,000."

2. **Section 2.6 of the Purchase Agreement**. The first sentence of Section 2.6 of the Purchase Agreement shall be amended and restated to read in its entirety as follows:

> "On July 1, 2011, the sixth closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Sixth Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Sixth Closing***") shall take place."

3. **Addition of New Section 2.7 of the Purchase Agreement.** A new Section 2.7 shall be added to the Purchase Agreement and shall read in its entirety as follows:

> "**2.7 Seventh Closing**. On August 1, 2011, the seventh closing of the purchase and sale of the Notes in the principal amounts set forth opposite each Investor's name under the heading "Seventh Closing Principal Amount of Note" on the Schedule of Investors attached hereto (the "***Seventh Closing***") shall take place.

(a) Deliveries by the Company. At the Seventh Closing, the Company shall deliver to each Investor participating in the Seventh Closing (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Seventh Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Seventh Closing, the Investors shall, in the aggregate, deliver to the Company funds, by check or wire transfer, in the amount set forth on the Schedule of Investors attached hereto under the heading "Seventh Closing Principal Amount of Note."

4. **Addition of New Section 2.8 of the Purchase Agreement.** A new Section 2.8 shall be added to the Purchase Agreement and shall read in its entirety as follows:

"2.8 **Additional Closings.** At any time within six months following the Seventh Closing, the Company may sell up to the balance of the authorized Notes and Warrants not sold at the Seventh Closing, Sixth Closing, Fifth Closing, Fourth Closing, Third Closing, Second Closing and Initial Closing to such persons as may be approved by the Chief Executive Officer of the Company (the "***Additional Investors***"). With respect to any such additional closing (each an "***Additional Closing***" and each of the Additional Closings, Seventh Closing, Sixth Closing, Fifth Closing, Fourth Closing, Third Closing, Second Closing and Initial Closing, a "***Closing***") all such sales at such Additional Closing shall be made on the terms and conditions set forth in this Agreement. This Agreement, including without limitation, the Schedule of Investors, may be unilaterally amended by the Company without the consent of the Investors to include any Additional Investors. Any Notes and Warrants sold pursuant to this Section 2.8 shall be deemed to be "Notes" and "Warrants" for all purposes under this Agreement, and any Additional Investors thereof shall be deemed to be "Investors" for all purposes under this Agreement.

(a) Deliveries by the Company. At each Additional Closing, the Company shall deliver to each Additional Investor participating in such Additional Closing (a) a duly executed Note (in the principal amount of such Additional Investor's Loan Amount) and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At each Additional Closing, each Additional Investor participating in such Additional Closing shall deliver to the Company funds, by check or wire transfer, in the amount of such Additional Investor's portion of the Loan Amount."

5. **Schedule of Investors attached to the Purchase Agreement**. The Schedule of Investors attached to the Purchase Agreement is hereby amended and restated to read in its entirety as set forth on **Exhibit A** hereto.

6. **Effect of Amendment**. Except as expressly modified by this Amendment, the Purchase Agreement shall remain unmodified and in full force and effect.

7. **Governing Law**. This Amendment shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

8. **Counterparts**. This Amendment may be executed in any number of counterparts and signatures delivered by facsimile, each of which shall be deemed an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the parties have executed this **SECOND AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY

BIOCEPT, INC.
a California corporation

By: /s/ David F. Hale

Name: David F. Hale

Title: Executive Chairman

INVESTORS:

Reiss Family GST Ex Marital Deduction Trust UDT 12/19/1988

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

The Reiss Family Survivor's Trust UDT dated December 19, 1988:

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss

Title: Trustee

EXHIBIT A

SCHEDULE OF INVESTORS

INVESTOR NAME	INITIAL CLOSING PRINCIPAL AMOUNT OF NOTE	SECOND CLOSING PRINCIPAL AMOUNT OF NOTE	THIRD CLOSING PRINCIPAL AMOUNT OF NOTE	FOURTH CLOSING PRINCIPAL AMOUNT OF NOTE	FIFTH CLOSING PRINCIPAL AMOUNT OF NOTE	SIXTH CLOSING PRINCIPAL AMOUNT OF NOTE	SEVENTH CLOSING PRINCIPAL AMOUNT OF NOTE
The Reiss Family GST Exempt Marital Deduction Trust Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$1,000,000	$0	$1,000,000	$0	$1,000,000	$0	To be determined
The Reiss Family Survivor's Trust UDT dated December 19, 1988 Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$0	$1,000,000	$0	$1,000,000	$0	$1,000,000	To be determined
TOTAL:	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000[1]

[1] $1,000,000 in the aggregate to be lent by The Reiss Family GST Exempt Marital Deduction Trust and/or The Reiss Family Survivor's Trust UDT dated December 19, 1988.

THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "*ACT*") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

SECURED CONVERTIBLE PROMISSORY NOTE

$[INSERT AMOUNT] _____, 2011
San Diego, California

FOR VALUE RECEIVED, BIOCEPT, INC., a California corporation (the "***Company***"), hereby promises to pay to the order of **[INSERT PURCHASER]** (the "***Investor***"), the principal sum of $[INSERT AMOUNT] (the "***Loan Amount***"), together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below.

This Note is issued pursuant to the Note and Warrant Purchase Agreement, dated February 1, 2011, as amended, by and among the Company and the investors listed on the Schedule of Investors thereto (the ***"Purchase Agreement"***), and is referred to in the Subordinated Security Agreement, dated February 1, 2011, among the Company and the Secured Parties set forth therein (the ***"Security Agreement").*** Additional rights and obligations of the Investor are set forth in the Security Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings given them in the Purchase Agreement.

1. Interest. Interest shall accrue on the outstanding principal amount hereof from the date of this Note until payment or conversion in full, which interest shall be payable at the rate of 8.0% per annum. Interest shall be due and payable on the Maturity Date (as defined below), and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

2. Payment. Unless the indebtedness outstanding under this Note is converted in accordance with Section 4 hereof, payment shall be made in lawful money of the United States to the Investor at the Company's principal offices or, at the option of the Investor, at such other place in the United States as Investor shall have designated by written notice to the Company. All payments shall be applied first to accrued interest and thereafter to principal.

3. No Prepayment. Prepayment by the Company of principal or accrued interest outstanding under this Note may be made only with the prior written consent of the Investor.

4. Conversion.

4.1 Maturity Date. This Note and all unpaid principal and accrued interest outstanding under this Note (the ***"Conversion Amount"***) shall be due and payable on December 31, 2011 (the ***"Maturity Date"); provided***, *however*, that the Maturity Date (i) may be extended for two successive three month periods upon the written consent of the Investor and (ii) shall be accelerated upon the occurrence of an Event of Default (defined below).

4.2 Automatic Conversion. Upon the closing of a Qualifying Financing (as defined below) before the Maturity Date, the Conversion Amount as of the date thereof shall automatically be converted into that number of shares of the Preferred Stock sold by the Company in the Qualifying Financing as is equal to the Conversion Amount divided by the per share purchase price of the Preferred Stock sold in the Qualifying Financing (the ***"Qualifying Financing Price"***) and on the other terms and conditions provided to investors in the Qualifying Financing. ***"Qualifying Financing"*** shall mean the first equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $20,000,000 in cumulative gross proceeds, including conversion of the Loan Amount made hereunder and interest hereon.

4.3 Optional Conversion. At any time before the Maturity Date the Investor may, at any time prior to the payment or conversion of the Conversion Amount in full, upon written notice to the Company, elect to convert all or any portion of the Conversion Amount (i) into that number of shares of the Company's Series BB Preferred Stock (the ***"Series BB Preferred"***) as is equal to the portion of the Conversion Amount being converted divided by $0.54 (the ***"Series BB Price"***) (as equitably adjusted for stock splits, combinations and the like), or (ii) if the Company closes an equity financing before the Maturity Date involving the sale by the Company of its Preferred Stock that is not a Qualified Financing (a ***"Next Equity Financing"***), into that number of shares of the Preferred Stock sold by the Company in the Next Equity Financing as is equal to the portion of the Conversion Amount being converted divided by 90% of the per share purchase price of the Preferred Stock sold in the Next Equity Financing (the ***"Next Equity Financing Price"***) and on the other terms and conditions provided to investors in the Next Equity Financing.

5. Termination of Rights. All rights with respect to this Note and the Security Agreement shall terminate upon a payment or conversion of the Conversion Amount in full, whether or not this Note has been surrendered.

6. Default. Each of the following events shall be an ***"Event of Default***" hereunder:

(a) The Company commits a material breach of the representations, warranties or covenants in the Purchase Agreement or the Security Agreement which is not cured within 5 calendar days after notice thereof from the Investor;

(b) The Company's failure to pay all unpaid principal and accrued interest outstanding under this Note on the Maturity Date;

(c) The voluntary dissolution or liquidation of the Company;

(d) The Company's voluntary cessation of business operations;

(e) The Company's closing of an Acquisition or Asset Transfer (each as defined in the Company's Amended and Restated Articles of Incorporation (the "***Articles***")) (except that an Acquisition or Asset Transfer shall not include a reincorporation of the Company solely to effect a change of domicile of the Company);

(f) The occurrence of an event of default related to any indebtedness of the Company which is not cured within 15 calendar days;

(g) The Company files a petition or action for relief under any bankruptcy, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any action in furtherance of any of the foregoing; or

(h) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

Upon the occurrence of an Event of Default, all unpaid principal, accrued interest and other amounts owing hereunder shall, at the option of the Investor, and, in the case of an Event of Default pursuant to **(g)** or **(h)** above, automatically, be immediately due, payable and collectible by the Investor pursuant to applicable law. Subject to the provisions hereof and of the Security Agreement, the Investor shall have all rights and may exercise any remedies available to it under law, successively or concurrently.

7. Fractional Shares. No fractional shares shall be issued upon conversion of this Note. In lieu of any fractional shares to which the Investor would otherwise be entitled, after combining any fractional interests of the Investor into as many whole shares as is possible, the Investor shall be paid in cash an amount equal to the product resulting from multiplying such fraction by the then current Qualifying Financing Price, Next Equity Financing Price or Series BB Price, as applicable, of one share of Preferred Stock.

8. No Impairment. Except and to the extent as waived or consented to by the Investor in accordance with Section 14 below, the Company will not, by amendment of the Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of any debt or equity securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note in order to protect the rights of Investor hereunder against impairment.

9. Highest Lawful Rate. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges, and other payments or rights which are treated as interest under applicable law, as provided for herein or in any other document executed

in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), the Company shall not be obligated to pay, and the Investor shall not be entitled to charge, collect, receive, reserve, or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. ***"Highest Lawful Rate"*** means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received, or collected by the Investor in connection with this Note under applicable law. In accordance with this section, any amounts received in excess of the Highest Lawful Rate shall be applied towards the prepayment of principal then outstanding.

10. Future Indebtedness. Except with respect to (i) any indebtedness which may be incurred pursuant to the terms of the Purchase Agreement, as the same may be amended from time-to-time, (ii) up to $200,000 of indebtedness incurred for the one-time purchase of automation equipment, and (iii) any indebtedness incurred in the ordinary course of business not in excess of $100,000, the Company shall not, without the prior written consent of Investor, incur any indebtedness.

11. Waiver. Subject to any other provision herein or in the Loan Documents, the Company hereby waives demand, notice, presentment, protest and notice of dishonor.

12. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflict of laws principles.

13. Successors and Assigns. Neither this Note nor any rights hereunder shall be transferable by the Investor without the prior written consent of the Company, except to an Affiliate of the Investor that agrees in writing to be subject to the terms of this Note to the same extent as if such Affiliate were an original Investor hereunder. Subject to the foregoing, the provisions of this Note shall inure to the benefit of and be binding on any successor to the Company and shall extend to any holder hereof.

14. Amendment; Waiver. Any term of this Note may be amended or waived with the written consent of the Company and the Investor.

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this **SECURED CONVERTIBLE PROMISSORY NOTE** to be executed by its duly authorized officer as of the date first written above.

BIOCEPT, INC.

By: _____

Title: _____

Acknowledged and Accepted:

INVESTOR:

By: _____

Printed Name: _____

Title: _____

NOTE CONVERSION AGREEMENT

THIS NOTE CONVERSION AGREEMENT (this ***"Agreement"***) is made and entered into as of June 28, 2013, by and between **BIOCEPT, INC.**, a California corporation (the ***"Company"***), and _____ (the ***"Noteholder"***).

RECITALS

WHEREAS, the Company and the Noteholder previously entered into that certain Note and Warrant Purchase Agreement, dated as of February 1, 2011, as amended (the ***"Bridge Financing Agreement"***), pursuant to which the Company issued and sold to the Noteholder the secured convertible promissory notes set forth on **SCHEDULE A** hereto (each a ***"Note"*** and collectively, the ***"Notes"***);

WHEREAS, in connection with the execution of the Bridge Financing Agreement, the Company and the Noteholder entered into that certain Subordinated Security Agreement (the ***"Subordinated Security Agreement"***), pursuant to which the Company granted the Noteholder a security interest in certain assets of the Company as described in the Subordinated Security Agreement; and

WHEREAS, the Company and the Noteholder now desire to convert the entire unpaid principal and accrued interest outstanding under the Notes into shares of Series A Preferred Stock of the Company (***"Series A Preferred"***) on the terms and conditions set forth in this Agreement, and after such conversion, the Notes and the Subordinated Security Agreement shall be cancelled.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other valid consideration, the receipt and sufficiency of which the hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT

1. Conversion of Notes. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Notes (the ***"Outstanding Balance"***) shall be automatically converted into an aggregate of [_____] shares of Series A Preferred (the ***"Conversion Shares"***). The parties hereto agree that upon such conversion of the Outstanding Balance, all amounts owed under the Notes shall be deemed paid in full, the Notes shall be terminated and cancelled in full, and no party shall have any further obligations or commitments with respect thereto except as expressly provided for under this Agreement. Promptly following the date hereof (i) the Noteholder agrees to return to the Company for cancellation the original Notes held by the Noteholder and (ii) the Company shall issue to the Noteholder the Conversion Shares. Other than the Noteholder's right to receive the Conversion Shares, the Noteholder hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Notes, including, without limitation, any rights arising from any

default or event of default under the Notes.

2. Subordinated Security Agreement. Effective immediately, the Subordinated Security Agreement shall be terminated, and no party shall have any further obligations or commitments with respect thereto, and the security interests granted in and all liens created by the Subordinated Security Agreement shall be discharged and released in full.

3. Noteholder Representations. The Noteholder hereby represents and warrants to the Company as follows:

(a) The Noteholder is the sole beneficial owner of the Notes held by it as indicated on **SCHEDULE A** hereto and the Noteholder has not sold, assigned, transferred, endorsed, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan or otherwise, or disposed of in any manner any such Note or any interest therein, other than in connection with the cancellation of the Notes as contemplated herein.

(b) The Noteholder is acquiring the Conversion Shares solely for its own account for investment purposes only and not with a view to any sale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"). The Noteholder has no pre-existing agreement, arrangement or understanding, formal or informal, with any person to sell, distribute or transfer all or any part of such Conversion Shares.

(c) The Noteholder understands that (i) the Conversion Shares have not been registered under the Securities Act or any state securities law by reason of their issuance in a transaction which is exempt from the registration requirements of the Securities Act and state securities laws, and that such securities must be held indefinitely unless they are subsequently registered under the Securities Act and such laws or a subsequent disposition thereof is exempt from registration under the applicable provisions of the Securities Act and such laws and (ii) the certificates evidencing such securities will contain a legend to the foregoing effect.

(d) The Noteholder has sufficient knowledge and expertise in business and financial matters so as to enable it to analyze and evaluate the merits and risks of acquiring the Conversion Shares pursuant to the terms of this Agreement.

(e) The Noteholder is an accredited investor within the meaning of Regulation D under the Securities Act.

(f) The Noteholder has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Noteholder has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(g) The Noteholder has the requisite power and authority to enter into this Agreement and to agree to the conversion of the Notes held by it under this Agreement.

4. Market Stand-Off Agreement. The Noteholder hereby agrees that the Noteholder shall

not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by the Noteholder (other than those included in the registration) during (i) the 180-day period following the effective date of the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation), and (ii) the 90-day period following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation); provided, that, with respect to (i) and (ii) above, all officers and directors of the Company are bound by and have entered into similar agreements. The obligations described in this Section 4 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future.

5. Miscellaneous.

5.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California in all respects as such laws are applied to agreements among California residents entered into and to be performed entirely within California, without reference to conflicts of laws or principles thereof. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Diego, California.

5.2 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Facsimile signatures shall be as effective as original signatures.

5.3 Further Assurances. Each party hereto agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other actions as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

5.4 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Conversion Shares from time to time; *provided, however*, that prior to the receipt by the Company of adequate written notice of the transfer of any Conversion Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such Conversion Shares in its records as the absolute owner and holder of such Conversion Shares for all purposes.

5.5 Severability. In the event one or more of the provisions of this Agreement

should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.6 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this NOTE CONVERSION AGREEMENT as of the date first written above.

COMPANY:

BIOCEPT, INC.

By: _____

Name:
Title:

NOTEHOLDER:

By: _____

Name: _____

Title: _____

SCHEDULE A

SCHEDULE OF NOTES

NOTEHOLDER	TITLE	DATE ISSUED	PRINCIPAL AMOUNT OUTSTANDING
[_____]	Secured Convertible Promissory Note	[_____]	$[_____]
[_____]	Secured Convertible Promissory Note	[_____]	$[_____]

Exhibit 10.18.6.2

NOTE CONVERSION AGREEMENT

THIS NOTE CONVERSION AGREEMENT (this ***"Agreement"***) is made and entered into as of June 28, 2013, by and among **BIOCEPT, INC.**, a California corporation (the ***"Company"***), The Reiss Family Survivor's Trust UDT dated December 19, 1988 (the ***"Survivor's Trust"***) and The Reiss Family GST Exempt Marital Deduction Trust (the ***"Marital Trust"***, and together with the Survivor's Trust, the ***"Noteholders"***).

RECITALS

WHEREAS, the Company and the Survivor's Trust previously entered into that certain Note and Warrant Purchase Agreement, dated as of January 13, 2012, as amended, pursuant to which the Company issued and sold to the Survivor's Trust the promissory notes set forth on **SCHEDULE A** hereto under the heading "Revolver Notes" (the ***"Revolver Notes"***);

WHEREAS, the Company and the Noteholders previously entered into that certain Note and Warrant Purchase Agreement, dated as of February 1, 2011, as amended (the ***"Bridge Financing Purchase Agreement"***), pursuant to which the Company issued and sold to the Noteholders the secured convertible promissory notes set forth on **SCHEDULE A** hereto under the heading "Bridge Financing Notes" (the ***"Bridge Financing Notes"*** and together with the Revolver Notes, the ***"Notes"***);

WHEREAS, in connection with the execution of the Bridge Financing Purchase Agreement, the Company and the Noteholders entered into that certain Subordinated Security Agreement (the ***"Subordinated Security Agreement"***), pursuant to which the Company granted the Noteholders a security interest in certain assets of the Company as described in the Subordinated Security Agreement; and

WHEREAS, the Company and the Noteholders now desire to convert the entire unpaid principal and accrued interest outstanding under the Notes into shares of Series A Preferred Stock of the Company (***"Series A Preferred"***) on the terms and conditions set forth in this Agreement, and after such conversion, the Notes and the Subordinated Security Agreement shall be cancelled.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other valid consideration, the receipt and sufficiency of which the hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT

1. Conversion of Revolver Notes. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Revolver Notes (the ***"Revolver Outstanding Balance"***) shall be automatically converted into an aggregate of 11,921,156 shares of Series A Preferred (the ***"Revolver Conversion Shares"***). The parties hereto agree that upon such conversion of the Revolver Outstanding Balance, all amounts owed under the Revolver Notes shall be deemed paid

in full, the Revolver Notes shall be terminated and cancelled in full, and no party shall have any further obligations or commitments with respect thereto except as expressly provided for under this Agreement. Promptly following the date hereof (i) the Survivor's Trust agrees to return to the Company for cancellation the original Revolver Notes held by the Survivor Trust and (ii) the Company shall issue to the Survivor's Trust the Revolver Conversion Shares. Other than the Survivor's Trust's right to receive the Revolver Conversion Shares, the Survivor's Trust hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Revolver Notes, including, without limitation, any rights arising from any default or event of default under the Revolver Notes.

2. Conversion of Survivor's Trust Bridge Financing Notes. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Bridge Financing Notes held by the Survivor's Trust (the ***"Survivor's Trust Bridge Outstanding Balance"***) shall be automatically converted into an aggregate of 17.449,467 shares of Series A Preferred (the ***"Survivor's Trust Bridge Conversion Shares"***). The parties hereto agree that upon such conversion of the Survivor's Trust Bridge Outstanding Balance, all amounts owed under the Bridge Financing Notes held by the Survivor's Trust shall be deemed paid in full, the Bridge Financing Notes held by the Survivor's Trust shall be terminated and cancelled in full, and no party shall have any further obligations or commitments with respect thereto except as expressly provided for under this Agreement. Promptly following the date hereof (i) the Survivor's Trust agrees to return to the Company for cancellation the original Bridge Financing Notes held by the Survivor's Trust and (ii) the Company shall issue to the Survivor's Trust the Survivor's Trust Bridge Conversion Shares. Other than the Survivor's Trust's right to receive the Survivor's Trust Bridge Conversion Shares, the Survivor's Trust hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Bridge Financing Notes held by the Survivor's Trust, including, without limitation, any rights arising from any default or event of default under the Bridge Financing Notes held by the Survivor's Trust.

3. Conversion of Marital Trust Bridge Financing Notes. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Bridge Financing Notes held by the Marital Trust (the ***"Marital Trust Bridge Outstanding Balance"***) shall be automatically converted into an aggregate of 6,553,222 shares of Series A Preferred (the ***"Marital Trust Bridge Conversion Shares"***). The parties hereto agree that upon such conversion of the Marital Trust Bridge Outstanding Balance, all amounts owed under the Bridge Financing Notes held by the Marital Trust shall be deemed paid in full, the Bridge Financing Notes held by the Marital Trust shall be terminated and cancelled in full, and no party shall have any further obligations or commitments with respect thereto except as expressly provided for under this Agreement. Promptly following the date hereof (i) the Marital Trust agrees to return to the Company for cancellation the original Bridge Financing Notes held by the Marital Trust and (ii) the Company shall issue to the Marital Trust the Marital Trust Bridge Conversion Shares. Other than the Marital Trust's right to receive the Marital Trust Bridge Conversion Shares, the Marital Trust hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Bridge Financing Notes held by the Marital Trust, including, without limitation, any rights arising from any default or event of default under the Bridge Financing Notes held by the Marital Trust.

4. Subordinated Security Agreement. Effective immediately, the Subordinated Security Agreement shall be terminated, and no party shall have any further obligations or commitments with respect thereto, and the security interests granted in and all liens created by the Subordinated Security Agreement shall be discharged and released in full.

5. Noteholder Representations. Each Noteholder hereby represents and warrants to the Company, severally and not jointly, as follows:

(a) The Noteholder is the sole beneficial owner of the Notes held by it as indicated on **SCHEDULE A** hereto and the Noteholder has not sold, assigned, transferred, endorsed, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan or otherwise, or disposed of in any manner any such Note or any interest therein, other than in connection with the cancellation of the Notes as contemplated herein.

(b) The Noteholder is acquiring the Revolver Conversion Shares, the Survivor's Trust Bridge Conversion Shares, and the Marital Trust Bridge Conversion Shares, as applicable, solely for its own account for investment purposes only and not with a view to any sale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the ***"Securities Act"***). The Noteholder has no pre-existing agreement, arrangement or understanding, formal or informal, with any person to sell, distribute or transfer all or any part of such Revolver Conversion Shares, Survivor's Trust Bridge Conversion Shares, or Marital Trust Bridge Conversion Shares, as applicable.

(c) The Noteholder understands that (i) the Revolver Conversion Shares, the Survivor's Trust Bridge Conversion Shares, and the Marital Trust Bridge Conversion Shares, as applicable, have not been registered under the Securities Act or any state securities law by reason of their issuance in a transaction which is exempt from the registration requirements of the Securities Act and state securities laws, and that such securities must be held indefinitely unless they are subsequently registered under the Securities Act and such laws or a subsequent disposition thereof is exempt from registration under the applicable provisions of the Securities Act and such laws and (ii) the certificates evidencing such securities will contain a legend to the foregoing effect.

(d) The Noteholder has sufficient knowledge and expertise in business and financial matters so as to enable it to analyze and evaluate the merits and risks of acquiring the Revolver Conversion Shares, the Survivor's Trust Bridge Conversion Shares, and the Marital Trust Bridge Conversion Shares, as applicable, pursuant to the terms of this Agreement.

(e) The Noteholder is an accredited investor within the meaning of Regulation D under the Securities Act.

(f) The Noteholder has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Noteholder has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(g) The Noteholder has the requisite power and authority to enter into this Agreement and to agree to the conversion of the Notes held by it under this Agreement.

6. Market Stand-Off Agreement. The Noteholder hereby agrees that the Noteholder shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by the Noteholder (other than those included in the registration) during (i) the 180-day period following the effective date of the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation), and (ii) the 90-day period following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation); provided, that, with respect to (i) and (ii) above, all officers and directors of the Company are bound by and have entered into similar agreements. The obligations described in this Section 8 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future.

7. Miscellaneous.

7.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California in all respects as such laws are applied to agreements among California residents entered into and to be performed entirely within California, without reference to conflicts of laws or principles thereof. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Diego, California.

7.2 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Facsimile signatures shall be as effective as original signatures.

7.3 Further Assurances. Each party hereto agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other actions as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

7.4 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Revolver Conversion Shares, the Survivor's Trust Bridge Conversion Shares, or the Marital Trust Bridge Conversion Shares from time to time; *provided, however*, that prior to the receipt by the Company of adequate

written notice of the transfer of any Revolver Conversion Shares, Survivor's Trust Bridge Conversion Shares or Marital Trust Bridge Conversion Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such equity securities in its records as the absolute owner and holder of such equity securities for all purposes.

7.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.6 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

[*SIGNATURE PAGE IMMEDIATELY FOLLOWS*]

IN WITNESS WHEREOF, the parties have executed this **NOTE CONVERSION AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.

By: /s/ William G. Kachioff

Name: William Kachioff
Title: CFO

IN WITNESS WHEREOF, the parties have executed this **NOTE CONVERSION AGREEMENT** as of the date first written above.

NOTEHOLDERS:

THE REISS FAMILY SURVIVOR'S TRUST UDT DATED DECEMBER 19, 1988

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss
Title: Trustee

THE REISS FAMILY GST EXEMPT MARITAL DEDUCTION TRUST

By: /s/ Claire K.T. Reiss

Name: Claire K.T. Reiss
Title: Trustee

SCHEDULE A

SCHEDULE OF NOTES

REVOLVER NOTES

NOTEHOLDER	TITLE	DATE ISSUED	PRINCIPAL AND INTEREST AMOUNT OUTSTANDING
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	1/13/12	$861,164.18
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	2/15/12	$284,246.58
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	2/28/12	$283,356.17
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	3/12/12	$282,465.75
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	3/26/12	$394,109.63
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	4/5/12	$561,643.88
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	4/18/12	$559,863.06
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	5/1/12	$558,082.24
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	5/29/12	$554,246.62
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	8/28/12	$270,890.41
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	9/10/12	$270,000.01
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	12/4/12	$301,163.01

The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	9/24/12	$295,945.22
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	10/9/12	$214,410.97
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	10/22/12	$347,260.25
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	11/5/12	$212,931.52
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Promissory Note	11/19/12	$185,643.84

BRIDGE FINANCING NOTES

NOTEHOLDER	TITLE	DATE ISSUED	PRINCIPAL AND INTEREST AMOUNT OUTSTANDING
The Reiss Family GST Exempt Marital Deduction Trust	Secured Convertible Promissory Note	2/1/11	$1,192,657.47
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	3/1/11	$1,186,520.55
The Reiss Family GST Exempt Marital Deduction Trust	Secured Convertible Promissory Note	4/1/11	$1,179,726.03
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	5/2/11	$1,172,931.51
The Reiss Family GST Exempt Marital Deduction Trust	Secured Convertible Promissory Note	6/1/11	$1,166,356.16
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	7/1/11	$1,159,780.82
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	8/1/11	$1,152,986.30

The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	9/12/11	$1,143,780.82
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	11/1/11	$1,132,821.92
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	11/30/11	$1,126,465.75
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	6/18/12	$270,602.76
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	6/26/12	$270,164.40
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	6/29/12	$270,000.02
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	7/25/12	$268,575.36
The Reiss Family Survivor's Trust UDT dated December 19, 1988	Secured Convertible Promissory Note	8/3/12	$268,082.21

Exhibit 10.18.7

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE HOLDER AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

WARRANT TO PURCHASE PREFERRED STOCK

No. PSW-__ **_____, 2011**

THIS CERTIFIES THAT, for value received, **[INSERT PURCHASER]**, or its assigns (the "***Holder***"), is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC.**, a California corporation (the "***Company***"), up to such number and series of fully paid and nonassessable shares of Preferred Stock of the Company as set forth herein, during the Exercise Period (as defined below).

This Warrant is issued pursuant to the Note and Warrant Purchase Agreement, dated February 1, 2011, as amended, among the Company and the Holder (the "***Purchase Agreement***"). Pursuant to the Purchase Agreement, the Company also issued Holder a Secured Convertible Promissory Note of even date herewith (the "***Note***") in the principal amount of $[INSERT AMOUNT]. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Purchase Agreement.

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "***Exercise Period***" shall mean the period commencing on the date hereof and ending five (5) years thereafter, unless sooner terminated as provided below.

(b) "***Exercise Price***" shall mean (a) if no portion of the Note has been converted, $0.54 and (b) if all or any portion of the Note has been converted, the price per share at which the Note was first converted into securities of the Company.

(c) "***Exercise Shares***" shall mean (a) the equity securities of the Company into which the Note is converted upon the automatic or optional conversion of the Note as

provided for in the Note or (b) if the Note has not converted upon the automatic or optional conversion of the Note as provided for in the Note, the Company's Series BB Preferred Stock.

(d) "***Warrant Coverage Amount***" shall mean the principal amount of the Note, multiplied by .20.

2. NUMBER OF SHARES. The number of Exercise Shares for up to which this Warrant may be exercisable shall be determined by dividing the Warrant Coverage Amount by the Exercise Price, and rounding down to the nearest whole share.

3. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

4. COVENANTS OF THE COMPANY.

4.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes.

4.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

5. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Preferred Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under the Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of the Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however*, that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 8 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

6. ADJUSTMENTS FOR DILUTING ISSUANCES. The Exercise Price and the number of Exercise Shares issuable upon exercise of this Warrant or, if the Exercise Shares are Preferred Stock, the number of shares of common stock issuable upon conversion of the Exercise Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Amended and Restated Articles of Incorporation, as amended from time to time, as if the Exercise Shares were issued and outstanding on and as of the date of any such required adjustment. Any adjustment to the conversion rate of the Exercise Shares issuable upon the exercise of this Warrant effected prior to any exercise of this Warrant shall apply to any Exercise Shares thereafter issued pursuant to the terms hereof.

7. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

8. EARLY TERMINATION. In the event of, at any time during the Exercise Period, an initial public offering of securities of the Company registered under the Securities Act, or any capital reorganization, or any reclassification of the capital stock of the Company (other than a change in par value or from par value to no par value or no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another

state), the Company shall provide to the Holder 20 days advance written notice of such public offering, reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets, and this Warrant shall terminate unless exercised prior to the date such public offering is closed or the occurrence of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets.

9. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing underwriter(s) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in connection with the Company's initial public offering (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 9. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. NO SHAREHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

11. TRANSFER OF WARRANT. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

12. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

13. NOTICES, ETC. All notices required or permitted hereunder 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 telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

All communications shall be sent to the Company and the Holder at the address set forth on the signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

14. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

15. COUNTERPARTS. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. GOVERNING LAW. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

17. AMENDMENT; WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Holder.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: _____

Name: _____

Title: _____

Address: 5810 Nancy Ridge Drive
San Diego, California 92121

Acknowledged and accepted:

[INSERT PURCHASER]

By: _____

Name: _____

Title: _____

Address: _____

_____

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the "***Company***") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____
_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____ _____
(Date) (Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's Signature: _____

Holder's Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

BIOCEPT, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of January 13, 2012 (the "***Effective Date***") by and among **BIOCEPT, INC.**, a California corporation (the "***Company***") and the Investors listed on the Schedule of Investors attached hereto (each an "***Investor***" and collectively, the "***Investors***").

RECITALS

WHEREAS, in exchange for a series of loans in an aggregate amount equal to $1,750,000 from the Investors, the Company will issue promissory notes and warrants to purchase shares of the Company's Preferred Stock (the "***Preferred Stock***") to the Investors.

AGREEMENT

NOW THEREFORE, the parties to this Agreement, for good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed, hereby agree as follows:

1. LOAN AMOUNT; ISSUANCE OF NOTES AND WARRANT.

1.1 Loan Amount; Issuance of Notes. Subject to the terms of this Agreement, the Investors agree, jointly and severally, to lend the Company at each Closing (as defined below), the amount set forth on the Schedule of Investors attached hereto (each, a "***Loan Amount***" and collectively the "***Loan***") against the issuance and delivery by the Company of promissory notes for such amounts, in substantially the form attached hereto as **Exhibit A** (each, a "***Note***" and collectively, the "***Notes***").

1.2 Issuance of Warrants. Subject to the terms of this Agreement, the Investors agree to purchase from the Company, and the Company agrees to issue to the Investor, a Warrant in the form attached hereto as **Exhibit B** (the "***Warrant***") to purchase the number of shares of Preferred Stock set forth in the Warrant (the "***Warrant Shares***").

2. CLOSINGS; DELIVERY.

2.1 Initial Closing. The initial closing of the purchase and sale of the Notes (the "***Initial Closing***") shall be held on the date hereof at the offices of Cooley LLP, 4401 Eastgate Mall, San Diego, California 92121, or at such other time and place as the Company and the Investors mutually agree.

(a) Deliveries by the Company. At the Initial Closing, the Company shall deliver (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investor. At the Initial Closing, the Investors participating in the Initial Closing shall deliver to the Company funds, by check or wire transfer, in the amount set forth opposite such Investor's name on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note."

2.2 Additional Closings. If, at any time prior to the Maturity Date (as defined in the Notes), (i) the Company has less than $1,000,000 of cash and cash equivalents and (ii) the Company has received a term sheet for a Qualifying Financing (as defined in the Notes) that is acceptable to the Company's Board of Directors (the requirements set forth in (i) and (ii) are referred to herein as the "***Draw-Down Requirements***"), then the Chief Executive Officer of the Company shall be permitted to deliver a written notice (the "***Draw-Down Notice***") to the Reiss Family Survivor's Trust UDT dated December 18, 1988 (the "***Major Investor***") and any other potential investor in the Company approved by the Chief Executive Officer of the Company (any such investor, a "***New Investor***" and collectively, the "***New Investors***"), which Draw-Down Notice shall certify that the Draw-Down Requirements have been satisfied and shall specify the closing of the sale of a specific amount of the authorized Notes and Warrants (such amount in any Draw-Down Notice, the "***Draw-Down Amount***") not previously sold by the Company (each an "***Additional Closing***" and together with the Initial Closing, a "***Closing***"), which such Additional Closing shall occur no earlier than two and no later than five business days after the delivery of the Draw-Down Notice. Notwithstanding the foregoing, the Major Investor shall not be required to participate in an Additional Closing during any calendar month to the extent that the Company has effected two Additional Closings in such calendar month. Following each Additional Closing, the Schedule of Investors under the heading "Additional Closing Principal Amount of Note" shall be unilaterally updated by the Company to record the names of Investors participating in such Additional Closing and the principal amount of each Investor's Loan Amount being made at such Additional Closing.

(a) Deliveries by the Company. At each Additional Closing, the Company shall deliver (a) to each Investor participating in such Additional Closing, a duly executed Note (in the principal amount of Investor's Loan Amount being made at such Additional Closing) and (b) to each Investor participating in such Additional Closing that has not previously been issued a Warrant pursuant to this Agreement, a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At each Additional Closing, (i) the Major Investor shall deliver to the Company funds, by check or wire transfer, in an amount equal to the Draw-Down Amount, less any amounts of the Draw-Down Amount that have been committed to be funded by New Investors in such Additional Closing, and (ii) the New Investors shall deliver to the Company funds, by check or wire transfer, in an amount equal to their commitment of the Draw-Down Amount in such Additional Closing.

Each New Investor not a party to this Agreement shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and any Notes and Warrants sold pursuant to this Section 2.2 shall be deemed to be "Notes" and "Warrants" for all purposes under this Agreement and any New Investors thereof shall be deemed to be an "Investor" for all purposes under this Agreement.

The issuance of the Notes and any Warrants to the Investors at each Closing, as applicable, shall be made on the terms and conditions set forth in this Agreement, provided that (i) the representations and warranties of the Company set forth in Section 3 hereof shall speak as of the date of such Closing and (ii) the representations and warranties of each Investor participating in such Closing set forth in Section 4 hereof shall speak as of the date of such Closing.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to each Investor, as of each Closing, as applicable, as follows:

3.1 Organization and Standing; Articles and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business, properties, or financial condition.

3.2 Corporate Power. The Company will have at each Closing all requisite legal and corporate power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement.

3.3 Authorization. All corporate action on the part of the Company, its directors and its shareholders necessary for the authorization, execution, delivery and performance of this Agreement, the Notes and the Warrant (collectively, the "***Loan Documents***") by the Company and the performance of the Company's obligations hereunder and thereunder, including the issuance and delivery of the Notes and Warrant and the reservation of the equity securities issuable upon exercise of the Warrant (collectively, the "***Conversion Shares***" and, together with the Notes and the Warrants, the "***Securities***") has been taken or will be taken prior to the issuance of such Securities, as applicable. The Loan Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies and (c) with respect to rights to indemnity, subject to federal and state securities laws. The Securities, when issued in compliance with the provisions of the Loan Documents, will be validly issued, fully paid and nonassessable. The issuance of the Securities pursuant to the provisions of this Agreement will not violate any preemptive rights or rights of first refusal granted by the Company that will not be validly complied with or waived. The Securities, when issued in compliance with the provisions of the Loan Documents, will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor through no action of the Company; *provided*, *however*, that the Securities may be subject to restrictions on transfer under (i) that certain Amended and Restated Investor Rights Agreement, by and among the Company and the

other signatories thereto, dated October 31, 2011 (the "***Investor Rights Agreement***"), (ii) the Company's Bylaws and (iii) state and/or federal securities laws.

3.4 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of the Loan Documents, the offer, sale or issuance of the Securities, or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at the Initial Closing and at each subsequent Closing, except for notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis.

3.5 Offering. Assuming the accuracy of the representations and warranties of the Investor contained in Section 4 hereof, the offer, issue, and sale of the Notes and the Warrant are and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "***Securities Act***"), and have been registered or qualified (or are exempt from registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws.

4. REPRESENTATIONS AND WARRANTIES OF THE INVESTOR.

Each Investor hereby represents and warrants to the Company as of each Closing in which such Investor participates, as applicable, as follows:

4.1 Requisite Power and Authority. The Investor has all necessary power and authority to execute and deliver this Agreement and the Loan Documents and to carry out their provisions. All action on the Investor's part required for the lawful execution and delivery of this Agreement and the Loan Documents has been taken. Upon their execution and delivery, this Agreement and the Loan Documents will be valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Purchase for Own Account. The Investor represents that it is acquiring the Securities solely for its own account and beneficial interest for investment only, and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same, and does not presently have reason to anticipate a change in such intention.

4.3 Information and Sophistication. The Investor (i) acknowledges that it has received all the information that it or its qualified purchaser representative has requested from the Company and that it considers necessary or appropriate for deciding whether to acquire the Securities, (ii) represents that it or its qualified purchaser representative has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the

accuracy of the information given the Investor and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment. Without limiting the foregoing, the Investor is relying on its own independent investigation of the Company and on its own respective professional advisors in entering into this Agreement and consummating the transactions described herein.

4.4 Ability to Bear Economic Risk. The Investor acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

4.5 Further Limitations on Disposition. Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) (i) The transferee has agreed in writing to be bound by the terms of this Agreement, (ii) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (iii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances. The Company will not require the transferee to be bound by the terms of this Agreement after the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (the "***Initial Offering***").

(c) Notwithstanding the provisions of subsections (a) and (b) above, no such restriction shall apply to a transfer by the Investor to an entity affiliated by common control (or other related entity) with the Investor (each such transferee, an "***Affiliate***" of the Investor); *provided* that in each case the transferee will agree in writing to be subject to the terms of this Agreement to the same extent as if the transferee were an original Investor hereunder.

(d) Each certificate evidencing the Securities to be issued to the Investor shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under (i) the Investor Rights Agreement, (ii) the Company's Bylaws and (iii) applicable state securities laws):

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "***ACT***") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL

SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(e) The Company shall be obligated to reissue promptly unlegended certificates representing any Securities held by the Investor at the request of the Investor if the Company has completed its Initial Offering and the Investor has obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be disposed of without registration, qualification and legend.

(f) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate state securities authority authorizing such removal.

4.6 Accredited Investor Status. The Investor is an accredited investor or is represented by a purchaser representative within the meaning of Regulation D under the Securities Act.

5. FURTHER ASSURANCES. The Company and each Investor agree and covenant that at any time and from time to time it will promptly execute and deliver to each other such further instruments and documents and take such further action as each of the parties hereto may reasonably require in order to carry out the full intent and purpose of this Agreement.

6. MISCELLANEOUS.

6.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

6.3 Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be as effective as original signatures.

6.4 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the transactions contemplated hereby.

6.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 Notices. All notices required or permitted hereunder or under the Notes or the Warrant shall be in writing (including facsimile, electronic mail or similar electronic transmissions), and shall be deemed effectively given: (a) when received by the addressee, if delivered by hand, facsimile, electronic mail or similar form of electronic transmission, (b) five days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) to the Company at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: Bill Kachioff, or (ii) to the Investors at the address shown on the Schedule of Investors, or at such other address as such party may designate by written notice to the other party.

6.7 Amendment; Waiver. Except as otherwise set forth herein, no amendment or waiver of any provision of this Agreement shall be effective unless in writing and approved by (i) the Company and (ii) the holders of at least a majority of the then-outstanding principal amount of all Notes.

6.8 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

6.9 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the Notes or the Warrant, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, the Notes or the Warrant, or any waiver on such party's part of any provisions or conditions of this Agreement, the Notes or the Warrant must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies under this Agreement, the Notes or the Warrant, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

6.10 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.11 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION OR IN THE ABSENCE OF AN EXEMPTION FROM SUCH QUALIFICATION IS UNLAWFUL. PRIOR TO ACCEPTANCE OF SUCH CONSIDERATION BY THE COMPANY, THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED OR AN EXEMPTION FROM SUCH QUALIFICATION BEING AVAILABLE.

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IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.,
a California corporation

By: _____
David Hale
Executive Chairman

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

THE REISS FAMILY SURVIVOR'S TRUST
UDT DATED DECEMBER 19, 1988:

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

By: _____

Name: _____

Title: _____

SCHEDULE OF INVESTORS

INVESTOR NAME	INITIAL CLOSING PRINCIPAL AMOUNT OF NOTE	ADDITIONAL CLOSING PRINCIPAL AMOUNT OF NOTE[1]
The Reiss Family Survivor's Trust UDT dated December 19, 1988 Address: 9675 La Jolla Farms Road La Jolla, CA 92037	$750,000	
[To be determined] Address: [_____] [_____]	$0	
TOTAL:	$750,000	

[1] Column to be updated unilaterally by Company following each Additional Closing.

EXHIBIT A

FORM OF PROMISSORY NOTE

EXHIBIT B

FORM OF WARRANT

Exhibit 10.19.2

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE *"ACT"*) AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS NOTE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

PROMISSORY NOTE

$[_____] [_____], 2012
San Diego, California

FOR VALUE RECEIVED, **BIOCEPT, INC.**, a California corporation (the "***Company***"), hereby promises to pay to the order of [_____] (collectively, the "***Investor***"), the principal sum of $[_____] (the "***Loan Amount***"), together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below.

This Note is issued pursuant to the Note and Warrant Purchase Agreement, dated January 13, 2012, by and among the Company and the signatories thereto (the ***"Purchase Agreement***"). Capitalized terms used and not otherwise defined herein shall have the meanings given them in the Purchase Agreement.

1. Interest. Interest shall accrue on the outstanding principal amount hereof from the date of this Note until payment in full, which interest shall be payable at the rate of 10% per annum. Interest shall be due and payable on the Maturity Date (as defined below), and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

2. Payment. Payment shall be made in lawful money of the United States to the Investor at the Company's principal offices or, at the option of the Investor, at such other place in the United States as Investor shall have designated by written notice to the Company. All payments shall be applied first to accrued interest and thereafter to principal.

3. Optional Prepayment. The Company may prepay the principal or accrued interest outstanding under this Note at any time, without penalty, in whole or in part.

4. Required Prepayment. If, at any time prior to the Maturity Date, the Company has more than $1,000,000 of cash and cash equivalents (such amount of cash and cash equivalents in

excess of $1,000,000, the "***Cash Reserves***"), then the Company shall be required to utilize the "pro rata portion" of the Cash Reserves to prepay the principal or accrued interest outstanding under this Note. The "pro rata portion" of the Cash Reserves shall be an amount equal to the product obtained by multiplying (i) the aggregate Cash Reserves by (ii) a fraction, the denominator of which is the aggregate principal amount then-outstanding on all Notes issued pursuant to the Purchase Agreement and the numerator of which is the principal amount then-outstanding on this Note.

5. Maturity Date. This Note and all unpaid principal and accrued interest outstanding under this Note shall be due and payable upon the earlier of (i) an Event of Default (defined below), (ii) the closing of an equity financing following the date hereof involving the sale by the Company of its Preferred Stock in which the Company receives an aggregate of at least $15,000,000 in cumulative gross proceeds (a ***"Qualifying Financing***"), (iii) May 31, 2012, if, as of such date, the Company has not received a term sheet for a Qualifying Financing that is acceptable to the Company's Board of Directors and (iv) July 31, 2012, if, as of such date, a Qualifying Financing has not occurred (the earliest of such dates, the ***"Maturity Date***").

6. Termination of Rights. All rights with respect to this Note shall terminate upon a payment of the principal and accrued interest outstanding under this Note in full, whether or not this Note has been surrendered.

7. Default. Each of the following events shall be an ***"Event of Default"*** hereunder:

(a) The Company commits a material breach of the representations, warranties or covenants in the Purchase Agreement which is not cured within 5 calendar days after notice thereof from the Investor;

(b) The Company's failure to pay all unpaid principal and accrued interest outstanding under this Note on the Maturity Date;

(c) The voluntary dissolution or liquidation of the Company;

(d) The Company's voluntary cessation of business operations;

(e) The Company's closing of an Acquisition or Asset Transfer (each as defined in the Company's Amended and Restated Articles of Incorporation (the "***Articles***")) (except that an Acquisition or Asset Transfer shall not include a reincorporation of the Company solely to effect a change of domicile of the Company);

(f) The occurrence of an event of default related to any indebtedness of the Company which is not cured within 15 calendar days;

(g) The Company files a petition or action for relief under any bankruptcy, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any action in furtherance of any of the foregoing; or

(h) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

Upon the occurrence of an Event of Default, all unpaid principal, accrued interest and other amounts owing hereunder shall, at the option of the Investor, and, in the case of an Event of Default pursuant to (g) or (h) above, automatically, be immediately due, payable and collectible by the Investor pursuant to applicable law. Subject to the provisions hereof, the Investor shall have all rights and may exercise any remedies available to it under law, successively or concurrently.

8. No Impairment. Except and to the extent as waived or consented to by the Investor in accordance with Section 13 below, the Company will not, by amendment of the Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of any debt or equity securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note in order to protect the rights of Investor hereunder against impairment.

9. Highest Lawful Rate. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges, and other payments or rights which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), the Company shall not be obligated to pay, and the Investor shall not be entitled to charge, collect, receive, reserve, or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. "***Highest Lawful Rate***" means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received, or collected by the Investor in connection with this Note under applicable law. In accordance with this section, any amounts received in excess of the Highest Lawful Rate shall be applied towards the prepayment of principal then outstanding.

10. Waiver. Subject to any other provision herein or in the Loan Documents, the Company hereby waives demand, notice, presentment, protest and notice of dishonor.

11. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflict of laws principles.

12. Successors and Assigns. Neither this Note nor any rights hereunder shall be transferable by the Investor without the prior written consent of the Company, except to an Affiliate of the Investor that agrees in writing to be subject to the terms of this Note to the same extent as if such Affiliate were an original Investor hereunder. Subject to the foregoing, the provisions of this

Note shall inure to the benefit of and be binding on any successor to the Company and shall extend to any holder hereof.

13. Amendment; Waiver. Any term of this Note may be amended or waived with the written consent of (i) the Company and (ii) the holders of at least a majority of the then-outstanding principal amount of all promissory notes issued pursuant to the Purchase Agreement.

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

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IN WITNESS WHEREOF, the Company has caused this **PROMISSORY NOTE** to be executed by its duly authorized officer as of the date first written above.

BIOCEPT, INC.

By: _____

Title: _____

Acknowledged and Accepted:

[_____]

_____

_____

NOTE CONVERSION AGREEMENT

THIS NOTE CONVERSION AGREEMENT (this ***"Agreement"***) is made and entered into as of [_____], 2013, by and between **BIOCEPT, INC.**, a California corporation (the ***"Company"***), and _____ (the ***"Noteholder"***).

RECITALS

WHEREAS, the Company and the Noteholder previously entered into that certain Note and Warrant Purchase Agreement, dated as of January 13, 2012, as amended, pursuant to which the Company issued and sold to the Noteholder the promissory notes set forth on **SCHEDULE A** hereto (each a ***"Note"*** and collectively, the ***"Notes"***); and

WHEREAS, the Company and the Noteholder now desire to convert the entire unpaid principal and accrued interest outstanding under the Notes into shares of Series A Preferred Stock of the Company (***"Series A Preferred"***) on the terms and conditions set forth in this Agreement, and after such conversion, the Notes shall be cancelled.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other valid consideration, the receipt and sufficiency of which the hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT

1. Conversion of Notes. Effective immediately, the entire unpaid principal and accrued interest outstanding under the Notes (the ***"Outstanding Balance"***) shall be automatically converted into an aggregate of [_____] shares of Series A Preferred (the ***"Conversion Shares"***). The parties hereto agree that upon such conversion of the Outstanding Balance, all amounts owed under the Notes shall be deemed paid in full, the Notes shall be terminated and cancelled in full, and no party shall have any further obligations or commitments with respect thereto except as expressly provided for under this Agreement. Promptly following the date hereof (i) the Noteholder agrees to return to the Company for cancellation the original Notes held by the Noteholder and (ii) the Company shall issue to the Noteholder the Conversion Shares. Other than the Noteholder's right to receive the Conversion Shares, the Noteholder hereby waives any and all demands, claims, suits, actions, causes of action, proceedings, assessments and rights in respect of the Notes, including, without limitation, any rights arising from any default or event of default under the Notes.

2. Noteholder Representations. The Noteholder hereby represents and warrants to the Company as follows:

(a) The Noteholder is the sole beneficial owner of the Notes held by it as indicated on **SCHEDULE A** hereto and the Noteholder has not sold, assigned, transferred, endorsed, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan or otherwise, or disposed of in any manner any such Note or any interest therein, other than in

connection with the cancellation of the Notes as contemplated herein.

(b) The Noteholder is acquiring the Conversion Shares solely for its own account for investment purposes only and not with a view to any sale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"). The Noteholder has no pre-existing agreement, arrangement or understanding, formal or informal, with any person to sell, distribute or transfer all or any part of such Conversion Shares.

(c) The Noteholder understands that (i) the Conversion Shares have not been registered under the Securities Act or any state securities law by reason of their issuance in a transaction which is exempt from the registration requirements of the Securities Act and state securities laws, and that such securities must be held indefinitely unless they are subsequently registered under the Securities Act and such laws or a subsequent disposition thereof is exempt from registration under the applicable provisions of the Securities Act and such laws and (ii) the certificates evidencing such securities will contain a legend to the foregoing effect.

(d) The Noteholder has sufficient knowledge and expertise in business and financial matters so as to enable it to analyze and evaluate the merits and risks of acquiring the Conversion Shares pursuant to the terms of this Agreement.

(e) The Noteholder is an accredited investor within the meaning of Regulation D under the Securities Act.

(f) The Noteholder has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Noteholder has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(g) The Noteholder has the requisite power and authority to enter into this Agreement and to agree to the conversion of the Notes held by it under this Agreement.

3. Market Stand-Off Agreement. The Noteholder hereby agrees that the Noteholder shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by the Noteholder (other than those included in the registration) during (i) the 180-day period following the effective date of the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation), and (ii) the 90-day period following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation); provided, that, with respect to (i) and (ii) above, all officers and directors of the Company are bound by and have entered into similar agreements. The obligations described in this Section 3 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar

forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future.

4. Miscellaneous.

4.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California in all respects as such laws are applied to agreements among California residents entered into and to be performed entirely within California, without reference to conflicts of laws or principles thereof. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Diego, California.

4.2 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Facsimile signatures shall be as effective as original signatures.

4.3 Further Assurances. Each party hereto agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other actions as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

4.4 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Conversion Shares from time to time; *provided*, *however*, that prior to the receipt by the Company of adequate written notice of the transfer of any Conversion Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such Conversion Shares in its records as the absolute owner and holder of such Conversion Shares for all purposes.

4.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.6 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this **NOTE CONVERSION AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.

By: _____

Name:
Title:

IN WITNESS WHEREOF, **the parties have executed this NOTE CONVERSION AGREEMENT** as of the date first written above.

NOTEHOLDER:

By: _____

Name: _____

Title: _____

SCHEDULE A

SCHEDULE OF NOTES

NOTEHOLDER	TITLE	DATE ISSUED	PRINCIPAL AMOUNT OUTSTANDING
[_____]	Promissory Note	[_____]	$[_____]
[_____]	Promissory Note	[_____]	$[_____]

BIOCEPT, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of June 28, 2013 (the "***Effective Date***") by and among **BIOCEPT, INC.**, a California corporation (the "***Company***"), and the Investors listed on the Schedule of Investors attached hereto (each an "***Investor*** and collectively, the "***Investors***").

RECITALS

WHEREAS, in exchange for a series of loans in an aggregate amount equal to $7,000,000 from the Investors, the Company will issue convertible promissory notes and a warrant to purchase shares of the Company's Common Stock (the "***Common Stock***") to the Investors.

AGREEMENT

NOW THEREFORE, the parties to this Agreement, for good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed, hereby agree as follows:

1. LOAN AMOUNT; ISSUANCE OF NOTES AND WARRANT.

1.1 Loan Amount; Issuance of Notes. Subject to the terms of this Agreement, the Investors agree, jointly and severally, to lend to the Company at each Closing (as defined below) the amount set forth on the Schedule of Investors attached hereto (each, a "***Loan Amount***" and collectively the "***Total Loan Amount***" or "***Loan***") against the issuance and delivery by the Company of convertible promissory notes for such amounts, in substantially the form attached hereto as **Exhibit A** (each, a "***Note***" and collectively, the "***Notes***").

1.2 Issuance of Warrants. Subject to the terms of this Agreement, the Investors participating in each Closing agree to purchase from the Company, and the Company agrees to issue to such Investors, a Warrant in the form attached hereto as **Exhibit B** (the "***Warrant***") to purchase the number of shares of Common Stock set forth in the Warrant (the "***Warrant Shares***").

2. CLOSINGS; DELIVERY.

2.1 Initial Closing. The initial closing of the purchase and sale of the Notes (the "***Initial Closing***") shall be held on the date hereof at the offices of Cooley LLP, 4401 Eastgate Mall, San Diego, California 92121, or at such other time and place as the Company and the Investors mutually agree.

(a) Deliveries by the Company. At the Initial Closing, the Company shall deliver (a) a duly executed Note (in the principal amount set forth on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note") and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At the Initial Closing, the Investor participating in the Initial Closing shall deliver to the Company funds, by check or wire transfer, in the amount set forth opposite such Investor's name on the Schedule of Investors attached hereto under the heading "Initial Closing Principal Amount of Note."

2.2 Additional Closings. At any time prior to December 31, 2013, the Company may sell up to the balance of the authorized Notes and Warrants not sold at the Initial Closing to such persons as may be approved by the Executive Chairman of the Company (the "***Additional Investors***"). With respect to any such additional closing (each an "***Additional Closing***" and each of the Additional Closings and Initial Closing, a "***Closing***") all such sales at such Additional Closing shall be made on the terms and conditions set forth in this Agreement. This Agreement, including without limitation, the Schedule of Investors, may be unilaterally amended by the Company without the consent of the Investors to include any Additional Investors. Any Notes and Warrants sold pursuant to this Section 2.2 shall be deemed to be "Notes" and "Warrants" for all purposes under this Agreement, and any Additional Investors thereof shall be deemed to be "Investors" for all purposes under this Agreement.

(a) Deliveries by the Company. At each Additional Closing, the Company shall deliver to each Additional Investor participating in such Additional Closing (a) a duly executed Note (in the principal amount of such Additional Investor's Loan Amount) and (b) a duly executed Warrant to purchase the Warrant Shares.

(b) Deliveries by Investors. At each Additional Closing, each Additional Investor participating in such Additional Closing shall deliver to the Company funds, by check or wire transfer, in the amount of such Additional Investor's portion of the Loan Amount.

The issuance of the Notes and the Warrants to the Investors at each Closing, as applicable, shall be made on the terms and conditions set forth in this Agreement, provided that (i) the representations and warranties of the Company set forth in Section 3 hereof shall speak as of the date of such Closing and (ii) the representations and warranties of each Investor participating in such Closing set forth in Section 4 hereof shall speak as of the date of such Closing.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to each Investor, as of each Closing, as applicable, as follows:

3.1 Organization and Standing; Articles and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of California and is in good standing under such laws. The Company has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business, properties, or financial condition.

3.2 Corporate Power. The Company will have at each Closing all requisite legal and corporate power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement.

3.3 Authorization. All corporate action on the part of the Company, its directors and its shareholders necessary for the authorization, execution, delivery and performance of this Agreement, the Notes and the Warrant (collectively, the "***Loan Documents***") by the Company and the performance of the Company's obligations hereunder and thereunder, including the issuance and delivery of the Notes and Warrants and the reservation of the Common Stock issuable upon conversion of the Notes and exercise of the Warrants (collectively, the "***Conversion Shares***" and, together with the Notes and the Warrants, the "***Securities***") has been taken or will be taken prior to the issuance of such Securities, as applicable. The Loan Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies and (c) with respect to rights to indemnity, subject to federal and state securities laws. The Securities, when issued in compliance with the provisions of the Loan Documents, will be validly issued, fully paid and nonassessable. The issuance of the Securities pursuant to the provisions of this Agreement will not violate any preemptive rights or rights of first refusal granted by the Company that will not be validly complied with or waived. The Securities, when issued in compliance with the provisions of the Loan Documents, will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor through no action of the Company; *provided, however*, that the Securities may be subject to restrictions on transfer under (i) that certain Investor Rights Agreement, by and among the Company and the other signatories thereto, dated August 4, 2010 (the "***Investor Rights Agreement***"), (ii) the Company's Bylaws and (iii) state and/or federal securities laws.

3.4 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of the Loan Documents, the offer, sale or issuance of the Securities, or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at the Initial Closing and at each subsequent Closing, except for notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis.

3.5 Offering. Assuming the accuracy of the representations and warranties of the Investor contained in Section 4 hereof, the offer, issue, and sale of the Notes and the Warrants are and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "***Securities Act***"), and have been registered or qualified (or are exempt from registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws.

4. REPRESENTATIONS AND WARRANTIES OF THE INVESTOR.

Each Investor hereby represents and warrants to the Company as of each Closing in which such Investor participates, as applicable, as follows:

4.1 Requisite Power and Authority. The Investor has all necessary power and authority to execute and deliver this Agreement and the Loan Documents and to carry out their provisions. All action on the Investor's part required for the lawful execution and delivery of this Agreement and the Loan Documents has been taken. Upon their execution and delivery, this Agreement and the Loan Documents will be valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Purchase for Own Account. The Investor represents that it is acquiring the Securities solely for its own account and beneficial interest for investment only, and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same, and does not presently have reason to anticipate a change in such intention.

4.3 Information and Sophistication. The Investor (i) acknowledges that it has received all the information that it or its qualified purchaser representative has requested from the Company and that it considers necessary or appropriate for deciding whether to acquire the Securities, (ii) represents that it or its qualified purchaser representative has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the accuracy of the information given the Investor and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment. Without limiting the foregoing, the Investor is relying on its own independent investigation of the Company and on its own respective professional advisors in entering into this Agreement and consummating the transactions described herein.

4.4 Ability to Bear Economic Risk. The Investor acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

4.5 Further Limitations on Disposition. Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) (i) The transferee has agreed in writing to be bound by the terms of this Agreement, (ii) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (iii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances. The Company will not require the transferee to be bound by the terms of this Agreement after the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (the "***Initial Offering***").

(c) Notwithstanding the provisions of subsections (a) and (b) above, no such restriction shall apply to a transfer by the Investor to an entity affiliated by common control (or other related entity) with the Investor (each such transferee, an "***Affiliate***" of the Investor); *provided* that in each case the transferee will agree in writing to be subject to the terms of this Agreement to the same extent as if the transferee were an original Investor hereunder.

(d) Each certificate evidencing the Securities to be issued to the Investor shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under (i) the Investor Rights Agreement, (ii) the Company's Bylaws and (iii) applicable state securities laws):

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "***ACT***") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.
>
> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(e) The Company shall be obligated to reissue promptly unlegended certificates representing any Securities held by the Investor at the request of the Investor if the Company has completed its Initial Offering and the Investor has obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be disposed of without registration, qualification and legend.

(f) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate state securities authority authorizing such removal.

4.6 Accredited Investor Status. The Investor is an accredited investor or is represented by a purchaser representative within the meaning of Regulation D under the Securities Act.

5. FURTHER ASSURANCES. The Company and each Investor agree and covenant that at any time and from time to time it will promptly execute and deliver to each other such further instruments and documents and take such further action as each of the parties hereto may reasonably require in order to carry out the full intent and purpose of this Agreement.

6. MISCELLANEOUS.

6.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles.

6.3 Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be as effective as original signatures.

6.4 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the transactions contemplated hereby.

6.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 Notices. All notices required or permitted hereunder or under the Notes or the Warrant shall be in writing (including facsimile, electronic mail or similar electronic transmissions), and shall be deemed effectively given: (a) when received by the addressee, if delivered by hand, facsimile, electronic mail or similar form of electronic transmission, (b) five days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) to the Company at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: William Kachioff,

Facsimile No: (858) 320-8261 or (ii) to the Investors at the address shown on the Schedule of Investors, or at such other address as such party may designate by written notice to the other party.

6.7 Amendment; Waiver. Except as otherwise set forth herein, no amendment or waiver of any provision of this Agreement shall be effective unless in writing and approved by the Company and the holders of at least a majority in interest of the outstanding Securities.

6.8 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

6.9 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the Notes or the Warrants, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, the Notes or the Warrants, or any waiver on such party's part of any provisions or conditions of this Agreement, the Notes or the Warrants must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies under this Agreement, the Notes or the Warrants, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

6.10 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.11 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION OR IN THE ABSENCE OF AN EXEMPTION FROM SUCH QUALIFICATION IS UNLAWFUL. PRIOR TO ACCEPTANCE OF SUCH CONSIDERATION BY THE COMPANY, THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED OR AN EXEMPTION FROM SUCH QUALIFICATION BEING AVAILABLE.

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IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

BIOCEPT, INC.,
a California corporation

By: _____
William Kachioff
Chief Financial Officer

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

[_____]

By: _____

Name: _____

Title: _____

SCHEDULE OF INVESTORS

INVESTOR NAME	INITIAL CLOSING PRINCIPAL AMOUNT OF NOTE
[_____]	$[_____]
Address: **[_____]**	
[_____]	$[_____]
Address: **[_____]**	
TOTAL:	$[_____]

EXHIBIT A

FORM OF CONVERTIBLE PROMISSORY NOTE

EXHIBIT B

FORM OF WARRANT

Exhibit 10.20.1

THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "*ACT*") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS NOTE AND THE SECURITIES ISSUABLE HEREUNDER IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

CONVERTIBLE PROMISSORY NOTE

$[_____] [_____], 2013
San Diego, California

FOR VALUE RECEIVED, **BIOCEPT, INC.,** a California corporation (the "***Company***"), hereby promises to pay to the order of **[_____]** (collectively, the "***Investor***"), the principal sum of $[_____] (the "***Loan Amount***"), together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below.

This Note is issued pursuant to the Note and Warrant Purchase Agreement, dated June 28, 2013, by and among the Company and the investors listed on the Schedule of Investors thereto (the "***Purchase Agreement***"). Capitalized terms used and not otherwise defined herein shall have the meanings given them in the Purchase Agreement.

1. Interest. Interest shall accrue on the outstanding principal amount hereof from the date of this Note until payment or conversion in full, which interest shall be payable at the rate of 8.0% per annum. Interest shall be due and payable on the Maturity Date (as defined below), and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

2. Payment. Unless the indebtedness outstanding under this Note is converted in accordance with Section 4.2 hereof, payment shall be made in lawful money of the United States to the Investor at the Company's principal offices or, at the option of the Investor, at such other place in the United States as Investor shall have designated by written notice to the Company. All payments shall be applied first to accrued interest and thereafter to principal.

3. No Prepayment. Prepayment by the Company of principal or accrued interest outstanding under this Note may be made only with the prior written consent of the Investor.

4. Maturity Date; Automatic Conversion.

4.1 Maturity Date. This Note and all unpaid principal and accrued interest outstanding under this Note (the "***Conversion Amount***") shall be due and payable on May 31, 2014 (the "***Maturity Date***"); *provided, however*, that the Maturity Date (i) may be extended for two successive six month periods upon the written consent of the Investor and (ii) shall be accelerated upon the occurrence of an Event of Default (defined below).

4.2 Automatic Conversion. Upon the closing of a Qualifying IPO (as defined below) before the Maturity Date, the Conversion Amount as of the date thereof shall automatically be converted into that number of shares of Common Stock as is equal to the Conversion Amount divided by the per share purchase price of the Common Stock sold in the Qualifying IPO (the "***Qualifying IPO Price***"). "***Qualifying IPO***" shall mean the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Common Stock for the account of the Company in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least $8,000,000.

5. Termination of Rights. All rights with respect to this Note shall terminate upon a payment or conversion of the Conversion Amount in full, whether or not this Note has been surrendered.

6. Default. Each of the following events shall be an "***Event of Default***" hereunder:

(a) The Company commits a material breach of the representations, warranties or covenants in the Purchase Agreement which is not cured within 5 calendar days after notice thereof from the Investor;

(b) The Company's failure to pay all unpaid principal and accrued interest outstanding under this Note on the Maturity Date;

(c) The voluntary dissolution or liquidation of the Company;

(d) The Company's voluntary cessation of business operations;

(e) The Company's closing of an Acquisition or Asset Transfer (each as defined in the Company's Amended and Restated Articles of Incorporation (the "***Articles***")) (except that an Acquisition or Asset Transfer shall not include a reincorporation of the Company solely to effect a change of domicile of the Company);

(f) The occurrence of an event of default related to any indebtedness of the Company which is not cured within 15 calendar days;

(g) The Company files a petition or action for relief under any bankruptcy, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any action in furtherance of any of the foregoing; or

(h) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

Upon the occurrence of an Event of Default, all unpaid principal, accrued interest and other amounts owing hereunder shall, at the option of the Investor, and, in the case of an Event of Default pursuant to **(g)** or **(h)** above, automatically, be immediately due, payable and collectible by the Investor pursuant to applicable law. Subject to the provisions hereof, the Investor shall have all rights and may exercise any remedies available to it under law, successively or concurrently.

7. Fractional Shares. No fractional shares shall be issued upon conversion of this Note. In lieu of any fractional shares to which the Investor would otherwise be entitled, after combining any fractional interests of the Investor into as many whole shares as is possible, the Investor shall be paid in cash an amount equal to the product resulting from multiplying such fraction by the Qualifying IPO Price.

8. No Impairment. Except and to the extent as waived or consented to by the Investor in accordance with Section 14 below, the Company will not, by amendment of the Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of any debt or equity securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note in order to protect the rights of Investor hereunder against impairment.

9. Highest Lawful Rate. Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges, and other payments or rights which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate (as defined below), the Company shall not be obligated to pay, and the Investor shall not be entitled to charge, collect, receive, reserve, or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate. "***Highest Lawful Rate***" means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received, or collected by the Investor in connection with this Note under applicable law. In accordance with this section, any amounts received in excess of the Highest Lawful Rate shall be applied towards the prepayment of principal then outstanding.

10. Future Indebtedness. Except with respect to (i) any indebtedness which may be incurred pursuant to the terms of the Purchase Agreement, as the same may be amended from time-to-time, (ii) up to $200,000 of indebtedness incurred for the purchase of automation equipment, and (iii) any indebtedness incurred in the ordinary course of business not in excess of $100,000, the Company shall not, without the prior written consent of Investor, incur any indebtedness.

11. Waiver. Subject to any other provision herein or in the Loan Documents, the Company hereby waives demand, notice, presentment, protest and notice of dishonor.

12. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflict of laws principles.

13. Successors and Assigns. Neither this Note nor any rights hereunder shall be transferable by the Investor without the prior written consent of the Company, except to an Affiliate of the Investor that agrees in writing to be subject to the terms of this Note to the same extent as if such Affiliate were an original Investor hereunder. Subject to the foregoing, the provisions of this Note shall inure to the benefit of and be binding on any successor to the Company and shall extend to any holder hereof.

14. Amendment; Waiver. Any term of this Note may be amended or waived with the written consent of the Company and the Investor.

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

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IN WITNESS WHEREOF, the Company has caused this **CONVERTIBLE PROMISSORY NOTE** to be executed by its duly authorized officer as of the date first written above.

BIOCEPT, INC.

By: _____

Title: _____

Acknowledged and Accepted:

[_____]

_____

_____

Exhibit 10.20.2

THIS WARRANT AND THE UNDERLYING SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN NOTE AND WARRANT PURCHASE AGREEMENT BY AND BETWEEN THE HOLDER AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

BIOCEPT, INC.

WARRANT TO PURCHASE COMMON STOCK

No. CSW-[__] **[_____], 2013**

THIS CERTIFIES THAT, for value received, **[_____]**, or their assigns (collectively, the "***Holder***"), is entitled to subscribe for and purchase at the Exercise Price (defined below) from **BIOCEPT, INC.**, a California corporation (the "***Company***"), up to such number and series of fully paid and nonassessable shares of Common Stock of the Company as set forth herein, during the Exercise Period (as defined below).

This Warrant is issued pursuant to the Note and Warrant Purchase Agreement, dated June 28, 2013, among the Company and the Holder (the "***Purchase Agreement***"). Pursuant to the Purchase Agreement, the Company also issued Holder a Convertible Promissory Note of even date herewith (the "***Note***") in the principal amount of $[_____]. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Purchase Agreement.

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "***Exercise Period***" shall mean the period commencing on the date of the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Company's Common Stock for the account of the Company (the "***IPO***") and ending five (5) years thereafter, unless sooner terminated as provided below.

(b) "***Exercise Price***" shall mean the per share purchase price of the Company's Common Stock sold in the IPO.

(c) "***Exercise Shares***" shall mean the Company's Common Stock.

(d) "***Warrant Coverage Amount***" shall mean the principal amount of the Note, multiplied by .50.

2. NUMBER OF SHARES. The number of Exercise Shares for up to which this Warrant may be exercisable shall be determined by dividing the Warrant Coverage Amount by the Exercise Price, and rounding down to the nearest whole share.

3. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth on the signature page hereto (or at such other address as it may designate by notice in writing to the Holder):

(a) An executed Notice of Exercise in the form attached hereto;

(b) Payment of the Exercise Price either (i) in cash or by check, (ii) by cancellation of indebtedness, or (iii) any combination thereof; and

(c) This Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

4. COVENANTS OF THE COMPANY.

4.1 Covenants as to Exercise Shares. The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved, free from preemptive rights, a sufficient number of shares to provide for the exercise of the rights represented by this Warrant. If at any time during the Exercise Period the number of authorized but unissued shares is not sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes.

4.2 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

5. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Common Stock of the Company by reason of stock dividends, split-ups, recapitalizations, reclassifications, combinations or exchanges of shares, separations, reorganizations, liquidations, or the like, the number and class of shares available under the Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of the Warrant, on exercise for the same aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment; *provided, however*, that such adjustment shall not be made with respect to, and this Warrant shall terminate if not exercised prior to, the events set forth in Section 7 below. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

6. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share by such fraction.

7. EARLY TERMINATION. In the event of, at any time during the Exercise Period, any capital reorganization, or any reclassification of the capital stock of the Company (other than a change in par value or from par value to no par value or no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or an Asset Transfer or Acquisition (as defined in the Company's Amended and Restated Articles of Incorporation, as amended) (other than a merger solely to effect a reincorporation of the Company into another state), the Company shall provide to the Holder 20 days advance written notice of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets, and this Warrant shall terminate unless exercised prior to the occurrence of such reorganization, reclassification, consolidation, merger or sale or other disposition of the Company's assets.

8. MARKET STAND-OFF AGREEMENT. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities) of the Company held by such Holder, for a period of time specified by the managing underwriter(s) not to exceed 180 days following the effective date of a registration statement of

the Company filed under the Securities Act in connection with the IPO (or such longer period, not to exceed 34 days after the expiration of the 180-day period, as the underwriters or the Company shall request in order to facilitate compliance with NASD Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation). Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such Common Stock (or other securities) until the end of such period. Each Holder agrees that any transferee of Common Stock (or other securities) shall be bound by this Section 8. The underwriters of the Company's stock are intended third party beneficiaries of this Section 8 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

9. NO SHAREHOLDER RIGHTS. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company.

10. TRANSFER OF WARRANT. Subject to applicable laws and the restrictions on transfer set forth in this Warrant, this Warrant and all rights hereunder are transferable, by the Holder in person or by duly authorized attorney, upon delivery of this Warrant and the form of assignment attached hereto to any transferee designated by Holder. The transferee shall sign an investment letter in form and substance satisfactory to the Company.

11. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

12. NOTICES, ETC. All notices required or permitted hereunder 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 telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company and the Holder at the address set forth on the signature page hereto, or at such other address as the Company or Holder may designate by 10 days advance written notice to the other party hereto.

13. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

14. COUNTERPARTS. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. GOVERNING LAW. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of California, applied to agreements between California residents, made to be performed entirely within the State of California, without giving effect to conflicts of law principles.

16. AMENDMENT; WAIVER. Any term of this Warrant may be amended or waived with the written consent of the Company and the Holder.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of the date set forth above.

BIOCEPT, INC.

By: _____

Name: _____

Title: _____

Address: 5810 Nancy Ridge Drive
San Diego, California 92121

Acknowledged and accepted:

[_____]

_____

_____

Address: _____

_____

[SIGNATURE PAGE TO WARRANT]

NOTICE OF EXERCISE

TO: BIOCEPT, INC.

(1) The undersigned hereby elects to purchase _____ Exercise Shares of Biocept, Inc. (the "***Company***") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Exercise Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

(3) The undersigned represents that (i) the aforesaid Exercise Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares; (ii) the undersigned is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision regarding its investment in the Company; (iii) the undersigned is experienced in making investments of this type and has such knowledge and background in financial and business matters that the undersigned is capable of evaluating the merits and risks of this investment and protecting the undersigned's own interests; (iv) the undersigned understands that the Exercise Shares issuable upon exercise of this Warrant have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), by reason of a specific exemption from the registration provisions of the Securities Act, which exemption depends upon, among other things, the bona fide nature of the investment intent as expressed herein, and, because such securities have not been registered under the Securities Act, they must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available; (v) the undersigned is aware that the aforesaid Exercise Shares may not be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met and until the undersigned has held the shares for the number of years prescribed by Rule 144, that among the conditions for use of the Rule is the availability of current information to the public about the Company and the Company has not made such information available and has no present plans to do so; and (vi) the undersigned agrees not to make any disposition of all or any part of the aforesaid Exercise Shares unless and until there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement, or the undersigned has provided the Company with an opinion of counsel satisfactory to the Company, stating that such registration is not required.

_____
(Date)

_____
(Signature)

_____
(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 20__

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

Exhibit 10.21

REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (this "**Agreement**"), dated as of July 11, 2013, is entered into by and among Biocept, Inc., a California corporation ("Borrower"), The Reiss Family Survivor's Trust UDT Dated December 19, 1988, Edward Neff and Hale Biopharmaventures, LLC (each individually referred to herein as a "**Guarantor**" and collectively, the "**Guarantors**").

RECITALS

A. Borrower proposes to obtain a credit line (the "**Loan**") from UBS Bank USA (the "**Bank**") pursuant to a Credit Line Agreement dated on or about the date hereof (as the same may be amended from time to time, the "**Loan Document**").

B. As a condition to closing on the transactions contemplated by the Loan Document, the Bank has required that the Guarantors guaranty the obligations of Borrower under the Loan Document pursuant to a Credit Line Guaranty Agreement (the "**Guaranty**").

C. The Guarantors have agreed to enter into the Guaranty, provided Borrower enters into this Agreement.

AGREEMENT

NOW, THEREFORE, the Borrower and the Guarantors agree as follows:

1. REIMBURSEMENT OBLIGATION.

1.1 Reimbursement Obligation. If Bank enforces its rights under the Guaranty (a "**Drawing**") or if any Guarantor is otherwise obligated to pay to Bank any other amount under the Guaranty or to incur any expense in connection with a Drawing (collectively "**Other Payments**"), Borrower shall reimburse such Guarantor by making (or causing to be made) to such Guarantor a payment in cash in the amount of such Drawing or Other Payment immediately on the date of the Drawing.

1.2 Reimbursement Obligations Absolute. The obligation of Borrower to reimburse a Guarantor for Drawings or Other Payments shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under and without regard to any circumstances, including (a) any lack of validity or enforceability of the Loan Document, (b) any amendment or waiver or any consent to departure from all or any terms of the Loan Document, (c) the existence of any claim, set off, defense or other right that Borrower may have at any time against the Bank or any transferee of the Guaranty, the Guarantors or any other person, whether in connection with this Agreement, the transactions contemplated herein, the Loan Document, or any unrelated transaction, (d) any breach of contract or dispute between or among the Bank, Borrower, the Guarantors or any other person, (e) any non-application or misapplication of the proceeds of any Drawing, or (f) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2. SECURITY INTEREST.

2.1 Security Interest. Borrower hereby grants and pledges to each Guarantor a continuing security interest in the property described on **Exhibit A** attached hereto to secure prompt repayment of any and all of Borrower's obligations to each Guarantor hereunder and to secure prompt performance by Borrower of each of its covenants and duties hereunder. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may be requested by any Guarantor to effect the purposes of this Agreement and the security granted hereunder.

2.2 Remedies. The Guarantors shall have all rights and may exercise any remedies available to them at law or in equity, successively or concurrently, including without limitation any remedies available to them under the Uniform Commercial Code, as amended or supplemented from time to time. Borrower hereby irrevocably appoints the Guarantors as Borrower's true and lawful attorney in fact, such appointment, and each and every one of the Guarantors' rights and powers, being coupled with an interest, is irrevocable until the Loan has been fully repaid.

3. WARRANTS.

3.1 Warrants. Upon execution of this Agreement, Borrower shall deliver to each Guarantor a duly executed Warrant to purchase shares of Borrower's Common Stock, in substantially the form attached hereto as Exhibit B, where the "Warrant Coverage Amount" for each Guarantor's Warrant shall be an amount equal to 50% of such Guarantor's individual Guaranty.

4. MISCELLANEOUS.

4.1 Notices. All notices required or permitted hereunder shall be in writing (including facsimile, electronic mail or similar electronic transmissions), and shall be deemed effectively given: (a) when received by the addressee, if delivered by hand, facsimile, electronic mail or similar form of electronic transmission, (b) five days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) to Borrower at 5810 Nancy Ridge Drive, San Diego, California 92121, Attn: William Kachioff, Facsimile No: (858) 320-8261 or (ii) to the Guarantors at the address shown on the signature page hereto, or at such other address as such party may designate by written notice to the other party.

4.2 Waivers; Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by each Guarantor and Borrower. No failure or delay by the Guarantors in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

4.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, the Guarantors, and their respective successors and permitted assigns. However, in no event may Borrower assign or transfer any of his rights or obligations under this Agreement without the prior written consent of each Guarantor.

4.4 Governing Law; Venue. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California without giving effect to its conflicts of laws principles. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Diego, California.

4.5 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

4.6 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

4.7 Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

BORROWER:

Biocept, Inc.,
a California corporation

/s/ William G. Kachioff
William Kachioff
Chief Financial Officer

GUARANTORS:

The Reiss Family Survivor's Trust UDT dated December 19, 1988

By: /s/ Claire K.T. Reiss
Name: Claire K.T. Reiss
Title: Trustee

Edward Neff

By: /s/ Edward Neff

Hale Biopharmaventures, LLC

By: /s/ David F. Hale
Name: David F. Hale
Title: Chairman & CEO

EXHIBIT A

COLLATERAL

All of Borrower's interest, whether presently existing or hereafter created or acquired, and wherever located, in the following (all of which being collectively referred to herein as the "**Collateral**"):

(a) All Accounts of Borrower;

(b) All Chattel Paper of Borrower;

(c) All Commodity Accounts of Borrower;

(d) All contracts of Borrower;

(e) All Deposit Accounts of Borrower;

(f) All Documents of Borrower;

(g) All General Intangibles of Borrower, including, without limitation, any intellectual property, in any medium, of any kind or nature whatsoever, now or hereafter owned or acquired or received by Borrower or in which Borrower now holds or hereafter acquires or receives any right or interest;

(h) All Goods of Borrower, including, without limitation, Equipment, Inventory and Fixtures;

(i) All Instruments of Borrower, including, without limitation, Promissory Notes;

(j) All Investment Property of Borrower;

(k) All Letter-of Credit Rights of Borrower;

(l) All Money of Borrower;

(m) All Securities Accounts of Borrower;

(n) All Supporting Obligations of Borrower;

(o) All property of Borrower held by the Guarantors, or any other party for whom the Guarantor are acting as agent, including, without limitation, all property of every-description now or hereafter in the possession or custody of or in transit to the Guarantors or such other party for any purpose, including, without limitation, safekeeping, collection or pledge, for the account of Borrower, or as to which Borrower may have any right or power;

(p) All other goods and personal property of Borrower, wherever located, whether tangible or intangible, and whether now owned or hereafter acquired, existing, leased or consigned by or to Borrower; and

(q) To the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for and rents, profits and products of each of the foregoing.

Notwithstanding the foregoing, the term "Collateral" shall not include: (a) the collateral which is subject to the security interest on certain assets of Borrower granted to Key Equipment Finance Inc., (b) "intent-to-use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise or (c) any Account, Chattel Paper, General Intangible or Promissory Note in which Borrower has any right, title or interest if and to the extent such Account, Chattel Paper, General Intangible or Promissory Note includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Borrower therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such Account, Chattel Paper, General Intangible or Promissory Note to enforce any remedy with respect thereto; provided that the foregoing exclusion shall not apply if (i) such prohibition has been waived or such other person has otherwise consented to the creation hereunder of a security interest in such Account, Chattel Paper, General Intangible or Promissory Note or (ii) such prohibition would be rendered ineffective pursuant to Sections 9-406(d), 9-407(a) or 9-408(a) of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the Bankruptcy Code) or principles of equity); provided further that immediately upon the ineffectiveness, lapse or termination of any such provision, the Collateral shall include, and Borrower shall be deemed to have granted on the date hereof a security interest in, all its rights, title and interests in and to such Account, Chattel Paper, General Intangible or Promissory Note as if such provision had never been in effect; and provided further that the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Guarantors' unconditional continuing security interest in and to all rights, title and interests of Borrower in or to any payment obligations or other rights to receive monies due or to become due under any such Account, Chattel Paper, General Intangible or Promissory Note and in any such monies and other proceeds of such Account, Chattel Paper, General Intangible or Promissory Note.

All terms above have the meanings given to them in the Uniform Commercial Code as the same may from time to time be in effect in the State of California.

EXHIBIT B

FORM OF WARRANT TO PURCHASE COMMON STOCK

Exhibit 21.1

List of Subsidiaries

None.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 and related Prospectus of our report dated August 16, 2013, relating to the financial statements of Biocept, Inc, (which report includes an explanatory paragraph relating to the uncertainty of the Company's ability to continue as a going concern) and to the reference to us under the caption "Experts" which is contained in this Prospectus.

/s/ Mayer Hoffman McCann P.C.

San Diego, California
August 16, 2013