

## Charter of the Compensation Committee

### Biocept, Inc.

#### **I. Purpose**

The purpose of the Compensation Committee (the “*Committee*” or “*Compensation Committee*”) of the Board of Directors (the “*Board*”) of Biocept, Inc. (the “*Company*”) is to develop, implement and review the executive officer and director compensation policies and plans that are appropriate for the Company and to administer the Company’s cash and equity-based compensation plans for executive officers, directors and employees. The Committee’s principal functions are to:

- Oversee the Company’s overall compensation programs applicable to executive officers and directors;
- Oversee the Company’s cash and equity-based compensation plans applicable to all of the Company’s directors, officers and employees;
- Produce an annual report on executive compensation for inclusion in the Company’s annual proxy statement; and
- Review and discuss with the Company’s management the tables and narrative discussion regarding executive officer and director compensation to be included in the Company’s annual proxy statement.

For purposes of this charter, it is understood that the term “compensation” includes salary, discretionary bonuses, performance based cash incentive plan awards, equity incentive plan awards, perquisites, severance arrangements, change of control related arrangements, retirement benefits, tax gross up provisions and other related benefits and benefit plans.

#### **II. Membership**

The Committee shall consist of two or more members of the Board. The members of the Committee shall be appointed by and serve at the discretion of the Board. Committee members may be removed, without cause, by the affirmative vote of the majority of the Board of Directors at any time. Any Committee member may resign effective upon giving oral or written notice to the Chairman of the Board, the Corporate Secretary or the Board of Directors (unless the notice specifies a later time for the effectiveness of such resignation). Vacancies occurring on the Committee shall be filled by the Board. The Chairman of the Committee also shall be appointed by the Board.

Each member of the Committee shall (1) be an “independent director” as defined under the listing rules of the stock exchange on which the Company’s securities are listed for trading, (2) be a “non-employee director” as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), (3) be an “outside director” as defined in Section 162(m) of the Internal Revenue Code of 1986, as amended, (4) be free from any relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment as a Committee member, and (5) meet any other requirements imposed by applicable laws, rules, regulations and listing standards, subject to any applicable exemptions and transition provisions.

### **III. Responsibilities and Authority**

The following are general guidelines establishing the responsibilities and authority of the Committee. This list is not intended to be exhaustive, and the Committee may modify the list as appropriate, establishing policies and procedures as required or recommended to meet its purpose and carry out its principal functions.

#### **A. Compensation of the Company's Chief Executive Officer and Other Executive Officers**

The Committee shall:

1. Establish the process for, and conduct annually, a performance review of the Company's Chief Executive Officer ("**CEO**"), on an overall basis and against any defined objectives, which process shall include input from each Board member.
2. Annually review the Company's overall compensation strategy and policies applicable to the CEO and the Company's other executive officers, as defined under Section 16 of the Exchange Act and the rules promulgated thereunder (together with the CEO, the "**Executive Officers**"). This shall include a review of base salary, discretionary bonuses, cash incentive compensation, equity-based awards, perquisites and other benefits, to assure that such compensation supports the Company's overall compensation philosophy.
3. Annually review the Company and individual performance goals and objectives that may be relevant to the compensation of the executive officers.
4. Review and approve the terms of any employment agreement, severance or change in control arrangements, or other compensatory arrangement with any Executive Officer.
5. Review and approve policies and procedures relating to benefits and perquisites of the Executive Officers.
6. Require that the CEO may not be present during voting or deliberations regarding his or her specific compensation and benefits, and that the other Executive Officers may not be present during voting or deliberations regarding their specific compensation and benefits; provided that the CEO and other Executive Officers may be present during the voting or deliberations regarding compensation plans generally applicable to employees and pursuant to which they may also be eligible to participate.
7. Review and assess periodically the Company's processes and procedures for the consideration and determination of executive compensation, and review and discuss with management any description of such processes and procedures to be included in the Company's proxy statement.

**B. Cash and Equity-Based Compensation Plans**

The Committee shall:

1. Annually review and approve (or, if it deems appropriate, make recommendations to the full Board regarding) the adoption, amendment and termination of the Company's cash incentive plans, equity incentive plans, cash pension and profit sharing plans, deferred compensation plans and similar programs. The Committee shall have full power and authority to administer these plans, establish guidelines, interpret plan documents, select participants, and exercise such other power and authority as may be permitted or required under such plans.
2. Approve grants of restricted stock, stock options or other equity-based awards to plan participants, and set performance goals associated with the vesting of those awards after taking into consideration the Company's compensation philosophy and strategy.
3. Approve target and maximum cash incentive amounts under the Company's cash incentive compensation plans, and set performance goals associated with the achievement of those bonuses after taking into consideration the Company's compensation philosophy and strategy.
4. Evaluate and determine the Executive Officers' compensation, including making determinations with respect to cash incentive compensation earned and equity-based grants vested, based on achievement with respect to performance objectives that were set for the Company and each of the Executive Officers.

**C. Compensation Committee Report and Narrative Discussion of Executive Compensation**

The Committee shall:

1. Review and discuss with management the tables and narrative disclosure regarding the Company's compensation policies and practices applicable to executive officers and directors.
2. Prepare a report of the Committee for inclusion in the annual report or the proxy statement for the Company's annual meeting in accordance with the rules and regulations of the Securities and Exchange Commission (the "*SEC*").

**D. Compensation of Non-Employee Directors**

The Committee shall make recommendations to the full Board regarding the type and amount of compensation to be paid or awarded to non-employee members of the Board, including consulting, retainer, Board meeting, committee and committee chair fees, equity incentive awards, and any deferred compensation arrangements or similar programs.

**E. Annual Review of Charter**

The Committee shall review and assess the adequacy of this Charter at least annually and recommend to the Board any amendments or modifications to the Charter that the Committee deems appropriate.

**F. Risk Oversight**

The Committee shall regularly consider whether the Company's overall and/or individual compensation practices, mechanisms, strategy and policies, or the structure or operation of the Company's compensation plans, or any other matters within the purview of the Committee, encourage undue or inappropriate risk taking by the Executive Officers and/or other employees. If so, the Committee shall take appropriate steps to remedy such matters or recommend that the Board take appropriate steps to remedy such matters.

**G. Additional Compensation Committee Authority**

The Committee is authorized, on behalf of the Board, to do any of the following, as the Committee deems necessary or appropriate in its discretion:

1. Meet with the CEO to discuss the cash and equity-based compensation programs to be in effect for the Executive Officers and other employees of the Company, and the Company and individual objectives and performance goals applicable to the Executive Officers and, whether appropriate, other employees of the Company.
2. Review its composition and performance on an annual basis.
3. Select and retain an independent compensation consultant, legal counsel or other advisor to conduct a comparative study of the Company's executive compensation policies, practices and procedures relative to other public companies, or conduct such other studies, surveys or analyses as the Committee deems appropriate. Prior to selecting any compensation consultant, legal counsel or other advisor with respect to compensation matters, the Committee shall review, discuss and consider the independence of such compensation consultant, legal counsel or other advisor as required by SEC rules and regulations, as well as any other factors identified by applicable listing standards.
4. Periodically review the Company's procedures with respect to employee loans.
5. Form and delegate authority to subcommittees consisting of one or more of its members as the Committee deems appropriate to carry out its responsibilities and exercise its powers.
6. To the extent deemed appropriate by the Committee, and subject to such terms and conditions as the Committee may establish from time to time,

- delegate authority to the CEO to grant cash incentive awards or equity incentive awards to the Company's non-executive employees, taking into consideration the Company's compensation philosophy and strategy.
7. Engage such independent legal and other advisors as it deems necessary or advisable to carry out its responsibilities and powers, and determine the compensation or fees payable to such counsel or other advisors.
  8. Rely upon advice and information that it receives in its discussions and communications with management and such advisors as may be engaged by the Committee.
  9. Request that any officer or employee of the Company, the Company's outside legal counsel or any other advisor retained by the Company, attend a meeting of the Compensation Committee (or any subcommittee), or meet with any members of or advisors to the Compensation Committee.
  10. Perform other activities required by applicable laws, rules, regulations, or listing standards.
  11. Perform other activities consistent with this Charter, the Company's Certificate of Incorporation and Bylaws (each as amended from time to time), and applicable laws, rules, regulations or listing standards as the Committee or the Board deems necessary or appropriate.
  12. Have unrestricted access to Company personnel and documents, and the authority to direct and supervise an investigation into any matters within the scope of its duties.
  13. Incur such expenses as are necessary or appropriate in carrying out its duties. In addition, the Company will provide for appropriate funding, as determined by the Committee, for the commission of any studies, surveys or analyses concerning the levels of executive compensation payable in the industry in which the Company is engaged and in other related industries or obtaining recommendations from outside consultants concerning comparable compensation programs.
  14. Perform such other functions as may be requested by the Board from time to time.

#### **IV. Meetings and Minutes**

The Committee will meet at least twice per year or more frequently, as determined appropriate by the Committee. The Committee will regularly report to the Board on significant matters related to the Committee's responsibilities and as requested by the Board with respect to other matters. A quorum of the Committee for the transaction of business will be a majority of its members. Meetings may be held telephonically. The Committee may also act by unanimous written consent in lieu of a meeting. The Committee will maintain written minutes of its meetings and will make such minutes available to the Board.