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

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**FORM S-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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**BioSig Technologies, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**3845**

(Primary Standard Industrial  
Classification Code Number)

**26-4333375**

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

**12424 Wilshire Boulevard, Suite 745**

**Los Angeles, California 90025**

**(310) 820-8100**

(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

**Kenneth Londoner**

**Chairman and Chief Executive Officer**

**12424 Wilshire Boulevard, Suite 745**

**Los Angeles, California 90025**

**(310) 820-8100**

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

***Copies of all communications, including communications sent to agent for service, should be sent to:***

**Rick A. Werner, Esq.**

**Haynes and Boone, LLP**

**30 Rockefeller Plaza, 26th Floor**

**New York, New York 10112**

**Tel. (212) 659-7300**

**Fax (212) 884-8234**

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

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.

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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

Smaller reporting company

(Do not check if a smaller reporting company)

#### Calculation of Registration Fee

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.001 par value per share, issuable upon conversion of Series C Preferred Stock	1,330,627	\$ 2.09 (2)	\$ 2,781,010.43	\$ 379.33
Common Stock underlying Warrants	1,797,416	\$ 2.09 (2)	\$ 3,756,599.44	\$ 512.40
<b>Total</b>	<b>3,128,043</b>	<b>\$ 2.09 (2)</b>	<b>\$ 6,537,609.87</b>	<b>\$ 891.73</b>

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), the shares of common stock offered 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.

(2) There is no current market for the securities and the price at which the shares are being offered has been estimated and used for the purpose of computing the amount of the registration fee in accordance with Rule 457 under the Securities Act.

**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.**

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**The information in this 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 state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JULY 22, 2013**

**PRELIMINARY PROSPECTUS**



**BioSig Technologies, Inc.**

**Up to 3,128,043 Shares of Common Stock Underlying Series C Preferred Stock and Warrants**

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This prospectus relates to the resale of up to 3,128,043 shares of our common stock to be offered by the selling stockholders upon the conversion of 2,781 shares of our Series C Preferred Stock, at a conversion price of \$2.09 per share, and upon the exercise of outstanding common stock purchase warrants.

The selling stockholders will be offering their shares of common stock at a price of \$2.09 per share until a market develops and thereafter at prevailing market prices or privately negotiated prices. There has been no market for our securities and a public market may not develop, or, if any market does develop, it may not be sustained. Our common stock is not listed on any exchange or quoted on the OTC Bulletin Board. After the effective date of the registration statement relating to this prospectus, we hope to have a market maker file an application with the Financial Industry Regulatory Authority for our common stock to be eligible for trading on the OTC Bulletin Board. We do not yet have a market maker who has agreed to file such application.

We will not receive any of the proceeds from the sale of common stock by the selling stockholders. However, we will generate proceeds in the event of a cash exercise of the warrants by the selling stockholders. We intend to use those proceeds, if any, for general corporate purposes. We will pay the expenses of registering these shares.

All expenses of registration incurred in connection with this offering are being borne by us, but all selling and other expenses incurred by the selling stockholders will be borne by the selling stockholders.

**Investing in our common stock is highly speculative and involves a high degree of risk. You should carefully consider the risks and uncertainties in the section entitled "Risk Factors" beginning on page 2 of this prospectus before making a decision to purchase our stock.**

**We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read the entire prospectus and any amendments or supplements carefully before you make your investment decision.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is July 22, 2013

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**You should rely only on the information contained in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.**

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## PROSPECTUS SUMMARY

*The following summary highlights information contained elsewhere in this prospectus. It may not contain all the information that may be important to you. You should read this entire prospectus carefully, including the sections entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and our historical financial statements and related notes included elsewhere in this prospectus or any accompanying prospectus supplement before making an investment decision. In this prospectus, unless the context requires otherwise, all references to “we,” “our,” “us” and the “Company” refer to BioSig Technologies, Inc.*

### Overview

We are a development stage medical device company that is developing a proprietary technology platform to minimize noise and artifacts from cardiac recordings during electrophysiology studies, which are studies, such as electrocardiograms and electrograms, that measure electrical activity of the heart, and ablation, which is a procedure that typically involves catheters that scar or destroy heart tissue in order to correct heart rhythm problems. Our product under development, the PURE EP System, is a surface electrocardiogram and intracardiac multichannel recording and analysis system that acquires, processes and displays electrocardiogram and electrograms required during electrophysiology studies and ablation procedures.

We were formed as BioSig Technologies, Inc., a Nevada corporation, in February 2009 and in April 2011 we merged with our wholly-owned subsidiary, BioSig Technologies Inc., a Delaware corporation, with the Delaware corporation continuing as the surviving entity. We have not generated any revenue to date and consequently our operations are subject to all risks inherent in the establishment of a new business enterprise.

Our principal executive offices are located at 12424 Wilshire Boulevard, Suite 745, Los Angeles, California 90025. Our telephone number is (310) 820-8100.

### The Offering

Common stock offered by the selling stockholders:	Up to 3,128,043 shares of our common stock to be offered by the selling stockholders upon the conversion of shares of Series C Convertible Preferred Stock and the exercise of outstanding common stock purchase warrants.
Common stock outstanding prior to the offering:	8,187,650
Common stock outstanding after this offering:	12,256,132 (1)
Use of proceeds:	We will not receive any proceeds from the sale of the common stock offered by the selling stockholders.
Offering price:	The selling stockholders will be offering their shares of common stock at a price of \$2.09 per share until a market develops and thereafter at prevailing market prices or privately negotiated prices.
Market for the common stock:	There has been no market for our securities and a public market may not develop, or, if any market does develop, it may not be sustained. Our common stock is not listed on any exchange or quoted on the OTC Bulletin Board. After the effective date of the registration statement relating to this prospectus, we hope to have a market maker file an application with the Financial Industry Regulatory Authority, for our common stock to be eligible for trading on the OTC Bulletin Board. We do not yet have a market maker who has agreed to file such application.
Risk factors:	You should carefully consider the information set forth in this prospectus and, in particular, the specific factors set forth in the “Risk Factors” section beginning on page 2 of this prospectus before deciding whether or not to invest in shares of our common stock.

- (1) The number of shares of common stock outstanding after the offering is based upon 9,128,089 shares outstanding as of July 22, 2013, including the automatic conversion of all shares of our Series A Preferred Stock and our Series B Preferred Stock, which will occur immediately upon us becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act, as amended, and assumes the conversion of all shares of Series C Preferred Stock and the exercise of all warrants with respect to those shares being registered for resale pursuant to the registration statement of which this prospectus forms a part.

The number of shares of common stock outstanding after this offering excludes:

- 2,990,977 shares of common stock issuable upon the exercise of currently outstanding options at a weighted average exercise price of \$2.08 per share; and
- 509,023 shares of common stock available for future issuance under the BioSig Technologies, Inc. 2012 Equity Incentive Plan.



## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the following factors and other information in this prospectus or any accompanying prospectus supplement before making a decision to invest in our common stock. If any of the risks actually occur, our business, financial conditions and operating results may be materially and adversely affected. In that event, the trading price of our common stock may decline, and you could lose all or part of your investment.*

### **Risks Related to Our Business and Industry**

***Because our condition as a going concern is in doubt, we will be forced to cease our business operations unless we can raise sufficient funds to satisfy our working capital needs.***

As shown in the accompanying financial statements during years ended December 31, 2012 and 2011, we incurred net losses attributable to common stockholders of \$2,477,002 and \$1,178,101, respectively and used \$1,524,956 in cash for operating activities for the year ended December 31, 2012. As of July 22, 2013, we had cash on hand of approximately \$480,000. These factors, among others, raise substantial doubt that we will be able to continue as a going concern for a reasonable period of time.

Our existence is dependent upon management's ability to develop profitable operations. Our management is devoting substantially all of its efforts to developing its products and services and there can be no assurance that our efforts will be successful. There is no assurance that can be given that management's actions will result in our profitable operations or the resolution of our liquidity problems.

***Because we are an early development stage company with no products near commercialization, we expect to incur significant additional operating losses.***

We are an early development stage company and we expect to incur substantial additional operating expenses over the next several years as our research, development, pre-clinical testing, regulatory approval and clinical trial activities increase. The amount of our future losses and when, if ever, we will achieve profitability are uncertain. We have no products that have generated any commercial revenue and do not expect to generate revenues from the commercial sale of our products in the near future, if ever. Our ability to generate revenue and achieve profitability will depend on, among other things, the following:

- successful completion of the preclinical and clinical development of our products;
- obtaining necessary regulatory approvals from the U.S. Food and Drug Administration or other regulatory authorities;
- establishing manufacturing, sales, and marketing arrangements, either alone or with third parties; and
- raising sufficient funds to finance our activities.

We might not succeed at all, or at any, of these undertakings. If we are unsuccessful at some or all of these undertakings, our business, prospects, and results of operations may be materially adversely affected.

***Our product candidates are at an early stage of development and may not be successfully developed or commercialized.***

Our main product candidate, the PURE EP System, is in the early stage of development and will require substantial further capital expenditures, development, testing, and regulatory clearances prior to commercialization, especially given that we have not yet completed pre-clinical testing on this product. The development and regulatory approval process takes several years and it is not likely that the PURE EP System, even if successfully developed and approved by the U.S. Food and Drug Administration, may not be commercially available for a number of years. Accordingly, even if we are able to obtain the requisite financing to fund our development program, we cannot assure you that our product candidates will be successfully developed or commercialized. Our failure to develop, manufacture or receive regulatory approval for or successfully commercialize any of our product candidates could result in the failure of our business and a loss of all of your investment in our company.

***We expect to derive our revenue from sales of our PURE EP System and other products we may develop. If we fail to generate revenue from these sources, our results of operations and the value of our business will be materially and adversely affected.***

We expect our revenue to be generated from sales of our PURE EP System and other products we may develop. Future sales of these products, if any, will be subject to, among other things, the receipt of regulatory approvals and commercial and market uncertainties that may be outside our control. If we fail to generate our intended revenues from these products, our results of operations and the value of our business and securities would be materially and adversely affected.

***We may need to finance our future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. Any additional funds that we obtain may not be on terms favorable to us or our stockholders and may require us to relinquish valuable rights.***

Until and unless we receive approval from the U.S. Food and Drug Administration and other regulatory authorities for our products, we will not generate revenues from our products. Therefore, for the foreseeable future, we will have to fund all of our operations and capital expenditures from cash on hand, public or private equity offerings, debt financings, bank credit facilities or corporate collaboration and licensing arrangements. We believe that our existing cash on hand will be sufficient to enable us to fund our projected operating requirements for approximately the next five months. However, we may need to raise additional funds more quickly if one or more of our assumptions prove to be incorrect or if we choose to expand our product development efforts more rapidly than we presently anticipate. We also may decide to raise additional funds before we require them if we are presented with favorable terms for raising capital.

If we seek to sell additional equity or debt securities, obtain a bank credit facility or enter into a corporate collaboration or licensing arrangement, we may not obtain favorable terms for us and/or our stockholders or be able to raise any capital at all, all of which could result in a material adverse effect on our business and results of operations. The sale of additional equity or debt securities, if convertible, could result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations. Raising additional funds through collaboration or licensing arrangements with third parties may require us to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates, or to grant licenses on terms that may not be favorable to us or our stockholders. In addition, we could be forced to discontinue product development, reduce or forego sales and marketing efforts and forego attractive business opportunities, all of which could have an adverse impact on our business and results of operations.

***We may be unable to develop our existing or future technology.***

Our product, the PURE EP System, may not deliver the levels of accuracy and reliability needed to make it a successful product in the market place. Additionally, the development of such accuracy and reliability may be indefinitely delayed or may never be achieved. Failure to develop this or other technology could have an adverse material effect on our business, financial condition, results of operations and future prospects.

***The results of clinical studies may not support the usefulness of our technology.***

Conducting clinical trials is a long, expensive and uncertain process that is subject to delays and failure at any stage. Clinical trials can take months or years. The commencement or completion of any of our clinical trials may be delayed or halted for numerous reasons, including:

- the U.S. Food and Drug Administration may not approve a clinical trial protocol or a clinical trial, or may place a clinical trial on hold;
- subjects may not enroll in clinical trials at the rate we expect or we may not follow up on subjects at the rate we expect;
- subjects may experience events unrelated to our products;



- third-party clinical investigators may not perform our clinical trials consistent with our anticipated schedule or the clinical trial protocol and good clinical practices, or other third-party organizations may not perform data collection and analysis in a timely or accurate manner;
- interim results of any of our clinical trials may be inconclusive or negative;
- regulatory inspections of our clinical trials may require us to undertake corrective action or suspend or terminate the clinical trials if investigators find us not to be in compliance with regulatory requirements; or
- governmental regulations or administrative actions may change and impose new requirements, particularly with respect to reimbursement.

Results of pre-clinical studies do not necessarily predict future clinical trial results and previous clinical trial results may not be repeated in subsequent medical trials. We may experience delays, cost overruns and project terminations despite achieving promising results in pre-clinical testing or early clinical testing. In addition, the data obtained from clinical trials may be inadequate to support approval or clearance of a submission. The U.S. Food and Drug Administration may disagree with our interpretation of the data from our clinical trials, or may find the clinical trial design, conduct or results inadequate to demonstrate the safety and effectiveness of the product candidate. The U.S. Food and Drug Administration may also require us to conduct additional pre-clinical studies or clinical trials that could further delay approval of our products. If we are unsuccessful in receiving U.S. Food and Drug Administration approval of a product, we would not be able to commercialize the product in the U.S., which could seriously harm our business. Moreover, we face similar risks in other jurisdictions in which we may sell or propose to sell our products.

***The medical device industry is subject to stringent regulation and failure to obtain regulatory approval will prevent commercialization of our products.***

Medical devices are subject to extensive and rigorous regulation by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, by comparable agencies in foreign countries and by other regulatory agencies and governing bodies. Under the Federal Food, Drug, and Cosmetic Act and associated regulations, manufacturers of medical devices must comply with certain regulations that cover the composition, labeling, testing, clinical study, manufacturing, packaging and distribution of medical devices. In addition, medical devices must receive U.S. Food and Drug Administration clearance or approval before they can be commercially marketed in the U.S., and the U.S. Food and Drug Administration may require testing and surveillance programs to monitor the effects of approved products that have been commercialized and can prevent or limit further marketing of a product based on the results of these post-market evaluation programs. The process of obtaining marketing clearance from the U.S. Food and Drug Administration for new products could take a significant period of time, require the expenditure of substantial resources, involve rigorous pre-clinical and clinical testing, require changes to the products and result in limitations on the indicated uses of the product. In addition, if we seek regulatory approval in non-U.S. markets, we will be subject to further regulatory approvals, that will require additional costs and resources. There is no assurance that we will obtain necessary regulatory approvals in a timely manner, or at all.

Our product, the PURE EP System, will need to receive 510(k) marketing clearance from the U.S. Food and Drug Administration in order permit us to market this product in the U.S. In addition, if we intend to market our product for additional medical uses or indications, we will need to submit additional 510(k) applications to the U.S. Food and Drug Administration that are supported by satisfactory clinical trial results specifically for the additional indication. The results of our initial clinical trials may not provide sufficient evidence to allow the U.S. Food and Drug Administration to grant us such additional marketing clearances and even additional trials requested by the U.S. Food and Drug Administration may not result in our obtaining 510(k) marketing clearance for our product. The failure to obtain U.S. Food and Drug Administration marketing clearance for the PURE EP System, any additional indications for the PURE EP System or any other of our future products would have a material adverse effect on our business.

***Even if regulatory approval is obtained, our products will be subject to extensive post-approval regulation.***

Once a product is approved by the relevant regulatory body for our targeted commercialization market, numerous post-approval requirements apply, including but not limited to requirements relating to manufacturing, labeling, packaging, advertising and record keeping. Even if regulatory approval of a product is obtained, the approval may be subject to limitations on the uses for which the product may be marketed, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. Any such post-approval requirement could reduce our revenues, increase our expenses and render the approved product candidate not commercially viable. If we fail to comply with the regulatory requirements of the applicable regulatory authorities, or if previously unknown problems with any approved commercial products, manufacturers or manufacturing processes are discovered, we could be subject to administrative or judicially imposed sanctions or other negative consequences, including:

- restrictions on our products, manufacturers or manufacturing processes;
- warning letters and untitled letters;
- civil penalties and criminal prosecutions and penalties;
- fines;
- injunctions;
- product seizures or detentions;
- import or export bans or restrictions;
- voluntary or mandatory product recalls and related publicity requirements;
- suspension or withdrawal of regulatory approvals;
- total or partial suspension of production; and
- refusal to approve pending applications for marketing approval of new products or of supplements to approved applications.

***Regulations are constantly changing, and in the future our business may be subject to additional regulations that increase our compliance costs.***

We believe that we understand the current laws and regulations to which our products will be subject in the future. However, federal, state and foreign laws and regulations relating to the sale of our products are subject to future changes, as are administrative interpretations of regulatory agencies. If we fail to comply with such federal, state or foreign laws or regulations, we may fail to obtain regulatory approval for our products and, if we have already obtained regulatory approval, we could be subject to enforcement actions, including injunctions preventing us from conducting our business, withdrawal of clearances or approvals and civil and criminal penalties. In the event that federal, state, and foreign laws and regulations change, we may need to incur additional costs to seek government approvals, in addition to the clearance we intend to seek from the U.S. Food and Drug Administration in order to sell or market our products. If we are slow or unable to adapt to changes in existing regulatory requirements or the promulgation of new regulatory requirements or policies, we or our licensees may lose marketing approval for our products which will impact our ability to conduct business in the future.

***The market for our technology and revenue generation avenues for our products may be slow to develop, if at all.***

The market for our products may be slower to develop or smaller than estimated or it may be more difficult to build the market than anticipated. The medical community may resist our products or be slower to accept them than we anticipate. Revenues from our products may be delayed or costs may be higher than anticipated which may result in our need for additional funding. We anticipate that our principal route to market will be through commercial distribution partners. These arrangements are generally non-exclusive and have no guaranteed sales volumes or commitments. The partners may be slower to sell our products than anticipated. Any financial, operational or regulatory risks that affect our partners could also affect the sales of our products. In the current economic environment, hospitals and clinical purchasing budgets may exercise greater restraint with respect to purchases, which may result in purchasing decisions being delayed or denied. If any of these situations were to occur this could have a material adverse effect on our business, financial condition, results of operations and future prospects.

***If we seek to market our products in foreign jurisdictions, we may need to obtain regulatory approval in these jurisdictions.***

In order to market our products in the European Union and many other foreign jurisdictions, we may need to obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. Approval procedures vary among countries (except with respect to the countries that are part of the European Economic Area) and can involve additional clinical testing. The time required to obtain approval may differ from that required to obtain U.S. Food and Drug Administration approval. Should we decide to market our products abroad, we may fail to obtain foreign regulatory approvals on a timely basis, if at all. Approval by the U.S. Food and Drug Administration does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority, including obtaining CE Mark approval, does not ensure approval by regulatory authorities in other foreign countries or by the U.S. Food and Drug Administration. We may be unable to file for, and may not receive, necessary regulatory approvals to commercialize our products in any foreign market, which could adversely affect our business prospects.

***If we fail to obtain an adequate level of reimbursement for our system by third-party payors, there may be no commercially viable markets for our system or the markets may be much smaller than expected.***

The availability and levels of reimbursement by governmental and other third-party payors significantly affect the market for our system. Reimbursement by third-party payors in the U.S. typically is based on the device's perceived benefit and whether it is deemed medically reasonable and necessary. Reimbursement levels of third-party payors in the U.S. are also based on established payment formulas that take into account part or all of the cost associated with these devices and the related procedures performed. We cannot assure you the level of reimbursement we might obtain in the U.S., if any, for our system. If we do not obtain adequate levels of reimbursement for our system by third-party payors in the U.S., which we believe is largest potential market for our system, our financial condition, results of operations and prospects would be harmed.

Reimbursement and health care payment systems in international markets vary significantly by country, and include both government-sponsored health care and private insurance. To obtain reimbursement or pricing approval in some countries, we may be required to produce additional clinical data, which may involve one or more additional clinical trials, that compares the cost-effectiveness of our system to other available therapies. We may not obtain international reimbursement or pricing approvals in a timely manner, if at all. Our failure to receive international reimbursement or pricing approvals would negatively impact market acceptance of our system in the international markets in which those approvals are sought.

We believe that future reimbursement may be subject to increased restrictions both in the U.S. and in international markets. Future legislation, regulation or reimbursement policies of third-party payors may adversely affect the demand for the PURE EP System or any of our other future products and limit our ability to sell the PURE EP System or any of our other future products on a profitable basis. In addition, third-party payors continually attempt to contain or reduce the costs of health care by challenging the prices charged for health care products and services. If reimbursement for our system is unavailable in any market or limited in scope or amount, or if pricing is set at unsatisfactory levels, market acceptance of our system would be significantly impaired and our future revenues, if any, would be significantly harmed.

***The electrophysiology market we operate in is highly competitive.***

There are a number of groups and organizations, such as healthcare, medical device and software companies in the electrophysiology market that may develop a competitive offering to our products, especially given that we have not yet filed for patent protection for any of our intellectual property. The largest companies in the electrophysiology market are GE, C.R. Bard, Inc., Siemens and St. Jude Medical. All of these companies have significantly greater resources, experience and name recognition than we possess. There is no assurance that they will not attempt to develop similar or superior products, that they will not be successful in developing such products or that any products they may develop will not have a competitive advantage over our products. If we experience delayed regulatory approvals or disputed clinical claims, we may not have a commercial or clinical advantage over competitors' products that we believe we currently possess. Should a superior offering come to market, this could have a material adverse effect on our business, financial condition, results of operations and future prospects.

***We rely on key executive officers and scientific and medical advisors, and their knowledge of our business and technical expertise would be difficult to replace.***

We are highly dependent on our executive officers and scientific and medical advisors because of their expertise and experience in medical device development. We do not have “key person” life insurance policies for any of our officers. The loss of the technical knowledge and management and industry expertise of any of our key personnel could result in delays in product development, loss of customers and sales and diversion of management resources, which could adversely affect our results of operations.

***We may fail to attract and retain qualified personnel.***

We expect to rapidly expand our operations and grow our sales, research and development and administrative operations. This expansion is expected to place a significant strain on our management and will require hiring a significant number of qualified personnel. Accordingly, recruiting and retaining such personnel in the future will be critical to our success. There is intense competition from other companies, research and academic institutions, government entities and other organizations for qualified personnel in the areas of our activities. Many of these companies, institutions and organizations have greater resources than we do, along with more prestige associated with their names. If we fail to identify, attract, retain and motivate these highly skilled personnel, we may be unable to continue our marketing and development activities, and this could have a material adverse effect on our business, financial condition, results of operations and future prospects.

***If we do not effectively manage changes in our business, these changes could place a significant strain on our management and operations.***

Our ability to grow successfully requires an effective planning and management process. The expansion and growth of our business could place a significant strain on our management systems, infrastructure and other resources. To manage our growth successfully, we must continue to improve and expand our systems and infrastructure in a timely and efficient manner. Our controls, systems, procedures and resources may not be adequate to support a changing and growing company. If our management fails to respond effectively to changes and growth in our business, including acquisitions, there could be a material adverse effect on our business, financial condition, results of operations and future prospects.

***Our strategic business plan may not produce the intended growth in revenue and operating income.***

Our strategies ultimately include making significant investments in sales and marketing programs to achieve revenue growth and margin improvement targets. If we do not achieve the expected benefits from these investments or otherwise fail to execute on our strategic initiatives, we may not achieve the growth improvement we are targeting and our results of operations may be adversely affected. We may also fail to secure the capital necessary to make these investments, which will hinder our growth.

In addition, as part of our strategy for growth, we may make acquisitions and enter into strategic alliances such as joint ventures and joint development agreements. However, we may not be able to identify suitable acquisition candidates, complete acquisitions or integrate acquisitions successfully, and our strategic alliances may not prove to be successful. In this regard, acquisitions involve numerous risks, including difficulties in the integration of the operations, technologies, services and products of the acquired companies and the diversion of management’s attention from other business concerns. Although we will endeavor to evaluate the risks inherent in any particular transaction, there can be no assurance that we will properly ascertain all such risks. In addition, acquisitions could result in the incurrence of substantial additional indebtedness and other expenses or in potentially dilutive issuances of equity securities. There can be no assurance that difficulties encountered with acquisitions will not have a material adverse effect on our business, financial condition and results of operations.

***We currently have no sales, marketing or distribution operations and will need to expand our expertise in these areas.***

We currently have no sales, marketing or distribution operations and, in connection with the expected commercialization of our system, will need to expand our expertise in these areas. To increase internal sales, distribution and marketing expertise and be able to conduct these operations, we would have to invest significant amounts of financial and management resources. In developing these functions ourselves, we could face a number of risks, including:

- we may not be able to attract and build an effective marketing or sales force;
- the cost of establishing, training and providing regulatory oversight for a marketing or sales force may be substantial; and
- there are significant legal and regulatory risks in medical device marketing and sales that we have never faced, and any failure to comply with applicable legal and regulatory requirements for sales, marketing and distribution could result in an enforcement action by the U.S. Food and Drug Administration, European regulators or other authorities that could jeopardize our ability to market the system or could subject us to substantial liability.

***The liability of our directors and officers is limited.***

The applicable provisions of the Delaware General Corporation Law and our Amended and Restated Certificate of Incorporation and By-laws limit the liability of our directors to us and our stockholders for monetary damages for breaches of their fiduciary duties, with certain exceptions, and for other specified acts or omissions of such persons. In addition, the applicable provisions of the Delaware General Corporation Law and of our Amended and Restated Certificate of Incorporation and Bylaws provide for indemnification of such persons under certain circumstances. In the event we are required to indemnify any of our directors or any other person, our financial strength may be harmed.

***Our product development program depends upon third-party researchers who are outside our control and whose negative performance could materially hinder or delay our pre-clinical testing or clinical trials***

We do not have the ability to conduct all aspects of pre-clinical testing or clinical trials ourselves. We depend upon independent investigators and collaborators, such as commercial third-parties, government, universities and medical institutions, to conduct our preclinical and clinical trials under agreements with us. These collaborators are not our employees and we cannot control the amount or timing of resources that they devote to our programs. These investigators may not assign as great a priority to our programs or pursue them as diligently as we would if we were undertaking such programs ourselves. The failure of any of these outside collaborators to perform in an acceptable and timely manner in the future, including in accordance with any applicable regulatory requirements, such as good clinical and laboratory practices, or pre-clinical testing or clinical trial protocols, could cause a delay or otherwise adversely affect our pre-clinical testing or clinical trials, our success in obtaining regulatory approvals and, ultimately, the timely advancement of our development programs. In addition, these collaborators may also have relationships with other commercial entities, some of whom may compete with us. If our collaborators assist our competitors at our expense, our competitive position would be harmed.

***Negative publicity or unfavorable media coverage could damage our reputation and harm our operations.***

In the event that the marketplace perceives our products as not offering the benefits which we believe they offer, we may receive negative publicity. This publicity may result in litigation and increased regulation and governmental review. If we were to receive such negative publicity or unfavorable media attention, whether warranted or unwarranted, our ability to market our products would be adversely affected. We may be required to change our products and services and become subject to increased regulatory burdens, and we may be required to pay large judgments or fines and incur significant legal expenses. Any combination of these factors could further increase our cost of doing business and adversely affect our financial position, results of operations and cash flows.

***We may face risks associated with current or future litigation and claims.***

Although we do not believe that we currently face any litigation or claims, there can be no guarantee that we will not, in the future, be involved in one or more lawsuits, claims or other proceedings. These suits could concern issues including contract disputes, employment actions, employee benefits, taxes, environmental, health and safety, personal injury and product liability matters. Due to the uncertainties of litigation, we can give no assurance that we will prevail on any claims made against us in any such lawsuit. Also, we can give no assurance that any other lawsuits or claims brought in the future will not have an adverse effect on our financial condition, liquidity or operating results.

Specifically, we believe we will be subject to product liability claims or product recalls, particularly in the event of false positive or false negative reports, because we plan to develop and manufacture medical diagnostic products. We intend to obtain appropriate insurance coverage once we reach a manufacturing stage. A product recall or a successful product liability claim or claims that exceed our planned insurance coverage could have a material adverse effect on us. In addition, product liability insurance is expensive. In the future we may not be able to obtain coverage on acceptable terms, if at all. Moreover, our insurance coverage may not adequately protect us from liability that we incur in connection with clinical trials or sales of our products. In the event of an award against us during a time when we have no available insurance or insufficient insurance, we may sustain significant losses of our operating capital. In addition, any products liability litigation, regardless of outcome or strength of claims, may divert time and resources away from the day-to-day operation of our business and product development efforts. Any of these outcomes could adversely impact our business and results of operations, as well as impair our reputation in the medical and investment communities.

***Recent global economic trends could adversely affect our business, liquidity and financial results.***

Recent global economic conditions, including disruption of financial markets, could adversely affect us, primarily through limiting our access to capital and disrupting our potential clients' businesses. In addition, continuation or worsening of general market conditions in economies important to our businesses may adversely affect our potential customers' level of spending and ability to obtain financing, leading to us being unable to generate the levels of sales that we anticipate. Continued disruption of financial markets could have a material adverse effect on our business, financial condition, results of operations and future prospects.

***We may be subject, directly or indirectly, to U.S. federal and state health care fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.***

If we are successful in achieving regulatory approval to market our PURE EP System, our operations will be directly, or indirectly through our customers and health care professionals, subject to various U.S. federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute, federal False Claims Act, and federal Foreign Corrupt Practices Act. These laws may impact, among other things, our proposed sales, and marketing and education programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal health care program such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal health care covered business, the statute has been violated. The Anti-Kickback Statute is broad and, despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the health care industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil and administrative sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal health care programs. An alleged violation of the Anti-Kickback Statute may be used as a predicate offense to establish liability pursuant to other federal laws and regulations such as the federal False Claims Act. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for health care items or services reimbursed by any source, not only the Medicare and Medicaid programs.



The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from, the federal government. Suits filed under the False Claims Act, known as “qui tam” actions, can be brought by any individual on behalf of the government and such individuals, commonly known as “relators” or “whistleblowers,” may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of medical device and health care companies to have to defend a False Claim Act action. The federal Patient Protection and Affordable Care Act includes provisions expanding the ability of certain relators to bring actions that would have been previously dismissed under prior law. When an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. The Deficit Reduction Act of 2005 encouraged states to enact or modify their state false claims act to be at least as effective as the federal False Claims Act by granting states a portion of any federal Medicaid funds recovered through Medicaid-related actions. Most states have enacted state false claims laws, and many of those states included laws including qui tam provisions. States have until March 31, 2013 to enact or amend their false claims laws modeled after the federal False Claims Act for review and approval to receive a greater portion of any recovery.

The federal Patient Protection and Affordable Care Act includes provisions known as the Physician Payments Sunshine Act, which requires manufacturers of drugs, biologics, devices and medical supplies covered under Medicare and Medicaid starting in 2012 to record any transfers of value to physicians and teaching hospitals and to report this data beginning in 2013 to the Centers for Medicare and Medicaid Services for subsequent public disclosure. Manufacturers must also disclose investment interests held by physicians and their family members. Failure to submit the required information may result in civil monetary penalties of up to \$1 million per year for knowing violations and may result in liability under other federal laws or regulations. Similar reporting requirements have also been enacted on the state level in the U.S., and an increasing number of countries worldwide either have adopted or are considering similar laws requiring transparency of interactions with health care professionals. In addition, some states such as Massachusetts and Vermont impose an outright ban on certain gifts to physicians. If we receive U.S. Food and Drug Administration clearance to market our system in the U.S., these laws could affect our promotional activities by limiting the kinds of interactions we could have with hospitals, physicians or other potential purchasers or users of our system. Both the disclosure laws and gift bans will impose administrative, cost and compliance burdens on us.

We are unable to predict whether we could be subject to actions under any of these laws, or the impact of such actions. If we are found to be in violation of any of the laws described above and other applicable state and federal fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, or an administrative action of suspension or exclusion from government health care reimbursement programs and the curtailment or restructuring of our operations.

In addition, to the extent we commence commercial operations overseas, we will be subject to the Foreign Corrupt Practices Act and other countries’ anti-corruption/anti-bribery regimes, such as the U.K. Bribery Act. The Foreign Corrupt Practices Act prohibits improper payments or offers of payments to foreign governments and their officials for the purpose of obtaining or retaining business. Safeguards we implement to discourage improper payments or offers of payments by our employees, consultants, sales agents or distributors may be ineffective, and violations of the Foreign Corrupt Practices Act and similar laws may result in severe criminal or civil sanctions, or other liabilities or proceedings against us, any of which would likely harm our reputation, business, financial condition and results of operations.

### **Risks Related to Our Intellectual Property**

*If we do not obtain protection for our intellectual property rights, our competitors may be able to take advantage of our research and development efforts to develop competing products.*

We intend to rely on a combination of patents, trade secrets, and nondisclosure and non-competition agreements to protect our proprietary intellectual property. We plan to file for patent applications in the U.S. and in other countries, as we deem appropriate for our products. We expect that our applications will include claims intended to provide market exclusivity for certain commercial aspects of the products, including the methods of production, the methods of usage and the commercial packaging of the products. However, we cannot predict:

- the degree and range of protection any patents will afford us against competitors, including whether third parties will find ways to invalidate or otherwise circumvent our patents;
- if and when such patents will be issued, and, if granted, whether patents will be challenged and held invalid or unenforceable;
- whether or not others will obtain patents claiming aspects similar to those covered by our patents and patent applications; or
- whether we will need to initiate litigation or administrative proceedings which may be costly regardless of outcome.

Our success also depends upon the skills, knowledge and experience of our scientific and technical personnel, our consultants and advisors as well as our licensors and contractors. To help protect our proprietary know-how and our inventions for which patents may be unobtainable or difficult to obtain, we rely on trade secret protection and confidentiality agreements. To this end, it is our policy to require all of our employees, consultants, advisors and contractors to enter into agreements which prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information. If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Given the fact that we may pose a competitive threat, competitors, especially large and well-capitalized companies that own or control patents relating to electrophysiology recording systems, may successfully challenge our patent applications, produce similar products or products that do not infringe our patents, or produce products in countries where we have not applied for patent protection or that do not respect our patents.

If any of these events occurs, or we otherwise lose protection for our trade secrets or proprietary know-how, the value of our intellectual property may be greatly reduced. Patent protection and other intellectual property protection are important to the success of our business and prospects, and there is a substantial risk that such protections will prove inadequate.

***If we infringe upon the rights of third parties, we could be prevented from selling products and forced to pay damages and defend against litigation.***

If our products, methods, processes and other technologies infringe the proprietary rights of other parties, we could incur substantial costs and we may be required to:

- obtain licenses, which may not be available on commercially reasonable terms, if at all;
- abandon an infringing product candidate;
- redesign our product candidates or processes to avoid infringement;
- cease usage of the subject matter claimed in the patents held by others;
- pay damages; and/or
- defend litigation or administrative proceedings which may be costly regardless of outcome, and which could result in a substantial diversion of our financial and management resources.

Any of these events could substantially harm our earnings, financial condition and operations.



## **Risks Related to our Common Stock**

***There is no current trading market for our common stock, and there is no assurance of an established public trading market, which would adversely affect the ability of our investors to sell their securities in the public market.***

Our common stock is not currently listed or quoted for trading on any national securities exchange or national quotation system. We believe that our common stock will be quoted on the OTC Bulletin Board. The OTC Bulletin Board is an inter-dealer, over-the-counter market that provides significantly less liquidity than the NASDAQ Global Market and NYSE MKT. Quotes for stocks included on the OTC Bulletin Board are not listed in the financial sections of newspapers as are those for the NASDAQ Stock Market and NYSE MKT. Therefore, prices for securities traded solely on the OTC Bulletin Board may be difficult to obtain and holders of common stock may be unable to resell their securities at or near their original offering price or at any price.

If our common stock is quoted on the OTC Bulletin Board, we could face significant consequences, including:

- a limited availability for market quotations for our shares of common stock;
- reduced liquidity with respect to our shares of common stock;
- a determination that our shares of common stock is a “penny stock,” which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our common stock; and
- limited amount of news and analyst coverage.

***The market price and trading volume of shares of our common stock may be volatile.***

When and if a market develops for our securities, the market price of our common stock could fluctuate significantly for many reasons, including reasons unrelated to our specific performance, such as limited liquidity for our stock, reports by industry analysts, investor perceptions, or announcements by our competitors regarding their own performance, as well as general economic and industry conditions. For example, to the extent that other large companies within our industry experience declines in their share price, our share price may decline as well. Fluctuations in operating results or the failure of operating results to meet the expectations of public market analysts and investors may negatively impact the price of our securities. Quarterly operating results may fluctuate in the future due to a variety of factors that could negatively affect revenues or expenses in any particular quarter, including vulnerability of our business to a general economic downturn, changes in the laws that affect our products or operations, competition, compensation related expenses, application of accounting standards and our ability to obtain and maintain all necessary government certifications and/or licenses to conduct our business. In addition, when the market price of a company’s shares drops significantly, stockholders could institute securities class action lawsuits against the company. A lawsuit against us could cause us to incur substantial costs and could divert the time and attention of our management and other resources.

***The interests of our controlling stockholders may not coincide with yours and such controlling stockholder may make decisions with which you may disagree.***

As of July 22, 2013, two of our officers and directors beneficially owned over 90% of our common stock. As a result, our controlling stockholders control substantially all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. In addition, this concentration of ownership may delay or prevent a change in control of our company and make some future transactions more difficult or impossible without the support of our controlling stockholders. The interests of our controlling stockholders may not coincide with our interests or the interests of other stockholders.

***If securities or industry analysts do not publish research or publish inaccurate or unfavorable research 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 or our business. We do not currently have research coverage by securities and industry analysts and you should not invest in our common stock in anticipation that we will obtain such coverage. If we obtain securities or industry analyst coverage and if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

***We will incur increased costs as a result of being a public reporting company.***

We will face increased legal, accounting, administrative and other costs and expenses as a public reporting company that we do not currently incur. The Sarbanes-Oxley Act of 2002, including the requirements of Section 404, as well as new rules and regulations subsequently implemented by the Securities and Exchange Commission and the Public Company Accounting Oversight Board impose additional reporting and other obligations on public reporting companies. We expect that compliance with these public company requirements will increase our costs and make some activities more time-consuming. A number of those requirements will require us to carry out activities we have not done previously. For example, we will adopt new internal controls and disclosure controls and procedures. In addition, we will incur additional expenses associated with our Securities and Exchange Commission reporting requirements. For example, under Section 404 of the Sarbanes-Oxley Act, we will need to document and test our internal control procedures and our management will need to assess and report on our internal control over financial reporting. Furthermore, if we identify any issues in complying with those requirements (for example, if we or our accountants identify a material weakness or significant deficiency in our internal control over financial reporting), we could incur additional costs rectifying those issues, and the existence of those issues could adversely affect us, our reputation or investor perceptions of us. It also could become more difficult and expensive to maintain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We expect that the additional reporting and other obligations imposed on us by these rules and regulations will increase our legal and financial compliance costs and the costs of our related legal, accounting and administrative activities significantly. These increased costs will require us to divert money that we could otherwise use to expand our business and achieve our strategic objectives.

***Delaware law and our corporate charter and bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that stockholders may consider favorable.***

Our board of directors is authorized to issue shares of preferred stock in one or more series and to fix the voting powers, preferences and other rights and limitations of the preferred stock. Accordingly, we may issue shares of preferred stock with a preference over our common stock with respect to dividends or distributions on liquidation or dissolution, or that may otherwise adversely affect the voting or other rights of the holders of common stock. Issuances of preferred stock, depending upon the rights, preferences and designations of the preferred stock, may have the effect of delaying, deterring or preventing a change of control, even if that change of control might benefit our stockholders. In addition, we are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless (i) prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; (ii) the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by 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 (iii) on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 could delay or prohibit mergers or other takeover or change in control attempts with respect to us and, accordingly, may discourage attempts to acquire us even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

***The terms of our Series C Preferred Stock prohibit us from paying dividends in the future. As a result, any return on investment may be limited to the value of our common stock.***

The terms of our Series C Preferred Stock prohibit us from paying dividends in the future on our common stock, absent consent from the holders representing a super-majority of the outstanding shares of our Series C Preferred Stock and a certain investor. Because we will likely not pay dividends, our common stock may be less valuable because a return on an investment in our common stock will only occur if our stock price appreciates.

#### **Risks Related to our Series C Preferred Stock**

***Our Series C Preferred Stock contains covenants that could limit our financing options and liquidity position, which would limit our ability to grow our business.***

Covenants in the certificate of designation for our Series C Preferred Stock impose operating and financial restrictions on us. These restrictions prohibit or limit our ability to, among other things:

- incur additional indebtedness;
- permit liens on assets;
- repay, repurchase or otherwise acquire more than a de minimis number of shares of common stock, Series A Preferred Stock or Series B Preferred Stock;
- pay cash dividends to our stockholders; and
- engage in transactions with affiliates.

These restrictions may limit our ability to obtain financing, withstand downturns in our business or take advantage of business opportunities. Moreover, debt financing we may seek may contain terms that include more restrictive covenants, may require repayment on an accelerated schedule or may impose other obligations that limit our ability to grow our business, acquire needed assets, or take other actions we might otherwise consider appropriate or desirable.

In addition, the certificate of designation for our Series C Preferred Stock requires us to redeem shares of our Series C Preferred Stock, at each holder's option and for an amount greater than their stated value, in the event that we fail to comply with certain covenants, including if we fail to complete a financing or series of related financings by February 12, 2014 that results in gross proceeds to us of at least \$3 million at a valuation of at least \$30 million or, if at any time after February 12, 2014, we fail to maintain the listing of our common stock on a trading market for more than five trading days in any twelve month period. In addition, if we fail to complete the aforementioned financing, holders of our Series C Preferred Stock may alternatively elect to reduce the conversion price of their shares of Series C Preferred Stock to \$1.50 per share.

#### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains "forward-looking statements," which include information relating to future events, future financial performance, strategies, expectations, competitive environment and regulation. Words such as "may," "should," "could," "would," "predict," "potential," "continue," "expect," "anticipate," "future," "intend," "plan," "believe," "estimate," and similar expressions, as well as statements in future tense, identify forward-looking statements. Forward-looking statements should not be read as a guarantee of future performance or results and may not be accurate indications of when such performance or results will be achieved. Forward-looking statements are based on information we have when those statements are made or our management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- failure to achieve necessary levels of accuracy and reliability in our products;
- unplanned expenditures in product development, clinical testing, or manufacturing;
- unexpected scientific, non-clinical or clinical findings relating to safety and/or efficacy;
- failure to receive regulatory approvals;
- emergence of superior or equivalent products;
- inability to generate revenue from our products;
- failure to achieve market acceptance for our products;
- inability to manufacture our product candidates on a commercial scale on our own, or in collaboration with third parties;
- difficulties in obtaining financing on commercially reasonable terms;
- changes in the size and nature of our competition;
- loss of one or more key executives or scientists; and
- changes in general, national or regional economic conditions.

You should review carefully the section entitled “Risk Factors” beginning on page 2 of this prospectus for a discussion of these and other risks that relate to our business and investing in shares of our common stock. We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

#### **USE OF PROCEEDS**

All shares of our common stock offered by this prospectus are being registered for the accounts of the selling stockholders and we will not receive any proceeds from the sale of these shares.

The shares of common stock offered by this prospectus are issuable upon the exercise of common stock purchase warrants or the conversion of shares of Series C Preferred Stock. As such, if a selling stockholder exercises all or any portion of its warrants on a cash basis, we will receive the aggregate exercise price paid by such selling stockholder in connection with any such warrant exercise. The maximum amount of proceeds we would receive upon the exercise of all the warrants on a cash basis would be approximately \$4,690,000. However, certain of the selling stockholders may also exercise their warrants through a cashless exercise. In the event a selling stockholder exercises a warrant through a cashless exercise, we will not receive any proceeds from such exercise. We expect to use the proceeds received from the exercise of the warrants, if any, for general working capital purposes.

#### **DIVIDEND POLICY**

In the past, we have not declared or paid cash dividends on our common stock. In addition, the terms of our Series C Preferred Stock prohibit us from paying dividends in the future on our common stock, absent consent from both the holders representing a super-majority of the outstanding shares of our Series C Preferred Stock and a certain holder of our Series C Preferred Stock. The prohibition on paying dividends will remain in effect so long as at least 15% of the originally issued shares of our Series C Preferred Stock remain outstanding. We will retain future earnings, if any, to fund the operation and expansion of our business and for general corporate purposes.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our financial statements and the related notes thereto that are included in this prospectus. In addition to historical information, the following discussion and analysis includes forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this prospectus, particularly in the section entitled "Risk Factors." See "Special Note Regarding Forward-Looking Statements."*

### **Our Business**

We are a development stage medical device company that is developing a proprietary technology platform to minimize noise and artifacts from cardiac recordings during electrophysiology studies and ablation. Our product under development, the PURE EP System, is a surface electrocardiogram and intracardiac multichannel recording and analysis system that acquires, processes and displays electrocardiogram and electrograms required during electrophysiology studies and ablation procedures.

We have not generated any revenue to date and consequently our operations are subject to all risks inherent in the establishment of a new business enterprise.

### **Critical Accounting Policies and Estimates**

The following discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with generally accepted accounting principles in the U.S. The preparation of financial statements in accordance with generally accepted accounting principles in the U.S. requires us to make estimates and assumptions that affect the amounts reported in our financial statements. The financial statements include estimates based on currently available information and our judgment as to the outcome of future conditions and circumstances. Significant estimates in these financial statements include allowance for doubtful accounts and accruals for inventory claims. Changes in the status of certain facts or circumstances could result in material changes to the estimates used in the preparation of the financial statements and actual results could differ from the estimates and assumptions.

Among the significant judgments made by management in the preparation of our financial statements are the following:

#### ***Research and development.***

We account for research and development costs in accordance with the Accounting Standards Codification subtopic 730-10, Research and Development ("ASC 730-10"). Under ASC 730-10, all research and development costs must be charged to expense as incurred. Accordingly, internal research and development costs are expensed as incurred. Third-party research and development costs are expensed when the contracted work has been performed or as milestone results have been achieved. Company-sponsored research and development costs related to both present and future products are expensed in the period incurred.

#### ***Stock Based Compensation.***

All stock-based payments to employees and to nonemployee directors for their services as directors consisted of grants of restricted stock and stock options, which are measured at fair value on the grant date and recognized in the statements of operations as compensation expense over the relevant vesting period. Restricted stock payments and stock-based payments to nonemployees are recognized as an expense over the period of performance. Such payments are measured at fair value at the earlier of the date a performance commitment is reached or the date performance is completed. In addition, for awards that vest immediately and are non-forfeitable, the measurement date is the date the award is issued.

### ***Income Taxes.***

Deferred income tax assets and liabilities are determined based on the estimated future tax effects of net operating loss and credit carryforwards and temporary differences between the tax basis of assets and liabilities and their respective financial reporting amounts measured at the current enacted tax rates. We record an estimated valuation allowance on our deferred income tax assets if it is not more likely than not that these deferred income tax assets will be realized. We recognize a tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement.

### **Results of Operations**

We anticipate that our results of operations will fluctuate for the foreseeable future due to several factors, such as the progress of our research and development efforts and the timing and outcome of regulatory submissions. Due to these uncertainties, accurate predictions of future operations are difficult or impossible to make.

#### *Three Months Ended March 31, 2013 Compared to Three Months Ended March 31, 2012*

*Revenues and Cost of Goods Sold.* We had no revenues or cost of goods sold during the three months ended March 31, 2013 and 2012.

*Research and Development Expenses.* Research and development expenses for the three months ended March 31, 2013 were \$306,339, an increase of \$7,314, or 2.4%, from \$299,025 for the three months ended March 31, 2012. This increase is primarily due to increased expenses related to the development of our proprietary technology platform.

*General and Administrative Expenses.* General and administrative expenses for the three months ended March 31, 2013 were \$3,019,459, an increase of \$2,893,511, or 2,297%, from \$125,948 incurred in the three months ended March 31, 2012. This increase is primarily due to payroll related expenses and professional services.

Payroll related expenses increased to \$2,076,828 in the current period from \$67,843 for the three months ended March 31, 2012, an increase of \$2,008,985, or 2,961%. We incurred \$2,015,314 in stock based compensation in connection with the vesting of stock and stock options issued to board members, officers and employees in 2013 as compared to no stock based compensation in 2012.

Professional services for the three months ended March 31, 2013 totaled \$44,698, an increase of \$15,457, or 53%, over the \$29,241 recognized for the three months ended March 31, 2012. Of professional services, legal fees totaled \$11,798 for the three months ended March 31, 2013, a decrease of \$2,543, or 18%, from \$14,341 incurred for the three months ended March 31, 2012. Accounting fees incurred in the three months ended March 31, 2013 amounted to \$32,900, an increase of \$22,000, or 202%, from \$10,900 incurred in same period last year. The increase in professional fees was primarily related to increased auditing, compensation programs and plans, and other legal requirements as we develop our operations.

Consulting fees totaled \$813,948 for the three months ended March 31, 2013 as compared no consulting fees incurred for the three month ended March 31, 2012. During the three months ended March 31, 2013, we incurred \$800,823 in stock based compensation for additional investment and finance consultants to assist in our fund raising and investor relations efforts as a result of our increased efforts in market research and potential investor identification.

Travel, meals and entertainment costs for the three months ended March 31, 2013 were \$14,110, a decrease of \$16,764, or 54%, from \$30,874 incurred in the three months ended March 31, 2012. Travel, meals and entertainment costs include travel related to business and technology development. Rent for the three months ended March 31, 2013 totaled \$18,444, an increase of \$873, or 5%, from \$17,571 incurred in three months ended March 31, 2012.

*Depreciation Expense.* Depreciation expense for the three months ended March 31, 2013 totaled \$3,692, an increase of \$1,170, or 47%, over the expense of \$2,522 incurred in the three months ended March 31, 2012, as a result of the purchase of new office computers and other equipment.

*Interest Expense.* Interest expense for the three months ended March 31, 2013 totaled \$21,070, an increase of \$21,075 from interest income of \$5 incurred during the same period last year. In the three months ended March 31, 2013, our interest costs were comprised primarily of bridge and related party notes issued in 2012 and the first three months of 2013 compared to no interest expense for the three months ended March 31, 2012.

*Financing Costs.* Financing costs for the three months ended March 31, 2013 totaled \$360,500, an increase of \$334,030, or 1,262% from \$26,470 incurred during the three months ended March 31, 2012. Financing costs are primarily related to the fees paid related to the issuance of our Series A and Series B Preferred Stock in 2011 and 2012 and a beneficial conversion feature in our Series C Preferred Stock.

*Preferred Stock Dividend.* Preferred stock dividend for the three months ended March 31, 2013 totaled \$51,517, an increase of \$28,824, or 127% from \$22,693 incurred during the three months ended March 31, 2012. Preferred stock dividends are primarily related to the issuance of our Series A, Series B and Series C Preferred Stock from 2011 through 2013.

*Net Loss.* As a result of the foregoing, net loss for the three months ended March 31, 2013 was \$3,762,577, compared to a net loss of \$476,653 for the three months ended March 31, 2012.

*Twelve Months Ended December 31, 2012 Compared to Twelve Months Ended December 31, 2011*

*Revenues and Cost of Goods Sold.* We had no revenues or cost of goods sold during the twelve months ended December 31, 2012 and 2011.

*Research and Development Expenses.* Research and development expenses for the twelve months ended December 31, 2012 were \$888,948, an increase of \$306,423, or 53%, from \$582,525 for the twelve months ended December 31, 2011. This increase is primarily due to increases in both personnel and R&D consulting services provided as we develop of our proprietary technology platform. Research and development expenses were comprised of \$586,593 of personnel costs and \$302,355 consulting services for the twelve months ended December 31, 2012 as compared to \$353,750 and \$228,775 for the same period last year, respectively. This increase is primarily due to increases in both personnel and R&D consulting services provided as we develop of our proprietary technology platform.

*General and Administrative Expenses.* General and administrative expenses for the twelve months ended December 31, 2012 were \$1,363,007, an increase of \$878,880, or 181%, from \$484,127 incurred in the twelve months ended December 31, 2011. This increase is primarily due to payroll related expenses and professional services.

Payroll related expenses increased to \$439,625 in the twelve months ended December 31, 2012 from \$146,338 for the twelve months ended December 31, 2011, an increase of \$293,287, or 200%. In 2012, our chief executive officer began receiving compensation previously waived in prior years. In addition, we incurred \$185,323 in stock based compensation in connection with the vesting of stock and stock options issued to board members, officers and employees in 2012 as compared to incurring no stock based compensation in 2011.

Professional services for the twelve months ended December 31, 2012 totaled \$197,691, an increase of \$142,713, or 359%, over the \$54,978 recognized for the twelve months ended December 31, 2011. Of professional services, legal fees totaled \$110,445 for the twelve months ended December 31, 2012, an increase of \$108,853, or 6,838%, from \$1,592 incurred for the twelve months ended December 31, 2011. Accounting fees incurred in the twelve months ended December 31, 2012 amounted to \$74,950, an increase of \$56,998, or 318%, from \$17,952 incurred for the same period in 2011. The increase in professional fees was primarily related to an increase in auditing, compensation programs and plans; and other legal requirements as we continue to develop our operations, including legal fees associated with our capital raising transactions.



Consulting fees totaled \$197,293 for the twelve months ended December 31, 2012, an increase of \$84,602 or 75%, from \$112,691 for the twelve months ended December 31, 2011. The increase in consulting fees in 2012 was as a result of an increase in our retaining the services of additional investment and finance consultants to assist in our fund raising and investor relations efforts.

Travel, meals and entertainment costs for the twelve months ended December 31, 2012 were \$159,792, an increase of \$133,793, or 515%, from \$25,999 incurred during the twelve months ended December 31, 2011. Increases in travel related to business and technology development in 2012 accounted for the primary increase from 2011. Rent for the twelve months ended December 31, 2012 totaled \$72,408, an increase of \$46,431, or 179%, from \$25,977 incurred during the same period in 2011, due primarily to the opening of new office space in Los Angeles in late 2011.

*Depreciation Expense.* Depreciation expense for the twelve months ended 2012 totaled \$10,020, an increase of \$3,225, or 47%, over the expense of \$6,795 incurred during the same period in 2011, as a result of the purchase of new office computers and other equipment.

*Interest Expense.* Interest expense for the twelve months ended December 31, 2012 totaled \$18,286, an increase of \$18,457 from interest income of \$171 incurred during the twelve months ended December 31, 2011. In the twelve months ended December 31, 2012, our interest costs were comprised primarily of bridge and related party notes issued in 2012 as compared to our having no interest costs in 2011.

*Financing Costs.* Financing costs for the twelve months ended December 31, 2012 totaled \$105,881, an increase of \$27,948, or 36% from \$77,933 incurred during the twelve months ended December 31, 2011. Financing costs are primarily comprised of costs and fees paid in connection with the private placement of our Series A and Series B Preferred Stock to certain accredited investors. The increase from 2011 to 2012 is due to the added amortizable costs paid in connection with the sale of our Series B Preferred Stock in 2012 and a complete year of amortization of financing costs of our Series A Preferred Stock issued in 2011.

*Preferred Stock Dividend.* Our preferred stock dividend for the twelve months ended December 31, 2012 totaled \$90,860, an increase of \$63,968, or 238% from \$26,892 incurred during the twelve months ended December 31, 2011. Preferred stock dividends are related to the issuance of our Series A and Series B Preferred Stock in 2011 and 2012.

*Net Loss.* Net loss for the twelve months ended December 31, 2012 was \$2,477,002, compared to a net loss of \$1,178,101 for the twelve months ended December 31, 2011, an increase of \$1,298,901 or 110.25%. The primary reasons for the increase, as described above, are the increase in personnel and consulting services incurred in both research and development and general and administrative expenses coupled with higher interest and financing costs due to our Series B financing transaction in 2012.

## **Liquidity and Capital Resources**

### *Three Months Ended March 31, 2013 Compared to Three Months Ended March 31, 2012*

As of March 31, 2013, we had working capital of \$222,577, comprised primarily of cash of \$672,887 and prepaid expenses of \$20,000, which was offset by \$238,121 of accounts payable and accrued expenses, short term related party advances of \$26,500, liability to placement agent of \$36,420 and accrued dividends on preferred stock issuances of \$169,269. For the three months ended March 31, 2013, we used \$677,258 of cash in operating activities. Cash provided by financing activities totaled \$1,331,730 from the sale of our Series C Preferred Stock, consisting of \$1,362,270 net offset by repayments of related party notes payable and advances of \$30,540. In the comparable 2012 period, \$516,250 was raised through the sale of our Series B Preferred Stock. At March 31, 2013, we had cash of \$672,887 compared to \$24,237 at December 31, 2012. Our cash is held in bank deposit accounts. At March 31, 2013, we had no convertible debentures outstanding, and at December 31, 2012, we \$613,812 of convertible debentures outstanding.



Cash used in operations for the three months ended March 31, 2013 and 2012 was \$677,258 and \$382,297, respectively, which represent cash outlays for research and development and general and administrative expenses in such periods. Increase in cash outlays principally resulted from increased research and development and general and administrative expenses.

Cash used in investing activities for the three months ended March 31, 2013 was \$5,822 compared to \$5,457 in the three months ended March 31, 2012. For three months ended March 31, 2013 and 2012, the cash used in investing activities was comprised of purchases of office furniture and computer equipment.

*Twelve Months Ended December 31, 2012 Compared to Twelve Months Ended December 31, 2011*

As of December 31, 2012, we had a working capital deficit of \$472,176, comprised primarily of cash of \$24,237 and prepaid expenses and other assets of \$245,760, which was offset by \$472,882 of accounts payable and accrued expenses, short term related party advances and notes payable of \$57,040, liability to the placement agent for our Series A and Series B Preferred Stock transactions of \$94,500 and accrued dividends on preferred stock issuances of \$117,751. For the twelve months ended December 31, 2012, we used \$1,524,956 of cash in operating activities. Cash provided by financing activities totaled \$1,495,650 from the sale of our Series B Preferred Stock of \$647,650, proceeds from issuance of bridge notes of \$600,000 and proceeds of related party notes of \$248,000. In the comparable period in 2011, \$859,900 was raised through the sale of our Series A and B Preferred Stock, \$92,500 through the sale of our common stock and \$5,500 through the issuance of related party notes payable. At December 31, 2012, we had cash of \$24,237 compared to \$69,020 at December 31, 2011. Our cash is held in bank deposit accounts. At December 31, 2012, we had \$613,812 of convertible debentures outstanding, as compared to no convertible debentures outstanding at December 31, 2011.

Cash used in operations for the twelve months ended December 31, 2012 and 2011 was \$1,524,956 and \$838,367, respectively, which represent cash outlays for research and development and general and administrative expenses in such periods. Increase in cash outlays principally resulted from increased research and development and general and administrative expenses due to the continued development of our operations.

Cash used in investing activities for the twelve months ended December 31, 2012 was \$15,477, compared to \$56,547 for the twelve months ended December 31, 2011. In the twelve months ended December 31, 2012 and 2011, we purchased office furniture and computer equipment of \$15,477 and \$31,547, respectively. In the twelve months ended December 31, 2011, we paid a real estate deposit relating to our office lease of \$25,000, which we did not have to pay in 2012.

In their report dated May 7, 2013, our independent registered public accounting firm stated at December 31, 2012, there is substantial doubt about our ability to continue as a going concern. Our ability to continue as a going concern is an issue raised due to our net losses and negative cash flows from operations since inception and our expectation that these conditions will continue for the foreseeable future. In addition, we will require additional financing to fund future operations. Further, we do not have any commercial products available for sale and have not generated revenues to date, and there is no assurance that, if approval of our products is received, we will be able to generate cash flow to fund operations. In addition, there can be no assurance that our research and development will be successfully completed or that any product will be approved or commercially viable. Our ability to continue as a going concern is subject to our ability to obtain necessary funding from outside sources, including obtaining additional funding from the sale of our securities, obtaining loans from various financial institutions or being awarded grants from government agencies, where possible. Our continued net operating losses increase the difficulty in meeting such goals and there can be no assurances that such methods will prove successful.

We expect to incur losses from operations for the near future. We expect to incur increasing research and development expenses, including expenses related to clinical trials. We expect that our general and administrative expenses will increase in the future as we expand our business development, add infrastructure and incur additional costs related to being a public company, including incremental audit fees, investor relations programs and increased professional services.

Our future capital requirements will depend on a number of factors, including the progress of our research and development of product candidates, the timing and outcome of regulatory approvals, the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims and other intellectual property rights, the status of competitive products, the availability of financing and our success in developing markets for our product candidates. We believe our existing cash will not be sufficient to fund our operating expenses and capital equipment requirements. We anticipate we will need approximately \$2 million in addition to our current cash on hand to fund our operating expenses and capital equipment requirements for the next 12 months. We will have to raise additional funds to continue our operations and, while we have been successful in doing so in the past, there can be no assurance that we will be able to do so in the future. Our continuation as a going concern is dependent upon our ability to obtain necessary additional funds to continue operations and the attainment of profitable operations.

Future financing may include the issuance of equity or debt securities, obtaining credit facilities, or other financing mechanisms. Even if we are able to raise the funds required, it is possible that we could incur unexpected costs and expenses or experience unexpected cash requirements that would force us to seek alternative financing. Furthermore, if we issue additional equity or debt securities, existing holders of our securities may experience additional dilution or the new equity securities may have rights, preferences or privileges senior to those of existing holders of our securities.

If additional financing is not available or is not available on acceptable terms, we may be required to delay, reduce the scope of or eliminate our research and development programs, reduce our commercialization efforts or obtain funds through arrangements with collaborative partners or others that may require us to relinquish rights to certain product candidates that we might otherwise seek to develop or commercialize independently.

#### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements.

### **BUSINESS**

#### **History**

We were formed as BioSig Technologies, Inc., a Nevada corporation, in February 2009 and in April 2011 we merged with our wholly-owned subsidiary, BioSig Technologies Inc., a Delaware corporation, with the Delaware corporation continuing as the surviving entity. In September 2011, we completed a private placement of our Series A Preferred Stock to certain accredited investors, with gross proceeds of \$922,000 and, in April 2012, we completed a private placement of our Series B Preferred Stock to certain accredited investors, with gross proceeds of \$887,500. In July 2013, we completed a private placement of our Series C Preferred Stock and warrants to purchase our common stock to certain accredited investors, with gross proceeds of \$2,781,000, including the conversion of \$600,000 of our outstanding bridge notes.

#### **Overview**

We are a development stage medical device company that is developing a proprietary technology platform to minimize noise and artifacts from cardiac recordings during electrophysiology studies and ablation. We are developing the PURE EP System, a surface electrocardiogram and intracardiac multichannel recording and analysis system that acquires, processes and displays electrocardiogram and electrograms required during electrophysiology studies and ablation procedures.

The PURE (Precise Uninterrupted Real-time evaluation of Electrograms) EP System is designed to assist electrophysiologists in making clinical decisions in real-time by providing information that, we believe, is not easily obtained, if at all, from any other equipment presently used in electrophysiology labs. PURE EP System's ability to acquire high fidelity cardiac signals will potentially increase these signals' diagnostic value, and therefore offer improved accuracy and efficiency of the EP studies and related procedures. We are developing signal processing tools within the PURE EP System, which we call confidence indexes. We believe that these will assist electrophysiologists in further differentiating true signals from noise, and will provide guidance in identifying ablation targets.

Since June 2011, we have collaborated with the Texas Cardiac Arrhythmia Institute at St. David's Medical Center in Austin, Texas for initial technology validation. The Texas Cardiac Arrhythmia Institute has provided us with digital recordings obtained with conventional electrophysiology recording systems during different stages of electrophysiology studies. Using our proprietary signal processing tools that are part of the PURE EP System, we analyzed these recordings and successfully removed baseline wander, noise and artifacts from the data thereby providing better diagnostic quality signals. Representatives from the Texas Cardiac Arrhythmia Institute informally confirmed the positive results of our proprietary signal processing tools.

We are focused on improving the quality of cardiac recordings obtained during ablation of atrial fibrillation or irregular heartbeat, the most common cardiac arrhythmia, and ventricular tachycardia, an arrhythmia evidenced by a fast heart rhythm originating from the lower chambers of the heart, which can be life-threatening. Cardiac ablation is a procedure that corrects conduction of electrical impulses in the heart that cause arrhythmias. During this invasive procedure, a catheter is usually inserted using a venous access into a specific area of the heart. A special radiofrequency generator delivers energy through the catheter to small areas of the heart muscle that cause the abnormal heart rhythm. According to a 2009 article in *Circulation: Arrhythmia and Electrophysiology*, ablation is superior to pharmacological treatments and is becoming a first line of therapy for certain patients with arrhythmias ("Treatment of Atrial Fibrillation With Antiarrhythmic Drugs or Radiofrequency Ablation," *Circulation: Arrhythmia and Electrophysiology* 2: 349-361 (2009)).

Our overall goal is to establish our proprietary technology as a new platform that will have the following advantages over the electrophysiology recording systems currently available on the market:

- Higher quality cardiac signal acquisition for accurate and more efficient electrophysiology studies;
- Precise, uninterrupted, real time evaluations of electrograms;
- Reliable cardiac recordings to better determine precise ablation targets, strategy and end point of procedures; and
- A portable device that can be fully integrated into existing electrophysiology lab environments.

If we are able to develop our product as designed, we believe that the PURE EP System and its signal processing tools will contribute to an increase in the number of procedures performed in each electrophysiology lab and possibly improved patient outcomes.

Our significant scientific achievements to date include:

- Initial system concept validation has been performed in collaboration with the Texas Cardiac Arrhythmia Institute at St. David's Medical Center in Austin, Texas in June 2011 with Drs. Andrea Natale and Luigi Di Biase. The Texas Cardiac Arrhythmia Institute provided challenging recordings obtained with competitive electrophysiology recording systems during various electrophysiology studies. Our technology team successfully imported the data into the PURE EP System and using proprietary signal processing, the PURE EP System was able to reduce baseline wander, noise, and artifacts from the data and therefore provide better diagnostic quality signals.
- We have performed demonstrations of the current version of our PURE EP System and have established clinical relationships for both technology development and validation studies at the following medical centers: Texas Cardiac Arrhythmia Institute, Austin, TX; Cardiac Arrhythmia Center at the University of California at Los Angeles, Los Angeles, CA; Mount Sinai Medical Center, New York, NY; Beaumont Medical Center, Detroit, MI; University Hospitals Case Medical Center, Cleveland, OH; and The Heart Rhythm Institute, University of Oklahoma Health Sciences Center, Oklahoma City, OK.

- As part of our pre-clinical trials, the Texas Cardiac Arrhythmia Institute, University Hospitals Case Medical Center and Mount Sinai Medical Center provide us with recordings from challenging ablation procedures, mainly for ventricular tachycardia and atrial fibrillation, where the attending electrophysiologists face clinical dilemmas with the recordings obtained by their current recording systems. We believe that the recordings that the PURE EP System has provided them, which show a significant reduction in baseline wander, noise, and artifacts, are of materially higher diagnostic value than the original recordings.
- The Cardiac Arrhythmia Center at the University of California at Los Angeles and Dr. Kalyanam Shivkumar have played a significant role in the initial functional testing of our hardware. Dr. Shivkumar and his team have enabled us to learn the connectivity of the lab and its devices that pertain to where our PURE EP System will fit in. In June 2013, we commenced our first animal study with the assistance of Dr. Shivkumar.
- We are developing a confidence index that will assist electrophysiologists in further differentiating true signals from noise, which may potentially provide guidance in identifying ablation targets. The confidence index is expected to be an integral part of the software of the PURE EP System, which we believe will significantly facilitate the locating of ablation targets.

Because we are an early development stage company, with our initial product under development, we currently do not have any customers. We anticipate that our initial customers will be hospitals and other health care facilities that operate electrophysiology labs.

## **Our Industry**

Electrophysiology is the study of the propagation of electrical impulses throughout the heart. Electrophysiology studies are focused on the diagnosis and treatment of arrhythmias, a medical condition in which conduction of electrical impulses within the heart vary from the normal. Such conditions may be associated with significant health risks to patients. The invasive cardiac electrophysiology study for the evaluation of cardiac conduction disorders has evolved rapidly from a research tool to an established clinical treatment. This technique permits detailed analyses of the mechanism underlying cardiac arrhythmias and determines precise locations of the sites of origin of these arrhythmias, thereby aiding in treatment strategies.

Pharmacological, or medicine-based, therapies have traditionally been used as initial treatments, but they often fail to adequately control the arrhythmia and may have significant side effects. Catheter ablation is now often recommended for an arrhythmia that medicine cannot control. Catheter ablation involves advancing several flexible catheters into the patient's blood vessels, usually either in the femoral vein, internal jugular vein or subclavian vein. The catheters are then advanced towards the heart. Electrical impulses are then used to induce the arrhythmia and local heating or freezing is used to ablate (destroy) the abnormal tissue that is causing it. Catheter ablation of most arrhythmias has a high success rate. For atrial fibrillation, several experienced teams of electrophysiologists in U.S. heart centers claim they can achieve up to a 75% success rate. However, one recent study, "Catheter Ablation Success Rates" (September 12, 2011), claims that the success rates are in fact much lower. Single procedure success rates have been published in this study at 28%. Often, several procedures are needed to raise the success rate to the 70-80% range.

Catheter ablation is usually performed by an electrophysiologist (a specially trained cardiologist) in a catheterization lab or a specialized electrophysiology lab. It is estimated that there are about 2,000 electrophysiology labs in the U.S. and 2,000 electrophysiology labs outside the U.S., each with an electrophysiology recording system costing an average of \$250,000. We believe that the current value of the electrophysiology recording device market in the U.S. is approximately \$500 million, based upon the number of electrophysiology labs in U.S. and the average cost of the recording system in each lab. With the potential of 12 million atrial fibrillation patients by the year 2050 (according to the Atrial Fibrillation Fact Sheet, February 2010, published by the Centers for Disease Control and Prevention) and improvements in technology for atrial fibrillation ablation therapy, significant growth is predicted for the number of hospitals building electrophysiology labs. A July 2012 report published by the Millennium Research Group predicted rapid growth in the U.S. market for electrophysiology mapping and ablation devices from 2012 to 2016, due to the medical community's growing focus on treating atrial fibrillation. The report further predicts that even with advances in drug treatments and management devices to treat or manage arrhythmias, the electrophysiology mapping and ablation device market will be sustained by the continued development of advanced technologies that decrease ablation procedure times and improve success rates. According to a 2011 report by Axis Research Mind, "Global Electrophysiology Devices – Market Growth Analysis, 2009-2015," total global electrophysiology devices market is forecasted to reach at \$4.4 billion by 2015 with a compound annual growth rate of 9.7%.

### *Treatment of Atrial Fibrillation and Ventricular Tachycardia*

We believe that the clearer recordings produced by the PURE EP System will be able to be utilized for ablation procedures targeting a variety of heart diseases and illnesses. Each year in the U.S., approximately 295,000 people die suddenly and unexpectedly due to cardiac arrhythmias. Almost 4,000 of them are young people under age 35. (*MMWR Weekly*, February 15, 2002/51(06); 123-6: “State-Specific Mortality from Sudden Cardiac Death—United States,” 1999.) Most cardiac problems that may cause sudden death in the young can be diagnosed and treated. With treatment, people with these conditions can have normal, productive lives.

Currently, the two most common conditions for which ablation procedures are performed are atrial fibrillation and ventricular tachycardia; therefore, we believe that in the near future, the PURE EP System may have the greatest impact on ablation procedures performed for those conditions. According to the National Institute of Health National Heart Lung and Blood Institute, there are approximately 3 million Americans suffering with atrial fibrillation and about 850,000 patients are hospitalized annually for this condition. As many as 600,000 new cases of atrial fibrillation are diagnosed each year. According to the Millennium Research Group, despite the fact that physicians have been performing radiofrequency ablations since the 1990s, catheter-based treatment is offered to less than 1% of the atrial fibrillation patient population in the U.S. and Europe. Many of the electrophysiologists in the U.S. do not perform atrial fibrillation catheter-based procedures on account of both its complexity, due primarily to the difficulties of accurately controlling the catheter, and its lack of acceptance as standard procedure. We believe that the number of atrial fibrillation procedures will grow with further advances in ablation treatment and diagnostic techniques. Studies are underway that we believe will demonstrate the effectiveness of atrial fibrillation ablation, as compared to anti-arrhythmic drug therapy, which may lead to its acceptance as a primary treatment strategy.

The American College of Cardiology/American Heart Association Task Force on Practice Guidelines/European Society of Cardiology Committee for Practice Guidelines, or ACC/AHA/ESC, 2009 guidelines recommend ablation in patients who either have sustained predominantly monomorphic ventricular tachycardia that is drug resistant, are drug intolerant or do not wish for long-term drug therapy. According to a recent study, catheter ablation has been found to reduce ventricular tachycardia/ventricular fibrillation recurrences and thereby implantable cardioverter defibrillator, or ICD, interventions, including ICD shocks, by approximately 75% in patients that have undergone multiple ICD shocks (Kuck, “Should Catheter Ablation be the Preferred Therapy for Reducing ICD Shocks? Ventricular Tachycardia in Patients With an Implantable Defibrillator Warrants Catheter Ablation,” *Circulation: Arrhythmia and Electrophysiology* (2009; 2: 713-720)). More importantly, according to Kuck, catheter ablation is the only treatment that can terminate and eliminate incessant ventricular tachycardia and acutely abolish electrical storm in ICD patients. Typically, patients who receive ICDs are at high risk for recurrent arrhythmia; hence, most patients receive one or more ICD therapies for spontaneous arrhythmias after implantation. Despite the technological evolution of ICD systems, more than 20% of shocks are due to supraventricular arrhythmia and hence are inappropriate. Although the ICD aborts ventricular tachycardia/ventricular fibrillation, many patients continue to have symptoms. These shocks are physically and emotionally painful and lead to poor quality of life and adverse psychological outcomes in patients and their families. Therefore, we believe that ablation will continue to become the preferred treatment for ventricular tachycardia, especially in light of the challenges presented by ICD therapies; this increase in ablation procedures will likely also increase the demand for medical devices essential to ablation procedures, including electrophysiology recorders.

### *Electrophysiology Lab Environment and Electrophysiology Recording Systems*

The electrophysiology lab environment and recording systems create significant amounts of noise and artifacts during electrophysiology procedures. Current surface and intracardiac recording systems typically consist of large workstations interconnected by a complex set of cables that contribute to significant amounts of noise during signal acquisition. Additional noise and artifacts generated from the electrophysiology lab equipment further hamper recordings of small electrophysiological potentials. Preserving spatiotemporal (space and time) characteristics of the signal in a very challenging electrophysiology recording environment is a difficult task. To remove noise and artifacts, recorders that are currently on the market offer a family of low pass, high pass and notch filters, but these filters alter signal information context.

The shape and amplitude of electrocardiograms, unipolar and bipolar electrograms, and, consequently, reconstructed endocardial and epicardial maps, are influenced not only by electrophysiological and structural characteristics of the myocardial tissue involved, but with characteristics of the recording system. Amplitude and morphology of electrocardiogram and intracardiac signals are significantly affected by filters used to remove noise. Because of the number of amplitude and interval measurements made during an electrophysiology study, it is imperative that the recording system faithfully acquires surface electrocardiogram and intracardiac electrograms. We believe that the recording systems that are currently available on the market are ineffective in preserving the optimal amount of original information contained in the cardiac signals.

In addition, the electrophysiology lab consists of sophisticated equipment that requires an electrophysiologist to mentally integrate information from a number of sources during procedures. There are numerous monitors in an electrophysiology lab that provide and display this variety of information. An electrophysiologist needs to evaluate the acquired cardiac signals and the patient's responses to any induced arrhythmias during the procedure. However, it is difficult for an electrophysiologist to synthesize the disparate information produced by the numerous monitors in the lab and calculate the real-time, three-dimensional orientation of the anatomy and the location of the recording and ablation catheters. As the number of electrophysiology procedures increase, a variety of diagnostic and therapeutic ablation catheters are becoming more widely available and new highly specialized catheters are being developed. In addition, remote robotic and magnetic navigation systems are being developed to address limitations of dexterity in controlling the catheter tip, especially during complex arrhythmia ablation procedures. We believe that, considering the improvements being made with respect to other equipment used in the electrophysiology lab and the continual increase of ablation procedures, the electrophysiology recorders currently available on the market are not sufficiently advanced with respect to the quality of their recordings to deliver adequate results. We believe that the PURE EP System will be able to deliver superior quality of recordings that will allow it to successfully integrate with the other advanced equipment found in the electrophysiology lab.

The requirement for optimal signal integrity is further amplified during ablation treatments of atrial fibrillation and ventricular tachycardia. Presently, one of the main objectives of the atrial fibrillation ablation procedure is to precisely identify, ablate and eliminate pulmonary vein potentials and one of the main objectives of the ventricular tachycardia procedure is to map the arrhythmia substrate and precisely identify, ablate and eliminate small abnormal potentials. The information provided by recorders is essential for an electrophysiologist to determine ablation strategy during termination of both pulmonary vein potentials and ventricular tachycardia. Therefore, it is important that the recording system's noise removal technique does not alter appearance and fidelity of these potentials. As a result, it is necessary that any new signal processing preserves signal fidelity as much as possible during electrophysiology recordings; otherwise, the signals that are needed to guide the ablation procedures will be difficult to distinguish due to noise interference.

## **Our Products**

We intend to bring to the electrophysiology market the PURE EP System, an electrocardiogram/intracardiac recorder that will be coupled with an array of software tools intended for electrophysiology studies and procedures ranging from simple diagnostic tests to ablation for the most complex cases of arrhythmias. We believe that this system will provide unique recording capabilities because we are developing it to allow precise, uninterrupted, real-time evaluations of electrocardiograms and electrograms, and allow electrophysiologists to obtain data that cannot be acquired from present day recorders.

The PURE EP System uses a combination of analog and digital signal processing to acquire and display cardiac data. Because our technology consists of proprietary hardware, software and algorithms, the original cardiac data is not distorted. In addition, we are developing a library of software tools that are designed to be configured to fit the needs of electrophysiologists in different settings and/or for different arrhythmia treatments. With the software, the PURE EP System can be positioned to provide information that can be used by electrophysiologists to help guide the ablation catheter; shorten procedure times; and can reduce the complexity of maneuvers necessary for identifying ablation targets for various arrhythmias, including atrial fibrillation and ventricular tachycardia.



*Initial Analysis*

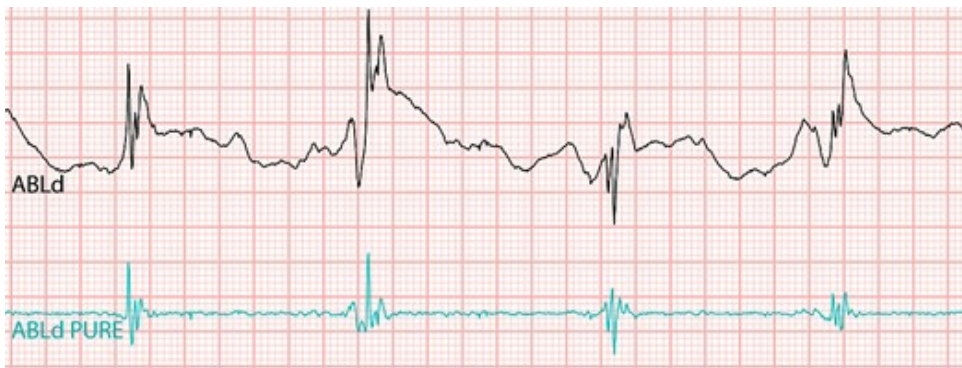
To validate present technology in the field, we completed a detailed analysis of the effect of filters used by existing EP recorders to reduce noise on spatiotemporal characteristics of electrocardiograms and intracardiac electrograms. We used a custom built electrocardiogram/intracardiac simulator with a database of various electrocardiogram signals combined with electrophysiology signals, along with waveforms from publicly available databases. The ability to faithfully reproduce database waveforms generated by an electrocardiogram/intracardiac simulator was tested using the PURE EP System and conventional electrophysiology recorders, the GE CardioLab and St. Jude EP-WorkMate.

We evaluated the signal quality (amplitude, morphology and duration) of the different recorders, along with the ability of the recorders to remove baseline wander and reduce noise level. The electrocardiogram and intracardiac signals subjected to the PURE EP System's signal processing showed significantly less baseline wander, noise and artifacts compared to the conventional electrophysiology recorders. Further, spatiotemporal characteristics of signals were greatly distorted by the conventional electrophysiology system, particularly when a notch filter was used, as compared to the recording of the same spatiotemporal characteristics by the PURE EP System. A notch filter is used traditionally to remove a specific frequency, especially 60Hz in the U.S. and 50Hz in Europe.

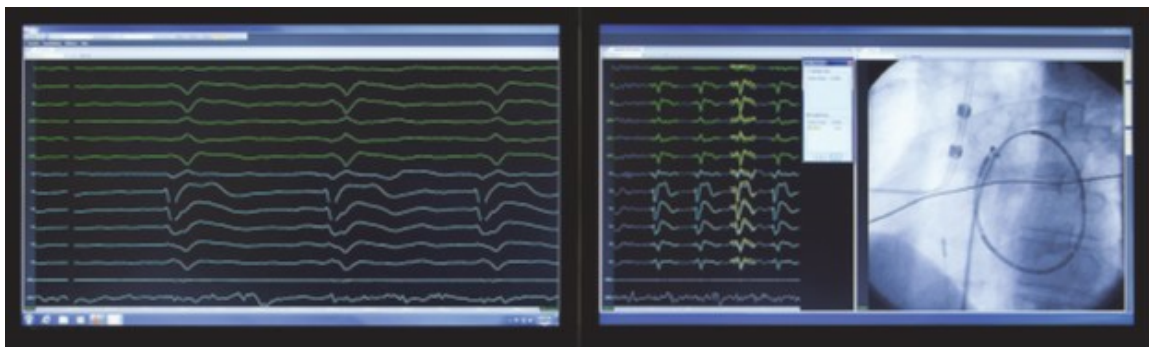
While preliminary analysis of the data from this study has been performed, the analysis of the data will be presented more formally in the future in conjunction with data from our animal study currently underway. As such, our data has not been subjected to any third-party review, as would be required for the publication of a formal study. If we are able to demonstrate a similar level of success in removing baseline wander and reducing noise level for our pre-clinical, animal and clinical studies and trials, we believe that the PURE EP System's signal processing will become a vital part of electrophysiology labs and will greatly assist in the ablation treatment for complex arrhythmias, including atrial fibrillation and ventricular tachycardia.

***Electrocardiogram recordings before and after “denoising” using PURE EP***

*During initial validation, Texas Cardiac Arrhythmia Institute provided data recorded with a competitive system (ABLd). PURE EP removed baseline wander, noise and artifacts and provided a clean signal (ABLd PURE) to assist in identification of ablation sites.*



*With provided data, the PURE EP System demonstrated its confidence indexes.*



## **Growth Strategy**

### *Technology and Development Plan*

Our technology team consists of six engineers with expertise in digital signal processing, low power analog and digital circuit design, software development, embedded system development, electromechanical design, testing and system integration, and the regulatory requirements for medical devices. We have also entered into collaboration agreements with advisors and medical institutions in the fields of cardiology and electrophysiology, including the Texas Cardiac Arrhythmia Institute (see “–Strategic Alliances”). We currently intend to outsource manufacturing, assembling, and testing.

We are currently actively engaged in retrospective studies, which use the PURE EP System to analyze electrophysiology recordings that were recorded by existing recorders. We believe these retrospective studies will be completed by the end of 2013. We commenced preliminary animal studies of the PURE EP System in June 2013 and we intend to commence clinical trials in the first quarter of 2014, with the intention of completing all studies and trials by the fourth quarter of 2014. We also plan on beginning in the near future the application process for the PURE EP System for 510(k) marketing clearance from the U.S. Food and Drug Administration. We believe that, by the end of 2014, we will have obtained marketing clearance from the U.S. Food and Drug Administration and begun marketing and commercializing the PURE EP System.

### *Strategic Alliances*

We formed a scientific advisory board in order to foster collaborations with physicians in the global electrophysiology market to help test and commercialize our PURE EP System. We also plan to develop studies, beginning with studies at the UCLA Cardiac Arrhythmia Center and the Texas Cardiac Arrhythmia Institute that are intended to demonstrate clinical advantages, build scientific evidence and accelerate technology awareness and market adoption of the PURE EP System. Thus far, we have collaborated with Dr. Andrea Natale of the Texas Cardiac Arrhythmia Institute and Dr. Luigi Di Biase of the Montefiore Einstein Center for Heart and Vascular Care in New York, who had previously worked with other companies such as St. Jude Medical, Boston Scientific, Biosense Webster, Inc., and Medtronic, Inc. We are also collaborating with other electrophysiology centers, including University Hospitals Case Medical Center in Cleveland, University of California at Los Angeles Cardiac Arrhythmia Center, Mount Sinai Hospital Cardiovascular Institute in New York, and the Heart Rhythm Institute at the University of Oklahoma Health Sciences Center. We envision beginning clinical trials or other further studies of our products at some or all of these institutions in 2014.

## **Competition**

The electrophysiology market is characterized by intense competition and rapid technological advances. There are currently four large companies that share the majority of the electrophysiological recording market share. They produce the following electrophysiology recording systems, each with a unit price of approximately \$250,000 per unit:

- GE’s CardioLab Recording System was developed in the early 1990s by Prucka Engineering and was acquired by GE in 1999.
- Bard’s LabSystem PRO EP Recording System was originally designed in the late 1980s.
- Siemens developed the Axiom Sensis XP in 2002.
- St. Jude Medical’s EP-Workmate Recording System was acquired from EP MedSystems in 2008, which had received approval for the product from the U.S. Food and Drug Administration in 2003.

Based upon publicly available data, we believe that the above recording systems are built on relatively old technologies and all use the identical approach in applying digital filters to remove noise and artifacts. We are of the opinion that such an approach sacrifices cardiac signal fidelity and, in the case of ablation, the filters have a direct impact on the ablation strategy of an electrophysiologist. This problem is one of the main reasons why multiple (or repeated) ablation procedures are frequently required in order to completely cure patients from atrial fibrillation and ventricular tachycardia. We are not currently aware of any other companies that are developing new recording technology for electrophysiology recorders.



## **Suppliers**

We are currently building a prototype in-house with supplies from various domestic and international suppliers. We envision outsourcing manufacturing to a local device manufacturer in California. We believe that the integrated circuits that are used to manufacture analog and digital boards, which are part of the PURE EP System, are readily available from a number of manufacturers.

## **Research and Development Expenses**

Research and development expenses for the fiscal years ended December 31, 2012 and 2011 were \$888,948 and \$582,525, respectively.

## **Sales, Marketing and Customer Service**

We plan to implement a market development program approximately 18 months prior to launch of our PURE EP System. As the product progresses through development and testing, we intend to gather the data produced by the PURE EP System's processing and presenting electrocardiogram and intracardiac signals and use such data for posters, presentations at cardiology conferences, and, if appropriate, submissions to scientific journals. We believe that as we gather additional data from our animal studies and user preference studies, we will be able to better determine the focus of our marketing efforts. We also plan to leverage our relationships with cardiac research and treatment centers to gain early product evaluation and validation. We believe that through these efforts, we may be able to gain preliminary acceptance of our PURE EP product by experienced professionals and academics in the electrophysiology field.

We also intend to simultaneously develop a branding strategy to introduce and support the PURE EP System. The strategy may include our presence at major relevant cardiology meetings on a national and regional basis to engage and educate physicians concerning the PURE EP System and any of our other products, as well as engaging in a variety of other direct marketing methods. We also intend to develop a small direct sales force together with a distribution network that has existing relationships with hospitals and electrophysiologists. We believe that we may be able to begin commercial sales of the PURE EP System in 2015.

## **Intellectual Property**

### *Patents*

Our success depends in large part on our ability to establish and maintain the proprietary nature of our technology. Although we currently do not enjoy patent protection for any of our technology, we have established an initial portfolio of patents that we intend to file in the U.S. in August 2013. In addition, we intend to protect some of the key components of our intellectual property as trade secrets and proprietary know-how.

### *Trademarks*

Our trademark application to register "PURE EP" in the U.S. was accepted and our trademark application to register "BioSig" in the U.S. is pending.

## **Government Regulation**

Our solutions include software and hardware, which will be used for patient diagnosis and, accordingly, are subject to regulation by the U.S. Food and Drug Administration and other regulatory agencies. U.S. Food and Drug Administration regulations govern, among other things, the following activities that we perform and will continue to perform in connection with:

- Product design and development;
- Product testing;
- Product manufacturing;

- Product labeling and packaging;
- Product handling, storage, and installation;
- Pre-market clearance or approval;
- Advertising and promotion; and
- Product sales, distribution, and servicing.

#### *U.S. Food and Drug Administration's Pre-market Clearance and Approval Requirements*

The U.S. Food and Drug Administration classifies all medical devices into one of three classes. Devices deemed to pose lower risks are placed in either Class I or II, which requires the manufacturer to submit to the U.S. Food and Drug Administration a pre-market notification, known as both a PMN and a 510(k) clearance, requesting clearance of the device for commercial distribution in the U.S. Some low risk devices are exempted from this requirement. Class III devices are devices which must be approved by the pre-market approval process. These tend to be devices that are permanently implanted into a human body or that may be necessary to sustain life. For example, an artificial heart meets both these criteria. We believe that our products will not fall into Class III categorization. We believe that our PURE EP System will be classified as a Class II device. We must, therefore, first receive a 510(k) clearance from the U.S. Food and Drug Administration for our PURE EP system before we can commercially distribute it in the U.S.

#### *510(k) Clearance Process*

For our PURE EP System, we must submit a pre-market notification to the U.S. Food and Drug Administration demonstrating that the proposed device is substantially equivalent to a previously cleared 510(k) device, a device that was in commercial distribution before May 28, 1976 for which the U.S. Food and Drug Administration has not yet called for the submission of pre-market approval applications, or is a device that has been reclassified from Class III to either Class II or I. If a device being submitted is significantly different than a previously cleared 510(k) device in terms of design, material, chemical composition, energy source, manufacturing process, or intended use, the device nominally must go through the pre-market approval process.

The U.S. Food and Drug Administration's 510(k) clearance process usually takes three to six months from the date the application is submitted and filed with the U.S. Food and Drug Administration, but it can take significantly longer. A device that reaches market through the 510(k) process is not considered to be "approved" by the U.S. Food and Drug Administration. They are generally referred to as "cleared" or "510(k) cleared" devices. Nevertheless, it can be marketed and sold in the U.S.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, will require a new 510(k) clearance or could require a pre-market approval, which requires more data and is generally a significantly longer process than the 510(k) clearance process. The U.S. Food and Drug Administration requires each manufacturer to make this determination initially, but the U.S. Food and Drug Administration can review any such decision and can disagree with a manufacturer's determination. If the U.S. Food and Drug Administration disagrees with a manufacturer's determination, the U.S. Food and Drug Administration can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or a pre-market approval is obtained.

#### *Pervasive and continuing U.S. Food and Drug Administration regulation*

After a medical device is placed on the market, numerous U.S. Food and Drug Administration regulatory requirements apply, including, but not limited to the following:

- Quality System regulation, which requires manufacturers to follow design, testing, control, documentation and other quality assurance procedures during the manufacturing process;
- Establishment Registration, which requires establishments involved in the production and distribution of medical devices intended for commercial distribution in the U.S. to register with the U.S. Food and Drug Administration;

- Medical Device Listing, which requires manufacturers to list the devices they have in commercial distribution with the U.S. Food and Drug Administration;
- Labeling regulations, which prohibit “misbranded” devices from entering the market, as well as prohibit the promotion of products for unapproved or “off-label” uses and impose other restrictions on labeling; and
- Medical Device Reporting regulations, which require that manufacturers report to the U.S. Food and Drug Administration if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur.

Failure to comply with applicable regulatory requirements can result in enforcement action by the U.S. Food and Drug Administration, which may include one or more of the following sanctions:

- Fines, injunctions, and civil penalties;
- Mandatory recall or seizure of our products;
- Administrative detention or banning of our products;
- Operating restrictions, partial suspension or total shutdown of production;
- Refusing our request for 510(k) clearance or pre-market approval of new product versions;
- Revocation of 510(k) clearance or pre-market approvals previously granted; and
- Criminal penalties.

### *International Regulation*

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for U.S. Food and Drug Administration approval, and the requirements may differ significantly.

The European Union has adopted legislation, in the form of directives to be implemented in each member state, concerning the regulation of medical devices within the European Union. The directives include, among others, the Medical Device Directive that establishes standards for regulating the design, manufacture, clinical trials, labeling, and vigilance reporting for medical devices. Our PURE EP system may be affected by this legislation. Under the European Union Medical Device Directive, medical devices are classified into four classes, I, IIa, IIb, and III, with class I being the lowest risk and class III being the highest risk. Under the Medical Device Directive, a competent authority is nominated by the government of each member state to monitor and ensure compliance with the Medical Device Directive. The competent authority of each member state then designates a notified body to oversee the conformity assessment procedures set forth in the Medical Device Directive, whereby manufacturers demonstrate that their devices comply with the requirements of the Medical Device Directive and are entitled to bear the CE mark. CE is an abbreviation for Conformance Européenne (or European Conformity) and the CE mark, when placed on a product, indicates compliance with the requirements of the applicable directive. Medical devices properly bearing the CE mark may be commercially distributed throughout the European Union. Failure to obtain the CE mark will preclude us from selling the PURE EP System and related products in the European Union.

### **Employees**

As of July 22, 2013, we had 8 full-time employees and no part-time employees. Additionally, we use consultants as needed to perform various specialized services. None of our employees are represented under a collective bargaining agreement.

### **Properties**

Our headquarters are located in Los Angeles, California, where we lease office space. Because we do not have any manufacturing requirements at this time, we believe our current headquarters is sufficient to meet our current needs.

## Legal Proceedings

From time to time, we may be involved in litigation that arises through the normal course of business. As of the date of this filing, we are not a party to any litigation nor are we aware of any such threatened or pending litigation.

## EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth information regarding our executive officers and the members of our board of directors.

<b>Name</b>	<b>Age</b>	<b>Position with the Company</b>
Kenneth L. Londoner	45	Chairman and Chief Executive Officer and Director
Budimir S. Drakulic, Ph.D.	63	Chief Technology Officer and Director
Asher Holzer, Ph.D.	63	Chief Scientific Advisor and Director
Lora Mikolaitis	40	Director of Operations
Kalyanam Shivkumar, MD, Ph.D.	44	Director
Roy Tanaka	65	Director
Jeffrey O'Donnell	53	Director
William Uglow	65	Director
Jonathan Steinhouse	46	Director
Seth H. Z. Fischer	56	Director

## Biographical Information

*Kenneth L. Londoner.* Mr. Londoner has served as our chairman and chief executive officer and director since February 2009. Mr. Londoner has served as the managing partner of Endicott Management Partners, LLC, a firm dedicated to assisting emerging growth companies in their corporate development, since February 2010. From February 2007 to December 2007, he served as executive vice president – finance and as a consultant to NewCardio, Inc., a medical device designer and developer. Mr. Londoner has also served as a director of Alliqua, Inc. since May 2012. Mr. Londoner is a co-founder and board member of Safe Ports Holdings, Charleston, South Carolina. Mr. Londoner was an investment officer and co-manager of the Seligman Growth Fund, Seligman Capital Fund, and approximately \$ 2 billion of pension assets at J & W Seligman & Co, Inc. in New York from 1991 to 1997. Mr. Londoner graduated from Lafayette College in 1989 with a degree in economics and finance and received his MBA from New York University's Leonard N. Stern School of Business in 1994. We believe that Mr. Londoner's extensive experience in financial and venture capital matters, as well as his executive leadership experience make him an asset that will serve as a bridge between our board of directors and our executive officers.

*Budimir S. Drakulic, Ph.D.* Dr. Drakulic has served as our chief technology officer and our director since February 2009. Dr. Drakulic brings more than 30 years of experience in the area of development and system integration for medical devices. Currently, Dr. Drakulic is a consultant with Miko Consulting Group, Inc., which offers marketing and technology consulting to medical device companies. From 2002 to 2008, he served as chief technology officer and director for Signalife, Inc., a medical device company focusing on the monitoring and measuring of physiological signals. Dr. Drakulic previously held numerous positions affiliated with the University of California at Los Angeles and served as chief scientist at the Medical Device Business Unit for Teledyne Electronic Technologies, where he successfully supervised the transfer of various research projects into commercial products. For his work, he received the Crump Prize for the best bioengineering project at UCLA and his technology innovations received two Frost & Sullivan awards in 2006 and 2008. Mr. Drakulic holds a Ph.D. in Electrical and Biomedical Engineering, a Masters of Electrical Engineering and a BA in Electrical Engineering from the University of Belgrade, Belgrade, Yugoslavia. We believe that Dr. Drakulic's significant experience in the medical device field, along with his previous service as an officer and director of a public medical device company, will allow him to contribute both day-to-day leadership as well as general guidance to the board.

*Asher Holzer, Ph.D.* Dr. Holzer has served as our chief scientific officer and our director since September 2012. Dr. Holzer serves as a director of InspireMD, Inc., an Israeli-based developer of a new stent platform, and served as that company's president from March 2011 until June 2012 and chairman from March 2011 until November 2011. In addition, Dr. Holzer co-founded InspireMD Ltd., the predecessor and later wholly-owned subsidiary of InspireMD, Inc., and served as its president and chairman of the board from April 2007 until June 2012. Previously, Dr. Holzer founded Adar Medical Ltd., an investment firm specializing in medical device startups, and served as its chief executive officer from 2002 through 2004. Dr. Holzer currently serves on the board of directors of Adar Medical Ltd., O.S.H.-IL The Israeli Society of Occupational Safety and Health Ltd., Theracoat Ltd., 2to3D Ltd., and S.P. Market Windows Cyprus. Dr. Holzer earned his Ph.D. in Applied Physics from the Hebrew University. Dr. Holzer is also an inventor and holder of numerous patents. Dr. Holzer brings to the board his more than 25 years of experience in advanced medical devices, as well as expertise covering a wide range of activities, including product development, clinical studies, regulatory affairs, market introduction and the financial aspects of the advance medical device business.

*Lora Mikolaitis.* Ms. Mikolaitis has served as our director of operations since February 2009. Ms. Mikolaitis has over 15 years of experience in sales, marketing and administration. She has served as president of Miko Consulting Group, Inc., which offers marketing and technology consulting to medical device companies, since 2008.

*Kalyanam Shivkumar, MD, Ph.D.* Dr. Shivkumar has served as our director since September 2012. Since 2002, Dr. Shivkumar serves as Professor of Medicine at the University of California at Los Angeles and currently holds a joint appointment in the department of Radiology at the university. Dr. Shivkumar serves as a director of Epicardial Technologies, Inc., a company developing percutaneous (minimally invasive), single-use products for heart treatment through the epicardial surface. He also co-founded and serves on the board of EP Dynamics, a company developing innovative products for invasive cardiology. Dr. Shivkumar is certified by the American Board of Internal Medicine in the subspecialties of cardiovascular disease and clinical cardiac electrophysiology. His field of specialization is interventional cardiac electrophysiology and he heads a group at University of California at Los Angeles that is involved in developing innovative techniques for the non-pharmacological management of cardiac arrhythmias. In 2002, he joined the newly created UCLA Cardiac Arrhythmia Center at the David Geffen School of Medicine at University of California at Los Angeles. Dr. Shivkumar received his medical degree from the University of Madras, India in 1991 and his Ph.D. from UCLA in 2000. Dr. Shivkumar brings to the board extensive experience in the fields of cardiovascular disease and clinical cardiac electrophysiology, as well as a viewpoint from the clinical and academic medical field.

*Roy Tanaka.* Mr. Tanaka has served as our director since July 2012. From 2004 until his retirement in September 2008, Mr. Tanaka served as the worldwide president of Biosense Webster, Inc., a Johnson & Johnson company, a market and technology leader in the field of electrophysiology. He joined Biosense Webster, Inc. as its U.S. president in 1997. Previously he held a variety of senior management positions at Sorin Biomedical, Inc., including president and chief executive officer, and leadership roles at CooperVision Surgical and Shiley, a division of Pfizer, Inc. He currently serves on the boards of directors of Volcano Corporation, Coherex Medical, Inc., Advanced Cardiac Therapeutics Inc. and VytronUS Inc. Mr. Tanaka brings broad experience in executive leadership in the medical device field. His operational expertise and knowledge of the regulatory environment, both in the U.S. and globally, also bring a valuable perspective.

*Jeffrey O'Donnell.* Mr. O'Donnell has served as our director since October 2011. Since 2009, Mr. O'Donnell has served as managing director and venture partner of Biostar Ventures, a venture capital partnership investing primarily in early stage medical device companies. Since January 2012, Mr. O'Donnell also serves as the executive chairman of the board of directors of Trice Orthopedics, Inc., a biomedical company focused on integrating miniaturized opto-electronics into well-designed clinical solutions. From 2009 to 2011, he was chairman and chief executive officer of Embrella Cardiovascular, Inc., a medical device startup company. He has held several senior management positions at Boston Scientific Corporation, Guidant Corporation and Johnson & Johnson's Orthopedic Division. Mr. O'Donnell brings to the board 26 years of experience in general management, sales and marketing with large healthcare companies.

*William Uglow.* Mr. Uglow has served as our director since February 2009. From 2005 to the present, Mr. Uglow has served as a consultant in the consumer products industry, negotiating product licensing and sponsorship deals for a variety of companies including the United Football League and the Professional Bull Riders. Prior to his consulting work, Mr. Uglow held executive positions for J.C. Penney, The Walt Disney Company, MGM Grand and Mandalay Resort Group. We believe that Mr. Uglow will provide the board with expertise in licensing, negotiating, manufacturing in Asia, and marketing.

*Jonathan Steinhouse.* Mr. Steinhouse has served as our director since February 2011. Since 2012, Mr. Steinhouse has served as vice president of sales for Sandlot Solutions in Philadelphia, PA, a health information exchange and analytics software company. From 2008 to 2011, he served as director of healthcare for Oracle Corporation in Philadelphia, PA, where he was responsible for overall sales (acquiring new, maintaining revenue and growing existing accounts) for direct and the channel sales to hospitals. From 2005 to 2008, he was regional manager of Concerro Incorporated, where he was responsible for new “software as a service” to increase utilization of internal employee resources. Mr. Steinhouse brings to the board the experience of a senior sales executive with over 23 years of experience in healthcare industry.

*Seth H. Z. Fischer.* Mr. Fischer has served as our director since May 2013. Mr. Fischer served in positions of increasing responsibility with Johnson & Johnson until his retirement in 2012. Most recently Mr. Fischer served as Company Group Chairman Johnson & Johnson, Worldwide Franchise Chairman Cordis Corporation from 2008 to 2012, which included responsibility for Cordis and Biosense Webster. Previously, he served as Company Group Chairman North America Pharmaceuticals from 2004 to 2007. In this position he had responsibilities for Ortho-McNeil Pharmaceuticals, Janssen and Scios. Mr. Fischer serves on the board of directors of Trius Therapeutics, Inc. We believe that Mr. Fischer’s extensive executive experience in a major health care company and his specific experience in launching and growing new pharmaceutical products make him an ideal candidate for our board.

### **Family Relationships**

We have no family relationships amongst our directors and executive officers.

### **Independent Directors**

Our board of directors has determined that each of Kalyanam Shivkumar, MD, Ph.D., Roy Tanaka, Jeffrey O’Donnell, William Uglow, Jonathan Steinhouse and Seth H. Z. Fischer is independent within the meaning of applicable listing rules of the Section 803A(2) of the NYSE MKT Rules and the rules and regulations promulgated by the Securities and Exchange Commission.

### **Committees of the Board of Directors**

We expect our board of directors, in the future, to appoint an audit committee, nominating committee and compensation committee, and to adopt charters relative to each such committee. We intend to appoint such persons to committees of the board of directors as are expected to be required to meet the corporate governance requirements imposed by a national securities exchange, although we are not required to comply with such requirements until we elect to seek a listing on a national securities exchange. In addition, we intend that at least one of our directors who serves on our audit committee will qualify as an “audit committee financial expert,” within the meaning of Item 407(d)(5) of Regulation S-K, as promulgated by the Securities and Exchange Commission. We do not currently have an “audit committee financial expert” since we currently do not have an audit committee in place.

### **Code of Ethics**

We intend to adopt a code of ethics that applies to our officers, directors and employees, including our principal executive officer and principal accounting officer, but have not done so to date due to our relatively small size. We intend to adopt a written code of ethics in the near future.

**EXECUTIVE COMPENSATION****2012 and 2011 Summary Compensation Table**

The table below sets forth, for our last two fiscal years, the compensation earned by our named executive officers: (i) Kenneth L. Londoner, our chairman, chief executive officer and director; (ii) Budimir S. Drakulic, Ph.D., our chief technology officer and director, and (iii) Lora Mikolaitis, our director of operations.

<b>Name and principal position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Stock Awards (\$)</b>	<b>Total (\$)</b>
Kenneth L. Londoner, Chairman, Chief Executive Officer and Director	2012	144,000	-	144,000
	2011	82,000	-	82,000
Budimir S. Drakulic, Ph.D., Chief Technology Officer and Director	2012	156,000	-	156,000
	2011	243,750	-	243,750
Lora Mikolaitis, Director of Operations	2012	96,000	-	96,000
	2011	112,000	35,000(1)	147,000

(1) Represents 43,750 shares of common stock issued as a bonus for past services.

**Employment Agreements**

We entered into employment agreements with both Kenneth Londoner and Budimir S. Drakulic, Ph.D. on March 1, 2013. The employment agreements terminate on March 1, 2015, after which each executive officer's employment will be on at-will basis. Mr. Londoner's annual base salary is \$225,000, which will be paid entirely as salary. Dr. Drakulic's annual base salary is \$225,000, which will be paid partially as salary and partially as consulting fees. Each executive officer will also be eligible for annual discretionary bonuses and equity-based incentives, as our board may determine. Each executive officer is subject to non-competition and non-solicitation obligations, whereby, for a period lasting until one year after the termination of such executive officer's employment with us, such executive officer is not permitted to, directly or indirectly, (i) in any state in the U.S. or country that we conduct business and for which such executive officer had responsibility, work for, invest in, provide financing to or establish a business that competes with our business, other than an exception that permits limited investment in publicly-traded competitors, (ii) solicit business from or do business with any customer, client, manufacturer or vendor with whom we did business or who we solicited within the preceding two years, and (iii) solicit, engage or hire any person employed by or who served as a consultant to us within the preceding twelve months.

Ms. Mikolaitis is an at-will employee and, prior to entering into each executive officer's employment agreement, each of Mr. Londoner and Dr. Drakulic was an at-will employee.

**Potential Payments Upon Termination or Change In Control**

For each of Mr. Londoner and Dr. Drakulic, pursuant to such executive officer's employment agreement, upon such executive officer's termination without cause, including in the event of our change of control, such executive officer will receive severance pay equal to such executive officer's base salary until March 1, 2015, which represents the end of such executive officer's employment agreement, so long as such executive officer executes a release that releases any of his claims against us. In the event the executive officer voluntarily resigns, such executive officer will not be entitled to any further payments, other than those accrued through the date of resignation. Cause means, with respect to the executive officer, termination because of (i) an act of willful or material misrepresentation, fraud or willful dishonesty, (ii) any willful misconduct with regard to us; (iii) any violation of any fiduciary duties owed to us; (iv) conviction of, or pleading nolo contendere or guilty to, a felony (other than a traffic infraction) or (v) any other material breach such executive officer's employment agreement that is not cured within twenty days after receipt of a written notice.

**2012 Outstanding Equity Awards at Fiscal Year End**

None of our named executive holders held option awards or stock awards at December 31, 2012.



**BioSig Technologies, Inc. 2011 Long-Term Incentive Plan**

On October 19, 2011, our board of directors and stockholders adopted and approved the BioSig Technologies, Inc. 2011 Long-Term Incentive Plan. Under the BioSig Technologies, Inc. 2011 Long-Term Incentive Plan, we reserved 1,500,000 shares of our common stock as awards to our employees, consultants, and service providers.

The purpose of the BioSig Technologies, Inc. 2011 Long-Term Incentive Plan was to provide an incentive to attract and retain employees, officers, consultants, directors, and service providers whose services are considered valuable, to encourage a sense of proprietorship and to stimulate an active interest of such persons in our development and financial success. The BioSig Technologies, Inc. 2011 Long-Term Incentive Plan was administered by our board of directors. On October 19, 2012, our board of directors elected to terminate the BioSig Technologies, Inc. 2011 Long Term Incentive Plan. We did not grant options to purchase common stock under the BioSig Technologies, Inc. 2011 Long-Term Incentive Plan to any of our named executive officers:

**BioSig Technologies, Inc. 2012 Equity Incentive Plan**

On October 19, 2012, our board of directors adopted the BioSig Technologies, Inc. 2012 Equity Incentive Plan, which provides for the grant of stock options, stock appreciation rights, restricted stock and restricted stock units to employees, directors and consultants, to be granted from time to time as determined by our board of directors or its designees. An aggregate of 2,000,000 shares of common stock are reserved for issuance under the BioSig Technologies, Inc. 2012 Equity Incentive Plan. In addition, 1,500,000 shares under the BioSig Technologies, Inc. 2011 Long Term Incentive Plan that were not subject to outstanding stock options or similar awards were rolled into the BioSig Technologies, Inc. 2012 Equity Incentive Plan. As of July 22, 2013, the number of options granted the under the BioSig Technologies, Inc. 2012 Equity Incentive Plan are 2,990,977.

Since its adoption, we have granted options to purchase common stock under the BioSig Technologies, Inc. 2012 Equity Incentive Plan that are currently outstanding to the following named executive officers:

<b>Name</b>	<b>Shares Subject to Options</b>	<b>Exercise Price</b>	<b>Vesting Schedule</b>	<b>Expiration</b>
Kenneth L. Londoner	250,000	\$ 2.09	Exercisable immediately	01/16/2020
Budimir S. Drakulic, Ph.D.	250,000	\$ 2.09	Exercisable immediately	01/16/2020
Lora Mikolaitis	100,000	\$ 2.09	Exercisable immediately	01/16/2020

**DIRECTOR COMPENSATION**

The following table provides compensation information for the one year period ended December 31, 2012 for each non-employee member of our board of directors. Directors are not paid for attendance (in person or by telephone) at meetings of the board of directors. Each stock option grant was made under the BioSig Technologies, Inc. 2012 Equity Incentive Plan.

<b>Name</b>	<b>Fees earned or paid in cash (\$)</b>	<b>Option Awards (\$)(1)</b>	<b>All other compensation (\$)</b>	<b>Total (\$)</b>
Kalyanam Shivkumar, MD, Ph.D.	-	259,868(2)	-	259,868
Roy Tanaka	-	1,228,234(3)	-	1,228,234
Jeffrey O'Donnell	-	-	70,000(5)	70,000
William Uglow	-	-	2,500(6)	2,500
Jonathan Steinhouse	-	-	-	-
Asher Holzer, Ph.D.	-	701,644(4)	7,500(7)	709,144



- (1) The amounts in this column reflect the dollar amounts recognized for financial statement reporting purposes with respect to the year ended December 31, 2012, in accordance with FASB ASC Topic 718. Fair value is based on the Black-Scholes option pricing model using the fair value of the underlying shares at the measurement date. For additional discussion of the valuation assumptions used in determining stock-based compensation and the grant date fair value for stock options, see “Management’s Discussion and Analysis of Financial Condition and Results of Operation — Critical Accounting Policies — Stock based compensation” and Note 1 — “Summary of Significant Accounting Policies” of the Notes to the Financial Statements included herein.
- (2) The stock option award is comprised of an option to purchase 150,000 shares of common stock, which will vest in equal installments on September 21, 2013, September 21, 2014 and September 21, 2015, with an exercise price of \$2.00 per share and an expiration of September 21, 2020, so long as Dr. Shivkumar is providing services to us. If Dr. Shivkumar is no longer providing services to us, the option will expire three months from the date of such termination.
- (3) The stock option award is comprised of an option to purchase 718,927 shares of common stock, which will vest as follows: 119,821 shares of common stock on July 18, 2013, 119,821 shares of common stock on July 18, 2014, 119,821 shares of common stock on July 18, 2015, 119,821 shares of common stock upon our closing of a \$6 million capital raising transaction, 119,821 shares of common stock upon our achievement of \$10 million in revenue and 119,821 shares of common stock upon our entering into an agreement for licensing, distribution, joint venture or similar strategic relationship, upon our board of director’s approval, so long as Mr. Tanaka is providing services to us. If Mr. Tanaka is no longer providing services to us, the option will expire three months from the date of such termination.
- (4) The stock option award is comprised of an option to purchase 405,000 shares of common stock, which will vest as follows: 81,000 shares of common stock on September 21, 2013, 81,000 shares of common stock on September 21, 2014, 81,000 shares of common stock on September 21, 2015, 81,000 shares of common stock upon our achievement of \$10 million in revenue and 81,000 shares of common stock upon our entering into an agreement for licensing, distribution, joint venture or similar strategic relationship, upon our board of director’s approval, so long as Dr. Holzer is providing services to us. If Dr. Holzer is no longer providing services to us, the option will expire three months from the date of such termination.
- (5) As part of the compensation to join our board of directors, Mr. O’Donnell was given 43,750 shares of common stock from each of Endicott Management Partners, LLC, an entity controlled by Mr. Londoner, and Miko Consulting Group, Inc., an entity jointly controlled by Dr. Drakulic and Ms. Mikolaitis.
- (6) Represents fees paid to Mr. Uglow in exchange for his services rendered with respect to our intellectual property.
- (7) Represents fees paid to Dr. Holzer pursuant to his consulting agreement with us.

Directors are not paid for attendance (in person or by telephone) at meetings of the board of directors.

#### **SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth information with respect to the beneficial ownership of our common stock as of July 22, 2013 by:

- each person known by us to beneficially own more than 5.0% of our common stock;
- each of our directors;
- each of the named executive officers; and
- all of our directors and executive officers as a group.

The percentages of common stock beneficially owned are reported on the basis of regulations of the Securities and Exchange Commission governing the determination of beneficial ownership of securities. Under the rules of the Securities and Exchange Commission, a person is deemed to be a beneficial owner of a security if that person has or shares voting power, which includes the power to vote or to direct the voting of the security, or investment power, which includes the power to dispose of or to direct the disposition of the security. Except as indicated in the footnotes to this table, to our knowledge and subject to community property laws where applicable, each beneficial owner named in the table below has sole voting and sole investment power with respect to all shares beneficially owned and each person's address is c/o BioSig Technologies, Inc., 12424 Wilshire Boulevard, Suite 745, Los Angeles, California 90025. As of July 22, 2013, we had 8,187,650 shares outstanding.

<u>Name of Beneficial Owner</u>	<u>Number of Shares Beneficially Owned(1)</u>	<u>Percentage of Common Stock Owned (1)(2)</u>
Kenneth L. Londoner	4,082,564 (3)	47.1%
Budimir S. Drakulic, Ph.D.	3,856,250 (4)	45.7%
Asher Holzer, Ph.D.	81,000 (5)	*
Kalyanam Shivkumar, MD, Ph.D.	50,000 (6)	*
Roy Tanaka	119,821 (7)	1.4%
Jeffrey O'Donnell	159,347 (8)	1.7%
William Uglow	43,750 (9)	*
Jonathan Steinhouse	189,549 (10)	2.3%
Seth H. Z. Fischer	62,500 (11)	*
Lora Mikolaitis	3,750,000 (12)	45.2%
All directors and executive officers as a group (10 persons)	8,616,772	91.3%

\* Less than 1%

- (1) Shares of common stock beneficially owned and the respective percentages of beneficial ownership of common stock assume the exercise of all options and other securities convertible into common stock beneficially owned by such person or entity currently exercisable or exercisable within 60 days of July 22, 2013, except as otherwise noted. Shares issuable pursuant to the exercise of stock options and other securities convertible into common stock exercisable within 60 days are deemed outstanding and held by the holder of such options or other securities for computing the percentage of outstanding common stock beneficially owned by such person, but are not deemed outstanding for computing the percentage of outstanding common stock beneficially owned by any other person.
- (2) These percentages have been calculated based on 8,187,650 shares of common stock outstanding as of July 22, 2013.

- (3) Comprised of (i) 6,250 shares of common stock directly held by Mr. Londoner, (ii) 3,586,250 shares of common stock are held by Endicott Management Partners, LLC, an entity for which Mr. Londoner is deemed the beneficial owner, (iii) shares of Series B Preferred Stock that are convertible into 24,752 shares of common stock, (iv) shares of Series C Preferred Stock that are convertible into 95,694 shares of common stock, (v) warrants to purchase 95,694 shares of common stock, and (vi) options to purchase 250,000 shares of common stock that are currently exercisable.
- (4) Comprised of (i) 3,606,250 shares of common stock beneficially owned by an entity for which Dr. Drakulic has joint control with another officer of ours, and (ii) options to purchase 250,000 shares of common stock that are currently exercisable.
- (5) Comprised of options to purchase 81,000 shares of common stock that are exercisable within 60 days of July 22, 2013.
- (6) Comprised of options to purchase 50,000 shares of common stock that are exercisable within 60 days of July 22, 2013.
- (7) Comprised of options to purchase 119,821 shares of common stock that are exercisable immediately.
- (8) Comprised of (i) 87,500 shares of common stock, and (ii) options to purchase 71,847 shares of common stock that are currently exercisable or exercisable within 60 days of July 22, 2013.
- (9) Consists of 43,750 shares of common stock held by Mr. Uglow.
- (10) Comprised of (i) 165,625 shares of common stock, (ii) shares of Series C Preferred Stock that are convertible into 11,962 shares of common stock, and (iii) warrants to purchase 14,953 shares of common stock.
- (11) Consists of options to purchase 62,500 shares of common stock that are currently exercisable or exercisable within 60 days of July 22, 2013.
- (12) Comprised of (i) 43,750 shares of common stock held by Ms. Mikolaitis directly, (ii) 3,606,250 shares of common stock beneficially owned by an entity for which Ms. Mikolaitis has joint control with another officer of ours, and (iii) options to purchase 100,000 shares of common stock that are currently exercisable.

#### **SELLING STOCKHOLDERS**

Up to 3,128,043 shares of our common stock are currently being offered by the selling stockholders under this prospectus. This reflects the number of shares of common stock into which (i) the Series C Preferred Stock are currently convertible, at a conversion price of \$2.09 per share per \$1,000 principal amount of Series C Preferred Stock and (ii) the warrants are exercisable.

The shares of common stock referred to above are being registered to permit public sales of the shares, and the selling stockholders may offer the shares for resale from time to time pursuant to this prospectus. The selling stockholders may also sell, transfer or otherwise dispose of all or a portion of their shares in transactions exempt from the registration requirements of the Securities Act of 1933, as amended, or pursuant to another effective registration statement covering those shares. We may from time to time include additional selling stockholders in supplements or amendments to this prospectus.

The table below sets forth certain information regarding the selling stockholders and the shares of our common stock offered by them in this prospectus. The selling stockholders have not had a material relationship with us within the past three years other than as described in the footnotes to the table below or as a result of their acquisition of our shares or other securities. To our knowledge, subject to community property laws where applicable, each person named in the table has sole voting and investment power with respect to the shares of common stock set forth opposite such person's name. None of the selling stockholders are broker-dealers or affiliates of broker-dealers.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the percentage of our common stock beneficially owned by each selling stockholder after the offering, we have assumed that all shares offered by such selling stockholder have been sold, and therefore the calculation is based on a number of shares of common stock outstanding comprised of (i) 8,187,650 shares of common stock outstanding as of July 22, 2013 plus (ii) the number of shares offered by the selling stockholder in this offering. The shares offered by one selling stockholder are not deemed outstanding for the purpose of computing the percentage ownership of any other selling stockholder. With respect to the Series C Preferred Stock and warrants held by the selling stockholders, there exist contractual provisions limiting conversion and exercise to the extent such conversion or exercise would cause such selling stockholder, together with its affiliates or members of a "group," to beneficially own a number of shares of common stock which would exceed 4.99% or 9.99% of our then outstanding shares of common stock following such conversion or exercise. The shares and percentage ownership of our outstanding shares indicated in the table below do not give effect to these limitations.

Selling Stockholder	Ownership Before Offering		Ownership After Offering	
	Number of shares of common stock beneficially owned (1)	Number of shares offered	Number of shares of common stock beneficially owned (1)	Percentage of common stock beneficially owned (1) (2)
Michael N. Emmerman	315,312(3)	215,312(3)	100,000	1.19%
Lau Family Fund LP (4)	53,828(5)	53,828(5)	0	-
Jonathan Steinhouse (6)	192,540(7)	26,915(7)	165,625	2.02%
Kenneth L. Londoner (8)	4,082,564(9)	215,312(10)	3,867,252(11)	46.02%
R. Ian Chaplin	51,915(12)	26,915(12)	25,000	*
Kenneth Epstein	107,656(13)	107,656(13)	0	-
Jerome B. Zeldis	53,828(14)	53,828(14)	0	-
Brio Capital Master Fund Ltd. (15)	134,570(16)	134,570(16)	0	-
Alpha Capital Anstalt (17)	672,847(18)	672,847(18)	0	-
Sterne Agee & Leach Inc C/F Maree Casatelli SEP IRA	26,915(19)	26,915(19)	0	-
Ron D Craig	124,514(20)	99,762(21)	24,752	*
Michael & Susan Engdall JTWROS	36,485(22)	36,485(22)	0	-
David W Frost	161,483(23)	161,483(23)	0	-
Phillip Todd Herndon	78,580(24)	53,828(25)	24,752	*
Rex A Jones	162,004(26)	107,656(27)	54,348	*
Nabil M Yazgi	126,541(28)	21,531(29)	105,010	1.28%
Portofino Ventures LP (30)	21,531(31)	21,531(31)	0	-
Thomas G Hoffman	34,341(32)	26,915(33)	7,426	*
James W Lees	31,701(34)	31,701(34)	0	-
Martin F Sauer	54,089(35)	26,915(36)	27,174	*
Ray Weber	47,249(37)	47,249(37)	0	-
Sterne Agee & Leach Inc C/F Raymond E Weber IRA	37,679(38)	37,679(38)	0	-
Fourfathom Capital, LLC (39)	107,656(40)	107,656(40)	0	-
Michael B & Sheila J Carroll JTWROS	161,483(41)	161,483(41)	0	-
Scott D. Gamble	107,656(42)	107,656(42)	0	-
Brian E. Jones & Peggy A. Jones JTWROS	78,580(43)	53,828(44)	24,752	*
David Patterson	21,531(45)	21,531(45)	0	-
Herschel E. Johnson	18,302(46)	18,302(46)	0	-
George & Karin Alexa Elefther JTWROS	18,373(47)	4,786(48)	13,587	*
L. Dean Fox	18,373(49)	4,786(50)	13,587	*
Sterne Agee & Leach Inc C/F John L Sommer IRA	59,075(51)	9,570(52)	49,505	*
Sterne Agee & Leach Inc C/F David W Frost IRA	4,782(53)	4,782(53)	0	-
Allan D Carlson	9,570(54)	9,570(54)	0	-
Ian H Murray	9,570(55)	9,570(55)	0	-
Sterne Agee & Leach Inc C/F Randy Payne IRA	21,946(56)	9,570(57)	12,376	*
Dr. Richard & Anita Matter JTWROS	19,140(58)	19,140(58)	0	-
Robert J Gray	37,511(59)	23,924(60)	13,587	*
Randal E Margo	23,924(61)	23,924(61)	0	-
Eugene E Eubank	47,848(62)	47,848(62)	0	-
Robert W Baird & Co Inc TTEE FBO Brian Mark Miller Roth IRA	95,694(63)	95,694(63)	0	-
Sterne Agee & Leach Inc C/F Dr Gary W Chmielewski IRA	9,570(64)	9,570(64)	0	-
Laidlaw & Co (UK) Ltd (65)	177,057(66)	177,057(66)	0	-

\* Less than 1%

- (1) Shares of common stock beneficially owned and the respective percentages of beneficial ownership of common stock assume the exercise of all options and other securities convertible into common stock beneficially owned by such person or entity currently exercisable or exercisable within 60 days of July 22, 2013, except as otherwise noted. Shares issuable pursuant to the exercise of stock options and other securities convertible into common stock exercisable within 60 days are deemed outstanding and held by the holder of such options or other securities for computing the percentage of outstanding common stock beneficially owned by such person, but are not deemed outstanding for computing the percentage of outstanding common stock beneficially owned by any other person.
- (2) These percentages have been calculated based on 8,187,650 shares of common stock outstanding as of July 22, 2013.
- (3) Includes 95,694 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 119,618 shares of common stock issuable upon the exercise of warrants.
- (4) S7 Capital, the general partner of Lau Family Fund LP, has voting and dispositive power over the securities held for the account of this selling stockholder. S7 Capital is controlled by Steven Lau, its manager, and accordingly, Mr. Lau may be deemed to have sole voting and dispositive power over the securities owned by Lau Family Fund LP.
- (5) Comprised of 23,923 shares of common stock issuable upon conversion of shares of our Series C Preferred Stock and 29,905 shares of common stock issuable upon the exercise of warrants.
- (6) Jonathan Steinhouse is a member of our board of directors.
- (7) Includes 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 14,953 shares of common stock issuable upon the exercise of warrants.
- (8) Kenneth L Londoner is our chief executive officer and the chairman of our board of directors.
- (9) Comprised of (i) 6,250 shares of common stock directly held by Mr. Londoner, (ii) 3,586,250 shares of common stock are held by Endicott Management Partners, LLC, an entity for which Mr. Londoner is deemed the beneficial owner, (iii) shares of Series B Preferred Stock that are convertible into 24,752 shares of common stock, (iv) shares of Series C Preferred Stock that are convertible into 95,694 shares of common stock, (v) 119,618 shares of common stock issuable upon the exercise of warrants, and (vi) options to purchase 250,000 shares of common stock that are currently exercisable.
- (10) Comprised of 95,694 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 119,618 shares of common stock issuable upon the exercise of warrants.
- (11) Comprised of (i) 31,002 shares of common stock directly held by Mr. Londoner, (ii) 3,586,250 shares of common stock are held by Endicott Management Partners, LLC, an entity for which Mr. Londoner is deemed the beneficial owner, and (iii) options to purchase 250,000 shares of common stock that are currently exercisable.
- (12) Includes 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 14,953 shares of common stock issuable upon the exercise of warrants.
- (13) Comprised of 47,847 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 59,809 shares of common stock issuable upon the exercise of warrants.

- (14) Comprised of 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 29,905 shares of common stock issuable upon the exercise of warrants.
- (15) Shaye Hirsch, director of Brio Capital Master Fund Ltd., has sole voting and dispositive power over the securities held for the account of this selling stockholder.
- (16) Comprised of 59,809 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 74,762 shares of common stock issuable upon the exercise of warrants.
- (17) Konrad Ackermann has sole voting and dispositive power over the securities held for the account of this selling stockholder.
- (18) Comprised of 299,043 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 373,804 shares of common stock issuable upon the exercise of warrants.
- (19) Comprised of 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 14,953 shares of common stock issuable upon the exercise of warrants.
- (20) Comprised of (i) 24,752 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 46,890 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 52,872 shares of common stock issuable upon the exercise of warrants.
- (21) Comprised of 46,890 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 52,872 shares of common stock issuable upon the exercise of warrants.
- (22) Comprised of 16,747 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 19,738 shares of common stock issuable upon the exercise of warrants.
- (23) Comprised of 71,770 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 89,713 shares of common stock issuable upon the exercise of warrants.
- (24) Comprised of (i) 24,752 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 29,905 shares of common stock issuable upon the exercise of warrants.
- (25) Comprised of 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 29,905 shares of common stock issuable upon the exercise of warrants.
- (26) Comprised of (i) 54,348 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 47,847 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 59,809 shares of common stock issuable upon the exercise of warrants.
- (27) Comprised of 47,847 shares of common stock issuable upon the exercise of warrants and 59,809 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock.
- (28) Comprised of (i) 95,109 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 9,901 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (iii) 9,569 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock, and (iv) 11,962 shares of common stock issuable upon the exercise of warrants.

- (29) Comprised of 9,569 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 11,962 shares of common stock issuable upon the exercise of warrants.
- (30) Portofino Management, Inc., the general partner of Portofino Ventures LP, has voting and dispositive power over the securities held for the account of this selling stockholder. Portofino Management, Inc. is controlled by Michael Knudsen, its president, and accordingly, Mr. Knudsen may be deemed to have sole voting and dispositive power over the securities owned by Portofino Management, Inc.
- (31) Comprised of 9,569 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 11,962 shares of common stock issuable upon the exercise of warrants.
- (32) Comprised of (i) 7,426 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 26,914 shares of common stock issuable upon the exercise of warrants.
- (33) Comprised of 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 26,914 shares of common stock issuable upon the exercise of warrants.
- (34) Comprised of 14,355 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 17,346 shares of common stock issuable upon the exercise of warrants.
- (35) Comprised of (i) 27,174 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 26,914 shares of common stock issuable upon the exercise of warrants.
- (36) Comprised of 23,923 shares of common stock issuable upon the exercise of warrants and 26,914 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock.
- (37) Comprised of 21,531 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 25,718 shares of common stock issuable upon the exercise of warrants.
- (38) Comprised of 16,746 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 20,933 shares of common stock issuable upon the exercise of warrants.
- (39) Brian Miller, manager of Fourfathom Capital, LLC, has sole voting and dispositive power over the securities held for the account of this selling stockholder.
- (40) Comprised of 47,847 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 59,809 shares of common stock issuable upon the exercise of warrants.
- (41) Comprised of 71,770 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 89,713 shares of common stock issuable upon the exercise of warrants.
- (42) Comprised of 47,847 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 59,809 shares of common stock issuable upon the exercise of warrants.
- (43) Comprised of (i) 24,752 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 29,905 shares of common stock issuable upon the exercise of warrants.
- (44) Comprised of 23,923 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 29,905 shares of common stock issuable upon the exercise of warrants.
- (45) Comprised of 9,569 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 11,962 shares of common stock issuable upon the exercise of warrants.
- (46) Comprised of 8,134 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 10,168 shares of common stock issuable upon the exercise of warrants.



- (47) Comprised of (i) 13,587 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 2,393 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 2,393 shares of common stock issuable upon the exercise of warrants.
- (48) Comprised of 2,393 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 2,393 shares of common stock issuable upon the exercise of warrants.
- (49) Comprised of (i) 13,587 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 2,393 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 2,393 shares of common stock issuable upon the exercise of warrants.
- (50) Comprised of 2,393 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 2,393 shares of common stock issuable upon the exercise of warrants.
- (51) Comprised of (i) 49,505 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 4,785 shares of common stock issuable upon the exercise of warrants.
- (52) Comprised of 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 4,785 shares of common stock issuable upon the exercise of warrants.
- (53) Comprised of 2,871 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 2,871 shares of common stock issuable upon the exercise of warrants.
- (54) Comprised of 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 4,785 shares of common stock issuable upon the exercise of warrants.
- (55) Comprised of 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 4,785 shares of common stock issuable upon the exercise of warrants.
- (56) Comprised of (i) 12,376 shares of common stock issuable upon the conversion of shares of our Series B Preferred Stock, (ii) 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 4,785 shares of common stock issuable upon the exercise of warrants
- (57) Comprised of 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 4,785 shares of common stock issuable upon the exercise of warrants.
- (58) Comprised of 9,570 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 9,570 shares of common stock issuable upon the exercise of warrants.
- (59) Comprised of (i) 13,587 shares of common stock issuable upon the conversion of shares of our Series A Preferred Stock, (ii) 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and (iii) 11,962 shares of common stock issuable upon the exercise of warrants
- (60) Comprised of 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 11,962 shares of common stock issuable upon the exercise of warrants.
- (61) Comprised of 11,962 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 11,962 shares of common stock issuable upon the exercise of warrants.
- (62) Comprised of 23,924 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 23,924 shares of common stock issuable upon the exercise of warrants.
- (63) Comprised of 47,847 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 47,847 shares of common stock issuable upon the exercise of warrants.
- (64) Comprised of 4,785 shares of common stock issuable upon the conversion of shares of our Series C Preferred Stock and 4,785 shares of common stock issuable upon the exercise of warrants.
- (65) Laidlaw & Co (UK) Ltd is a registered broker-dealer. Matthew Eitner is the chief executive officer of Laidlaw & Co (UK) Ltd and, in such capacity, he may be deemed to have voting and dispositive power over the securities held for the account of this selling stockholder. On January 17, 2013, we engaged Laidlaw & Co (UK) Ltd to serve as our placement agent in connection with the private placement of our Series C Preferred Stock and the related warrants. In connection with such private placement, we paid Laidlaw & Co (UK) Ltd a fee of \$166,860 and we issued it a five-year warrant to purchase 177,057 shares of our common stock, at an initial exercise price of \$2.61 per share.
- (66) Represents shares of common stock issuable upon the exercise of warrants.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

On August 1, 2012, we entered into a consulting agreement with Asher Holzer, Ph.D., a member of our board of directors. Pursuant to the consulting agreement, Dr. Holzer was to serve as our chief scientific officer and assist in the development of our technology and our PURE EP System, in exchange for monthly payments of \$10,000. We have paid Dr. Holzer an initial payment of \$7,500 pursuant to the consulting agreement and we are negotiating an amendment to the consulting agreement with Dr. Holzer that will reflect the parties' current relationship.

On November 21, 2012, we issued an unsecured promissory note for \$218,000 to Kenneth L. Londoner, our chairman and chief executive officer, for previously advanced funds with interest payable annually, in arrears, on each anniversary at the short term "Applicable Federal Rate" within the meaning of Section 1274(d) of the Internal Revenue Code of 1986, as amended adjusted each anniversary date. The promissory note matures November 21, 2021 and may be prepaid, without premium or penalty, at any time. In connection with the private placement of our Series C Preferred Stock and warrants, on February 6, 2013, Mr. Londoner agreed not to receive payments (by voluntary prepayment, acceleration, set-off or otherwise) associated with the unsecured promissory note absent the prior written consent of the purchasers holding at least 67% interest of our Series C Preferred Stock outstanding, which purchasers must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of our Series C Preferred Stock.

On December 6, 2012, we issued an unsecured promissory note for \$30,000 to a company under the control of Mr. Londoner for previously advanced funds, interest free and due the earlier of (i) the next financing of not less than \$300,000; (ii) February 28, 2013 or (iii) occurrence of an event of default, as defined. The promissory note has been paid in full.

In the fourth quarter of 2012, we sold \$600,000 principal amount of certain bridge notes in a private placement to selected accredited investors. These bridge notes were converted into shares of our Series C Preferred Stock and warrants on February 6, 2013. Kenneth L. Londoner, our chairman and chief executive officer, purchased \$200,000 principal amount of notes, which were converted into 200 shares of Series C Preferred Stock and a warrant to purchase 95,694 shares of our common stock, and Jonathan Steinhouse, a member of our board of directors, purchased \$25,000 principal amount of notes; which were converted into 25 shares of Series C Preferred Stock and a warrant to purchase 11,962 shares of our common stock.

## DESCRIPTION OF SECURITIES

We have authorized 51,000,000 shares of capital stock, par value \$0.001 per share, of which 50,000,000 are shares of common stock and 1,000,000 are shares of "blank check" preferred stock, of which 200 are authorized as Series A Preferred Stock, 600 are authorized as Series B Preferred Stock and 4,200 are authorized as Series C Preferred Stock. On July 22, 2013, there were 8,187,650 shares of common stock issued and outstanding, 184.4 shares of Series A Preferred Stock issued and outstanding, 177.5 shares of Series B Preferred Stock issued and outstanding and 2,781 shares of Series C Preferred Stock issued and outstanding.

### Common Stock

The holders of common stock are entitled to one vote per share on all matters to be voted upon by stockholders. Holders of our common stock are entitled to receive ratably dividends as may be declared by the board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution, or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities. The common stock has no preemptive or conversion rights, other subscription rights, or redemption or sinking fund provisions.

Each share of common stock entitles the holder to one vote, either in person or by proxy, at meetings of stockholders. The holders are not permitted to vote their shares cumulatively. Accordingly, the stockholders of our common stock who hold, in the aggregate, more than fifty percent of the total voting rights can elect all of our directors and, in such event, the holders of the remaining minority shares will not be able to elect any of such directors. The vote of the holders of a majority of the issued and outstanding shares of common stock entitled to vote thereon is sufficient to authorize, affirm, ratify or consent to such act or action, except as otherwise provided by law.

Subject to the rights of the holders of any preferred stock, holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by our board of directors out of funds legally available. We have not paid any dividends since our inception, and, subject to our obligations to pay dividends to the holders of our preferred stock as described below, we presently anticipate that all earnings, if any, will be retained for development of our business. Any future disposition of dividends will be at the discretion of our board of directors and will depend upon, among other things, our future earnings, operating and financial condition, capital requirements, and other factors.

Holders of our common stock have no preemptive rights or other subscription rights, conversion rights, redemption or sinking fund provisions. Subject to the rights of the holders of our preferred stock, upon our liquidation, dissolution or winding up, the holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities. There are no provisions in our certificate of incorporation or our by-laws that would prevent or delay a change in our control.

### **Series A Preferred Stock**

The holders of the Series A Preferred Stock are entitled to a five percent (5%) dividend on the \$5,000 per share stated value. From and after May 31, 2011, cumulative, preferential dividends on outstanding shares of Series A Preferred Stock have accrued and have been payable quarterly, in arrears, beginning on August 31, 2011. Dividends are payable at our option in cash or in shares of Series A Preferred Stock. If not previously converted, the shares of the Series A Preferred Stock will be redeemed by us on December 31, 2014. In the event of our liquidation or winding up of affairs, the holders of the Series A Preferred Stock will be entitled to a liquidation preference of the stated value plus any accrued but unpaid dividends.

Upon us being required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the shares of Series A Preferred Stock will automatically convert into shares of common stock at a conversion price equal to \$1.84 per share. In addition, at any time prior to the automatic conversion of the Series A Preferred Stock, the holders of the Series A Preferred Stock have the option to convert some or all of their shares of Series A Preferred Stock into shares of common stock at a conversion price equal to \$1.84 per share.

The holders of the Series A Preferred Stock have no voting rights, except as required by law. Any amendment to our certificate of incorporation that adversely affects the Series A Preferred Stock requires the approval of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

### **Series B Preferred Stock**

The holders of the Series B Preferred Stock are entitled to a five percent (5%) dividend on the \$5,000 per share stated value. From and after December 31, 2011, cumulative, preferential dividends on outstanding shares of Series B Preferred Stock have accrued and have been payable quarterly, in arrears, beginning on March 31, 2012. Dividends are payable at our option in cash or in shares of Series B Preferred Stock. If not previously converted, the shares of the Series B Preferred will be redeemed by us on December 31, 2014. In the event of our liquidation or winding up of affairs, the holders of the Series B Preferred Stock, subject to the rights of the holders of the Series A Preferred Stock, will be entitled to a liquidation preference of the stated value plus any accrued but unpaid dividends.

Upon us being required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the shares of Series B Preferred will automatically convert into shares of common stock at a conversion price equal to \$2.02 per share. In addition, at any time prior to the automatic conversion of the Series B Preferred Stock, the holders of the Series B Preferred Stock have the option to convert some or all of their shares of Series B Preferred Stock into shares of common stock at a conversion price equal to \$2.02 per share.

The holders of the Series B Preferred Stock have no voting rights, except as required by law. Any amendment to our certificate of incorporation that adversely affects the Series B Preferred Stock requires the approval of the holders of a majority of the shares of Series B Preferred Stock then outstanding.

### **Series C Preferred Stock**

The holders of the Series C Preferred Stock are entitled to a nine percent (9%) dividend on the \$1,000 per share Stated Value. Unless the Series C Preferred Stock is converted into shares of common stock, from and after February 12, 2013, the dividends have accrued and have been payable in cash or, subject to the satisfaction of certain conditions, in pay-in-kind shares. Such cumulative dividends are payable quarterly, commencing on September 30, 2013 and on each conversion date; provided, however, that if a holder converts its shares of Series C Preferred Stock into shares of common stock any time prior to February 12, 2016, the holder will be deemed to have earned a make whole amount as if such shares of Series C Preferred Stock had been outstanding until such date.

In the event that (i) we fail to, or announce our intention not to, deliver common stock share certificates upon conversion of our Series C Preferred Stock prior to the seventh trading day after such shares are required to be delivered, (ii) we fail for any reason to pay in full the amount of cash due pursuant to our failure to deliver common stock share certificates upon conversion of our Series C Preferred Stock within five calendar days after notice therefor is delivered, (iii) we fail to have available a sufficient number of authorized and unreserved shares of common stock to issue to upon a conversion of our Series C Preferred Stock, (iv) we fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of our obligations under, the securities purchase agreement, the registration rights agreement, the certificate of designation or the warrants entered into pursuant to the private placement transaction for our Series C Preferred Stock, which failure or breach could have a material adverse effect, and such failure or breach is not cured within 30 calendar days after written notice was delivered, (v) we fail to complete a financing or series of related financings by February 12, 2014 that results in gross proceeds to us of at least \$3 million at a valuation of at least \$30 million, (vi) we are party to a change of control transaction, (vii) we file for bankruptcy or a similar arrangement or are adjudicated insolvent, (viii) at any time after February 12, 2014, we fail to maintain the listing of our common stock on a trading market for more than five trading days in any twelve month period, (ix) we are subject to a judgment of greater than \$100,000, and such judgment remains unvacated, unbonded or unstayed for a period of 45 calendar days, the holders of the Series C Preferred Stock are entitled, among other rights, to redeem their shares of Series C Preferred Stock at any time for greater than their stated value, increase the dividend rate on their shares of Series C Preferred Stock to 18% or, solely upon the occurrence of (v) above, reduce the conversion price of their shares of Series C Preferred Stock to \$1.50 per share.

In the event of our liquidation or winding up of affairs, the holders of the Series C Preferred Stock will be entitled to a liquidation preference of the stated value plus any accrued but unpaid dividends or any other fees due the holder. The shares of the Series C Preferred Stock rank senior to the rights of the common stock and all other securities exercisable or convertible into shares of common stock.

Any holder of Series C Preferred Stock is entitled at any time to convert any whole or partial number of shares of Series C Preferred Stock into shares of our common stock at a price based on a pre-money valuation of \$20 million, or \$2.09 per share. The Series C Preferred Stock is subject to full ratchet anti-dilution price protection upon the issuance of equity or equity-linked securities at an effective common stock purchase price of less than \$2.09 per share as well as other customary anti-dilution protection. As noted above, in the event that we fail to complete a financing pursuant to which we raise at least \$3 million at a valuation of at least \$30 million within 12 months following the closing, the conversion price of the Series C Preferred Stock may be reset to \$1.50 per share at the discretion of the holders.

Without the requisite consent of the holders of the shares of Series C Preferred Stock, we will not authorize or create any class of stock ranking senior to, or otherwise pari passu with, the shares of Series C Preferred Stock as to dividends, redemption or distribution of assets upon a liquidation.

In the event we issue any equity or equity-linked securities with terms more favorable than those of the Series C Preferred Stock, any holder of the Series C Preferred Stock may request to amend the terms of such holder's Series C Preferred Stock to be equivalent to the terms of such issued equity or equity-linked securities, subject to certain exempted issuances.

## **Warrant**

### *Five-Year Warrants*

In connection with the private placement of our Series C Preferred Stock, we issued to the holders of our Series C Preferred Stock warrants to purchase up to an aggregate of 1,330,629 shares of common stock at an exercise price of \$2.61 per share. The warrants contain full ratchet anti-dilution price protection upon the issuance of equity or equity-linked securities at an effective common stock purchase price of less than \$2.61 per share as well as other customary anti-dilution protection. The warrants are exercisable for cash; or if at any time after six months from the issuance date, there is no effective registration statement registering the resale, or no current prospectus available for the resale, of the shares of common stock underlying the warrants, the warrants may be exercised by means of a "cashless exercise".

### *Five-Year Amendment Warrants*

As consideration for amending certain provisions of the securities purchase agreement and the registration rights agreement related to our Series C Preferred Stock, we issued to the certain holders of our Series C Preferred Stock warrants to purchase up to an aggregate of 289,730 shares of common stock. The terms of these warrants are identical to the Five-Year Warrants described above.

### *Series A Placement Agent Warrant*

As consideration for serving as our placement agent in connection with the private placement of Series A Preferred Stock, we issued to Laidlaw & Company (UK) Ltd. a seven-year warrant to purchase up to 35,076 shares of common stock at an exercise price of \$1.84 per share. The terms of this warrant are otherwise identical to the Five-Year Warrants described above.

### *Series B Placement Agent Warrant*

As consideration for serving as our placement agent in connection with the private placement of Series B Preferred Stock, we issued to Laidlaw & Company (UK) Ltd. a seven-year warrant to purchase up to 30,755 shares of common stock at an exercise price of \$2.02 per share. The terms of this warrant are otherwise identical to the Five-Year Warrants described above.

### *Series C Placement Agent Warrant*

As consideration for serving as our placement agent in connection with the private placement of Series C Preferred Stock, we issued to Laidlaw & Company (UK) Ltd. a warrant to purchase up to 177,057 shares of common stock. The terms of this warrant are identical to the Five-Year Warrants described above.

### *Par Value Warrant*

As consideration for providing general financial advisory services, we issued to James Capital Group LLC a seven-year warrant to purchase up to 383,320 shares of common stock at an exercise price of \$0.001 per share. The terms of this warrant are otherwise identical to the Five-Year Warrants described above.

## Registration Rights

On February 6, 2013, in connection with our private placement of our Series C Preferred Stock and warrants, we entered into a registration rights agreement with the purchasers pursuant to which we agreed to provide certain registration rights with respect to the common stock issuable upon conversion of our Series C Preferred Stock and exercise of the warrants issued to holders of our Series C Preferred Stock. Specifically, we agreed to file a registration statement with the Securities and Exchange Commission covering the resale of the common stock issuable upon conversion of the convertible debentures and exercise of the warrants on or before July 22, 2013 and to cause such registration statement to be declared effective by the Securities and Exchange Commission, in the event that the registration statement is not reviewed by the Securities and Exchange Commission, within five trading days after we are notified that registration statement is not being reviewed by the Securities and Exchange Commission, and by November 22, 2013 in the event that the registration statement is reviewed by the Securities and Exchange Commission and the Securities and Exchange Commission issues comments.

If (i) the registration statement is not filed by July 22, 2013, (ii) the registration statement is not declared effective by the Securities and Exchange Commission within five trading days after we are notified that registration statement is not being reviewed by the Securities and Exchange Commission, in the case of a no review, (iii) the registration statement is not declared effective by the Securities and Exchange Commission by November 22, 2013 in the case of a review by the Securities and Exchange Commission pursuant to which the Securities and Exchange Commission issues comments or (iv) the registration statement ceases to remain continuously effective for more than 20 consecutive calendar days or more than an aggregate of 45 calendar days during any 12-month period after its first effective date, then we are subject to liquidated damage payments to the holders of the shares sold in the private placement in an amount equal to .25% of the aggregate purchase price paid by such purchasers per month of delinquency. Notwithstanding the foregoing, (i) the maximum aggregate liquidated damages due under the registration rights agreement shall be 3% of the aggregate purchase price paid by the purchasers, and (ii) if any partial amount of liquidated damages remains unpaid for more than seven days, we shall pay interest of 18% per annum, accruing daily, on such unpaid amount.

Pursuant to the registration rights agreement, we must maintain the effectiveness of the registration statement from the effective date until the date on which all securities registered under the registration statement have been sold, or are otherwise able to be sold pursuant to Rule 144 without volume or manner-of-sale restrictions, subject to the our right to suspend or defer the use of the registration statement in certain events.

## Delaware Anti-Takeover Law and Provisions of our Certificate of Incorporation and Bylaws

Section 203 of the Delaware General Corporation Law, in general, prohibits a business combination between a corporation and an interested stockholder within three years of the time such stockholder became an interested stockholder, unless:

- prior to such time 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 consummation 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 commenced, exclusive of shares owned by directors who are also officers and by certain employee stock plans; or
- at or subsequent to such time, the business combination is approved by the board of directors and authorized by the affirmative vote at a stockholders' meeting of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

The term “business combination” is defined to include, among other transactions between an interested stockholder and a corporation or any direct or indirect majority owned subsidiary thereof: a merger or consolidation; a sale, lease, exchange, mortgage, pledge, transfer or other disposition (including as part of a dissolution) of assets having an aggregate market value equal to 10% or more of either the aggregate market value of all assets of the corporation on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation; certain transactions that would result in the issuance or transfer by the corporation of any of its stock to the interested stockholder; certain transactions that would increase the interested stockholder’s proportionate share ownership of the stock of any class or series of the corporation or such subsidiary; and any receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation or any such subsidiary. In general, and subject to certain exceptions, an “interested stockholder” is any person who is the owner of 15% or more of the outstanding voting stock of the corporation, an affiliate or associate of the corporation who was the owner of 15% or more of the outstanding voting stock of the corporation at any time within three years immediately prior to the relevant date or the affiliates and associates of such person. The term “owner” is broadly defined to include any person that individually or with or through such person’s affiliates or associates, among other things, beneficially owns such stock, or has the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement or understanding or upon the exercise of warrants or options or otherwise or has the right to vote such stock pursuant to any agreement or understanding, or has an agreement or understanding with the beneficial owner of such stock for the purpose of acquiring, holding, voting or disposing of such stock.

The restrictions described above do not apply to corporations that have elected, in the manner provided therein, not to be subject to Section 203 of the Delaware General Corporation Law or, with certain exceptions, which do not have a class of voting stock that is listed on a national securities exchange or held of record by more than 2,000 stockholders. We have not opted out of Section 203, but we are not currently subject to it because we are not listed on a national securities exchange and our securities are held of record by fewer than 2,000 stockholders. However, we could become subject to it if we become so listed or so held.

If Section 203 becomes applicable to us, it could delay or prohibit mergers or other takeover or change in control attempts with respect to us and, accordingly, could discourage attempts to acquire us even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

Provisions of our certificate of incorporation and bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our certificate of incorporation and bylaws:

- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by our board of directors, chairman, chief executive officer, president or secretary; and
- provide advance notice provisions with which a stockholder who wishes to nominate a director or propose other business to be considered at a stockholder meeting must comply.



## **Indemnification of Directors and Officers**

Pursuant to Section 145 of the Delaware General Corporation Law, a corporation has the power to indemnify its directors and officers against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with a third-party action, other than a derivative action, and against expenses actually and reasonably incurred in the defense or settlement of a derivative action, provided that there is a determination that the individual acted in good faith and in a manner 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 the individual's conduct was unlawful. Such determination will be made, in the case of an individual who is a director or officer at the time of such determination:

- by a majority of the disinterested directors, even though less than a quorum;
- by a committee of such directors designated by a majority vote of such directors, even though less than a quorum;
- if there are no disinterested directors, or if such directors so direct, by independent legal counsel; or
- by a majority vote of the stockholders, at a meeting at which a quorum is present.

Without court approval, however, no indemnification may be made in respect of any derivative action in which such individual is adjudged liable to the corporation.

The Delaware General Corporation Law requires indemnification of directors and officers for expenses relating to a successful defense on the merits or otherwise of a derivative or third-party action.

The Delaware General Corporation Law permits a corporation to advance expenses relating to the defense of any proceeding to directors and officers contingent upon such individuals' commitment to repay any advances unless it is determined ultimately that such individuals are entitled to be indemnified.

Under the Delaware General Corporation Law, the rights to indemnification and advancement of expenses provided in the law are non-exclusive, in that, subject to public policy issues, indemnification and advancement of expenses beyond that provided by statute may be provided by bylaw, agreement, vote of stockholders, disinterested directors or otherwise.

## **Limitation of Personal Liability of Directors**

The Delaware General Corporation Law provides that a corporation's certificate of incorporation may include a provision limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. However, no such provision can eliminate or limit the liability of a director for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law;
- violation of certain provisions of the Delaware General Corporation Law;
- any transaction from which the director derived an improper personal benefit; or
- any act or omission prior to the adoption of such a provision in the certificate of incorporation.

Our certificate of incorporation provides that our directors will not be personally liable to us or any of our stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the Delaware General Corporation Law.

#### **Disclosure of Commission Position on Indemnification for Securities Act Liabilities**

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to our directors, officers and persons controlling us, we have been advised that it is the Securities and Exchange Commission's opinion that such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable.

#### **PLAN OF DISTRIBUTION**

As used in this prospectus, "selling stockholders" includes the successors-in-interest, donees, transferees, pledgees or others who may later hold the selling stockholders' interests. In all cases, the selling stockholders will act independently of us in making decisions with respect to the timing, manner, size and price of each sale.

Each selling stockholder of the common stock may, from time to time, sell any or all of their shares of common stock on the OTC Bulletin Board or any other stock exchange, market or trading facility on which the shares are listed or quoted at the time of sale or in private transactions. These sales may be at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or negotiated prices. A selling stockholder may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- loan or pledge the shares to a broker-dealer, who may sell the loaned shares or, in the event of default, sell the pledged shares;
- through underwriters or dealers;
- through agents;
- directly to purchasers, including institutional investors;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act of 1933, as amended, may be sold under Rule 144 rather than under this prospectus.

Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of the common stock short after the effective date of the registration statement of which this prospectus is a part and deliver common stock registered hereby to close out their short positions and to return borrowed shares in connection with such short sales, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The selling stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, as amended, in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933, as amended. Discounts, concessions, commissions and similar selling expenses, if any, that can be attributed to the sale of the shares of common stock will be paid by the selling stockholder and/or the purchasers. Each selling stockholder has represented and warranted to us that it acquired the securities subject to this registration statement solely for its own account and not with a view to, or for offer or sale in connection with, any distribution thereof. In no event shall any broker-dealer receive fees, commissions and markups which, in the aggregate, would exceed eight percent (8%).

We are required to pay certain fees and expenses incurred by us incident to the registration of the shares, but we will not receive any proceeds from the sale of the common stock. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act of 1933, as amended.

Because selling stockholders may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, as amended, they will be subject to the prospectus delivery requirements of the Securities Act of 1933, as amended, including Rule 172 thereunder. There is no underwriter or coordinating broker acting in connection with the proposed sale of the common stock by the selling stockholders.

We have agreed to keep this prospectus effective until the earlier of (i) the date on which the shares may be resold by the selling stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for us to be in compliance with the current public information under Rule 144 under the Securities Act of 1933, as amended, or any other rule of similar effect or (ii) all of the shares have been sold pursuant to this prospectus or Rule 144 under the Securities Act of 1933, as amended, or any other rule of similar effect. The shares will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the shares covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Securities Exchange Act of 1934, as amended, any person engaged in the distribution of the common stock may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the selling stockholders will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of shares of the common stock by the selling stockholders or any other person. We will make copies of this prospectus available to the selling stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act of 1933, as amended).

## LEGAL MATTERS

Haynes and Boone, LLP, New York, New York, will pass upon the validity of the shares of our common stock offered by the selling stockholders under this prospectus.

## EXPERTS

Our financial statements as of December 31, 2012 and 2011 and for the years then ended included in this prospectus have been audited by Rosenberg Rich Baker Berman & Company, an independent registered public accounting firm, as stated in its report appearing in the registration statement, and are included in reliance upon the report of such firm given upon its authority as experts in accounting and auditing.

### Change in Our Public Accounting Firm

On May 28, 2013, we advised Rosenberg Rich Baker Berman & Company that it was dismissed as our independent registered public accounting firm, retroactively effective to December 31, 2012. On June 11, 2013, retroactively effective to January 1, 2013, we engaged Liggett, Vogt & Webb P.A., as our independent registered public accounting firm. The decision to dismiss Rosenberg Rich Baker Berman & Company as our independent registered public accounting firm was approved by our board of directors.

The report of Rosenberg Rich Baker Berman & Company on our financial statements for the fiscal years ended December 31, 2011 and December 31, 2012 did not contain an adverse opinion or disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope or accounting principles, except that the report raised substantial doubt as to our ability to continue as a going concern.

From our inception through December 31, 2012, there were (i) no disagreements with Rosenberg Rich Baker Berman & Company on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which, if not resolved to the satisfaction of Rosenberg Rich Baker Berman & Company, would have caused it to make reference to the matter in connection with its reports, and (ii) no reportable events within the meaning set forth in Item 304(a)(1)(v) of Regulation S-K..

From January 1, 2013 through the date of dismissal (May 28, 2013), we had a disagreement with Rosenberg Rich Baker Berman & Company with regard to the application of accounting principles with certain anti-dilutive provisions embedded within our Series C Preferred Stock and related warrants issued during the three months ended March 31, 2013. This disagreement was not discussed by our board of directors. We authorized Rosenberg Rich Baker Berman & Company to respond fully to the inquiries of Liggett, Vogt & Webb P.A. concerning the application of accounting principles with certain anti-dilutive provisions embedded within our Series C Preferred Stock and related warrants issued during the three months ended March 31, 2013.

From our inception through date of engagement (June 11, 2013), we did not consult Liggett, Vogt & Webb P.A. regarding either: (i) the application of accounting principles to a specific completed or contemplated transaction, or the type of audit opinion that might be rendered on our financial statements; or (ii) any matter that was the subject of a disagreement as defined in Item 304(a)(1)(iv) of Regulation S-K.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1, together with any amendments and related exhibits, under the Securities Act of 1933, as amended, with respect to our shares of common stock offered by this prospectus. The registration statement contains additional information about us and our shares of common stock that the selling stockholders are offering in this prospectus.

Following this offering, we will be required to file annual, quarterly and current reports and other information with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Our Securities and Exchange Commission filings are available to the public over the Internet at the Securities and Exchange Commission's website at <http://www.sec.gov>. You may also read and copy any document we file at the Securities and Exchange Commission's public reference room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information on the public reference rooms and their copy charges. Access to those electronic filings is available as soon as practicable after filing with the Securities and Exchange Commission. You may also request a copy of those filings, excluding exhibits, from us at no cost. Any such request should be addressed to us at: 12424 Wilshire Boulevard, Suite 745, Los Angeles, California 90025, Attention: Kenneth L. Londoner, Chairman and Chief Executive Officer.

**BIOSIG TECHNOLOGIES, INC.**

FINANCIAL STATEMENTS

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of

BioSig Technologies, Inc. (a Development Stage Company)

We have audited the accompanying balance sheets of BioSig Technologies, Inc. (a Development Stage Company) as of December 31, 2012 and 2011, and the related statements of operations, stockholders' deficit, and cash flows for the years then ended and for the period from February 24, 2009 (date of inception) to December 31, 2012. BioSig Technologies, Inc.'s management is responsible for these financial statements. 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 also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, 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 BioSig Technologies, Inc. as of December 31, 2012 and 2011, and the results of its operations and its cash flows for the years then ended and for the period from February 24, 2009 (date of inception) to December 31, 2012 in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company is in the development stage, has incurred losses from operations since its inception and has a net stockholders' deficiency. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Rosenberg Rich Baker Berman & Company

Somerset, New Jersey

May 7, 2013



**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**BALANCE SHEETS**  
**DECEMBER 31, 2012 AND 2011**

	<u>2012</u>	<u>2011</u>
<b>ASSETS</b>		
Current assets:		
Cash	\$ 24,237	\$ 69,020
Prepaid expenses	33,125	82,118
Capitalized financing costs	212,635	84,167
Total current assets	<u>269,997</u>	<u>235,305</u>
Property and equipment, net	30,209	24,752
Other assets:		
Deposits	25,000	25,000
Total assets	<u>\$ 325,206</u>	<u>\$ 285,057</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 472,882	\$ 35,725
Advances, related party	27,040	27,040
Note payable, related party	30,000	-
Liability to placement agent	94,500	-
Dividends payable	117,751	26,892
Total current liabilities	<u>742,173</u>	<u>89,657</u>
Long term liabilities:		
Deferred rent payable	5,067	5,067
Note payable, related party	218,000	-
Convertible bridge notes payable, \$225,000 related party	613,812	-
Redeemable Series A preferred stock	922,000	922,000
Redeemable Series B preferred stock	887,500	100,000
Total long term liabilities	<u>2,646,379</u>	<u>1,027,067</u>
Total liabilities	<u>3,388,552</u>	<u>1,116,724</u>
Commitments and contingencies		
Stockholders' deficit		
Preferred stock, \$0.001 par value, authorized 1,000,000 shares		
Common stock, \$0.001 par value, authorized 50,000,000 and 10,000,000 shares as of December 31, 2012 and 2011, respectively, 8,166,238 and 8,136,238 issued and outstanding as of December 31, 2012 and 2011, respectively	8,166	8,136
Additional paid in capital	833,647	588,354
Deficit accumulated during development stage	(3,905,159)	(1,428,157)
Total stockholders' deficit	<u>(3,063,346)</u>	<u>(831,667)</u>
Total liabilities and stockholders' deficit	<u>\$ 325,206</u>	<u>\$ 285,057</u>

See the accompanying notes to the financial statements

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**STATEMENTS OF OPERATIONS**

	Year ended December 31,		From
	2012	2011	February 24, 2009 (date of inception) to December 31, 2012
Operating expenses:			
Research and development	\$ 888,948	\$ 582,525	\$ 1,471,473
General and administrative	1,363,007	484,127	2,097,190
Depreciation	10,020	6,795	16,815
Total operating expenses	<u>2,261,975</u>	<u>1,073,447</u>	<u>3,585,478</u>
Net loss from operations	(2,261,975)	(1,073,447)	(3,585,478)
Other income (expense):			
Interest income (expense)	(18,286)	171	(18,115)
Financing costs	<u>(105,881)</u>	<u>(77,933)</u>	<u>(183,814)</u>
Net loss before income taxes	(2,386,142)	(1,151,209)	(3,787,407)
Income taxes (benefit)	<u>-</u>	<u>-</u>	<u>-</u>
Net loss	(2,386,142)	(1,151,209)	(3,787,407)
Preferred stock dividend	<u>(90,860)</u>	<u>(26,892)</u>	<u>(117,752)</u>
NET LOSS AVAILABLE TO COMMON STOCKHOLDERS'	<u>\$ (2,477,002)</u>	<u>\$ (1,178,101)</u>	<u>\$ (3,905,159)</u>
Net loss per common share, basic and diluted	<u>\$ (0.30)</u>	<u>\$ (0.18)</u>	
Weighted average number of common shares outstanding, basic and diluted	<u>8,142,222</u>	<u>6,650,026</u>	

See the accompanying notes to the financial statements

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**STATEMENT OF STOCKHOLDERS' DEFICIT**  
**FROM FEBRUARY 24, 2009 (DATE OF INCEPTION) TO DECEMBER 31, 2012**

	<u>Common stock</u>		<u>Shares subscribed</u>		<u>Shares to be issued</u>		<u>Additional Paid in Capital</u>	<u>Deficit Accumulated During Development Stage</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>			
Common stock issued to founders	4,000,000	\$ 4,000	-	\$ -	-	\$ -	-	\$ -	\$ 4,000
Common stock issuable to founders	-	-	-	-	3,400,000	3,400	-	-	3,400
Donated capital	-	-	-	-	-	-	100	-	100
Net loss	-	-	-	-	-	-	-	(104,584)	(104,584)
Balance, December 31, 2009	4,000,000	4,000	-	-	3,400,000	3,400	100	(104,584)	(97,084)
Proceeds from common stock subscription	-	-	37,500	30,000	-	-	-	-	30,000
Net loss	-	-	-	-	-	-	-	(145,472)	(145,472)
Balance, December 31, 2010	4,000,000	4,000	37,500	30,000	3,400,000	3,400	100	(250,056)	(212,556)
Sale of common stock	153,125	153	(37,500)	(30,000)	-	-	122,347	-	92,500
Common stock issued for services rendered	408,113	408	-	-	-	-	326,082	-	326,490
Common stock issued for future services	175,000	175	-	-	-	-	139,825	-	140,000
Common stock issued to founders	3,400,000	3,400	-	-	(3,400,000)	(3,400)	-	-	-
Preferred stock dividend	-	-	-	-	-	-	-	(26,892)	(26,892)
Net loss	-	-	-	-	-	-	-	(1,151,209)	(1,151,209)
Balance, December 31, 2011	8,136,238	8,136	-	-	-	-	588,354	(1,428,157)	(831,667)
Common stock issued for services rendered	30,000	30	-	-	-	-	59,970	-	60,000
Fair value of vested options	-	-	-	-	-	-	185,323	-	185,323
Preferred stock dividend	-	-	-	-	-	-	-	(90,860)	(90,860)
Net loss	-	-	-	-	-	-	-	(2,386,142)	(2,386,142)
Balance, December 31, 2012	<u>8,166,238</u>	<u>\$ 8,166</u>	<u>-</u>	<u>\$ -</u>	<u>-</u>	<u>\$ -</u>	<u>\$ 833,647</u>	<u>\$ (3,905,159)</u>	<u>\$(3,063,346)</u>

See the accompanying notes to the financial statements

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**STATEMENTS OF CASH FLOWS**

	Year ended December 31,		From
	2012	2011	February 24, 2009 (date of inception) to December 31, 2012
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net loss attributable to common stockholders	\$ (2,386,142)	\$ (1,151,209)	\$ (3,787,407)
Adjustments to reconcile net loss to cash used in operating activities:			
Depreciation	10,020	6,795	16,815
Amortization of financing costs	105,881	77,933	183,814
Stock based compensation	314,316	384,372	706,088
Donated capital	-	-	100
(Increase) in prepaid expenses	(20,000)	-	(20,000)
Increase (Decrease) in accounts payable and accrued expenses	450,969	(158,385)	486,694
Decrease in accrued expenses, related party	-	(2,940)	-
Increase in deferred rent payable	-	5,067	5,067
Net cash used in operating activities	(1,524,956)	(838,367)	(2,408,829)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchase of property and equipment	(15,477)	(31,547)	(47,024)
Payment of long term deposit	-	(25,000)	(25,000)
Net cash used in investing activity	(15,477)	(56,547)	(72,024)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from notes payable, related party	248,000	5,500	275,040
Proceeds from convertible bridge notes payable	600,000	-	600,000
Net proceeds from the sale of Series A preferred stock	-	788,400	788,400
Net proceeds from the sale of Series B preferred stock	647,650	71,500	719,150
Proceeds from sale of common stock	-	92,500	122,500
Net cash provided by financing activities	1,495,650	957,900	2,505,090
Net (decrease) increase in cash and cash equivalents	(44,783)	62,986	24,237
Cash and cash equivalents, beginning of the period	69,020	6,034	-
Cash and cash equivalents, end of the period	\$ 24,237	\$ 69,020	\$ 24,237
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid during the period for interest	\$ -	\$ -	\$ -
Cash paid during the period for income taxes	\$ -	\$ -	\$ -

See the accompanying notes to the financial statements

**BIOSIG TECHNOLOGIES INC.**  
**(A development stage company)**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

A summary of the significant accounting policies applied in the preparation of the accompanying financial statements follows.

Business and Basis of Presentation

BioSig Technologies Inc. (the "Company") was initially incorporated on February 24, 2009 under the laws of the State of Nevada and subsequently re-incorporated in the state of Delaware in 2011. The Company is in the development stage as defined under Accounting Standards Codification subtopic 915-10 Development Stage Entities and its efforts are principally devoted to improving the quality of cardiac recordings obtained during ablation of atrial fibrillation (AF). The Company has not generated any revenue to date and consequently its operations are subject to all risks inherent in the establishment of a new business enterprise.

Revenue Recognition

The Company recognizes revenue in accordance with Accounting Standards Codification subtopic 605-10, Revenue Recognition ("ASC 605-10") 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; (3) the selling price is fixed and determinable; and (4) collectability is reasonably assured. Determination of criteria (3) and (4) are based on management's judgments regarding the fixed nature of the selling prices of the products delivered and the collectability of those amounts. Provisions for discounts and rebates to customers, estimated returns and allowances, and other adjustments are provided for in the same period the related sales are recorded.

The Company accounts for Multiple-Element Arrangements under ASC 605-10 which incorporates Accounting Standards Codification subtopic 605-25, Multiple-Element Arrangements ("ASC 605-25"). ASC 605-25 addresses accounting for arrangements that may involve the delivery or performance of multiple products, services and/or rights to use assets.

Concentrations of Credit Risk

Financial instruments and related items, which potentially subject the Company to concentrations of credit risk, consist primarily of cash and cash equivalents. The Company places its cash and temporary cash investments with credit quality institutions. At times, such amounts may be in excess of the FDIC insurance limit. The Company periodically reviews its trade receivables in determining its allowance for doubtful accounts. The Company does not have accounts receivable and allowance for doubtful accounts at December 31, 2012 and 2011.

Prepaid Expenses

From time to time, the Company issues shares of its common stock for services to be performed. The fair value of the common stock is determined at the date of the contract for services and is amortized ratably over the term of the contract. As of December 31, 2012 and 2011, prepaid expenses relating to stock based payments were \$13,135 and \$82,118, respectively.

**BIOSIG TECHNOLOGIES INC.**  
**(A development stage company)**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Property and Equipment

Property and equipment are stated at cost and depreciated using the straight-line method over their estimated useful lives of 3 to 5 years. When retired or otherwise disposed, the related carrying value and accumulated depreciation are removed from the respective accounts and the net difference less any amount realized from disposition, is reflected in earnings.

Long-Lived Assets

The Company follows Accounting Standards Codification 360-10-15-3, "Impairment or Disposal of Long-lived Assets," which established a "primary asset" approach to determine the cash flow estimation period for a group of assets and liabilities that represents the unit of accounting for a long-lived asset to be held and used. Long-lived assets to be held and used are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The carrying amount of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less cost to sell.

Net Income (loss) Per Common Share

The Company computes earnings (loss) per share under Accounting Standards Codification subtopic 260-10, Earnings Per Share ("ASC 260-10"). Net loss per common share is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the year. Diluted net loss per share for year ending December 31, 2012 does not reflect the effects of 25,000 shares potentially issuable upon the exercise of the Company's stock options (calculated using the treasury stock method) as of December 31, 2012 as including such would be anti-dilutive. As of December 31, 2011, the Company did not have common stock equivalents.

Income Taxes

The Company follows Accounting Standards Codification subtopic 740-10, Income Taxes ("ASC 740-10") for recording the provision for income taxes. Deferred tax assets and liabilities are computed based upon the difference between the financial statement and income tax basis of assets and liabilities using the enacted marginal tax rate applicable when the related asset or liability is expected to be realized or settled. Deferred income tax expenses or benefits are based on the changes in the asset or liability during each period. If available evidence suggests that it is more likely than not that some portion or all of the deferred tax assets will not be realized, a valuation allowance is required to reduce the deferred tax assets to the amount that is more likely than not to be realized. Future changes in such valuation allowance are included in the provision for deferred income taxes in the period of change. Deferred income taxes may arise from temporary differences resulting from income and expense items reported for financial accounting and tax purposes in different periods. Deferred taxes are classified as current or non-current, depending on the classification of assets and liabilities to which they relate. Deferred taxes arising from temporary differences that are not related to an asset or liability are classified as current or non-current depending on the periods in which the temporary differences are expected to reverse and are considered immaterial.

**BIOSIG TECHNOLOGIES INC.**  
**(A development stage company)**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Research and Development

The Company accounts for research and development costs in accordance with the Accounting Standards Codification subtopic 730-10, Research and Development (“ASC 730-10”). Under ASC 730-10, all research and development costs must be charged to expense as incurred. Accordingly, internal research and development costs are expensed as incurred. Third-party research and development costs are expensed when the contracted work has been performed or as milestone results have been achieved. Company-sponsored research and development costs related to both present and future products are expensed in the period incurred. The Company incurred research and development expenses of \$888,948 and \$582,525 the years ended December 31, 2012 and 2011, respectively and \$1,471,473 from the period from February 24, 2009 (date of inception) to December 31, 2012.

Fair Value of Financial Instruments

Accounting Standards Codification subtopic 825-10, Financial Instruments (“ASC 825-10”) requires disclosure of the fair value of certain financial instruments. The carrying value of cash and cash equivalents, accounts payable and accrued liabilities, and short-term borrowings, as reflected in the balance sheets, approximate fair value because of the short-term maturity of these instruments. All other significant financial assets, financial liabilities and equity instruments of the Company are either recognized or disclosed in the financial statements together with other information relevant for making a reasonable assessment of future cash flows, interest rate risk and credit risk. Where practicable the fair values of financial assets and financial liabilities have been determined and disclosed; otherwise only available information pertinent to fair value has been disclosed.

Stock Based Compensation

The Company follows Accounting Standards Codification subtopic 718-10, Compensation (“ASC 718-10”) which requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. This statement does not change the accounting guidance for share based payment transactions with parties other than employees provided in ASC 505-50.

As of December 31, 2012, the Company had 1,273,927 and 25,000 employee and non-employee options outstanding to purchase shares of common stock, respectively. As of December 31, 2011, the Company had Nil employee and non-employee stock options outstanding.

Recent Accounting Pronouncements

There are various updates recently issued, most of which represented technical corrections to the accounting literature or application to specific industries and are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

**NOTE 2 – GOING CONCERN MATTERS**

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As shown in the accompanying financial statements during the years ended December 31, 2012 and 2011, the Company incurred net losses attributable to common stockholders of \$2,477,002 and \$1,178,101, respectively and used \$1,524,956 in cash for operating activities for the year ended December 31, 2012. These factors among others raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.



**BIOSIG TECHNOLOGIES INC.**  
**(A development stage company)**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

**NOTE 2 – GOING CONCERN MATTERS**

The Company's existence is dependent upon management's ability to develop profitable operations. The Company completed financing subsequent to the date of these financial statements (See Note 15). However additional capital will be needed to continue developing its products and services and there can be no assurance that the Company's efforts will be successful. There is no assurance that can be given that management's actions will result in profitable operations or the resolution of its liquidity problems. The accompanying statements do not include any adjustments that might result should the Company be unable to continue as a going concern.

**NOTE 3 – RELATED PARTY TRANSACTIONS**

The Company's President and shareholders have advanced funds to the Company for working capital purposes since the Company's inception in February 2009. No formal repayment terms or arrangements exist and the Company is not accruing interest on these advances. The net amount outstanding at December 31, 2012 and 2011 was \$27,040.

Accrued interest and expenses due related parties as of December 31, 2012 and 2011 was \$54,184 and \$nil, respectively.

During 2012, the Company issued promissory notes for funding provided by the Company's president or a company under his control in the aggregate of \$248,000. See Note 6 below.

During 2012, the Company issued convertible bridge notes for funding provided by the Company's president and a Director of the Company for an aggregate of \$225,000. See Note 7 below.

During 2011, the Company issued an aggregate of 3,400,000 shares of its common stock at par value in connection with services provided by founders.

The Company has informal compensation and consulting agreements with employees and outside contractors, certain of whom are also Company stockholders. The Agreements are generally month to month. As of December 31, 2012 and 2011, total due under these agreements and related expenses were \$43,630 and \$nil.

On December 10, 2010, the Company entered into a two year consulting agreement with one of the Company's directors for certain services with compensation totaling 43,750 shares of the Company's common stock valued at \$35,000

**NOTE 4 – PROPERTY AND EQUIPMENT**

Property and equipment as of December 31, 2012 and 2011 is summarized as follows:

	<b>2012</b>	<b>2011</b>
Computer equipment	\$ 39,221	\$ 24,735
Furniture and fixtures	7,803	6,813
Total	47,024	31,548
Less accumulated depreciation	(16,815)	(6,795)
	<u>\$ 30,209</u>	<u>\$ 24,752</u>

**BIOSIG TECHNOLOGIES INC.**  
**(A development stage company)**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

**NOTE 5 – ACCOUNTS PAYABLE AND ACCRUED EXPENSES**

Accounts payable and accrued expenses at December 31, 2012 and 2011 consist of the following:

	<u>2012</u>	<u>2011</u>
Accrued accounting and legal	\$ 120,922	\$ 35,725
Accrued reimbursements	44,338	-
Accrued consulting	111,546	-
Accrued research and development expenses	68,120	-
Accrued credit card obligations	21,844	-
Accrued payroll	101,621	-
Accrued interest	4,491	-
	<u>\$ 472,882</u>	<u>\$ 35,725</u>

**NOTE 6 – NOTES PAYABLE, RELATED PARTY**

On November 21, 2012, the Company issued an unsecured promissory note for \$218,000 to the Company's President for previously advanced funds with interest payable annually, in arrears, on each anniversary at the short term "Applicable Federal Rate" within the meaning of Section 1274(d) of the Internal Revenue Code of 1986, as amended adjusted each anniversary date. The promissory note matures November 21, 2021 and may be prepaid, without premium or penalty, at any time. In connection with the issuance of the unsecured promissory note, the Company's President agreed not to receive payments (by voluntary prepayment, acceleration, set-off or otherwise) associated with the unsecured promissory note absent the prior written consent of the purchasers holding at least 67% interest of the preferred stock outstanding, which purchasers must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of preferred stock.

On December 6, 2012, the Company issued an unsecured promissory note for \$30,000 to a company under the control of the Company's President for previously advanced funds, interest free and due the earlier of (i) the next financing of not less than \$300,000; (ii) February 28, 2013 or (iii) occurrence of an event of default, as defined.

**NOTE 7 – CONVERTIBLE BRIDGE NOTES**

In 2012, the Company issued an aggregate of \$600,000 unsecured Senior Convertible Promissory Notes (\$225,000 related party) with interest due at maturity at 8% per annum and may be paid, at the Company's discretion, in cash or the Company's common stock. The Notes, together with unpaid accrued interest, if any, is due upon written notice by the majority in interest of the holders on or after February 15, 2014 or (ii) upon the occurrence of an event of default, as defined. The Notes may be prepaid in whole or in part prior to the maturity date at the Company's discretion.

The Convertible Bridge Notes and any accrued and unpaid interest automatically converts at the earlier of (i) (A) a completion of a transaction whereby the Company merges or consolidates with another company that has its common stock approved for quotation on any domestic national stock exchange and (B) the new entity thereafter issues and sells shares for no less than \$3.0 million aggregate gross proceeds or (ii) a qualified IPO. The Convertible Bridge Notes shall convert into the new securities issued at 95% of the purchase price of the Conversion Securities offered to investors.

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**NOTE 7 – CONVERTIBLE BRIDGE NOTES**

In connection with the issuance of the Senior Convertible Promissory Notes, the Company issued the right to purchase at any time, on or after the Public Financing Closing Date, (as defined above) hereof until the fifth anniversary of the Public Financing Closing date, the number of fully paid and nonassessable shares (the “*Warrant Shares*”) of the Company’s common stock equal to the quotient of (a) the Warrant Coverage Amount (as defined below), *divided by* (b) the applicable Conversion Price of the Notes, at the per share exercise price (the “*Exercise Price*”), which shall initially be, as of the Public Financing Closing Date, equal to the Initial Exercise Price (as defined below), subject to further adjustments, as defined.

*Initial Exercise Price*” means one hundred twenty-five percent (125%) of the Conversion Price.

*Warrant Coverage Amount*” shall be the amount obtained by multiplying (x) the *Warrant Coverage Percentage* by (y) the principal amount outstanding (and not including any accrued and unpaid interest) of the Note, in connection with which this Warrant is concurrently issued.

“*Warrant Coverage Percentage*” shall be equal to fifty percent (50%) as defined in the Bridge Loan Agreement.

**NOTE 8 — REDEEMABLE PREFERRED STOCK**

Series A Preferred Stock

In May 2011, the Board of Directors authorized the issuance of up to 200 shares of Series A Preferred Stock (the “Series A preferred stock”).

The Series A preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$5,000 plus any accrued and unpaid dividends ; entitled to dividends as a preference to holders of junior stock at a rate of 5% per annum of the Stated Value of \$5,000 per share, payable quarterly beginning on August 31, 2011 and are cumulative. The holders of Series A preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series A preferred stock, the Company cannot, (a) alter or change adversely the powers, preferences or rights given to the Series A preferred stock or alter or amend the Certificate of Designation.

The Series A preferred stock is mandatorily redeemable on December 31, 2014 (as modified) at a price equal to the Stated Value (\$5,000) plus an amount equal to all accumulated and unpaid dividends. If the Company fails to redeem at redemption, the unpaid redemption price will accrue at 14% per annum until paid.

The Series A preferred stock is convertible, at the holders discretion, at any time to convert any whole or partial number of Series A preferred stock into common stock at a price based on \$15 million post conversion calculated on a fully diluted basis. The number of common shares issuable is obtained by multiplying (i) the number of Series A preferred stock to be converted by (ii) the sum of (A) \$5,000 and (B) all accrued by unpaid dividends divided the product by \$15 million and issuing common shares equal to the quotient as a percentage of the fully diluted common shares of the Company.

The Series A preferred stock is automatically convertible at the earlier of (i) (A) a completion of a transaction whereby the Company merges or consolidates with another company that has its common stock approved for quotation on any domestic national stock exchange and (B) the new entity thereafter issues and sells shares for no less than \$5.0 million aggregate gross proceeds or (ii) a qualified IPO. The Series A preferred stock shall convert into the new securities issued at 90% of the purchase price.

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**NOTE 8 — REDEEMABLE PREFERRED STOCK**

During the year ended December 31, 2012 and 2011, the Company sold an aggregate of 184.4 shares of Series A preferred stock at net proceeds of \$-0- and \$788,400, respectively. As of December 31, 2012 and 2011, 184.4 shares of Series A preferred stock were issued and outstanding. As of December 31, 2012 and 2011, the Company has accrued \$73,255 and \$26,892 dividends payable on the Series A preferred stock.

See modifications of the Series A preferred stock subsequent to the financial statements, Note 15.

Series B Preferred Stock

On November 28, 2011, the Board of Directors authorized the issuance of up to 600 shares of Series B Preferred Stock (the “Series B preferred stock”).

The Series B preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$5,000 plus any accrued and unpaid dividends; entitled to dividends as a preference to holders of junior stock at a rate of 5% per annum of the Stated Value of \$5,000 per share, payable quarterly beginning on December 31, 2011 and are cumulative. The holders of Series B preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series B preferred stock, the Company cannot (a) alter or change adversely the powers, preferences or rights given to the Series A preferred stock or alter or amend the Certificate of Designation.

The Series B preferred stock is mandatorily redeemable on December 31, 2014 at a price equal to the Stated Value (\$5,000) plus an amount equal to all accumulated and unpaid dividends. If the Company fails to redeem at redemption, the unpaid redemption price will accrue at 14% per annum until paid.

The Series B preferred stock is convertible, at the holders discretion, at any time to convert any whole or partial number of Series B preferred stock into common stock at a price based on \$17.5 million post conversion calculated on a fully diluted basis. The number of common shares issuable is obtained by multiplying (i) the number of Series B preferred stock to be converted by (ii) the sum of (A) \$5,000 and (B) all accrued by unpaid dividends divided the product by \$17.5 million and issuing common shares equal to the quotient as a percentage of the fully diluted common shares of the Company.

The Series B preferred stock is automatically convertible at the earlier of (i) (A) a completion of a transaction whereby the Company merges or consolidates with another company that has its common stock approved for quotation on any domestic national stock exchange and (B) the new entity thereafter issues and sells shares for no less than \$5.0 million aggregate gross proceeds or (ii) a qualified IPO. The Series B preferred stock shall convert into the new securities issued at 90% of the purchase price.

During the year ended December 31, 2012 and 2011, the Company sold an aggregate of 157.5 and 20.0 shares of Series B preferred stock at net proceeds of \$647,650 and \$71,500, respectively. As of December 31, 2012 and 2011, 177.5 and 20.0 shares of Series B preferred stock were issued and outstanding, respectively. As of December 31, 2012 and 2011, the Company has accrued \$44,497 and \$-0- dividends payable on the Series B preferred stock.

See modifications of the Series B preferred stock subsequent to the financial statements, Note 15.

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**NOTE 9 — STOCKHOLDER EQUITY**

Preferred stock

The Company is authorized to issue 1,000,000 shares of \$.001 par value preferred stock. As of December 31, 2012 the Company has designated and issued 200 and 184.4 shares of Series A preferred stock, respectively, designated and issued 600 and 177.5 shares of Series B preferred stock, respectively and designated and issued 2,000 and -0- shares of Series C 9% convertible preferred stock.

Common stock

On October 17, 2012, the Company amended its Articles of Incorporation to increase the number of authorized shares of its common stock from 10 million to 50 million shares. As of December 31, 2012 the Company has 8,166,238 shares of common stock issued and outstanding.

During the period from February 24, 2009 to December 31, 2009, the Company issued or designated an aggregate of 7,400,000 shares of common stock as payment for services by founders, 4,000,000 and 3,400,000 shares issued during the years ended December 31, 2009 and 2011, respectively.

During the year ended December 31, 2011, the Company issued an aggregate of 408,113 shares of common stock for services rendered totaling \$326,490.

During the year ended December 31, 2011, the Company issued an aggregate of 175,000 shares of common stock for future services totally \$140,000.

During the year ended December 31, 2012, the Company issued an aggregate of 30,000 shares of common stock for future services totally \$60,000.

**NOTE 10 — OPTIONS AND WARRANTS**

Stock option plans

On October 19, 2012, the Company's Board of Directors approved the 2012 Equity Incentive Plan (the "2012 Plan"). The Plan provides for the issuance of options to purchase up to 2,000,000 shares of the Company's common stock to officers, directors, employees and consultants of the Company including any common stock reserved by not issued pursuant to any awards granted under the Company's 2011 Long-Term Incentive Plan. Under the terms of the Plan the Company may issue Incentive Stock Options as defined by the Internal Revenue Code to employees of the Company only and nonstatutory options. The Board of Directors of the Company determines the exercise price, vesting and expiration period of the grants under the Plan. However, the exercise price of an Incentive Stock Option should not be less than 110% of fair value of the common stock at the date of the grant for a 10% or more stockholder and 100% of fair value for a grantee who is not 10% stockholder. The fair value of the common stock is determined based on quoted market price or in absence of such quoted market price, by the Board of Directors in good faith. Additionally, the vesting period of the grants under the Plan will be determined by the Committee, in its sole discretion and expiration period not more than ten years. In connection with the Board's approval, the Company's 2011 Long-Term Incentive Plan was closed.

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**NOTE 10 — OPTIONS AND WARRANTS**

On October 19, 2011, the Company's Board of Directors approved the 2011 Long-Term Incentive Plan (the "2011 Plan"). The Plan provides for the issuance of options to purchase up to 1,500,000 shares of the Company's common stock to officers, directors, employees and consultants of the Company. Under the terms of the Plan the Company may issue Incentive Stock Options as defined by the Internal Revenue Code to employees of the Company only and nonstatutory options. The Board of Directors of the Company determines the exercise price, vesting and expiration period of the grants under the Plan. However, the exercise price of an Incentive Stock Option should not be less than 110% of fair value of the common stock at the date of the grant for a 10% or more stockholder and 100% of fair value for a grantee who is not 10% stockholder. The fair value of the common stock is determined based on quoted market price or in absence of such quoted market price, by the Board of Directors in good faith. Additionally, the vesting period of the grants under the Plan will be determined by the Committee, in its sole discretion and expiration period not more than ten years. The Company reserved 1,500,000 shares of its common stock for future issuance under the terms of the Plan. As of December 31, 2012, the Company granted an aggregate of 1,298,927 options to directors and key consultants with an aggregate estimated fair value of \$1,237,868.

Employee Options

The following table summarizes the employee options outstanding and the related prices for the shares of the Company's common stock issued at December 31, 2012:

Prices	Options Outstanding		Weighted Price	Options Exercisable	
	Outstanding	Weighted Average (Years)		Exercisable	Weighted Price
\$ 2.00	1,273,927	6.57	\$ 2.00	-	\$ 2.00

Transactions involving stock options issued to employees are summarized as follows:

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2010:	-	\$ -
Granted	-	-
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2011:	-	-
Granted	1,273,927	2.00
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2012:	1,273,927	\$ 2.00

During the year ended December 31, 2012, the Company granted 1,273,927 options to purchase the Company stock in connection with the services rendered at the exercise price of \$2.00 per share for a term of seven years with 250,821 options vesting at the first, second and third anniversaries of the grant date. The remainder (521,464 options) vest contingent on the occurrence of certain events, as defined.

The fair value of the granted options for the year ended December 31, 2012 was determined using the Black Scholes option pricing model with the following assumptions:

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**NOTE 10 — OPTIONS AND WARRANTS**

Dividend yield:	-0-%
Volatility	108.60% to 111.78 %
Risk free rate:	0.97% to 1.14 %
Expected life:	7 years

The fair value of all employee options vesting during the year ended December 31, 2012 and 2011 of \$142,032 and \$0-, respectively, was charged to current period operations. Unrecognized compensation expense of \$1,152,939 at December 31, 2012 will be expensed in future periods.

Non-employee Options

The following table summarizes the non-employee options outstanding and the related prices for the shares of the Company's common stock issued at December 31, 2012:

Prices	Options Outstanding		Weighted Price	Options Exercisable	
	Outstanding	Weighted Average (Years)		Exercisable	Weighted Price
\$ 2.00	25,000	6.72	\$ 2.00	25,000	\$ 2.00

Transactions involving stock options issued to non- employees are summarized as follows:

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2010:	-	\$ -
Granted	-	-
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2011:	-	-
Granted	25,000	2.00
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2012:	25,000	\$ 2.00

During the year ended December 31, 2012, the Company granted 25,000 options to purchase the Company stock in connection with the services rendered at the exercise price of \$2.00 per share for a term of seven years vesting immediately.

The fair value of the granted options of \$43,291 for the year ended December 31, 2012 was determined using the Black Scholes option pricing model with the following assumptions:

Dividend yield:	-0-%
Volatility	111.78%
Risk free rate:	0.97%
Expected term:	7 years



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**NOTE 10 — OPTIONS AND WARRANTS**

The fair value of all non- employee options vesting during the year ended December 31, 2012 and 2011 of \$43,291 and \$-0-, respectively, was charged to current period operations.

The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the term. Estimated volatility is a measure of the amount by which the Company's stock price is expected to fluctuate each year during the term of the award. The Company's estimated volatility is an average of the historical volatility of the stock prices of its peer entities whose stock prices were publicly available. The Company's calculation of estimated volatility is based on historical stock prices over a period equal to the term of the awards. The Company used the historical volatility of peer entities due to the lack of sufficient historical data of its stock price.

Warrants.

As of December 31, 2012, the Company had issued warrants contingent on future events in connection with the issuance of the Convertible Bridge Notes. (See Note 7 above)

**NOTE 11 - LOSS PER SHARE**

The following table presents the computation of basic and diluted loss per share for the years ended December 31, 2012 and 2011:

	<u>2012</u>	<u>2011</u>
Net loss available to Common stockholders	\$ (2,477,002)	\$ (1,178,101)
Basic and diluted earnings (loss) per share	\$ (0.30)	\$ (0.18)
Weighted average common shares outstanding	8,142,222	6,650,026

**NOTE 12 - FAIR VALUE OF FINANCIAL INSTRUMENTS**

The Company follows the provisions of ASC 825-10. For financial assets and liabilities included within the scope of ASC 825-10, the Company was required to adopt the provisions of ASC 825-10 prospectively as of the beginning of Fiscal 2009. The adoption of ASC 825-10 did not have a material impact on our consolidated financial position or results of operations.

There were no items required to be measured at fair value on a recurring basis in the consolidated financial statements as of December 31, 2012 and 2011.

**NOTE 13 - COMMITMENTS AND CONTINGENCIES**

Operating leases

On August 9, 2011, the Company entered into a three-year lease for office space in Los Angeles, California, with monthly payments escalating from \$60,804 in the first year to \$66,456 in the third year.

Future minimum lease payments under the operating lease are as follows:

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**NOTE 13 - COMMITMENTS AND CONTINGENCIES**

<b>Year Ending December 31,</b>	
2013	\$ 63,256
2014	44,304
	<u>\$ 107,560</u>

In addition, the Company leases parking in aggregate of approximately \$620 per month, on a month to month basis.

Total lease rental expenses for the years ended December 31, 2012 and 2011 was \$72,408 and \$8,752, respectively.

Litigation

The Company is subject at times to other legal proceedings and claims, which arise in the ordinary course of its business. Although occasional adverse decisions or settlements may occur, the Company believes that the final disposition of such matters should not have a material adverse effect on its financial position, results of operations or liquidity. There was no outstanding litigation as of December 31, 2012.

Employment and Consulting Agreements

The Company has consulting agreements with outside contractors to provide certain consulting and advisory services. The Agreements are generally for a term of 12 months from inception and renewable automatically from year to year unless either the Company or Consultant terminates such engagement by written notice. As of December 31, 2012, the Company has an aggregate of \$252,000 (annualized) informal consulting/employment agreements.

On December 10, 2010, the Company entered into a two year consulting contract with a Company director in exchange for 43,750 shares of the Company's common stock valued at \$35,000.

**NOTE 14 -INCOME TAXES**

At December 31, 2012, the Company has available for federal income tax purposes a net operating loss carry forward of approximately \$3,100,000, expiring in the year 2031, that may be used to offset future taxable income. The Company has provided a valuation reserve against the full amount of the net operating loss benefit, since in the opinion of management based upon the earnings history of the Company; it is more likely than not that the benefits will not be realized. Due to possible significant changes in the Company's ownership, the future use of its existing net operating losses may be limited. All or portion of the remaining valuation allowance may be reduced in future years based on an assessment of earnings sufficient to fully utilize these potential tax benefits.

We have adopted the provisions of ASC 740-10-25, which provides recognition criteria and a related measurement model for uncertain tax positions taken or expected to be taken in income tax returns. ASC 740-10-25 requires that a position taken or expected to be taken in a tax return be recognized in the financial statements when it is more likely than not that the position would be sustained upon examination by tax authorities. Tax position that meet the more likely than not threshold are then measured using a probability weighted approach recognizing the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company had no tax positions relating to open income tax returns that were considered to be uncertain.

The Company is required to file income tax returns in the U.S. Federal jurisdiction and in California. The Company is no longer subject to income tax examinations by tax authorities for tax years ending before December 31, 2009.

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**NOTE 14 -INCOME TAXES**

The effective rate differs from the statutory rate of 34% for due to the following:

Statutory rate on pre-tax book loss	(34.00)%
Stock based compensation	11.70%
Financing costs	2.40%
Valuation allowance	19.90%
	<u>0.00%</u>

The Company's deferred taxes as of December 31, 2012 consist of the following:

<b>Non-Current deferred tax asset:</b>	
Net operating loss carry-forwards	\$ 900,000
Valuation allowance	(900,000)
Net non-current deferred tax asset	<u>\$ -</u>

**NOTE 15 -SUBSEQUENT EVENTS**

Series C Convertible Preferred Stock

On January 9, 2013, the Board of Directors authorized the issuance of up to 3,500 shares of Series C Convertible Preferred Stock (the "Series C Convertible Preferred Stock").

The Series C convertible preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$1,000 plus any accrued and unpaid dividends ; entitled to dividends as a preference to holders of junior stock at a rate of 9% per annum of the Stated Value of \$1,000 per share, payable quarterly beginning on September 30, 2013 and are cumulative. The holders of Series C preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series C preferred stock, the Company cannot (a) alter or change adversely the powers, preferences or rights given to the Series C preferred stock or alter or amend the Certificate of Designation.

Each share of Series C preferred stock is convertible, at any time at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series C preferred stock by the conversion price \$2.30 subject to adjustments.

If, at any time while the Series C preferred stock is outstanding, the Company sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues any common stock or common stock equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then conversion price ("Base Conversion Price"), then the conversion price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued.

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**NOTE 15 –SUBSEQUENT EVENTS**

Amendments to Certificates of Designations to Preferred Stock

On February 6, 2013, the Company filed an Amended and Restated Certificate of Incorporation to amend the Certificates of Designation for the Series A, B and C preferred stock to replace the automatic conversion provision to automatically convert, inclusive of any accrued and unpaid dividends, immediately upon the Company becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended at conversion price of \$1.84 (Series A) and \$2.02 (Series B), and \$2.09 (Series C), respectively. In addition, the Company increased the number of authorized Series C preferred stock the Company may issue from 3,500 shares to 4,200 shares.

Sale of Series C Convertible Preferred Stock

During the months of February and March 2013, the Company sold an aggregate of 1,635 shares of the Company's Series C Convertible Preferred Stock for net proceeds of \$1,362,270.

In connection with the sale of the Series C preferred stock, the Company issued an aggregate of 782,297 warrants to purchase the Company's common stock at \$2.61 per share expiring five years from the initial exercise date and contain certain defined anti-dilutive and cashless provisions.

Conversion of Convertible Bridge notes payable

On January 13, 2013, the Convertible Bridge note holders converted into 600 shares of Series C preferred stock and 287,081 warrants to purchase the Company's common stock at \$2.61 per share expiring five years from the initial exercise date and contain certain defined anti-dilutive and cashless provisions. In connection with the conversion of the convertible bridge notes, the note holders surrendered and the Company's cancelled the previous issued contingent warrants.

In connection with the conversion, the note holders surrendered previously issued contingent warrants (See Note 7 above).

Registration Rights Agreement

The Company entered into a Registration Rights Agreement in connection with the sale and issuance of the Series C preferred stock. The Company is required to file a registration statement registering for resale (a) the common stock issuable upon conversion in full of the Preferred Stock (assuming on such date the shares of Preferred Stock are converted in full without regard to any conversion limitations therein), (b) all shares of Common Stock issuable as dividends and "Make-Whole Payments" (as defined in the Certificate of Designation) on the Preferred Stock assuming all dividend and Make-Whole Payments are made in shares of Common Stock and the Preferred Stock is held for at least 3 years, (c) all warrant shares then issuable upon exercise of the Warrants (assuming on such date the warrants are exercised in full without regard to any exercise limitations therein), (d) any additional shares of Common Stock issuable in connection with any anti-dilution provisions in the Preferred Stock or the Warrants (in each case, without giving effect to any limitations on conversion set forth in the Certificate of Designation or limitations on exercise set forth in the Warrants) and (e) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing. The Company is required to file a registration statement and must be declared effective no later than 210 days from the date of termination of the sale the Series C preferred stock.

**BIOSIG TECHNOLOGIES INC.**  
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**NOTES TO THE FINANCIAL STATEMENTS**  
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**NOTE 15 –SUBSEQUENT EVENTS**

The Company is required to maintain the effectiveness of the registration statement from its effective date unless all securities registered under the registration statement have been sold or are otherwise able to be sold. If the Company fails to comply with the registration statement effective date requirements, the Company is required to pay the investors a fee equal to 0.25% of the Purchaser's investment, for each 30-day period of delay, subject to a maximum payment of 3% to each Purchaser

On January 18, 2013, the Company issued 383,320 warrants to purchase the Company's common stock at \$0.001 per share for five years for future services. In addition, the Company issued 35,076 and 30,755 warrants to purchase the Company's common stock at \$1.84 and \$2.02 per share, respectively, for five years in settlement of placement agent liability relating to the sale of the Series A and Series B preferred stock. The Company accrued an estimated fair value of \$94,500 included in the December 31, 2012 financial statements.

On January 1, 2013, the Company's board of directors granted 95,800 employee options under the 2012 Equity Incentive Plan. The options vest over one year from the date of issuance and exercisable at \$2.09 per share for seven years.

On January 16, 2013, the Company's board of directors granted an aggregate of 935,000 employee and 30,000 non-employee options under the 2012 Equity Incentive Plan. The options are fully vested at the date of issuance and exercisable at \$2.09 per share for seven years.

On February 12, 2013, the Company's board of directors granted 283,750 non-employee options to a consultant exercisable at a price equal to the fair value of the Company's common stock at the time of the grant for seven years. The options vest at (1) 48,611 shares on the first, second and third month anniversaries and (2) with the remainder vesting one twenty fourth (1/24) each monthly anniversary thereafter.

**BIOSIG TECHNOLOGIES, INC.**  
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**CONDENSED BALANCE SHEETS**

	<u>March 31,</u> <u>2013</u>	<u>December 31,</u> <u>2012</u>
	(unaudited)	
ASSETS		
Current assets:		
Cash	\$ 672,887	\$ 24,237
Prepaid expenses	20,000	33,125
Capitalized financing costs	-	212,635
Total current assets	<u>692,887</u>	<u>269,997</u>
Property and equipment, net	32,339	30,209
Other assets:		
Deposits	<u>25,000</u>	<u>25,000</u>
Total assets	<u>\$ 750,226</u>	<u>\$ 325,206</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	\$ 238,121	\$ 472,882
Advances, related parties	26,500	27,040
Note payable, related parties	-	30,000
Liability to placement agent	36,420	94,500
Dividends payable	<u>169,269</u>	<u>117,751</u>
Total current liabilities	470,310	742,173
Long term liabilities:		
Deferred rent payable	5,067	5,067
Note payable, related parties	218,000	218,000
Convertible bridge notes payable, including \$229,359 due to a related party	-	613,812
Redeemable Series A Preferred Stock, liquidation preference of \$922,000, net of debt discount of \$68,382 as of March 31, 2013	853,618	922,000
Redeemable Series B Preferred Stock, liquidation preference of \$887,500, net of debt discount of \$129,642 as of March 31, 2013	<u>757,858</u>	<u>887,500</u>
Total long term liabilities	<u>1,834,543</u>	<u>2,646,379</u>
Total liabilities	<u>2,304,853</u>	<u>3,388,552</u>
Series C Preferred stock, liquidation preference of \$2,235,000, net of debt discount of \$1,910,466	<u>324,534</u>	<u>-</u>
Stockholders' deficit		
Preferred stock, \$0.001 par value, authorized 1,000,000 shares, designated 200 shares of Series A, 600 shares of Series B and 4,200 shares of Series C Preferred Stock		
Common stock, \$0.001 par value, authorized 50,000,000 shares, 8,181,788 and 8,166,238 issued and outstanding as of March 31, 2013 and December 31, 2012, respectively	8,182	8,166
Additional paid in capital	5,780,393	833,647
Deficit accumulated during development stage	<u>(7,667,736)</u>	<u>(3,905,159)</u>
Total stockholders' deficit	<u>(1,879,161)</u>	<u>(3,063,346)</u>
Total liabilities and stockholders' deficit	<u>\$ 750,226</u>	<u>\$ 325,206</u>

See the accompanying notes to the unaudited condensed financial statements

**BIOSIG TECHNOLOGIES, INC.**  
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**CONDENSED STATEMENTS OF OPERATIONS**  
**(unaudited)**

	<b>Three months ended March 31,</b>		<b>From</b>
	<b>2013</b>	<b>2012</b>	<b>February 24,</b>
			<b>2009 (date of</b>
			<b>inception) to</b>
			<b>March 31, 2013</b>
Operating expenses:			
Research and development	\$ 306,339	\$ 299,025	\$ 1,777,812
General and administrative	3,019,459	125,948	5,116,649
Depreciation	3,692	2,522	20,507
Total operating expenses	<u>3,329,490</u>	<u>427,495</u>	<u>6,914,968</u>
Loss from operations	(3,329,490)	(427,495)	(6,914,968)
Other income (expense):			
Interest income (expense)	(21,070)	5	(39,185)
Financing costs	<u>(360,500)</u>	<u>(26,470)</u>	<u>(544,314)</u>
Loss before income taxes	(3,711,060)	(453,960)	(7,498,467)
Income taxes (benefit)	<u>-</u>	<u>-</u>	<u>-</u>
Net loss	(3,711,060)	(453,960)	(7,498,467)
Preferred stock dividend	<u>(51,517)</u>	<u>(22,693)</u>	<u>(169,269)</u>
<b>NET LOSS AVAILABLE TO COMMON STOCKHOLDERS</b>	<b><u>\$ (3,762,577)</u></b>	<b><u>\$ (476,653)</u></b>	<b><u>\$ (7,667,736)</u></b>
Net loss per common share, basic and diluted	<u>\$ (0.46)</u>	<u>\$ (0.07)</u>	
Weighted average number of common shares outstanding, basic and diluted	<u>8,175,222</u>	<u>6,650,026</u>	

See the accompanying notes to the unaudited condensed financial statements



**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**STATEMENT OF STOCKHOLDERS' DEFICIT**  
**FROM JANUARY 1, 2013 TO MARCH 31, 2013**

	<b>Common stock</b>		<b>Additional</b>	<b>Deficit</b>	
	<b>Shares</b>	<b>Amount</b>	<b>Paid in</b>	<b>Accumulated</b>	<b>Total</b>
			<b>Capital</b>	<b>During</b>	
				<b>Development</b>	
				<b>Stage</b>	
Balance, December 31, 2012	8,166,238	\$ 8,166	\$ 833,647	\$ (3,905,159)	\$ (3,063,346)
Common stock issued for services rendered	15,550	16	32,484	-	32,500
Fair value of common stock issuable in connection with note payable	-	-	20,000	-	20,000
Fair value of beneficial conversion feature and warrants issued in connection with the Series C Preferred Stock	-	-	1,962,270	-	1,962,270
Fair value of warrants issued for services	-	-	916,677	-	916,677
Fair value of vested options	-	-	2,015,315	-	2,015,315
Preferred stock dividend	-	-	-	(51,517)	(51,517)
Net loss	-	-	-	(3,711,060)	(3,711,060)
Balance, March 31, 2013	<u>8,181,788</u>	<u>\$ 8,182</u>	<u>\$ 5,780,393</u>	<u>\$ (7,667,736)</u>	<u>\$ (1,879,161)</u>

See the accompanying notes to the unaudited condensed financial statements

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**CONDENSED STATEMENTS OF CASH FLOWS**  
**(unaudited)**

	<b>Three months ended March 31,</b>		<b>From</b>
	<b>2013</b>	<b>2012</b>	<b>February 24,</b>
			<b>2009 (date of</b>
			<b>inception) to</b>
			<b>March 31, 2013</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net loss	\$ (3,711,060)	\$ (453,960)	\$ (7,498,467)
Adjustments to reconcile net loss to cash used in operating activities:			
Depreciation	3,692	2,522	20,507
Amortization of debt discount	380,499	26,470	564,313
Stock based compensation	2,060,940	29,618	2,767,028
Fair value of warrants issued for services	837,243	-	837,243
Donated capital	-	-	100
Changes in operating assets and liabilities:			
Prepaid expenses	-	-	(20,000)
Accounts payable	(248,572)	13,053	238,121
Deferred rent payable	-	-	5,067
Net cash used in operating activities	<u>(677,258)</u>	<u>(382,297)</u>	<u>(3,086,087)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchase of property and equipment	(5,822)	(5,457)	(52,846)
Payment of long term deposit	-	-	(25,000)
Net cash used in investing activity	<u>(5,822)</u>	<u>(5,457)</u>	<u>(77,846)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from notes payable, related party	-	-	275,040
Proceeds from convertible bridge notes payable	-	-	600,000
Net proceeds from the sale of Series A preferred stock	-	-	788,400
Net proceeds from the sale of Series B preferred stock	-	516,250	719,150
Net proceeds from the sale of Series C preferred stock and warrants	1,362,270	-	1,362,270
Proceeds from sale of common stock	-	-	122,500
Payments of related party notes	(30,000)	-	(30,000)
Payments of related party advances	(540)	-	(540)
Net cash provided by financing activities	<u>1,331,730</u>	<u>516,250</u>	<u>3,836,820</u>
Net (decrease) increase in cash and cash equivalents	648,650	128,496	672,887
Cash and cash equivalents, beginning of the period	24,237	69,020	-
Cash and cash equivalents, end of the period	<u>\$ 672,887</u>	<u>\$ 197,516</u>	<u>\$ 672,887</u>
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid during the period for interest	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Cash paid during the period for income taxes	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Non cash investing and financing activities:</b>			
Convertible bridge notes payable exchanged for preferred shares	<u>\$ 600,000</u>	<u>\$ -</u>	<u>\$ 600,000</u>

See the accompanying notes to the unaudited condensed financial statements

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

A summary of the significant accounting policies applied in the preparation of the accompanying financial statements follows.

Business and organization

BioSig Technologies Inc. (the "Company") was initially incorporated on February 24, 2009 under the laws of the State of Nevada and subsequently re-incorporated in the state of Delaware in 2011. The Company is in the development stage as defined under Accounting Standards Codification subtopic 915-10 Development Stage Entities and its efforts are principally devoted to improving the quality of cardiac recordings obtained during ablation of atrial fibrillation (AF). The Company has not generated any revenue to date and consequently its operations are subject to all risks inherent in the establishment of a new business enterprise.

Interim Financial Statements

The unaudited condensed interim financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information and the instructions to Form 10-Q and Rule 8-03 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included.

The condensed balance sheet as of December 31, 2012 contained herein has been derived from audited financial statements.

Operating results for the three months ended March 31, 2013 are not necessarily indicative of results that may be expected for the year ending December 31, 2013. These condensed financial statements should be read in conjunction with the audited financial statements and notes thereto for the year ended December 31, 2012, which are included elsewhere in this Form S-1.

Basis of presentation

As the Company is devoting substantially all of its efforts to establishing a new business, and while planned principal operations have commenced, there has been no revenue generated from sales, license fees or royalties, the Company is considered a development stage enterprise. Accordingly, the Company's financial statements are presented in accordance with authoritative accounting guidance related to a development stage enterprise. Financial position, results of operations and cash flows of a development stage enterprise are presented in conformity with generally accepted accounting principles that apply to established operating enterprises.

As a development stage enterprise, the Company's primary efforts are devoted to conducting research and development principally devoted to improving the quality of cardiac recordings obtained during ablation of atrial fibrillation (AF). The Company has experienced net losses and negative cash flows from operations since inception and expects these conditions to continue for the foreseeable future. In addition, the Company has stockholders' deficiencies at March 31, 2013 and requires additional financing to fund future operations. Further, the Company does not have any commercial products available for sale and there is no assurance that if approval of their products is received that the Company will be able to generate cash flow to fund operations. In addition, there can be no assurance that the Company's research and development will be successfully completed or that any product will be approved or commercially viable.

The above factors raise substantial doubt as to the Company's ability to continue as a going concern. The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that may result from the outcome of this uncertainty.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Use of estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and expenses and disclosures of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates. Significant estimates include the useful life of fixed assets and assumptions used in the fair value of stock-based compensation.

Fair Value of Financial Instruments

The Company's short-term financial instruments, including cash, prepaid expenses and other assets, accounts payable and accrued expenses and other liabilities, consist primarily of instruments without extended maturities, the fair value of which, based on management's estimates, reasonably approximate their book value. The fair value of the Company's convertible securities is based on management estimates and reasonably approximates their book value.

Research and development costs

The Company accounts for research and development costs in accordance with the Accounting Standards Codification subtopic 730-10, Research and Development ("ASC 730-10"). Under ASC 730-10, all research and development costs must be charged to expense as incurred. Accordingly, internal research and development costs are expensed as incurred. Third-party research and development costs are expensed when the contracted work has been performed or as milestone results have been achieved. Company-sponsored research and development costs related to both present and future products are expensed in the period incurred. The Company incurred research and development expenses of \$306,339 and \$299,025 the three months ended March 31, 2013 and 2012 and 2011, respectively and \$1,777,812 from the period from February 24, 2009 (date of inception) to March 31, 2013.

Income taxes

Income tax provisions or benefits for interim periods are computed based on the Company's estimated annual effective tax rate. Based on the Company's historical losses and its expectation of continuation of losses for the foreseeable future, the Company has determined that it is more likely than not that deferred tax assets will not be realized and, accordingly, has provided a full valuation allowance. As the Company anticipates or anticipated that its net deferred tax assets at December 31, 2013 and 2012 would be fully offset by a valuation allowance, there is no federal or state income tax benefit for the periods ended March 31, 2013 and 2012 related to losses incurred during such periods.

Net Income (loss) Per Common Share

The Company computes earnings (loss) per share under Accounting Standards Codification subtopic 260-10, Earnings Per Share ("ASC 260-10"). Net loss per common share is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the year. Diluted net loss per share for three months ended March 31, 2013 does not reflect the effects of potentially issuable upon the exercise of the Company's stock options (calculated using the treasury stock method) and warrants as of March 31, 2013 as including such would be anti-dilutive. As of March 31, 2012, the Company did not have common stock equivalents.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Stock Based Compensation

The Company follows Accounting Standards Codification subtopic 718-10, Compensation (“ASC 718-10”) which requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. This statement does not change the accounting guidance for share based payment transactions with parties other than employees provided in ASC 505-50.

As of March 31, 2013, the Company had 2,304,727 and 338,750 employee and non-employee options outstanding to purchase shares of common stock, respectively.

Recent Accounting Pronouncements

There are various updates recently issued, most of which represented technical corrections to the accounting literature or application to specific industries and are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

**NOTE 2 – RELATED PARTY TRANSACTIONS**

The Company's President and shareholders have advanced funds to the Company for working capital purposes since the Company's inception in February 2009. No formal repayment terms or arrangements exist and the Company is not accruing interest on these advances. The net amount outstanding at March 31, 2013 and December 31, 2012 was \$26,500 and \$27,040, respectively.

Accrued interest and expenses due related parties as of March 31, 2013 and December 31, 2012 was \$8,883 and \$54,184, respectively.

During 2012, the Company issued promissory notes for funding provided by the Company's president or a company under his control in the aggregate of \$248,000, of which \$218,000 was outstanding as of March 31, 2013 and 2012. See Note 6 below.

The Company has informal compensation and consulting agreements with employees and outside contractors, certain of whom are also Company stockholders. The Agreements are generally month to month. As of March 31, 2013 and December 31, 2012, total due under these agreements and related expenses were \$0 and \$43,630, respectively.

**BIOSIG TECHNOLOGIES, INC.**  
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**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
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**NOTE 3 – PROPERTY AND EQUIPMENT**

Property and equipment as of March 31, 2013 and December 31, 2012 is summarized as follows:

	<b>March 31, 2013</b>	<b>December 31, 2012</b>
Computer equipment	\$ 45,043	\$ 39,221
Furniture and fixtures	7,803	7,803
Subtotal	52,846	47,024
Less accumulated depreciation	(20,507)	(16,815)
Property and equipment, net	<u>\$ 32,339</u>	<u>\$ 30,209</u>

Property and equipment are stated at cost and depreciated using the straight-line method over their estimated useful lives of 3 to 5 years. When retired or otherwise disposed, the related carrying value and accumulated depreciation are removed from the respective accounts and the net difference less any amount realized from disposition, is reflected in earnings.

**NOTE 4 – ACCOUNTS PAYABLE AND ACCRUED EXPENSES**

Accounts payable and accrued expenses at March 31, 2013 and December 31, 2012 consist of the following:

	<b>March 31, 2013</b>	<b>December 31, 2012</b>
Accrued accounting and legal	\$ 137,020	\$ 120,922
Accrued reimbursements	8,592	44,338
Accrued consulting	30,000	111,546
Accrued research and development expenses	20,000	68,120
Accrued credit card obligations	6,444	21,844
Accrued payroll	16,662	101,621
Accrued interest	19,403	4,491
Total	<u>\$ 238,121</u>	<u>\$ 472,882</u>

**NOTE 5 – NOTES PAYABLE, RELATED PARTY**

On November 21, 2012, the Company issued an unsecured promissory note for \$218,000 to the Company's President for previously advanced funds with interest payable annually, in arrears, on each anniversary at the short term "Applicable Federal Rate" within the meaning of Section 1274(d) of the Internal Revenue Code of 1986, as amended adjusted each anniversary date. The promissory note matures November 21, 2021 and may be prepaid, without premium or penalty, at any time. In connection with the issuance of the unsecured promissory note, the Company's President agreed not to receive payments (by voluntary prepayment, acceleration, set-off or otherwise) associated with the unsecured promissory note absent the prior written consent of the purchasers holding at least 67% interest of the preferred stock outstanding, which purchasers must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of preferred stock.

On December 6, 2012, the Company issued an unsecured promissory note for \$30,000 to a company under the control of the Company's President for previously advanced funds, interest free and due the earlier of (i) the next financing of not less than \$300,000; (ii) February 28, 2013 or (iii) occurrence of an event of default, as defined. During the three months ended March 31, 2013, the Company paid off the promissory note in full.

**BIOSIG TECHNOLOGIES, INC.**  
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**NOTE 6 – CONVERTIBLE BRIDGE NOTES**

In 2012, the Company issued an aggregate of \$600,000 unsecured Senior Convertible Promissory Notes (\$225,000 related party) with interest due at maturity at 8% per annum and may be paid, at the Company's discretion, in cash or the Company's common stock. The Notes, together with unpaid accrued interest, if any, is due upon written notice by the majority in interest of the holders on or after February 15, 2014 or (ii) upon the occurrence of an event of default, as defined. The Notes may be prepaid in whole or in part prior to the maturity date at the Company's discretion.

The Convertible Bridge Notes and any accrued and unpaid interest automatically converts at the earlier of (i) (A) a completion of a transaction whereby the Company merges or consolidates with another company that has its common stock approved for quotation on any domestic national stock exchange and (B) the new entity thereafter issues and sells shares for no less than \$3.0 million aggregate gross proceeds or (ii) a qualified IPO. The Convertible Bridge Notes shall convert into the new securities issued at 95% of the purchase price of the Conversion Securities offered to investors.

In connection with the issuance of the Senior Convertible Promissory Notes, the Company issued the right to purchase at any time, on or after the Public Financing Closing Date, (as defined above) hereof until the fifth anniversary of the Public Financing Closing date, the number of fully paid and nonassessable shares (the "*Warrant Shares*") of the Company's common stock equal to the quotient of (a) the Warrant Coverage Amount (as defined below), *divided by* (b) the applicable Conversion Price of the Notes, at the per share exercise price (the "*Exercise Price*"), which shall initially be, as of the Public Financing Closing Date, equal to the Initial Exercise Price (as defined below), subject to further adjustments, as defined.

*Initial Exercise Price*" means one hundred twenty-five percent (125%) of the Conversion Price.

*Warrant Coverage Amount*" shall be the amount obtained by multiplying (x) the *Warrant Coverage Percentage* by (y) the principal amount outstanding (and not including any accrued and unpaid interest) of the Note, in connection with which this Warrant is concurrently issued.

*Warrant Coverage Percentage*" shall be equal to fifty percent (50%) as defined in the Bridge Loan Agreement.

On January 13, 2013, the Convertible Bridge Notes and the above described contingent warrants previously issued as described above were converted into 600 shares of Series C Convertible Preferred Stock and an aggregate of 287,082 warrants to purchase the Company's common stock at an exercise price of \$2.09 per share for 5 years.

**NOTE 7 — REDEEMABLE PREFERRED STOCK**

Series A Preferred Stock

In May 2011, the Board of Directors authorized the issuance of up to 200 shares of Series A Preferred Stock (the "Series A preferred stock").

The Series A preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$5,000 plus any accrued and unpaid dividends ; entitled to dividends as a preference to holders of junior stock at a rate of 5% per annum of the Stated Value of \$5,000 per share, payable quarterly beginning on August 31, 2011 and are cumulative. The holders of Series A preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series A preferred stock, the Company cannot, (a) alter or change adversely the powers, preferences or rights given to the Series A preferred stock or alter or amend the Certificate of Designation.

The Series A preferred stock is mandatorily redeemable on December 31, 2014 (as modified) at a price equal to the Stated Value (\$5,000) plus an amount equal to all accumulated and unpaid dividends. If the Company fails to redeem at redemption, the unpaid redemption price will accrue at 14% per annum until paid.



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The Series A preferred stock is convertible (as amended), automatically, inclusive of any accrued and unpaid dividends, immediately into the Company's common stock upon the Company becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended at conversion price of \$1.84 per share.

On February 6, 2013, in connection with the amendment to the Series A preferred stock defining the conversion feature, the Company reclassified the associated financing costs as a debt discount against the carrying value of the preferred stock.

As of March 31, 2013 and December 31, 2012, 184.4 shares of Series A preferred stock were issued and outstanding. As of March 31, 2013 and December 31, 2012, the Company has accrued \$84,622 and \$73,255 dividends payable on the Series A preferred stock.

Series B Preferred Stock

On November 28, 2011, the Board of Directors authorized the issuance of up to 600 shares of Series B Preferred Stock (the "Series B preferred stock").

The Series B preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$5,000 plus any accrued and unpaid dividends; entitled to dividends as a preference to holders of junior stock at a rate of 5% per annum of the Stated Value of \$5,000 per share, payable quarterly beginning on December 31, 2011 and are cumulative. The holders of Series B preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series B preferred stock, the Company cannot (a) alter or change adversely the powers, preferences or rights given to the Series A preferred stock or alter or amend the Certificate of Designation.

The Series B preferred stock is mandatorily redeemable on December 31, 2014 at a price equal to the Stated Value (\$5,000) plus an amount equal to all accumulated and unpaid dividends. If the Company fails to redeem at redemption, the unpaid redemption price will accrue at 14% per annum until paid.

The Series B preferred stock is convertible (as amended), automatically, inclusive of any accrued and unpaid dividends, immediately into the Company's common stock upon the Company becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended at conversion price of \$2.02 per share.

On February 6, 2013, in connection with the amendment to the Series B preferred stock defining the conversion feature, the Company reclassified the associated financing costs as a debt discount against the carrying value of the preferred stock.

As of March 31, 2013 and December 31, 2012, 177.5 shares of Series B preferred stock were issued and outstanding. As of March 31, 2013 and December 31, 2012, the Company has accrued \$55,438 and \$44,497 dividends payable on the Series A preferred stock.

**NOTE 8 — SERIES C 9% CONVERTIBLE PREFERRED STOCK**

On January 9, 2013, the Board of Directors authorized the issuance of up to 4,200 shares of Series C Convertible Preferred Stock (the "Series C Convertible Preferred Stock").

The Series C convertible preferred stock is entitled to preference over holders of junior stock upon liquidation in the amount of \$1,000 plus any accrued and unpaid dividends ; entitled to dividends as a preference to holders of junior stock at a rate of 9% per annum of the Stated Value of \$1,000 per share, payable quarterly beginning on September 30, 2013 and are cumulative. The holders of Series C preferred stock have no voting rights, however without the affirmative vote of all the holders of then outstanding shares of the Series C preferred stock, the Company cannot (a) alter or change adversely the powers, preferences or rights given to the Series C preferred stock or alter or amend the Certificate of Designation.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 8 — SERIES C 9% CONVERTIBLE PREFERRED STOCK**

Each share of Series C preferred stock is convertible automatically, inclusive of any accrued and unpaid dividends, immediately upon the Company becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended at conversion price of \$2.09, respectively.

If, at any time while the Series C preferred stock is outstanding, the Company sells or grants any option to purchase or sells or grants any right to re-price, or otherwise disposes of or issues any common stock or common stock equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then conversion price (“Base Conversion Price”), then the conversion price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued.

The Series C preferred stock contains triggering events which would require redemption at (i) the greater of 120% of the stated value of \$1,000 or the product of the variable weighted average price of the Company’s common stock on the trading day immediately preceding the date of the triggering event and the stated value divided by then then conversion price or (ii) either (a) redeem each Series C preferred share for a redemption price, in shares of the Company’s common stock, equal to a number of shares equal to the (i) above divided by 75%. The Company determined that certain of the defined triggering events were outside the Company’s control and therefore classified the Series C preferred stock outside of equity.

In accordance with ASC 470-20, the Company recognizes an embedded beneficial conversion feature present in the Series C preferred stock when it was issued. The Company allocated a portion of the proceeds equal to the intrinsic value of that feature to additional paid-in capital. The debt discount attributed to the beneficial conversion feature is amortized over one year as interest expense.

In connection with the sale of the Series C preferred stock, the Company issued an aggregate of 1,069,377 warrants to purchase the Company’s common stock at \$2.61 per share expiring five years from the initial exercise date and contain certain defined anti-dilutive and future cashless provisions.

The Company determined the allocated value attributable to the warrants in the amount of \$880,988 and will amortize over one year as interest expense. The Company valued the warrants in accordance with ASC 470-20 using the Black-Scholes pricing model and the following assumptions: contractual terms of 5 years, an average risk free interest rate of 0.39%, a dividend yield of 0%, and volatility of 123.41%.

The total debt discount attributed to the beneficial conversion feature in the amount of \$1,962,270 is charged to operations ratably over one year as interest expense

During the month of January 2013, the holders of the Convertible Bridge Notes (See Note 7) converted into 600 shares of the Company’s Series C 9% Convertible Preferred Stock.

During the months of February and March 2013, the Company sold an aggregate of 1,635 shares of the Company’s Series C 9% Convertible Preferred Stock for net proceeds of \$1,362,270.

The Company determined that the anti-dilutive provisions embedded in the Series C 9% Convertible Preferred Stock and related issued warrants did not meet the defined criteria of a derivative in such that the net settlement requirement of delivery of common shares does not meet the “readily convertible to cash” as described in Accounting Standards Codification 815 and therefore bifurcation is not required. There is no established market for the Company’s common stock.

Series C preferred stock issued and outstanding totaled 2,235 as of March 31, 2013. . There were no shares issued as of December 31, 2012.

**BIOSIG TECHNOLOGIES, INC.**  
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**NOTE 8 — SERIES C 9% CONVERTIBLE PREFERRED STOCK**

Registration Rights Agreement

The Company entered into a Registration Rights Agreement in connection with the sale and issuance of the Series C preferred stock. The Company is required to file a registration statement registering for resale the (a) common stock issuable upon conversion in full of the Preferred Stock (assuming on such date the shares of Preferred Stock are converted in full without regard to any conversion limitations therein), (b) all shares of Common Stock issuable as dividends and “Make-Whole Payments” (as defined in the Certificate of Designation) on the Preferred Stock assuming all dividend and Make-Whole Payments are made in shares of Common Stock and the Preferred Stock is held for at least 3 years, (c) all warrant shares then issuable upon exercise of the Warrants (assuming on such date the warrants are exercised in full without regard to any exercise limitations therein), (d) any additional shares of Common Stock issuable in connection with any anti-dilution provisions in the Preferred Stock or the Warrants (in each case, without giving effect to any limitations on conversion set forth in the Certificate of Designation or limitations on exercise set forth in the Warrants) and (e) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing. The Company is required to file a registration statement and must be declared effective no later than 210 days from the date of termination of the sale the Series C preferred stock. The Company is required to maintain the effectiveness of the registration statement from its effective date unless all securities registered under the registration statement have been sold or are otherwise able to be sold. If the Company fails to comply with the registration statement effective date requirements, the Company is required to pay the investors a fee equal to 0.25% of the Purchaser’s investment, for each 30-day period of delay, subject to a maximum payment of 3% to each Purchaser

The Company has determined it will meet its required filing and effectiveness obligation and therefore has not accrued liquidating damages as of March 31, 2013.

**NOTE 9 — STOCKHOLDER EQUITY**

Common stock

The Company is authorized to issue 50,000,000 shares of \$0.001 par value common stock. As of March 31, 2013 and December 31, 2012, the Company has 8,181,788 and 8,166,238 shares issued and outstanding, respectively.

Preferred stock

The Company is authorized to issue 1,000,000 shares of \$0.001 par value preferred stock. As of March 31, 2013 the Company has designated and issued 200 and 184.4 shares of Series A preferred stock, respectively, designated and issued 600 and 177.5 shares of Series B preferred stock, respectively and designated and issued 4,200 and 2,235 shares of Series C 9% convertible preferred stock.

**NOTE 10 — OPTIONS AND WARRANTS**

On October 19, 2012, the Company’s Board of Directors approved the 2012 Equity Incentive Plan (“the “2012 Plan) and terminated the Long-Term Incentive Plan (the “ 2011 Plan”). The Plan provides for the issuance of options to purchase up to 3,500,000 shares of the Company’s common stock to officers, directors, employees and consultants of the Company. Under the terms of the Plan the Company may issue Incentive Stock Options as defined by the Internal Revenue Code to employees of the Company only and nonstatutory options. The Board of Directors of the Company determines the exercise price, vesting and expiration period of the grants under the Plan. However, the exercise price of an Incentive Stock Option should not be less than 110% of fair value of the common stock at the date of the grant for a 10% or more stockholder and 100% of fair value for a grantee who is not 10% stockholder. The fair value of the common stock is determined based on quoted market price or in absence of such quoted market price, by the Board of Directors in good faith. Additionally, the vesting period of the grants under the Plan will be determined by the Committee, in its sole discretion and expiration period not more than ten years. The Company reserved 3,500,000 shares of its common stock for future issuance under the terms of the Plan.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 10 — OPTIONS AND WARRANTS**

As of March 31, 2013, the Company granted an aggregate of 2,643,477 options to directors and key consultants with an aggregate estimated fair value of \$3,042,971.

Employee Options

The following table summarizes the employee options outstanding and the related prices for the shares of the Company's common stock issued at March 31, 2013:

Prices	Options Outstanding			Weighted Price	Options Exercisable		
	Outstanding	Weighted Average (Years)			Exercisable	Weighted Price	
\$ 2.00	1,273,927	6.32		\$ 2.00	-	\$ 2.00	
2.09	1,030,800	6.82		2.09	958,949	2.09	
	2,304,727	6.54		2.04	958,949	2.09	

Transactions involving stock options issued to employees are summarized as follows:

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2011:	-	\$ -
Granted	1,273,927	2.00
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2012:	1,273,927	2.00
Granted	1,030,800	2.09
Exercised	-	-
Expired	-	-
Outstanding at March 31, 2013:	2,304,727	\$ 2.04

During the three months ended March 31, 2013, the Company granted an aggregate of 1,030,800 options to purchase the Company stock in connection with the services rendered at the exercise price of \$2.09 per share for a term of seven years with 95,800 options vesting at ratably over one year and the remainder (935,000 options) vested immediately upon issuance.

The fair value of the granted options for the three month ended March 31, 2013 was determined using the Black Scholes option pricing model with the following assumptions:

Dividend yield:	-0.0%
Volatility	114.95% to 115.03 %
Risk free rate:	1.23% to 1.25 %
Expected life:	7 years

The fair value of all employee options vesting during the three months ended March 31, 2013 and 2012 of \$1,866,228 and \$-0-, respectively, was charged to current period operations. Unrecognized compensation expense of \$1,176,743 at March 31, 2013 will be expensed in future periods.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 10 — OPTIONS AND WARRANTS**

Non-employee Options

The following table summarizes the non-employee options outstanding and the related prices for the shares of the Company's common stock issued at March 31, 2013:

Prices	Options Outstanding			Weighted Price	Options Exercisable		
	Outstanding	Weighted Average (Years)			Exercisable	Weighted Price	
\$ 2.00	25,000	6.47	\$ 2.00	25,000	\$ 2.00		
2.09	313,750	9.58	2.09	78,611	2.09		
	338,750	9.35	2.08	103,611	2.07		

Transactions involving stock options issued to non- employees are summarized as follows:

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2011:	-	\$ -
Granted	25,000	2.00
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2012:	25,000	2.00
Granted	313,750	2.09
Exercised	-	-
Expired	-	-
Outstanding at March 31, 2013:	338,750	\$ 2.08

During the three months ended March 31, 2013, the Company granted an aggregate of 313,750 options to purchase the Company stock in connection with the services rendered at the exercise price of \$2.09 per share for a term of seven years (30,000) to ten years (283,750), vesting immediately for 30,000 options, with the remainder vesting at 48,611 per first three month anniversary with remainder vesting at 1/24 per month.

The fair value of the vesting options of \$149,086 for the three months ended March 31, 2013 was determined using the Black Scholes option pricing model with the following assumptions:

Dividend yield:	-0%
Volatility	110.48% to 115.03 %
Risk free rate:	1.23% to 2.03 %
Expected term:	7 to 10 years

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 10 — OPTIONS AND WARRANTS**

Warrants

The following table summarizes warrants outstanding and the related prices for the shares of the Company's common stock issued at March 31, 2013:

Prices	Warrants Outstanding		Weighted Price	Warrants Exercisable	
	Outstanding	Weighted Average (Years)		Exercisable	Weighted Price
\$ 0.001	383,320	6.77	\$ 0.001	383,320	\$ 0.001
1.84	35,076	4.79	1.84	35,076	1.84
2.02	30,755	4.79	2.02	30,755	2.02
2.61	1,069,377	4.85	2.61	1,069,377	2.61
	1,518,528	5.33	1.92	1,518,528	1.92

Transactions involving warrants issued are summarized as follows:

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2011:	-	\$ -
Granted	-	-
Exercised	-	-
Expired	-	-
Outstanding at December 31, 2012:	-	-
Granted	1,518,528	1.92
Exercised	-	-
Expired	-	-
Outstanding at March 31, 2013:	1,518,528	\$ 1.92

On January 7, 2013, the Company issued 383,320 warrants to purchase the Company stock in connection with the services rendered at the exercise price of \$0.001 per share for a term of seven years exercisable immediately.

The fair value of the issued warrants were determined using the Black Scholes option pricing model with the following assumptions:

Dividend yield:	-0%
Volatility	114.99%
Risk free rate:	1.31%
Expected life:	7 years

The fair value of \$800,823 was charged to current period operations.

On January 13, 2013, the Company issued an aggregate of 65,831 warrants to purchase the Company stock in connection with the placement services at the exercise prices of \$1.84 (35,076 warrants) and \$2.02 (30,775 warrants) per share for a term of five years exercisable immediately.

**BIOSIG TECHNOLOGIES, INC.**  
**(a development stage company)**  
**NOTES TO THE CONDENSED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 10 — OPTIONS AND WARRANTS**

The fair value of the issued warrants were determined using the Black Scholes option pricing model with the following assumptions:

Dividend yield:	-0%
Volatility	123.30%
Risk free rate:	0.72%
Expected life:	5 years

The fair value of \$115,854 was charged to operations ratably as financing costs through December 31, 2014.

During the three months ended March 31, 2013, the Company issued an aggregate of 1,069,377 warrants to purchase the Company stock in connection with the sale of the Series C 9% Convertible Preferred Stock at the exercise price of \$2.61 per share for a term of five years exercisable immediately.

The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the term. Estimated volatility is a measure of the amount by which the Company's stock price is expected to fluctuate each year during the term of the award. The Company's estimated volatility is an average of the historical volatility of the stock prices of its peer entities whose stock prices were publicly available. The Company's calculation of estimated volatility is based on historical stock prices over a period equal to the term of the awards. The Company used the historical volatility of peer entities due to the lack of sufficient historical data of its stock price.

**NOTE 11 - FAIR VALUE OF FINANCIAL INSTRUMENTS**

The Company follows the provisions of ASC 825-10. For financial assets and liabilities included within the scope of ASC 825-10, the Company was required to adopt the provisions of ASC 825-10 prospectively as of the beginning of Fiscal 2009. The adoption of ASC 825-10 did not have a material impact on our consolidated financial position or results of operations.

There were no items required to be measured at fair value on a recurring basis in the financial statements as of March 31, 2013 and December 31, 2012.

**NOTE 12 – SUBSEQUENT EVENTS**

Sale of Series C Convertible Preferred Stock

During the months of April and May, 2013, the Company sold an aggregate of 187 shares of the Company's Series C Convertible Preferred Stock for net proceeds of \$187,000.

In connection with the sale of the Series C preferred stock, the Company issued an aggregate of 89,473 warrants to purchase the Company's common stock at \$2.61 per share expiring five years from the initial exercise date and contain certain defined anti-dilutive and cashless provisions.



**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution.**

We are paying all of the selling stockholders' expenses related to this offering, except that the selling stockholders will pay any applicable underwriting discounts and commissions. The fees and expenses payable by us in connection with this Registration Statement are estimated as follows:

Securities and Exchange Commission Registration Fee	\$	891.73
Accounting Fees and Expenses	\$	12,500
Legal Fees and Expenses		50,000
Printing Expenses	\$	6,000
Miscellaneous Fees and Expenses		2,608.27
Total	\$	<u>72,000</u>

**Item 14. Indemnification of Directors and Officers.**

Section 145 of the General Corporation Law of the State of Delaware provides, in general, that a corporation incorporated under the laws of the State of Delaware, as we are, may indemnify 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 (other than a derivative action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person 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 such person's conduct was unlawful. In the case of a derivative action, a Delaware corporation may indemnify any such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification will be made in respect of any claim, issue or matter as to which such person will have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or any other court in which such action was brought determines such person is fairly and reasonably entitled to indemnity for such expenses.

We are also permitted to apply for, and currently maintain, insurance on behalf of any director, officer, employee or other agent for liability arising out of his actions, whether or not the General Corporation Law of the State of Delaware would permit indemnification.

**Item 15. Recent Sales of Unregistered Securities.**

On September 21, 2011, we entered into a securities purchase agreement with 20 accredited investors (as defined by Rule 501 under the Securities Act of 1933, as amended), pursuant to which we issued 184.4 shares of our Series A Preferred Stock for aggregate cash proceeds of \$922,000. The securities sold in this offering were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

On January 18, 2013, in connection the above described private placement, we issued a seven-year warrant to purchase up to 35,076 shares of common stock at an exercise price of \$1.84 per share, to Laidlaw & Company (UK) Ltd., our placement agent in the private placement. The warrant was not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and was offered and sold in reliance on the exemption from registration afforded by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended, and corresponding provisions of state securities laws, which exempt transactions by an issuer not involving a public offering. Laidlaw & Company (UK) Ltd. was an accredited investor (as defined by Rule 501 under the Securities Act of 1933, as amended) at the time of the private placement.

On April 30, 2012, we entered into a securities purchase agreement with 24 accredited investors (as defined by Rule 501 under the Securities Act of 1933, as amended), pursuant to which we issued 177.5 shares of our Series B Preferred Stock for aggregate cash proceeds of \$877,500. The securities sold in this offering were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

On January 18, 2013, in connection the above described private placement, we issued a seven-year warrant to purchase up to 30,755 shares of common stock at an exercise price of \$2.02 per share, to Laidlaw & Company (UK) Ltd., our placement agent in the private placement. The warrant was not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and was offered and sold in reliance on the exemption from registration afforded by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended, and corresponding provisions of state securities laws, which exempt transactions by an issuer not involving a public offering. Laidlaw & Company (UK) Ltd. was an accredited investor (as defined by Rule 501 under the Securities Act of 1933, as amended) at the time of the private placement.

From July to December 2012, we entered into a securities purchase agreement with 6 accredited investors (as defined by Rule 501 under the Securities Act of 1933, as amended), pursuant to which we issued bridge notes in the aggregate amount of \$600,000. The securities sold in this offering were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

On January 7, 2013, as consideration for providing general financial advisory services, we issued to James Capital Group LLC a seven-year warrant to purchase up to 383,320 shares of common stock at an exercise price of \$0.001 per share. The warrant was not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and was offered and sold in reliance on the exemption from registration afforded by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended, and corresponding provisions of state securities laws, which exempt transactions by an issuer not involving a public offering. James Capital Group LLC was an accredited investor (as defined by Rule 501 under the Securities Act of 1933, as amended) at the time of the private placement.

On February 6, 2013, we entered into a securities purchase agreement with 9 accredited investors (as defined by Rule 501 under the Securities Act of 1933, as amended), pursuant to which we issued 1,400 shares of our Series C Preferred Stock and five-year warrants to purchase 669,857 shares of our common stock for aggregate cash proceeds of \$800,000 and the conversion of \$600,000 of our outstanding bridge notes. The securities sold in this offering were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

From February to July 2013, over four separate closings, we entered into a securities purchase agreement with 32 accredited investors (as defined by Rule 501 under the Securities Act of 1933, as amended), pursuant to which we issued 1,381 shares of our Series C Preferred Stock and five-year warrants to purchase 1,330,629 shares of our common stock for aggregate cash proceeds of \$1,381,000. The securities sold in this offering were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

On July 15, 2013, we issued five-year warrants to purchase 289,730 shares of our common stock to certain holders of our Series C Preferred Stock in consideration for amending certain provisions of the securities purchase agreement and registration rights agreement related to our Series C Preferred Stock. The warrants issued were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were issued in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended.

On July 15, 2013, in connection the above described private placement, we issued a five-year warrant to purchase up to 177,057 shares of common stock at an exercise price of \$2.61 per share, to Laidlaw & Company (UK) Ltd., our placement agent in the private placement. The warrant was not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and was offered and sold in reliance on the exemption from registration afforded by Section 4(2) and Regulation D (Rule 506) under the Securities Act of 1933, as amended, and corresponding provisions of state securities laws, which exempt transactions by an issuer not involving a public offering. Laidlaw & Company (UK) Ltd. was an accredited investor (as defined by Rule 501 under the Securities Act of 1933, as amended) at the time of the private placement.

**Item 16. Exhibits and Financial Statement Schedules.**

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation</a>
3.2	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation (Amendment No. 1)</a>
3.3	<a href="#">Certificate of Amendment of the Amended and Restated Certificate of Incorporation (Amendment No. 2)</a>
3.4	<a href="#">By-Laws</a>
5.1*	Opinion of Haynes and Boone, LLP
10.1	<a href="#">BioSig Technologies, Inc. 2012 Equity Incentive Plan</a>
10.2	<a href="#">Form of Stock Option Agreement</a>
10.3	<a href="#">Securities Purchase Agreement, dated September 19, 2011, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.4	<a href="#">Securities Purchase Agreement, dated December 27, 2011, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.5	<a href="#">Securities Purchase Agreement, dated February 6, 2013, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.6	<a href="#">Registration Rights Agreement, dated February 6, 2013, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.7	<a href="#">Form of Warrant</a>

10.8	<a href="#">Amendment Agreement No. 1 to Securities Purchase Agreement and Registration Rights Agreement, dated February 25, 2013, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.9	<a href="#">Amendment Agreement No. 2 to Securities Purchase Agreement, dated April 12, 2013, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.10	<a href="#">Amendment Agreement No. 3 to Securities Purchase Agreement and Registration Rights Agreement, dated June 25, 2013, by and between BioSig Technologies, Inc. and certain purchasers set forth therein</a>
10.11	<a href="#">Office Lease Agreement, dated August 9, 2011, by and between BioSig Technologies, Inc. and Douglas Emmett 1993, LLC</a>
10.12	<a href="#">Employment Agreement, dated March 1, 2013, by and between BioSig Technologies, Inc. and Kenneth Londoner</a>
10.13	<a href="#">Employment Agreement, dated March 1, 2013, by and between BioSig Technologies, Inc. and Budimir Drakulic</a>
10.14	<a href="#">Indemnity Agreement, dated May 2, 2013 by and between BioSig Technologies, Inc. and Seth H. Z. Fischer</a>
10.15	<a href="#">Consulting Agreement, dated August 1, 2012, by and between BioSig Technologies, Inc. and Asher Holzer</a>
16.1	<a href="#">Letter of Rosenberg Rich Baker Berman &amp; Company, dated July 22, 2013</a>
23.1	<a href="#">Consent of Rosenberg Rich Baker Berman &amp; Company</a>
23.2*	Consent of Haynes and Boone, LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)

\* To be filed by amendment.

**Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

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

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

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

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

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

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

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the undersigned registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California on July 22, 2013.

### BIOSIG TECHNOLOGIES, INC.

By: /s/ Kenneth L. Londoner  
Name: Kenneth L. Londoner  
Title: Chairman and Chief Executive Officer

### POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned officers and directors of BioSig Technologies, Inc., a Delaware corporation, do hereby constitute and appoint Kenneth L. Londoner as his or her true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for him and in his name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement and any subsequent registration statement filed by the registrant pursuant to Rule 462(b) of the Securities Act of 1933, as amended, which relates to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Kenneth L. Londoner</u> Kenneth L. Londoner	Chairman, Chief Executive Officer and Director (principal executive officer)	July 22, 2013
<u>/s/ Steve Chaussy</u> Steve Chaussy	Chief Financial Officer (principal financial and accounting officer)	July 22, 2013
<u>/s/ Budimir S. Drakulic</u> Budimir S. Drakulic	Chief Technology Officer and Director	July 22, 2013
<u>/s/ Asher Holzer</u> Asher Holzer	Director	July 22, 2013
<u>/s/ Kalyanam Shivkumar</u> Kalyanam Shivkumar	Director	July 22, 2013
<u>/s/ Roy Tanaka</u> Roy Tanaka	Director	July 22, 2013
<u>/s/ Jeffrey O'Donnell</u> Jeffrey O'Donnell	Director	July 22, 2013
<u>/s/ William Uglow</u> William Uglow	Director	July 22, 2013
<u>/s/ Jonathan Steinhouse</u> Jonathan Steinhouse	Director	July 22, 2013
<u>/s/ Seth H. Z. Fischer</u> Seth H. Z. Fischer	Director	July 22, 2013



**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**BIOSIG TECHNOLOGIES, INC.**

**BioSig Technologies, Inc.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is BioSig Technologies, Inc.

SECOND: That the Corporation's original Certificate of Incorporation (as amended, the "Charter") was filed with the Secretary of State of the State of Delaware on April 21, 2011.

THIRD: That the Board of Directors of the Corporation has duly adopted resolutions proposing to amend and restate the Charter, and that said amendment and restatement was duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware. This Amended and Restated Certificate of Incorporation amends and restates the provisions of the Charter.

FOURTH: That the text of the Charter is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer, this 6<sup>th</sup> day of February, 2013.

**BIOSIG TECHNOLOGIES, INC.**

By: /s/ Kenneth Londoner  
Kenneth Londoner  
Chairman and Chief Executive Officer



**EXHIBIT A**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**BIOSIG TECHNOLOGIES, INC.**

**ARTICLE I**

**NAME**

The name of the corporation is BioSig Technologies, Inc. (the "Corporation").

**ARTICLE II**

**ADDRESS**

The address of the registered office of the Corporation in the State of Delaware is 16192 Coastal Highway, Lewes, Sussex County, Delaware 19958. The name of the registered agent at such registered office is Harvard Business Services, Inc.

**ARTICLE III**

**PURPOSE**

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

**ARTICLE IV**

**CAPITAL STOCK**

A. The aggregate number of shares of capital stock that the Corporation will have authority to issue is fifty-one million (51,000,000), of which fifty million (50,000,000) will be shares of common stock, \$0.001 par value per share (the "***Common Stock***"), and one million (1,000,000) of which will be shares of preferred stock, \$0.001 par value per share (the "***Preferred Stock***"). Exhibit A hereto, incorporated herein by reference, sets forth the designation, number of shares, voting powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions therefor, of the Series A Preferred Stock, a series of the Preferred Stock. Exhibit B hereto, incorporated herein by reference, sets forth the designation, number of shares, voting powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions therefor of the Series B Preferred Stock, a series of the Preferred Stock. Exhibit C hereto, incorporated herein by reference, sets forth the designation, number of shares, voting powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions therefor of the Series C Preferred Stock, a series of the Preferred Stock.

B. In addition to the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, whose designations are incorporated herein by reference, subject to any vote expressly required by the Certificate of Incorporation, authority is hereby expressly granted to the Board of Directors from time to time to issue Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix the number of shares thereof, such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing, and subject to the rights of any series of Preferred Stock then outstanding, the resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to Preferred Stock of any other series to the extent permitted by law and as set forth herein.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

D. No stockholder of the Corporation shall, by reason of being a stockholder, have any preemptive right to acquire additional, unissued or treasury shares of the Corporation, or securities convertible into or carrying a right to subscribe to or to acquire any shares of any class of the Corporation now or hereafter authorized.

E. No stockholder shall have the right to cumulate votes at any election for directors of the Corporation.

#### **ARTICLE V**

#### **CORPORATE MATTERS**

The affairs of the Corporation shall be managed by a Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation shall be from time to time fixed by, or altered in the manner provided in, the Bylaws of the Corporation. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

#### **ARTICLE VI**

#### **AMENDMENTS**

In furtherance and not in limitation of the powers conferred upon the Board of Directors by law, the Board of Directors shall have the power to adopt, amend, and repeal, from time to time, Bylaws of the Corporation.

#### **ARTICLE VII**

#### **DURATION OF EXISTENCE**

The Corporation will have a perpetual existence.

**ARTICLE VIII**

**RIGHT TO AMEND**

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE IX**

**LIABILITY OF DIRECTORS**

The liability of the directors of the Corporation to the Corporation or its stockholders for monetary damages for acts or omissions occurring in their capacity as directors shall be limited to the fullest extent permitted by the laws of the State of Delaware and any other applicable law, as such laws now exist and to such greater extent as they may provide in the future.

Any repeal or modification of this Certificate of Incorporation shall operate prospectively only and shall not adversely affect the rights existing at the time of such repeal or modification of any of the aforementioned persons.

**ARTICLE X**

**INDEMNIFICATION**

The Corporation shall indemnify and advance expenses to and may provide indemnity insurance for each person who is or was a director or officer of the Corporation in every capacity in which such person serves for which the Corporation may or is required to indemnify or advance expenses to such person, for amounts incurred by such person in connection with any action, suit, or proceeding to which such person was, is or may be a party by reason of such person's position with the Corporation or service on behalf of the Corporation, when and to the fullest extent permitted or required by the laws of the State of Delaware and any other applicable law, as such laws now exist and to such greater extent as they may provide in the future.

Any repeal or modification of this Certificate of Incorporation shall operate prospectively only and shall not adversely affect the rights existing at the time of such repeal or modification of any of the aforementioned persons.

**EXHIBIT A**

**DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS**

**OF**

**SERIES A PREFERRED STOCK**

**OF**

**BIOSIG TECHNOLOGIES, INC.**

1. Designation, Amount and Par Value. This series of Preferred Stock shall be designated as the Corporation's Series A Preferred Stock and the number of shares so designated shall be two hundred (200). Each share of Series A Preferred Stock shall have a par value of \$0.001 per share.

2. Definitions. In this Exhibit A:

“*Junior Stock*” means the Corporation's common stock, par value \$0.001 per share (the “*Common Stock*”), and all other classes and series of equity securities of the Corporation which by their terms do not rank senior to or *pari passu* with the Series A Preferred Stock.

“*Stated Value*” means \$5,000 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction).

3. Dividends.

(a) Series A Preferred Stock Dividend Preference. Subject to any other provisions of this Amended and Restated Certificate of Incorporation (the “*Charter*”), including any other certificates of designation of Preferred Stock, the holders of Series A Preferred Stock, in preference to the holders of Junior Stock, shall be entitled to receive, but only out of any funds legally available for the declaration of dividends, cumulative dividends payable as provided in paragraph (b) below of this Section 3 at the rate of 5% per annum of the aggregate Stated Value of the shares of Series A Preferred Stock held by such holders. Dividends on shares of Series A Preferred Stock shall accrue and be cumulative from May 31, 2011 regardless of the date when the holder of Series A Preferred Stock actually received such Series A Preferred Stock, and shall accumulate and accrue from day to day thereafter. Dividends on the Series A Preferred Stock shall accrue on a daily basis, whether or not the Corporation has earnings or surplus at the time. Dividends paid on shares of Series A Preferred Stock and Series B Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all shares of Series A Preferred Stock and all shares of the Series B Preferred Stock at the time outstanding. No dividends or distributions (other than dividends or distributions on Junior Stock payable in Junior Stock) shall be paid upon, or declared or set apart for, the Junior Stock unless and until all cumulative dividends on the then outstanding shares of Series A Preferred Stock and shares of Series B Preferred Stock have been paid in full.

(b) Payment of Series A Preferred Stock Dividends. Dividends are payable at the option of the Corporation in cash or in shares of Series A Preferred Stock (including fractional shares). If the Corporation elects to pay dividends in shares of Series A Preferred Stock, the number of shares of Series A Preferred Stock to be issued to a holder pursuant to this Section 3(b) shall be an amount equal to the quotient of (i) the amount of the dividend payable to such holder divided by (ii) the Stated Value of a share of the Series A Preferred Stock then in effect. Fractional shares of Series A Preferred Stock may be issued pursuant to this Section 3.

(c) Junior Stock. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock and subject to the Corporation's complete satisfaction of all of its obligations to the Series A Preferred Stock and Series B Preferred Stock and as set forth in paragraphs (a) and (b) above of this Section 3, dividends may be declared and paid on the Junior Stock when and as determined by the Board of Directors, out of any funds legally available for such purposes.

4. Voting Rights. Except as otherwise provided by law or in this Section 4, the Series A Preferred Stock shall have no voting rights. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not (by merger, consolidation or otherwise), without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, consenting or voting (as the case may be) separately as a class, amend, alter or repeal any provision of the Certificate of Incorporation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock.

5. Redemption.

(a) Mandatory Redemption. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, on December 31, 2014 (the "**Redemption Date**"), the Corporation shall redeem all of the then issued and outstanding shares of Series A Preferred Stock, for cash, at a redemption price equal to the Stated Value of a share of Series A Preferred Stock plus an amount equal to all accumulated and unpaid dividends thereon to the Redemption Date (the "**Redemption Amount**").

(b) Redemption Procedures.

(i) Not less than 20 nor more than 60 days prior to the Redemption Date, a written notice specifying the time and place of the redemption shall be given by first-class mail, postage prepaid, to the holders of record of the shares of Series A Preferred Stock to be redeemed at their respective addresses as the same shall appear on the books of the Corporation, calling upon each holder of record to surrender to the Corporation on the Redemption Date at the place designated in the notice his certificate or certificates representing all the shares of Series A Preferred Stock owned by such holder. Neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice. On or after the Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed shall present and surrender its certificate or certificates for such shares to the Corporation at the place designated in the redemption notice, and thereupon the redemption price of the shares shall be paid to or on the order of the person whose name appears on such certificate or certificates as the owner thereof in immediately available funds, and each surrendered certificate shall be canceled.

(ii) If a notice of redemption has been given pursuant to this Section 5 and if, on or before the Redemption Date, the funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the Series A Preferred Stock, then, notwithstanding that any certificates for such shares have not been surrendered for cancellation, on the date that funds for the redemption of the Series A Preferred Stock are actually paid to the holders thereof (the "**Payment Date**"), dividends shall cease to accrue on the shares of Series A Preferred Stock at the close of business on the Payment Date and the holders of such shares shall cease to be stockholders with respect to those shares, shall have no interest in or claims against the Corporation by virtue thereof and shall have no voting or other rights with respect thereto, except the right to receive the moneys payable upon such redemption upon surrender of their certificates, and the shares evidenced thereby shall be deemed to be no longer outstanding. Any interest accrued on funds so deposited shall be paid to the Corporation from time to time.

(iii) If the Corporation shall fail to deliver any or all of the Redemption Price to a holder on the Payment Date, any portion of the Redemption Price payable to such holder hereunder shall accrue interest at the rate of 14% per annum until paid.

(c) Retirement. Shares of Series A Preferred Stock redeemed by the Corporation shall not be reissued and shall be retired in the manner provided in the General Corporation Law of the State of Delaware.

6. Conversion. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, the holders of the Series A Preferred Stock shall have conversion rights as follows (the “*Conversion Rights*”):

(a) Automatic Conversion. Immediately upon the Corporation becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended (the “*Conversion Event*”), the outstanding shares of Series A Preferred Stock and all accrued but unpaid dividends thereon through and including the date of conversion shall be automatically converted into shares of Common Stock at a price of \$1.85 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the “*Conversion Price*”). The fully paid and non-assessable shares of Common Stock issuable to the holders of Series A Preferred Stock upon the conversion of the shares of the Series A Preferred Stock are referred to herein as the “*Conversion Shares*.”

(b) Optional Conversion. Any holder of Series A Preferred Stock shall be entitled at any time and/or from time to time prior to the automatic conversion described in Section 6(a) to convert any whole or partial number of shares of Series A Preferred Stock into Conversion Shares at the Conversion Price. For purposes of this Section 6(b), the number of Conversion Shares issuable to the holder shall be equal to a fraction, the numerator of which is the sum of (i) the aggregate Stated Value of those shares being converted and (ii) all accrued but unpaid dividends thereon, and the denominator of which is the Conversion Price. The Corporation shall not issue any fractional Conversion Shares upon any conversion pursuant to this Section 6(b). All Conversion Shares (including fractions thereof) issuable upon conversion of the Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a Conversion Share. If, after the aforementioned aggregation, the issuance would result in the issuance of a fraction of a Conversion Share, the Corporation shall, in lieu of issuing such fractional share, round the number of shares to be issued upon conversion up to the nearest whole number of shares. Notwithstanding anything to the contrary provided herein or elsewhere, upon conversion pursuant to this Section 6(b), all accrued but unpaid dividends shall be payable in immediately available funds to the converting holder of the Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into Conversion Shares, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock or, if such certificates are lost, provide the Corporation with fully completed and executed standard lost stock affidavits. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, appropriate corporate documentation evidencing the Conversion Shares to which he shall be entitled as aforesaid. In the case of an automatic conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the Conversion Event, and the person or persons entitled to receive the Conversion Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares on such date.

7. Liquidation Preference.

(a) Series A Preferred Stock. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, in the event of any liquidation, dissolution, winding up or similar event of the Corporation and/or its operating subsidiary, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Junior Stock by reason of their ownership thereof, the amount of \$5,000 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, plus all accrued but unpaid dividends on such share for each share of Series A Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid amount, then the entire assets and funds of the Corporation legally available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock and the holders of the Series B Preferred Stock in proportion to the amount each such holder is otherwise entitled to receive.

(b) Junior Stock. If the assets of the Corporation are sufficient to permit the payment to the holders of the Series A Preferred Stock of the amounts called for under paragraph (a) of this Section 7, no additional distributions shall be made to holders of Series A Preferred Stock and the remainder of such assets after the distribution of the amounts called for under paragraph (a) of this Section 7, shall then be distributed pro rata to the holders of Junior Stock.

8. Exclusion of Other Rights. Unless otherwise required by law, the holders of shares of Series A Preferred Stock shall not have any voting powers, preferences or relative, participating, optional, or other special rights other than those specifically set forth in this Exhibit A.

9. In Pari Passu. Unless the context otherwise requires, the rights and preferences of the holders of Series A Preferred Stock and the holders of the Series B Preferred Stock with respect to dividends, including the payment of dividends in shares of Preferred Stock in lieu of cash, redemption, automatic conversion, and liquidation preference, shall be treated on a pari passu basis.

**EXHIBIT B**

**DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS**

**OF**

**SERIES B PREFERRED STOCK**

**OF**

**BIOSIG TECHNOLOGIES, INC.**

1. Designation, Amount and Par Value. This series of Preferred Stock shall be designated as the Corporation's Series B Preferred Stock and the number of shares so designated shall be six hundred (600). Each share of Series B Preferred Stock shall have a par value of \$0.001 per share.

2. Definitions. In this Exhibit B:

“*Junior Stock*” means the Corporation's common stock, par value \$0.001 per share (the “*Common Stock*”), and all other classes and series of equity securities of the Corporation which by their terms do not rank senior to or *pari passu* with the Series B Preferred Stock.

“*Stated Value*” means \$5,000 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction).

3. Dividends.

(a) Series B Preferred Stock Dividend Preference. Subject to any other provisions of this Amended and Restated Certificate of Incorporation (the “*Charter*”), including any other certificates of designation of Preferred Stock, the holders of Series B Preferred Stock, in preference to the holders of Junior Stock, shall be entitled to receive, but only out of any funds legally available for the declaration of dividends, cumulative, dividends payable as provided in paragraph (b) below of this Section 3 at the rate of 5% per annum of the aggregate Stated Value of the shares of Series B Preferred Stock held by such holders. Dividends on shares of Series B Preferred Stock shall accrue and be cumulative from December 31, 2011 regardless of the date when the holder of Series B Preferred Stock actually received such Series B Preferred Stock, and shall accumulate and accrue from day to day thereafter. Dividends on the Series B Preferred Stock shall accrue on a daily basis, whether or not the Corporation has earnings or surplus at the time. Dividends paid on shares of Series B Preferred Stock and Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all shares of Series B Preferred Stock and all shares of the Series A Preferred Stock at the time outstanding. No dividends or distributions (other than dividends or distributions on Junior Stock payable in Junior Stock) shall be paid upon, or declared or set apart for, the Junior Stock unless and until all cumulative dividends on the then outstanding shares of Series B Preferred Stock and shares of Series A Preferred Stock have been paid in full.

(b) Payment of Series B Preferred Stock Dividends. Dividends are payable at the option of the Corporation in cash or in shares of Series B Preferred Stock (including fractional shares). If the Corporation elects to pay dividends in shares of Series B Preferred Stock, the number of shares of Series B Preferred Stock to be issued to a holder pursuant to this Section 3(b) shall be an amount equal to the quotient of (i) the amount of the dividend payable to such holder divided by (ii) the Stated Value of a share of the Series B Preferred Stock then in effect. Fractional shares of Series B Preferred Stock may be issued pursuant to this Section 3.



(c) Junior Stock. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock and subject to the Corporation's complete satisfaction of all of its obligations to the Series A Preferred Stock and Series B Preferred Stock and as set forth in paragraphs (a) and (b) above of this Section 3, dividends may be declared and paid on the Junior Stock when and as determined by the Board of Directors, out of any funds legally available for such purposes.

4. Voting Rights. Except as otherwise provided by law or in this Section 4, the Series B Preferred Stock shall have no voting rights. So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not (by merger, consolidation or otherwise), without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of Series B Preferred Stock, consenting or voting (as the case may be) separately as a class, amend, alter or repeal any provision of the Certificate of Incorporation in a manner that adversely affects the powers, preferences or rights of the Series B Preferred Stock.

5. Redemption.

(a) Mandatory Redemption. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, on December 31, 2014 (the "**Redemption Date**"), the Corporation shall redeem all of the then issued and outstanding shares of Series B Preferred Stock, for cash, at a redemption price equal to the Stated Value of a share of Series B Preferred Stock plus an amount equal to all accumulated and unpaid dividends thereon to the Redemption Date (the "**Redemption Amount**").

(b) Redemption Procedures.

(i) Not less than 20 nor more than 60 days prior to the Redemption Date, a written notice specifying the time and place of the redemption shall be given by first-class mail, postage prepaid, to the holders of record of the shares of Series B Preferred Stock to be redeemed at their respective addresses as the same shall appear on the books of the Corporation, calling upon each holder of record to surrender to the Corporation on the Redemption Date at the place designated in the notice his certificate or certificates representing all the shares of Series B Preferred Stock owned by such holder. Neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice. On or after the Redemption Date, each holder of shares of Series B Preferred Stock to be redeemed shall present and surrender its certificate or certificates for such shares to the Corporation at the place designated in the redemption notice, and thereupon the redemption price of the shares shall be paid to or on the order of the person whose name appears on such certificate or certificates as the owner thereof in immediately available funds, and each surrendered certificate shall be canceled.

(ii) If a notice of redemption has been given pursuant to this Section 5 and if, on or before the Redemption Date, the funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the Series B Preferred Stock, then, notwithstanding that any certificates for such shares have not been surrendered for cancellation, on the date that funds for the redemption of the Series B Preferred Stock are actually paid to the holders thereof (the "**Payment Date**"), dividends shall cease to accrue on the shares of Series B Preferred Stock at the close of business on the Payment Date and the holders of such shares shall cease to be stockholders with respect to those shares, shall have no interest in or claims against the Corporation by virtue thereof and shall have no voting or other rights with respect thereto, except the right to receive the moneys payable upon such redemption upon surrender of their certificates, and the shares evidenced thereby shall be deemed to be no longer outstanding. Any interest accrued on funds so deposited shall be paid to the Corporation from time to time.

(iii) If the Corporation shall fail to deliver any or all of the Redemption Price to a holder on the Payment Date, any portion of the Redemption Price payable to such holder hereunder shall accrue interest at the rate of 14% per annum until paid.

(c) Retirement. Shares of Series B Preferred Stock redeemed by the Corporation shall not be reissued and shall be retired in the manner provided in the General Corporation Law of the State of Delaware.

6. Conversion. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, the holders of the Series B Preferred Stock shall have conversion rights as follows (the “*Conversion Rights*”):

(a) Automatic Conversion. Immediately upon the Corporation becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended (the “*Conversion Event*”), the outstanding shares of Series B Preferred Stock and all accrued but unpaid dividends thereon through and including the date of conversion shall be automatically converted into shares of Common Stock at a price of \$2.16 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the “*Conversion Price*”). The fully paid and non-assessable shares of Common Stock issuable to the holders of Series B Preferred Stock upon the conversion of the shares of the Series B Preferred Stock are referred to herein as the “*Conversion Shares*.”

(b) Optional Conversion. Any holder of Series B Preferred Stock shall be entitled at any time and/or from time to time prior to the automatic conversion described in Section 6(a) to convert any whole or partial number of shares of Series B Preferred Stock into Conversion Shares at the Conversion Price. For purposes of this Section 6(b), the number of Conversion Shares issuable to the holder shall be equal to a fraction, the numerator of which is the sum of (i) the aggregate Stated Value of those shares being converted and (ii) all accrued but unpaid dividends thereon, and the denominator of which is the Conversion Price. The Corporation shall not issue any fractional Conversion Shares upon any conversion pursuant to this Section 6(b). All Conversion Shares (including fractions thereof) issuable upon conversion of the Series B Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a Conversion Share. If, after the aforementioned aggregation, the issuance would result in the issuance of a fraction of a Conversion Share, the Corporation shall, in lieu of issuing such fractional share, round the number of shares to be issued upon conversion up to the nearest whole number of shares. Notwithstanding anything to the contrary provided herein or elsewhere, upon conversion pursuant to this Section 6(b), all accrued but unpaid dividends shall be payable in immediately available funds to the converting holder of the Series B Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to convert the same into Conversion Shares, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock or, if such certificates are lost, provide the Corporation with fully completed and executed standard lost stock affidavits. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred Stock, appropriate corporate documentation evidencing the Conversion Shares to which he shall be entitled as aforesaid. In the case of an automatic conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the Conversion Event and the person or persons entitled to receive the Conversion Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares on such date.

7. Liquidation Preference.

(a) Series B Preferred Stock. Subject to any other provisions of this Charter, including any other certificates of designation of Preferred Stock, in the event of any liquidation, dissolution, winding up or similar event of the Corporation and/or its operating subsidiary, whether voluntary or involuntary, the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Junior Stock by reason of their ownership thereof, the amount of \$5,000 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, plus all accrued but unpaid dividends on such share for each share of Series B Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock and the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid amount, then the entire assets and funds of the Corporation legally available for such distribution shall be distributed ratably among the holders of the Series B Preferred Stock and the holders of the Series A Preferred Stock in proportion to the amount each such holder is otherwise entitled to receive.

(b) Junior Stock. If the assets of the Corporation are sufficient to permit the payment to the holders of the Series B Preferred Stock of the amounts called for under paragraph (a) of this Section 7, no additional distributions shall be made to holders of Series B Preferred Stock and the remainder of such assets after the distribution of the amounts called for under paragraph (a) of this Section 7, shall then be distributed pro rata to the holders of Junior Stock.

8. Exclusion of Other Rights. Unless otherwise required by law, the holders of shares of Series B Preferred Stock shall not have any voting powers, preferences or relative, participating, optional, or other special rights other than those specifically set forth in this Exhibit B.

9. In Pari Passu. Unless the context otherwise requires, the rights and preferences of the holders of Series B Preferred Stock and the holders of the Series A Preferred Stock with respect to dividends, including the payment of dividends in shares of Preferred Stock in lieu of cash, redemption, automatic conversion, and liquidation preference, shall be treated on a pari passu basis.

**EXHIBIT C**

**DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS**

**OF**

**SERIES C PREFERRED STOCK**

**OF**

**BIOSIG TECHNOLOGIES, INC.**

Section 1.            Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Bankruptcy Event” means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(d).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(c)(iv).

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act), other than a legal entity majority owned by, or a group wholly consisting of, officers and directors of the corporation and their Affiliates, of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 50% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Closing” means a closing of the purchase and sale of the Securities pursuant to Section 2.1 of the Purchase Agreement.

“Closing Date” means a Trading Day on which all of the Transaction Documents have been executed and delivered by the Corporation and each of the purchasers purchasing shares of Preferred Stock and Warrants at the relevant Closing, and all conditions precedent to (i) the purchasers’ obligations to pay the Subscription Amount and (ii) the Corporation’s obligations to deliver the shares of Preferred Stock and Warrants, in each case, have been satisfied or waived.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Conversion Shares Registration Statement” means a registration statement that registers the resale of all Conversion Shares of the Holders, who shall be named as “selling stockholders” therein and meets the requirements of the Registration Rights Agreement.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Dividend Conversion Rate” means the lesser of (a) the Conversion Price or (b) 90% of the lesser of (i) the average of the VWAPs for the 5 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Dividend Payment Date or (ii) the average of the VWAPs for the 5 consecutive Trading Days ending on the Trading Day that is immediately prior to the date the applicable dividend conversion Shares are issued and delivered if such delivery is after the Dividend Payment Date.

“Dividend Notice Period” shall have the meaning set forth in Section 3(a).

“Dividend Payment Date” shall have the meaning set forth in Section 3(a).

“Dividend Share Amount” shall have the meaning set forth in Section 3(a).

“Effective Date” means the date that the Conversion Shares Registration Statement filed by the Corporation pursuant to the Registration Rights Agreement is first declared effective by the Commission.

“Equity Conditions” means, during the period in question, (a) the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Corporation shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c)(i) there is an effective Conversion Shares Registration Statement pursuant to which the Holders are permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future), or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Corporation as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) the issuance of the shares in question to the applicable Holder would not violate the limitations set forth in Section 6(d) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Corporation that constitutes, or may constitute, material non-public information, and (j) for each Trading Day in a period of 20 consecutive Trading Days prior to the applicable date in question, the daily trading volume for the Common Stock on the principal Trading Market exceeds \$100,000 per Trading Day.

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

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose, (b) the Qualified Offering (as defined in the Purchase Agreement), (c) securities upon the exercise or exchange of or conversion of any securities issued pursuant to the Purchase Agreement and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date of the Purchase Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of any such securities, and (d) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an asset in a business synergistic with the business of the Corporation and shall provide to the Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

“Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“GAAP” means United States generally accepted accounting principles.

“Holder” shall have the meaning given such term in Section 2.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$250,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of \$250,000 due under leases required to be capitalized in accordance with GAAP.

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Corporation.

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Liquidation” shall have the meaning set forth in Section 5.

“Make-Whole Payment” shall have the meaning set forth in Section 3(a).

“New York Courts” shall have the meaning set forth in Section 11(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Permitted Indebtedness” means (a) the Indebtedness existing on the Original Issue Date (or committed to and final terms agreed to on the Original Issue Date) and set forth on Schedule 3.1(z) attached to the Purchase Agreement, (b) lease obligations and purchase money indebtedness of up to \$500,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets and Indebtedness incurred in connection with a Qualified Offering.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Corporation’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Corporation’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (b) thereunder, provided that such Liens are not secured by assets of the Corporation or its Subsidiaries other than the assets so acquired or leased.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of February 6, 2013, among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Corporation and the original Holders, in the form of Exhibit D attached to the Purchase Agreement.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Holder as provided for in the Registration Rights Agreement.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities” means the Preferred Stock, the Warrants, the Warrant Shares and the Conversion Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Share Delivery Date” shall have the meaning set forth in Section 6(c).



“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Subscription Amount” shall mean, as to each Holder, the aggregate amount to be paid for the Preferred Stock purchased pursuant to the Purchase Agreement as specified below such Holder’s name on the signature page of the Purchase Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsidiary” means any subsidiary of the Corporation as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

“Successor Entity” shall have the meaning set forth in Section 7(e).

“Trading Day” means a day on which the principal Trading Market is open for trading; provided, that in the event that the Common Stock is not listed or quoted for trading on a Trading Market on the date in question, then Trading Day shall mean a Business Day.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTC QB Marketplace or the OTC QX Marketplace (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designation, the Purchase Agreement, the Warrants, the Registration Rights Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement.

“Transfer Agent” means a transfer agent for the Corporation’s Common Stock and the Securities, and any successor transfer agent of the Corporation. If the Corporation does not have a transfer agent for its Common Stock on the date in question since its shares of Common Stock are not listed for trading on a stock exchange or automated quotation service, then Transfer Agent shall mean the Company.

“Triggering Event” shall have the meaning set forth in Section 10(a).

“Triggering Redemption Amount” means, for each share of Preferred Stock, the sum of (a) the greater of (i) 120% of the Stated Value and (ii) the product of (y) the VWAP on the Trading Day immediately preceding the date of the Triggering Event and (z) the Stated Value divided by the then Conversion Price, (b) all accrued but unpaid dividends thereon and (c) all liquidated damages and other costs, expenses or amounts due in respect of the Preferred Stock.

“Triggering Redemption Payment Date” shall have the meaning set forth in Section 10(b).

“Underlying Shares” means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock, upon exercise of the Warrants and issued and issuable in lieu of the cash payment of dividends on the Preferred Stock in accordance with the terms of this Certificate of Designation.

“Variable Rate Transaction” shall have the meaning ascribed to such term in Section 4.13(b) of the Purchase Agreement.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported on the OTC Pink Marketplace maintained by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

“Warrants” means, collectively, the Common Stock purchase warrants delivered to the Holder at each Closing in accordance with Section 2.2(a) of the Purchase Agreement, which Warrants shall be exercisable immediately and have a term of exercise equal to 5 years, in the form of Exhibit C attached to the Purchase Agreement.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as the Corporation’s Series C 9% Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 4,200 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”)). Each share of Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,000, subject to increase set forth in Section 3 below (the “Stated Value”).

Section 3. Dividends.

a) Dividends in Cash or in Kind; Make-Whole Payment. Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) from the initial Closing Date and for so long as Preferred Stock is outstanding, of 9% per annum (subject to increase pursuant to Section 10(b)), payable initially quarterly on September 30, 2013 and thereafter quarterly on December 31, March 31, June 30 and September 30, and on each Conversion Date (with respect only to Preferred Stock being converted) (each such date, a “Dividend Payment Date”) (if any Dividend Payment Date is not a Trading Day, the applicable payment shall be due on the next succeeding Trading Day) in cash, or at the Corporation’s option, in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock as set forth in this Section 3(a), or a combination thereof (the amount to be paid in shares of Common Stock, the “Dividend Share Amount”); provided, however, upon the conversion of Preferred Stock prior to February 6, 2016, the Corporation shall also pay to the Holders of the Preferred Stock so converted cash, or at the Corporation’s option, in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock as set forth in this Section 3(a), or a combination thereof, with respect to the Preferred Stock so converted in an amount equal to \$270 per \$1,000 of Stated Value of the Preferred Stock, less the amount of all prior quarterly dividends paid on such converted Preferred Stock before the relevant Conversion Date (the “Make-Whole Payment”). The form of dividend payments and Make-Whole Payments to each Holder shall be determined in the following order of priority: (i) if funds are legally available for the payment of dividends and the Equity Conditions have not been met during the 5 consecutive Trading Days immediately prior to the applicable Dividend Payment Date or Conversion Date (the “Dividend Notice Period”), in cash only, (ii) if funds are legally available for the payment of dividends and the Equity Conditions have been met during the Dividend Notice Period, at the sole election of the Corporation, in any combination of cash or shares of Common Stock which shall be valued solely for such purpose at 90% of the average of the VWAPs for the 5 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Dividend Payment Date or Conversion Date, (iii) if funds are not legally available for the payment of dividends and the Equity Conditions have been met during the Dividend Notice Period, in shares of Common Stock which shall be valued solely for such purpose at 90% of the average of the VWAPs for the 5 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Dividend Payment Date or Conversion Date, (iv) if funds are not legally available for the payment of dividends and the Equity Condition relating to an effective Conversion Shares Registration Statement has been waived by such Holder, as to such Holder only, in unregistered shares of Common Stock which shall be valued solely for such purpose at 90% of the average of the VWAPs for the 5 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Dividend Payment Date or Conversion Date, and (v) if funds are not legally available for the payment of dividends and the Equity Conditions have not been met during the Dividend Notice Period, then, at the election of such Holder, such dividends shall accrue to the next applicable Dividend Payment or Date Conversion Date or shall be accreted to, and increase, the outstanding Stated Value. The Holders shall have the same rights and remedies with respect to the delivery of any such shares as if such shares were being issued pursuant to Section 6. In the event the Corporation notifies the Holders that it will pay dividends in whole or in part in shares of Common Stock based on its good faith and reasonable belief that the Corporation it will be in compliance with the Equity Conditions during the Dividend Notice Period, and the Corporation determines on or before the first day of the Dividend Notice Period that it will not be in compliance with the Equity Conditions, it shall so notify the Holders and each Holder may elect to receive Common Stock or cash.

b) Participating Dividends on As-Converted Basis. From and after February 6, 2016, in addition to the payment of dividends pursuant to Section 2(a) herein, Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal to (on an as-if-converted-to-Common-Stock basis) and in the same form as dividends (other than dividends in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends in the form of Common Stock) are paid on shares of the Common Stock. The Corporation shall pay no dividends (other than dividends in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

c) Corporation's Ability to Pay Dividends in Cash or Kind. The Corporation shall promptly notify the Holders at any time the Corporation shall become able or unable, as the case may be, to legally pay cash dividends. If at any time the Corporation has the right to pay dividends in cash or shares of Common Stock, the Corporation must provide the Holders with at least 20 Trading Days' notice of its election to pay a regularly scheduled dividend in shares of Common Stock (the Corporation may indicate in such notice that the election contained in such notice shall continue for later periods until revised by a subsequent notice). If at any time the Corporation delivers a notice to the Holders of its election to pay the dividends in shares of Common Stock after the Registration Statement has been declared effective by the Commission, the Corporation shall timely file a prospectus supplement pursuant to Rule 424 disclosing such election. The aggregate number of shares of Common Stock otherwise issuable to a Holder on a Dividend Payment Date shall be reduced by the number of shares of Common Stock previously issued to such Holder in connection with such Dividend Payment Date.

d) Dividend Calculations. Dividends on the Preferred Stock shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Payment of dividends in shares of Common Stock shall otherwise occur pursuant to Section 6(c)(i) herein and, solely for purposes of the payment of dividends in shares, the Dividend Payment Date shall be deemed the Conversion Date. Dividends shall cease to accrue with respect to any Preferred Stock converted, provided that, the Corporation actually delivers the Conversion Shares within the time period required by Section 6(c)(i) herein. Except as otherwise provided herein, if at any time the Corporation pays dividends partially in cash and partially in shares, then such payment shall be distributed ratably among the Holders based upon the number of shares of Preferred Stock held by each Holder on such Dividend Payment Date.

e) Late Fees. Any dividends, whether paid in cash or shares of Common Stock, that are not paid within five Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 18% per annum or the lesser rate permitted by applicable law which shall accrue daily from the Dividend Payment Date through and including the date of actual payment in full.

f) Other Securities. So long as at least 15% of the originally issued shares of Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10(b). So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon (other than a dividend or distribution described in Section 6 or dividends due and paid in the ordinary course on preferred stock of the Corporation at such times when the Corporation is in compliance with its payment and other obligations hereunder), nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

g) Special Reserves. The Corporation acknowledges and agrees that the capital of the Corporation (as such term is used in Section 154 of the Delaware General Corporation Law) in respect of the Preferred Stock and any future issuances of the Corporation's capital stock shall be equal to the aggregate par value of such Preferred Stock or capital stock, as the case may be, and that, on or after the date of the Purchase Agreement, it shall not increase the capital of the Corporation with respect to any shares of the Corporation's capital stock issued and outstanding on such date. The Corporation also acknowledges and agrees that it shall not create any special reserves under Section 171 of the Delaware General Corporation Law without the prior written consent of each Holder.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. Holders of Preferred Stock shall vote together with the holders of Common Stock on an as converted basis but may not vote such Preferred Stock, which would exceed the Beneficial Ownership Limitation. In any event, and notwithstanding the foregoing limitation, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of at least 67% in Stated Value of the then outstanding shares of the Preferred Stock provided such holders must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (c) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (d) increase the number of authorized shares of Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing.

Section 5.                    Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. A Fundamental Transaction or Change of Control Transaction shall not be deemed a Liquidation. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6.                    Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a “Notice of Conversion”). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal **\$2.30**, subject to adjustment herein (the “Conversion Price”).

c) Mechanics of Conversion

i. Delivery of Certificate Upon Conversion. Not later than five (5) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder (A) a certificate or certificates representing the Conversion Shares which, on or after the earlier of (i) the Effective Date or (ii) the one year anniversary of the final Closing Date (provided that the Holder provides the Corporation or the Corporation’s counsel with any reasonable certifications requested by the Corporation with respect to future sales of such Conversion Shares) shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of the Preferred Stock (including, if the Corporation has given continuous notice pursuant to Section 3(c) for payment of dividends in shares of Common Stock at least 20 Trading Days prior to the date on which the Notice of Conversion is delivered to the Corporation, shares of Common Stock representing the payment of accrued dividends otherwise determined pursuant to Section 3(a) but assuming that the Dividend Notice Period is the 20 Trading Days period immediately prior to the date on which the Notice of Conversion is delivered to the Corporation and excluding for such issuance the condition that the Corporation deliver the Dividend Share Amount as to such dividend payment prior to the commencement of the Dividend Notice Period), and (B) a bank check in the amount of accrued and unpaid dividends (if the Corporation has elected or is required to pay accrued dividends in cash). On or after the earlier of (i) the Effective Date or (ii) the one year anniversary of the final Closing Date, the Corporation shall use commercially reasonable efforts to deliver any certificate or certificates required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions if the Corporation if then a participant in such system.

ii. Failure to Deliver Certificates. If, in the case of any Notice of Conversion, such certificate or certificates are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such certificate or certificates, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Common Stock certificates issued to such Holder pursuant to the rescinded Conversion Notice.

iii. Obligation Absolute; Partial Liquidated Damages. Except as otherwise set forth in this Section 6(c)(iii), the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such certificate or certificates pursuant to Section 6(c)(i) on the second Trading Day after the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after such second Trading Day after the Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable certificate or certificates by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Conversion Shares Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Conversion Shares Registration Statement (subject to such Holder's compliance with its obligations under the Registration Rights Agreement).

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price.

vii. Transfer Taxes and Expenses. The issuance of certificates for shares of the Common Stock on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

d) Beneficial Ownership Limitation. The Corporation shall not affect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock or the Warrants) beneficially owned by such Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon not less than 61 days' prior notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase or decrease will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.



a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, despite the prohibition set forth in the Purchase Agreement, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether a Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. If the Corporation, at any time while this Preferred Stock is outstanding, distributes to all holders of Common Stock (and not to the Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (other than the Common Stock, which shall be subject to Section 7(c)), then in each such case the Conversion Price shall be adjusted by multiplying such Conversion Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then fair market value at such record date of the portion of such assets or evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors of the Corporation in good faith. In either case the adjustments shall be described in a statement delivered to the Holders describing the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall, if (i) after the Effective Date simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K, and (ii) if prior to the Effective Date disclose all such information in the Registration Statement. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8.                    Forced Conversion. Under no circumstances may the Corporation compel the conversion of the Preferred Stock without the consent of the Holder.

Section 9.                    Negative Covenants. As long as at least 15% of the originally issued shares of Preferred Stock are outstanding, unless the holders of at least 67% in Stated Value of the then outstanding shares of Preferred Stock, which holders must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of Preferred Stock, shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents;

d) pay cash dividends or distributions on Junior Securities of the Corporation;

e) enter into any transaction with any Affiliate of the Corporation which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Corporation (even if less than a quorum otherwise required for board approval); or

f) enter into any agreement with respect to any of the foregoing.

In addition, as long as any shares of Preferred Stock are outstanding, unless the holders of at least 67% in Stated Value of the then outstanding shares of Preferred Stock, which holders must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of Preferred Stock, shall have otherwise given prior written consent, the Corporation shall not, directly or indirectly, amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder except to the extent required to effect a reverse stock split permitted by the Purchase Agreement.

Section 10.                    Redemption Upon Triggering Events.

a) "Triggering Event" means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. the Corporation shall fail to deliver certificates representing Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the seventh Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Preferred Stock in accordance with the terms hereof;

ii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within five calendar days after notice therefor is delivered hereunder;

iii. the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder;

iv. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, which failure or breach could have a Material Adverse Effect, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered;

v. the Corporation shall have failed to compete a financing or series of related financings within twelve months after the Original Issue Date that results in gross proceeds to the Corporation of at least \$3,000,000 at a valuation of at least \$30,000,000;

vi. the Corporation shall be party to a Change of Control Transaction;

vii. there shall have occurred a Bankruptcy Event;

viii. from and after the sooner of (A) one year anniversary of the Original Issue Date, or (B) one hundred and twenty (120) days after the Effective Date, the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than five Trading Days in any twelve month period, which need not be consecutive Trading Days; or

ix. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days.

b) Upon the occurrence of a Triggering Event, each Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation with respect to each share of Preferred Stock to, (A) redeem each share of Preferred Stock then held by such Holder for a redemption price, in cash, equal to the Triggering Redemption Amount or (B) either (a) redeem each share of Preferred Stock then held by such Holder for a redemption price, in shares of Common Stock, equal to a number of shares of Common Stock equal to the Triggering Redemption Amount divided by 75% of the average of the 10 VWAPs immediately prior to the date of election hereunder, or (b) increase the dividend rate on all of the outstanding Preferred Stock held by such Holder to 18% per annum thereafter, or (c) only with respect to the Triggering Event set forth in Section 10(a)(v) automatically reduce the Conversion Price to \$1.50, subject to the other and further adjustments described herein. The Triggering Redemption Amount, in cash or in shares, shall be due and payable or issuable, as the case may be, within five Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Corporation fails to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section (whether in cash or shares of Common Stock), the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered as set forth in the Purchase Agreement, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment obligation shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series C 9% Convertible Preferred Stock.

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ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series C 9% Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "Common Stock"), of BioSig Technologies, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_

Name:

Title:

**CERTIFICATE OF AMENDMENT  
TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
BIOSIG TECHNOLOGIES, INC.**

**BioSig Technologies, Inc.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is BioSig Technologies, Inc.

SECOND: That the Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 21, 2011.

THIRD: That the Corporation's Amended and Restated Certificate of Incorporation (the "Charter") was filed with the Secretary of State of the State of Delaware on February 6, 2013.

FOURTH: That the Board of Directors of the Corporation has duly adopted resolutions proposing to amend the Charter, and that said amendment was duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware. This Certificate of Amendment amends the provisions of the Charter as set forth herein.

FIFTH: That the text of the Charter is hereby amended as follows:

1. Section 6(a) of Exhibit A of the Charter shall be deleted in its entirety and replaced with the following:

"Automatic Conversion. Immediately upon the Corporation becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended (the "**Conversion Event**"), the outstanding shares of Series A Preferred Stock and all accrued but unpaid dividends thereon through and including the date of conversion shall be automatically converted into shares of Common Stock at a price of \$1.84 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the "**Conversion Price**"). The fully paid and non-assessable shares of Common Stock issuable to the holders of Series A Preferred Stock upon the conversion of the shares of the Series A Preferred Stock are referred to herein as the "**Conversion Shares.**" "

2. Section 6(a) of Exhibit B of the Charter shall be deleted in its entirety and replaced with the following:

"Automatic Conversion. Immediately upon the Corporation becoming subject to the reporting requirements under Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended (the "**Conversion Event**"), the outstanding shares of Series B Preferred Stock and all accrued but unpaid dividends thereon through and including the date of conversion shall be automatically converted into shares of Common Stock at a price of \$2.02 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the "**Conversion Price**"). The fully paid and non-assessable shares of Common Stock issuable to the holders of Series B Preferred Stock upon the conversion of the shares of the Series B Preferred Stock are referred to herein as the "**Conversion Shares.**" "

3. Section 6(b) of Exhibit C of the Charter shall be deleted in its entirety and replaced with the following:
-

“Conversion Price.” The conversion price for the Preferred Stock shall equal **\$2.09**, subject to adjustment herein (the “Conversion Price”.)”

*[Signature Page to Follow]*

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized officer, this 6<sup>th</sup> day of February, 2013.

**BIOSIG TECHNOLOGIES, INC.**

By: /s/ Kenneth Londoner  
Kenneth Londoner  
Chairman and Chief Executive Officer

**CERTIFICATE OF SECOND AMENDMENT  
TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
BIOSIG TECHNOLOGIES, INC.**

**BioSig Technologies, Inc.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is BioSig Technologies, Inc.

SECOND: That the Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 21, 2011.

THIRD: That the Corporation's Amended and Restated Certificate of Incorporation (the "Charter") was filed with the Secretary of State of the State of Delaware on February 6, 2013.

FOURTH: That the Board of Directors of the Corporation has duly adopted resolutions proposing to amend the Charter, and that said amendment was duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware. This Certificate of Amendment amends the provisions of the Charter as set forth herein.

FIFTH: That the text of the Charter is hereby amended as follows:

1. In Exhibit C of the Charter, in the definition of "Change of Control Transaction," all references to "the date hereof" shall be deleted and replaced with "February 12, 2013".
2. In Exhibit C of the Charter, in the definition of "Exempt Issuance," all references to "the date of the Purchase Agreement" shall be deleted and replaced with "February 12, 2013".
3. In Exhibit C of the Charter, the definition of "Original Issue Date" shall be deleted in its entirety and replaced with "Original Issue Date" shall mean February 12, 2013".
4. In Section 3(a) of Exhibit C of the Charter, the reference to "February 6, 2016" shall be deleted and replaced with "February 12, 2016".
5. In Section 3(b) of Exhibit C of the Charter, the reference to "February 6, 2016" shall be deleted and replaced with "February 12, 2016".
6. In Section 3(g) of Exhibit C of the Charter, the reference to "the date of the Purchase Agreement" shall be deleted and replaced with "February 12, 2013".

*[Signature Page to Follow]*

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized officer, this 11<sup>th</sup> day of March, 2013.

**BIOSIG TECHNOLOGIES, INC.**

By: /s/ Kenneth Londoner  
Kenneth Londoner  
Chairman and Chief Executive Officer

**BYLAWS OF  
BIOSIG TECHNOLOGIES, INC.**

**(A Delaware Corporation)**

**April 21, 2011**

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**BYLAWS OF**  
**BIOSIG TECHNOLOGIES, INC.**

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ARTICLE I

**CORPORATE OFFICES**

1.1 REGISTERED OFFICE

The registered office of the corporation shall be fixed in the corporation's certificate of incorporation.

1.2 OTHER OFFICES

The Board of Directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II

**MEETINGS OF STOCKHOLDERS**

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal office of the corporation.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held each year on a date and at a time designated by the Board of Directors. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding business day. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING

A special meeting of the stockholders may be called at any time by the Board of Directors, the chairman of the board, the chief executive officer, the president (in the absence of a chief executive officer) or by one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent of the votes at that meeting.

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If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission or by electronic transmission (including by e-mail or over the World Wide Web in any electronic format), to the chairman of the board, the chief executive officer, the president (in the absence of a chief executive officer), or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than ten (10) nor more than sixty (60) days after the receipt of the request. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

#### 2.4 NOTICE OF STOCKHOLDERS' MEETINGS

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these Bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

#### 2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE

Written notice of any meeting of stockholders, if mailed, is given 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. An affidavit of the Secretary or an Assistant Secretary or of the transfer 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.

#### 2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairman of the meeting or (ii) 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, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

#### 2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, 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 corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (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.

## 2.8 CONDUCT OF BUSINESS

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

## 2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.12 of these Bylaws, subject to the provisions of Sections 217 and 218 of the Delaware General Corporation Law (“*DGCL*”) (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation or these Bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder and stockholders shall not be entitled to cumulate their votes in the election of directors or with respect to any matter submitted to a vote of the stockholders.

## 2.10 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 attends 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.

## 2.11 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed 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.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the DGCL.

## 2.12 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS

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 fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

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.

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.

## 2.13 PROXIES

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the DGCL.

## 2.14 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (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 ten (10) days prior to 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 who is present. 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.

## ARTICLE III

### **DIRECTORS**

#### 3.1 POWERS

Subject to the provisions of the DGCL and any limitations in the certificate of incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

#### 3.2 NUMBER OF DIRECTORS

The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time pursuant to a resolution adopted by a majority of the total number of authorized directors. Directors need not be stockholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

#### 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until his successor is elected and qualified or until his earlier resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his earlier resignation or removal.

Elections of directors need not be by written ballot.

#### 3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon written notice to the attention of the Secretary of the corporation. When one or more directors so resigns and the resignation is effective at a future date, unless otherwise prohibited by contract, 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 in the filling of other 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.

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 (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10) percent 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.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The Board of Directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6 REGULAR MEETINGS

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

### 3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the chief executive officer, the president, any vice president, the secretary or any two (2) directors.

Notice of the time and place of special meetings shall be delivered personally, by telephone, by facsimile or by electronic transmission (including by e-mail or over the World Wide Web in any electronic format) to each director or sent by first-class mail or by nationally recognized courier, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally, by telephone, by facsimile, by electronic transmission or by courier, it shall be delivered personally, by telephone, by facsimile, by electronic transmission or by courier at least twenty-four (24) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

### 3.8 QUORUM

At all meetings of the Board of Directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is 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 for that meeting.

### 3.9 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 attends 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 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.



### 3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

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 members of the Board of Directors or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

### 3.11 FEES AND COMPENSATION OF DIRECTORS

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.

### 3.12 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.

### 3.13 REMOVAL OF DIRECTORS

Unless otherwise restricted by statute, by the certificate of incorporation, by these Bylaws or by contract, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that, so long as stockholders of the corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## ARTICLE IV

### COMMITTEES

#### 4.1 COMMITTEES OF DIRECTORS

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, with 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 thereof present at any meeting and not disqualified from voting, whether or not he or they 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. Any such committee, to the extent provided in the resolution of the Board of Directors or in the Bylaws of the corporation, 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, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) amend the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the DGCL, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the DGCL, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, (iv) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution, or (v) amend the Bylaws of the corporation; and, unless the Board resolution establishing the committee, the Bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.

#### 4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### 4.3 MEETINGS AND ACTION 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, Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting), 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 be determined either by resolution of the Board of Directors or by resolution of the committee, that special 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

### OFFICERS

#### 5.1 OFFICERS

The officers of the corporation shall initially be a president and a secretary. 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, a treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person.

#### 5.2 APPOINTMENT OF OFFICERS

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

#### 5.3 SUBORDINATE OFFICERS

The Board of Directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president to appoint, such other officers and agents 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 these Bylaws or as the Board of Directors may from time to time determine.

#### 5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the Board of Directors or, except in the 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 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 is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

#### 5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

## 5.6 CHAIRMAN OF THE BOARD

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board of Directors or as may be prescribed by these Bylaws. If there is no chief executive officer or president, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these Bylaws.

## 5.7 CHIEF EXECUTIVE OFFICER

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if there be such an officer, the chief executive officer shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and affairs of the corporation and shall report directly to the Board of Directors, with all other officers, officials, employees and agents reporting directly or indirectly to him. The chief executive officer shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall preside at all meetings of the stockholders and, in the absence of a chairman of the board, at all meetings of the Board of Directors. He shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

## 5.8 PRESIDENT

In the absence or disability of the chief executive officer, the president shall perform all the duties of the chief executive officer and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer. The president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board of Directors, these Bylaws, the chief executive officer or the chairman of the board.

## 5.9 VICE PRESIDENTS

In the absence or disability of the 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 be 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, these Bylaws, the chairman of the board, the chief executive officer or, in the absence of a chief executive officer, the president.

## 5.10 SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the corporation 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. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and 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 the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation 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 evidencing such shares, 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 to be given by law or by these Bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

#### 5.11 TREASURER/CHIEF FINANCIAL OFFICER

The treasurer (may also be referred to as the chief financial officer, as determined by the Board of Directors) 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, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer 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. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the chief executive officer or, in the absence of a chief executive officer, the president and directors, whenever they request it, an account of all his or her transactions as treasurer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

#### 5.12 ASSISTANT SECRETARY

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as may be prescribed by the Board of Directors or these Bylaws.

#### 5.13 ASSISTANT TREASURER

The assistant treasurer, or, if there is more than one, the assistant treasurers, in the order determined by the stockholders or Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as may be prescribed by the Board of Directors or these Bylaws.

#### 5.14 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the Board of Directors or the chief executive officer, the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

#### 5.15 AUTHORITY AND DUTIES OF OFFICERS

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board of Directors or the stockholders.

### ARTICLE VI

#### INDEMNIFICATION

##### 6.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS

The corporation shall, to the maximum extent and in the manner permitted by applicable law, as the same now exists or may hereafter be amended, indemnify any person against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was a director or officer of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation shall mean any person (i) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

The corporation shall be required to indemnify a director or officer in connection with an action, suit, or proceeding (or part thereof) initiated by such director or officer only if the initiation of such action, suit, or proceeding (or part thereof) by the director or officer was authorized by the Board of Directors of the corporation.

The corporation shall pay the expenses (including attorney's fees) incurred by a director or officer of the corporation entitled to indemnification hereunder in defending any action, suit or proceeding referred to in this Section 6.1 in advance of its final disposition; provided, however, that payment of expenses incurred by a director or officer of the corporation in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should ultimately be determined that the director or officer is not entitled to be indemnified under this Section 6.1 or otherwise.

The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the corporation's Certificate of Incorporation, these Bylaws, agreement, vote of the stockholders or disinterested directors or otherwise.

Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

#### 6.2 INDEMNIFICATION OF OTHERS

The corporation shall have the power, to the maximum extent and in the manner permitted by the DGCL as the same now exists or may hereafter be amended, to indemnify any person (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding, in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was an employee or agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) shall mean any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

#### 6.3 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of 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 the DGCL.

### ARTICLE VII

#### **RECORDS AND REPORTS**

##### 7.1 MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent so to act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, 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 ten (10) days prior to 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 who is present.

#### 7.2 INSPECTION BY DIRECTORS

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

### ARTICLE VIII

#### GENERAL MATTERS

##### 8.1 CHECKS

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

##### 8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.



### 8.3 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation 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. Notwithstanding the adoption of such a resolution by the Board of Directors, 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 or vice-chairman of the Board of Directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. 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 has 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.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

### 8.4 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the 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 shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, 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 that 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, the designations, the preferences, and the 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.

#### 8.5 LOST CERTIFICATES

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

#### 8.6 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

#### 8.7 DIVIDENDS

The directors of the corporation, subject to any restrictions contained in (i) the DGCL or (ii) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

#### 8.8 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

#### 8.9 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors, and may use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

#### 8.10 TRANSFER OF STOCK

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, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

#### 8.11 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

#### 8.12 REGISTERED STOCKHOLDERS

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner 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 another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

### ARTICLE IX

#### AMENDMENTS

The Bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

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**BIOSIG TECHNOLOGIES, INC.**

**CERTIFICATE OF ADOPTION OF BYLAWS**

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The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary of BioSig Technologies, Inc. and that the foregoing Bylaws were adopted as the corporation's Bylaws on April 21, 2011 by the corporation's initial Directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 21<sup>st</sup> day of April, 2011.

/s/ Lora Mikolaitis  
Lora Mikolaitis, Secretary

## BIOSIG TECHNOLOGIES, INC.

## 2012 EQUITY INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, Directors and Consultants, and
- to promote the success of the Company's business.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock and Restricted Stock Units.

2. Definitions. As used herein, the following definitions will apply:

(a) "Administrator" means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Applicable Laws" means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or will be, granted under the Plan.

(c) "Award" means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, or Restricted Stock Units.

(d) "Award Agreement" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

(e) "Board" means the Board of Directors of the Company.

(f) "Change in Control" means the occurrence of any of the following events:

(i) Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board will not be considered a Change in Control; or

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(ii) Change in Effective Control of the Company. If the Company has a class of securities registered pursuant to Section 12 of the Exchange Act, a change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 2(f), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction will not constitute a Change in Control if: (i) its sole purpose is to change the jurisdiction of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(g) "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.

(h) "Committee" means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board, or by the compensation committee of the Board, in accordance with Section 4 hereof.

(i) "Common Stock" means the common stock of the Company.

(j) "Company" means BioSig Technologies, a Delaware corporation, or any successor thereto.

(k) “Consultant” means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Code Section 22(e)(3), provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

(n) “Employee” means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

(o) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(p) “Exchange Program” means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have higher or lower exercise prices and different terms), Awards of a different type, and/or cash, (ii) Participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

(q) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market of The Nasdaq Stock Market, its Fair Market Value will be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

(r) "Incentive Stock Option" means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Code Section 422 and the regulations promulgated thereunder.

(s) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(t) "Option" means a stock option granted pursuant to the Plan.

(u) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Code Section 424(e).

(v) "Participant" means the holder of an outstanding Award.

(w) "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock are subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

(x) "Plan" means this 2012 Equity Incentive Plan.

(y) "Restricted Stock" means Shares issued pursuant to an Award of Restricted Stock under Section 8 of the Plan, or issued pursuant to the early exercise of an Option.

(z) "Restricted Stock Unit" means a bookkeeping entry representing an amount equal to the Fair Market Value of one Share, granted pursuant to Section 9. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

(aa) "Service Provider" means an Employee, Director or Consultant.

(bb) "Share" means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

(cc) "Stock Appreciation Right" means an Award, granted alone or in connection with an Option, that pursuant to Section 7 is designated as a Stock Appreciation Right.

(dd) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Code Section 424(f).

### 3. Stock Subject to the Plan.

(a) Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be subject to Awards and sold under the Plan is 2,000,000 Shares, plus (i) any Shares that, as of the date of stockholder approval of this Plan, have been reserved but not issued pursuant to any awards granted under the BioSig Technologies, Inc. 2011 Long-Term Incentive Plan (the "2011 Plan") and are not subject to any awards granted thereunder, and (ii) any Shares subject to stock options or similar awards granted under the 2011 Plan that expire or otherwise terminate without having been exercised in full and Shares issued pursuant to awards granted under the 2011 Plan that are forfeited to or repurchased by the Company, with the maximum number of Shares to be added to the Plan pursuant to clauses (i) and (ii) equal to 1,500,000 Shares. The Shares may be authorized but unissued, or reacquired Common Stock.



(b) Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, is surrendered pursuant to an Exchange Program, or, with respect to Restricted Stock or Restricted Stock Units, is forfeited to or repurchased by the Company due to the failure to vest, the unpurchased Shares (or for Awards other than Options or Stock Appreciation Rights the forfeited or repurchased Shares) which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). With respect to Stock Appreciation Rights, only Shares actually issued pursuant to a Stock Appreciation Right will cease to be available under the Plan; all remaining Shares under Stock Appreciation Rights will remain available for future grant or sale under the Plan (unless the Plan has terminated). Shares that have actually been issued under the Plan under any Award will not be returned to the Plan and will not become available for future distribution under the Plan; provided, however, that if Shares issued pursuant to Awards of Restricted Stock or Restricted Stock Units are repurchased by the Company or are forfeited to the Company due to the failure to vest, such Shares will become available for future grant under the Plan. Shares used to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Notwithstanding the foregoing and, subject to adjustment as provided in Section 13, the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal the aggregate Share number stated in Section 3(a), plus, to the extent allowable under Code Section 422 and the Treasury Regulations promulgated thereunder, any Shares that become available for issuance under the Plan pursuant to Section 3(b).

(c) Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

#### 4. Administration of the Plan.

##### (a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Other Administration. Other than as provided above, the Plan will be administered by (A) the Board or (B) a Committee, which Committee will be constituted to satisfy Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator will have the authority, in its discretion:

- (i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Awards may be granted hereunder;

(iii) to determine the number of Shares to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator will determine;

(vi) to institute and determine the terms and conditions of an Exchange Program;

(vii) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

(viii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;

(ix) to modify or amend each Award (subject to Section 18(c) of the Plan), including but not limited to the discretionary authority to extend the post-termination exercisability period of Awards and to extend the maximum term of an Option (subject to Section 6(d));

(x) to allow Participants to satisfy withholding tax obligations in a manner prescribed in Section 14;

(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xii) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that otherwise would be due to such Participant under an Award; and

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on all Participants and any other holders of Awards.

5. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, and Restricted Stock Units may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

## 6. Stock Options.

(a) Grant of Options. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Options in such amounts as the Administrator, in its sole discretion, will determine.

(b) Option Agreement. Each Award of an Option will be evidenced by an Award Agreement that will specify the exercise price, the term of the Option, the number of Shares subject to the Option, the exercise restrictions, if any, applicable to the Option, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(c) Limitations. Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. Notwithstanding such designation, however, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars (\$100,000), such Options will be treated as Nonstatutory Stock Options. For purposes of this Section 6(c), Incentive Stock Options will be taken into account in the order in which they were granted, the Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted, and calculation will be performed in accordance with Code Section 422 and Treasury Regulations promulgated thereunder.

(d) Term of Option. The term of each Option will be stated in the Award Agreement; provided, however, that the term will be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

### (e) Option Exercise Price and Consideration.

(i) Exercise Price. The per Share exercise price for the Shares to be issued pursuant to the exercise of an Option will be determined by the Administrator, but will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant. In addition, in the case of an Incentive Stock Option granted to an Employee who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price will be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant. Notwithstanding the foregoing provisions of this Section 6(e)(i), Options may be granted with a per Share exercise price of less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Code Section 424(a).

(ii) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

(iii) Form of Consideration. The Administrator will determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator will determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of: (1) cash; (2) check; (3) promissory note, to the extent permitted by Applicable Laws, (4) other Shares, provided that such Shares have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option will be exercised and provided further that accepting such Shares will not result in any adverse accounting consequences to the Company, as the Administrator determines in its sole discretion; (5) consideration received by the Company under cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan; (6) by net exercise, (7) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws, or (8) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator will consider if acceptance of such consideration may be reasonably expected to benefit the Company.

(f) Exercise of Option.

(i) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (i) notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable tax withholding). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 13 of the Plan.

Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's termination as the result of the Participant's death or Disability, the Participant may exercise his or her Option within thirty (30) days of termination, or such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within six (6) months of termination, or such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iv) Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised within six (6) months following the Participant's death, or within such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of death, by the Participant's designated beneficiary, provided such beneficiary has been designated prior to the Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. Unless otherwise provided by the Administrator, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

#### 7. Stock Appreciation Rights.

(a) Grant of Stock Appreciation Rights. Subject to the terms and conditions of the Plan, a Stock Appreciation Right may be granted to Service Providers at any time and from time to time as will be determined by the Administrator, in its sole discretion.

(b) Number of Shares. The Administrator will have complete discretion to determine the number of Shares subject to any Award of Stock Appreciation Rights.

(c) Exercise Price and Other Terms. The per Share exercise price for the Shares that will determine the amount of the payment to be received upon exercise of a Stock Appreciation Right as set forth in Section 7(f) will be determined by the Administrator and will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant. Otherwise, the Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of Stock Appreciation Rights granted under the Plan.

(d) Stock Appreciation Right Agreement. Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the exercise price, the term of the Stock Appreciation Right, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(e) Expiration of Stock Appreciation Rights. A Stock Appreciation Right granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement. Notwithstanding the foregoing, the rules of Section 6(d) relating to the maximum term and Section 6(f) relating to exercise also will apply to Stock Appreciation Rights.

(f) Payment of Stock Appreciation Right Amount. Upon exercise of a Stock Appreciation Right, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

(i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price;  
times

(ii) The number of Shares with respect to which the Stock Appreciation Right is exercised.

At the discretion of the Administrator, the payment upon Stock Appreciation Right exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

#### 8. Restricted Stock.

(a) Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, will determine.

(b) Restricted Stock Agreement. Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Unless the Administrator determines otherwise, the Company as escrow agent will hold Shares of Restricted Stock until the restrictions on such Shares have lapsed.

(c) Transferability. Except as provided in this Section 8 or as the Administrator determines, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction.

(d) Other Restrictions. The Administrator, in its sole discretion, may impose such other restrictions on Shares of Restricted Stock as it may deem advisable or appropriate.

(e) Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period of Restriction or at such other time as the Administrator may determine. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed.

(f) Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(g) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

(h) Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed will revert to the Company and again will become available for grant under the Plan.

#### 9. Restricted Stock Units.

(a) Grant. Restricted Stock Units may be granted at any time and from time to time as determined by the Administrator. After the Administrator determines that it will grant Restricted Stock Units, it will advise the Participant in an Award Agreement of the terms, conditions, and restrictions related to the grant, including the number of Restricted Stock Units.

(b) Vesting Criteria and Other Terms. The Administrator will set vesting criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units that will be paid out to the Participant. The Administrator may set vesting criteria based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, continued employment or service), or any other basis determined by the Administrator in its discretion.

(c) Earning Restricted Stock Units. Upon meeting the applicable vesting criteria, the Participant will be entitled to receive a payout as determined by the Administrator. Notwithstanding the foregoing, at any time after the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any vesting criteria that must be met to receive a payout.

(d) Form and Timing of Payment. Payment of earned Restricted Stock Units will be made as soon as practicable after the date(s) determined by the Administrator and set forth in the Award Agreement. The Administrator, in its sole discretion, may settle earned Restricted Stock Units in cash, Shares, or a combination of both.

(e) Cancellation. On the date set forth in the Award Agreement, all unearned Restricted Stock Units will be forfeited to the Company.

10. Compliance With Code Section 409A. Awards will be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Code Section 409A, except as otherwise determined in the sole discretion of the Administrator. The Plan and each Award Agreement under the Plan is intended to meet the requirements of Code Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that an Award or payment, or the settlement or deferral thereof, is subject to Code Section 409A the Award will be granted, paid, settled or deferred in a manner that will meet the requirements of Code Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A.

11. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months following the first (1<sup>st</sup>) day of such leave, any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

12. Limited Transferability of Awards.

(a) Unless determined otherwise by the Administrator, Awards may not be sold, pledged, assigned, hypothecated, or otherwise transferred in any manner other than by will or by the laws of descent and distribution, and may be exercised, during the lifetime of the Participant, only by the Participant. If the Administrator makes an Award transferable, such Award may only be transferred (i) by will, (ii) by the laws of descent and distribution, or (iii) as permitted by Rule 701 of the Securities Act of 1933, as amended (the "Securities Act").

(b) Further, until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or after the Administrator determines that it is, will, or may no longer be relying upon the exemption from registration under the Exchange Act as set forth in Rule 12h-1(f) promulgated under the Exchange Act, an Option, or prior to exercise, the Shares subject to the Option, may not be pledged, hypothecated or otherwise transferred or disposed of, in any manner, including by entering into any short position, any "put equivalent position" or any "call equivalent position" (as defined in Rule 16a-1(h) and Rule 16a-1(b) of the Exchange Act, respectively), other than to (i) persons who are "family members" (as defined in Rule 701(c)(3) of the Securities Act) through gifts or domestic relations orders, or (ii) to an executor or guardian of the Participant upon the death or disability of the Participant. Notwithstanding the foregoing sentence, the Administrator, in its sole discretion, may determine to permit transfers to the Company or in connection with a Change in Control or other acquisition transactions involving the Company to the extent permitted by Rule 12h-1(f).

13. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will adjust the number and class of shares of stock that may be delivered under the Plan and/or the number, class, and price of shares of stock covered by each outstanding Award; provided, however, that the Administrator will make such adjustments to an Award required by Section 25102(o) of the California Corporations Code to the extent the Company is relying upon the exemption afforded thereby with respect to the Award.



(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Change in Control. In the event of a merger of the Company with or into another corporation or other entity or a Change in Control, each outstanding Award will be treated as the Administrator determines (subject to the provisions of the following paragraph) without a Participant's consent, including, without limitation, that (i) Awards will be assumed, or substantially equivalent Awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices; (ii) upon written notice to a Participant, that the Participant's Awards will terminate upon or immediately prior to the consummation of such merger or Change in Control; (iii) outstanding Awards will vest and become exercisable, realizable, or payable, or restrictions applicable to an Award will lapse, in whole or in part prior to or upon consummation of such merger or Change in Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such merger or Change in Control; (iv) (A) the termination of an Award in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights as of the date of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment), or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion; or (v) any combination of the foregoing. In taking any of the actions permitted under this subsection 13(c), the Administrator will not be obligated to treat all Awards, all Awards held by a Participant, or all Awards of the same type, similarly.

In the event that the successor corporation does not assume or substitute for the Award (or portion thereof), the Participant will fully vest in and have the right to exercise all of his or her outstanding Options and Stock Appreciation Rights, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock and Restricted Stock Units will lapse, and, with respect to Awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels and all other terms and conditions met. In addition, if an Option or Stock Appreciation Right is not assumed or substituted in the event of a merger or Change in Control, the Administrator will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

For the purposes of this subsection 13(c), an Award will be considered assumed if, following the merger or Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the merger or Change in Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of an Option or Stock Appreciation Right or upon the payout of a Restricted Stock Unit, for each Share subject to such Award, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or Change in Control.

Notwithstanding anything in this Section 13(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more performance goals will not be considered assumed if the Company or its successor modifies any of such performance goals without the Participant's consent; provided, however, a modification to such performance goals only to reflect the successor corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption.

Notwithstanding anything in this Section 13(c) to the contrary, if a payment under an Award Agreement is subject to Code Section 409A and if the change in control definition contained in the Award Agreement does not comply with the definition of "change of control" for purposes of a distribution under Code Section 409A, then any payment of an amount that is otherwise accelerated under this Section will be delayed until the earliest time that such payment would be permissible under Code Section 409A without triggering any penalties applicable under Code Section 409A.

#### 14. Tax Withholding.

(a) Withholding Requirements. Prior to the delivery of any Shares or cash pursuant to an Award (or exercise thereof), the Company will have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local, foreign or other taxes (including the Participant's FICA obligation) required to be withheld with respect to such Award (or exercise thereof).

(b) Withholding Arrangements. The Administrator, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit a Participant to satisfy such tax withholding obligation, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the statutory amount required to be withheld, provided the delivery of such Shares will not result in any adverse accounting consequences, as the Administrator determines in its sole discretion, or (iv) selling a sufficient number of Shares otherwise deliverable to the Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. The amount of the withholding requirement will be deemed to include any amount which the Administrator agrees may be withheld at the time the election is made, not to exceed the amount determined by using the maximum federal, state or local marginal income tax rates applicable to the Participant with respect to the Award on the date that the amount of tax to be withheld is to be determined. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

15. No Effect on Employment or Service. Neither the Plan nor any Award will confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company, nor will they interfere in any way with the Participant's right or the Company's right to terminate such relationship at any time, with or without cause, to the extent permitted by Applicable Laws.

16. Date of Grant. The date of grant of an Award will be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

17. Term of Plan. Subject to Section 21 of the Plan, the Plan will become effective upon its adoption by the Board. Unless sooner terminated under Section 18, it will continue in effect for a term of ten (10) years from the later of (a) the effective date of the Plan, or (b) the earlier of the most recent Board or stockholder approval of an increase in the number of Shares reserved for issuance under the Plan.

18. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company will obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan will impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

19. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares will not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares will comply with Applicable Laws and will be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

20. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, will relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority will not have been obtained.

21. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

22. Information to Participants. Beginning on the earlier of (i) the date that the aggregate number of Participants under this Plan is five hundred (500) or more and the Company is relying on the exemption provided by Rule 12h-1(f)(1) under the Exchange Act and (ii) the date that the Company is required to deliver information to Participants pursuant to Rule 701 under the Securities Act, and until such time as the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, is no longer relying on the exemption provided by Rule 12h-1(f)(1) under the Exchange Act or is no longer required to deliver information to Participants pursuant to Rule 701 under the Securities Act, the Company shall provide to each Participant the information described in paragraphs (e)(3), (4), and (5) of Rule 701 under the Securities Act not less frequently than every six (6) months with the financial statements being not more than 180 days old and with such information provided either by physical or electronic delivery to the Participants or by written notice to the Participants of the availability of the information on an Internet site that may be password-protected and of any password needed to access the information. The Company may request that Participants agree to keep the information to be provided pursuant to this section confidential. If a Participant does not agree to keep the information to be provided pursuant to this section confidential, then the Company will not be required to provide the information unless otherwise required pursuant to Rule 12h-1(f)(1) under the Exchange Act or Rule 701 of the Securities Act.



**BIOSIG TECHNOLOGIES, INC.**  
**2012 EQUITY INCENTIVE PLAN**  
**STOCK OPTION AGREEMENT**

Unless otherwise defined herein, the terms defined in the 2012 Equity Incentive Plan (the "Plan") shall have the same defined meanings in this Stock Option Agreement (the "Option Agreement").

**I. NOTICE OF STOCK OPTION GRANT**

**Name:**

**Address:**

The undersigned Participant has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant: \_\_\_\_\_

Vesting Commencement Date: \_\_\_\_\_

Exercise Price per Share: \$ \_\_\_\_\_

Total Number of Shares Granted: \_\_\_\_\_

Total Exercise Price : \$ \_\_\_\_\_

Type of Option: \_\_\_\_\_ Incentive Stock Option

\_\_\_\_\_ Nonstatutory Stock Option

Term/Expiration \_\_\_\_\_ Date:

**Vesting Schedule:**

This Option shall be exercisable, in whole or in part, according to the following vesting schedule:

**Termination Period:**

This Option shall be exercisable for three (3) months after Participant ceases to be a Service Provider, unless such termination is due to Participant's death or Disability, in which case this Option shall be exercisable for twelve (12) months after Participant ceases to be a Service Provider. Notwithstanding the foregoing sentence, in no event may this Option be exercised after the Term/Expiration Date as provided above and this Option may be subject to earlier termination as provided in Section 13 of the Plan.

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## **II. AGREEMENT**

1. **Grant of Option.** The Administrator of the Company hereby grants to the Participant named in the Notice of Stock Option Grant in Part I of this Agreement (“Participant”), an option (the “Option”) to purchase the number of Shares set forth in the Notice of Stock Option Grant, at the exercise price per Share set forth in the Notice of Stock Option Grant (the “Exercise Price”), and subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 18 of the Plan, in the event of a conflict between the terms and conditions of the Plan and this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Stock Option Grant as an Incentive Stock Option (“ISO”), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option (“NSO”). Further, if for any reason this Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a NSO granted under the Plan. In no event shall the Administrator, the Company or any Parent or Subsidiary or any of their respective employees or directors have any liability to Participant (or any other person) due to the failure of the Option to qualify for any reason as an ISO.

### **2. Exercise of Option.**

(a) **Right to Exercise.** This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Stock Option Grant and with the applicable provisions of the Plan and this Option Agreement.

(b) **Method of Exercise.** This Option shall be exercisable by delivery of an exercise notice in the form attached as **Exhibit A** (the “Exercise Notice”) or in a manner and pursuant to such procedures as the Administrator may determine, which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised (the “Exercised Shares”), and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares, together with any applicable tax withholding. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price, together with any applicable tax withholding.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Participant on the date on which the Option is exercised with respect to such Shares.

3. **Participant’s Representations.** In the event the Shares have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), at the time this Option is exercised, Participant shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as **Exhibit B**.

4. Lock-Up Period. Participant hereby agrees that Participant shall not offer, pledge, sell, 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 Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Participant (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred and eighty (180) days following the effective date of any registration statement of the Company filed under the Securities Act (or such other period as may be requested by the Company or the underwriters to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto).

Participant agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, Participant shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. 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 Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred and eighty (180) day (or other) period. Participant agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section 4.

5. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Participant:

(a) cash;

(b) check;

(c) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Plan; or

(d) surrender of other Shares which (i) shall be valued at its Fair Market Value on the date of exercise, and (ii) must be owned free and clear of any liens, claims, encumbrances or security interests, if accepting such Shares, in the sole discretion of the Administrator, shall not result in any adverse accounting consequences to the Company.



6. Restrictions on Exercise. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law.

7. Non-Transferability of Option.

(a) This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of Participant.

(b) Further, until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or after the Administrator determines that it is, will, or may no longer be relying upon the exemption from registration of Options under the Exchange Act as set forth in Rule 12h-1(f) promulgated under the Exchange Act (the "Reliance End Date"), Participant shall not transfer this Option or, prior to exercise, the Shares subject to this Option, in any manner other than (i) to persons who are "family members" (as defined in Rule 701(c)(3) of the Securities Act) through gifts or domestic relations orders, or (ii) to an executor or guardian of Participant upon the death or disability of Participant. Until the Reliance End Date, the Options and, prior to exercise, the Shares subject to this Option, may not be pledged, hypothecated or otherwise transferred or disposed of, including by entering into any short position, any "put equivalent position" or any "call equivalent position" (as defined in Rule 16a-1(h) and Rule 16a-1(b) of the Exchange Act, respectively), other than as permitted in clauses (i) and (ii) of this paragraph.

8. Term of Option. This Option may be exercised only within the term set out in the Notice of Stock Option Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option Agreement.

9. Tax Obligations.

(a) Tax Withholding. Participant agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Participant) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Participant acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver the Shares if such withholding amounts are not delivered at the time of exercise.

(b) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Participant herein is an ISO, and if Participant sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (i) the date two (2) years after the Date of Grant, or (ii) the date one (1) year after the date of exercise, Participant shall immediately notify the Company in writing of such disposition. Participant agrees that Participant may be subject to income tax withholding by the Company on the compensation income recognized by Participant.

(c) Code Section 409A. Under Code Section 409A, an Option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "discount option") may be considered "deferred compensation." An Option that is a "discount option" may result in (i) income recognition by Participant prior to the exercise of the Option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The "discount option" may also result in additional state income, penalty and interest tax to the Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the date of grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Participant shall be solely responsible for Participant's costs related to such a determination.

10. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant. This Option Agreement is governed by the internal substantive laws but not the choice of law rules of Delaware.

11. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

Participant acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Participant has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. Participant further agrees to notify the Company upon any change in the residence address indicated below.

PARTICIPANT

BIOSIG TECHNOLOGIES, INC.

Signature \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_ Title

Residence Address \_\_\_\_\_

**EXHIBIT A**

**2012 EQUITY INCENTIVE PLAN**

**EXERCISE NOTICE**

BioSig Technologies, Inc.  
12424 Wilshire Blvd Suite 745  
Los Angeles, CA 90025

Attention: Secretary

1. Exercise of Option. Effective as of today, \_\_\_\_\_, \_\_\_\_\_, the undersigned ("Participant") hereby elects to exercise Participant's option (the "Option") to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of BioSig Technologies, Inc. (the "Company") under and pursuant to the 2012 Equity Incentive Plan (the "Plan") and the Stock Option Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "Option Agreement").

2. Delivery of Payment. Participant herewith delivers to the Company the full purchase price of the Shares, as set forth in the Option Agreement, and any and all withholding taxes due in connection with the exercise of the Option.

3. Representations of Participant. Participant acknowledges that Participant has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Common Stock subject to an Award, notwithstanding the exercise of the Option. The Shares shall be issued to Participant as soon as practicable after the Option is exercised in accordance with the Option Agreement. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in Section 13 of the Plan.

5. Company's Right of First Refusal. Before any Shares held by Participant or any transferee (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 5 (the "Right of First Refusal").

(a) Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the bona fide cash price or other consideration for which the Holder proposes to transfer the Shares (the "Offered Price"), and the Holder shall offer the Shares at the Offered Price to the Company or its assignee(s).

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

(c) Purchase Price. The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section 5 shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(d) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(e) Holder's Right to Transfer. If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 5, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, *provided* that such sale or other transfer is consummated within one hundred and twenty (120) days after the date of the Notice, that any such sale or other transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee agrees in writing that the provisions of this Section 5 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(f) Exception for Certain Family Transfers. Anything to the contrary contained in this Section 5 notwithstanding, the transfer of any or all of the Shares during the Participant's lifetime or on the Participant's death by will or intestacy to the Participant's immediate family or a trust for the benefit of the Participant's immediate family shall be exempt from the provisions of this Section 5. "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section 5, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 5.

(g) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded.

6. Call Right. In the event Participant's continuous status as a Service Provider terminates for any or no reason (including death or Disability), the Company shall, upon the date of such termination (as reasonably fixed and determined by the Company), have an irrevocable, exclusive option for a period of six (6) months from such date to repurchase the Shares at the Fair Market Value of the Shares on the date of such repurchase (the "Repurchase Price") pursuant to the terms and conditions set forth in this Section 6 (the "Call Right").

(a) Exercise of Call Right. The Call Right shall be exercised by the Company by delivering written notice to Participant or Participant's executor AND, at the Company's option, (i) by delivering to Participant or Participant's executor a check in the amount of the aggregate Repurchase Price, (ii) by the Company canceling an amount of Participant's indebtedness to the Company equal to the aggregate Repurchase Price, (iii) by the Company issuing Participant a promissory note with a principle amount equal to the aggregate Repurchase Price payable over two (2) years at an annual interest rate of five (5%) percent, compounded annually, or (iv) by a combination of (i), (ii), and/or (iii) so that the combined payment, cancellation of indebtedness, and or principle amount of the promissory note equals such aggregate Repurchase Price. Upon delivery of such notice and the payment of the aggregate Repurchase Price in any of the ways described above, the Company shall become the legal and beneficial owner of the Shares being repurchased and all rights and interests therein or relating thereto, and the Company shall have the right to retain and transfer to its own name the number of Shares being repurchased by the Company.

(b) Assignment of Call Right. Whenever the Company shall have the right to repurchase the Shares hereunder, the Company may designate and assign one or more employees, officers, directors or shareholders of the Company or other persons or organizations to exercise all or a part of the Company's Call Right to purchase all or a part of the Shares. If the Fair Market Value of the Shares to be repurchased on the date of such designation or assignment (the "Repurchase FMV") exceeds the aggregate Repurchase Price of the Shares, then each such designee or assignee shall pay the Company cash equal to the difference between the Repurchase FMV and the aggregate Repurchase Price of Unreleased Shares to be purchased.

(c) Termination of Call Right. The Call Right shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded. The Call Right shall also terminate if the Company or its assignee does not elect to exercise the Call Right by giving the requisite notice within six (6) months following Participant's termination as a Service Provider.

7. Tax Consultation. Participant understands that Participant may suffer adverse tax consequences as a result of Participant's purchase or disposition of the Shares. Participant represents that Participant has consulted with any tax consultants Participant deems advisable in connection with the purchase or disposition of the Shares and that Participant is not relying on the Company for any tax advice.

8. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Participant understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal 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, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND A RIGHT OF FIRST REFUSAL HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE EXERCISE NOTICE BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS AND RIGHT OF FIRST REFUSAL ARE BINDING ON TRANSFEREES OF THESE SHARES.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR A PERIOD OF TIME FOLLOWING THE EFFECTIVE DATE OF THE UNDERWRITTEN PUBLIC OFFERING OF THE COMPANY'S SECURITIES SET FORTH IN AN AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF BY THE HOLDER PRIOR TO THE EXPIRATION OF SUCH PERIOD WITHOUT THE CONSENT OF THE COMPANY OR THE MANAGING UNDERWRITER.

(b) Stop-Transfer Notices. Participant 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 Exercise Notice 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.

9. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

10. Interpretation. Any dispute regarding the interpretation of this Exercise Notice shall be submitted by Participant or by the Company forthwith to the Administrator, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all parties.

11. Governing Law; Severability. This Exercise Notice is governed by the internal substantive laws, but not the choice of law rules, of Delaware. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Exercise Notice shall continue in full force and effect.

12. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Exercise Notice, the Plan, the Option Agreement and the Investment Representation Statement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant.

Submitted by:  
PARTICIPANT

Accepted by:  
BIOSIG TECHNOLOGIES, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Received



**EXHIBIT B**

**INVESTMENT REPRESENTATION STATEMENT**

PARTICIPANT :  
COMPANY : BIOSIG TECHNOLOGIES, INC.  
SECURITY : COMMON STOCK  
AMOUNT :  
DATE :

In connection with the purchase of the above-listed Securities, the undersigned Participant represents to the Company the following:

(a) Participant 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 Securities. Participant is acquiring these Securities for investment for Participant's 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 of 1933, as amended (the "Securities Act").

(b) Participant acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Participant's investment intent as expressed herein. In this connection, Participant understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if Participant's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one (1) year or any other fixed period in the future. Participant further 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. Participant further acknowledges and understands that the Company is under no obligation to register the Securities. Participant understands that the certificate evidencing the Securities shall be imprinted with any legend required under applicable state securities laws.

(c) Participant is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to Participant, the exercise shall be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of the applicable conditions specified by Rule 144, including in the case of affiliates (1) the availability of certain public information about the Company, (2) the amount of Securities being sold during any three (3) month period not exceeding specified limitations, (3) the resale being made in an unsolicited "broker's transaction", transactions directly with a "market maker" or "riskless principal transactions" (as those terms are defined under the Securities Exchange Act of 1934) and (4) the timely filing of a Form 144, if applicable.

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In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which may require (i) the availability of current public information about the Company; (ii) the resale to occur more than a specified period after the purchase and full payment (within the meaning of Rule 144) for the Securities; and (iii) in the case of the sale of Securities by an affiliate, the satisfaction of the conditions set forth in sections (2), (3) and (4) of the paragraph immediately above.

(d) Participant further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption shall be required; and that, notwithstanding the fact that Rules 144 and 701 are 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 Rules 144 or 701 shall 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. Participant understands that no assurances can be given that any such other registration exemption shall be available in such event.

PARTICIPANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date



SECURITIES PURCHASE AGREEMENT

Dated as of September 19, 2011

of

**BIOSIG TECHNOLOGIES, INC.**

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## IMPORTANT NOTICES TO INVESTORS

THIS SECURITIES PURCHASE AGREEMENT (THE “AGREEMENT”) WAS PREPARED SOLELY BY BIOSIG TECHNOLOGIES, INC. (THE “COMPANY”) TO PROVIDE TO POTENTIAL PURCHASERS OF THE SECURITIES OFFERED HEREBY.

THE SECURITIES OFFERED HEREBY ARE SPECULATIVE, INVOLVE A HIGH DEGREE OF RISK AND SHOULD ONLY BE PURCHASED BY PERSONS WHO CAN AFFORD THE LOSS OF THEIR ENTIRE INVESTMENT. PROSPECTIVE INVESTORS SHOULD CAREFULLY READ AND EVALUATE THE INFORMATION SET FORTH IN THIS AGREEMENT BEFORE PURCHASING ANY OF SUCH SECURITIES.

THIS AGREEMENT CONTAINS SUMMARIES OF CERTAIN DOCUMENTS PREPARED BY THE COMPANY BUT REFERENCE IS HEREBY MADE TO SUCH DOCUMENTS FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO. COPIES OF SUCH DOCUMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY. ALL OF SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE.

SALES OF THE SECURITIES OFFERED HEREBY WILL ONLY BE MADE TO U.S. PERSONS WHO ARE “ACCREDITED INVESTORS,” AS DEFINED IN RULE 506 OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). EACH INVESTOR WILL BE REQUIRED TO REPRESENT AND WARRANT THAT EACH SUCH INVESTOR IS AN “ACCREDITED INVESTOR” TO ESTABLISH “ACCREDITED INVESTOR” STATUS UNDER THE U.S. SECURITIES ACT. EACH U.S. PERSON WHO DESIRES TO PURCHASE THE SECURITIES WILL BE REQUIRED TO COMPLETE AND FURNISH TO THE COMPANY THE “CONFIDENTIAL PURCHASER QUESTIONNAIRE” ATTACHED HERETO AND MADE A PART HEREOF.

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR THE SECURITIES LAWS OF ANY STATE AND/OR ANY OTHER UNITED STATES OR FOREIGN JURISDICTION, AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTION ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND ANY OTHER SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”), ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OF THE SECURITIES (THE “OFFERING”) OR THE ACCURACY OR ADEQUACY OF THIS AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE SECURITIES WILL BE OFFERED FOR A PERIOD OF 60 DAYS FROM THE DATE HEREOF, SUBJECT TO A 60-DAY FURTHER EXTENSION.

EXCEPT AS OTHERWISE INDICATED, THIS AGREEMENT SPEAKS AS OF THE DATE HEREOF. NEITHER THE DELIVERY OF THIS AGREEMENT NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY AFTER THE DATE HEREOF.

IN MAKING AN INVESTMENT DECISION, PROSPECTIVE INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF, AMONG OTHER ITEMS, THE COMPANY, MANAGEMENT OF THE COMPANY, THE FINANCIAL POSITION OF THE COMPANY, THE SECURITIES BEING OFFERED HEREBY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

BY EXECUTING THIS AGREEMENT, EACH INVESTOR REPRESENTS THAT IT IS FAMILIAR WITH AND UNDERSTANDS THE TERMS OF THE OFFERING AND THE SECURITIES AND THAT IT OR ITS PURCHASER REPRESENTATIVES HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT IT IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF AN INVESTMENT IN THE SECURITIES BEING OFFERED HEREBY.

THIS AGREEMENT IS MADE AVAILABLE ON A CONFIDENTIAL BASIS FOR USE BY A LIMITED NUMBER OF PROSPECTIVE ACCREDITED INVESTORS SOLELY IN CONNECTION WITH THEIR CONSIDERATION OF THE PURCHASE OF THE SECURITIES BEING OFFERED HEREBY. THIS AGREEMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY TO ANY PERSON IN ANY STATE OR OTHER JURISDICTION IN WHICH SUCH AN OFFER OR SOLICITATION WOULD BE UNLAWFUL. ANY REPRODUCTION OR DISTRIBUTION OF THIS AGREEMENT, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY, IS PROHIBITED. ANY DISTRIBUTION OF THIS AGREEMENT TO ANY PERSON OTHER THAN THE OFFEREE TO WHICH IT IS PROVIDED IS UNAUTHORIZED. ANY PERSON ACTING CONTRARY TO THE FOREGOING RESTRICTIONS MAY BE IN VIOLATION OF U.S. AND/OR U.S. STATE SECURITIES LAWS.

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE MADE OR INTENDED TO BE MADE, NOR SHOULD ANY BE INFERRED, WITH RESPECT TO THE ECONOMIC RETURN, IF ANY, OR THE TAX ATTRIBUTES OF AN INVESTMENT IN THE SECURITIES BEING OFFERED HEREBY. EACH PROSPECTIVE INVESTOR MUST CONSULT HIS, HER OR ITS OWN COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO LEGAL, TAX, ECONOMIC AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE SECURITIES BEING OFFERED HEREBY AND THE SUITABILITY OF SUCH AN INVESTMENT FOR THE PROSPECTIVE INVESTOR.

PROSPECTIVE INVESTORS ARE ENCOURAGED TO AVAIL THEMSELVES OF THE OPPORTUNITY TO ASK QUESTIONS OF, AND RECEIVE WRITTEN ANSWERS FROM, THE COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE SECURITIES, THE FINANCIAL POSITION OF THE COMPANY, THE BUSINESS OF THE COMPANY AND TO OBTAIN ADDITIONAL WRITTEN INFORMATION REGARDING THE COMPANY AND THE OFFERING, TO THE EXTENT POSSESSED OR OBTAINABLE BY THE COMPANY WITHOUT UNREASONABLE EFFORT OR EXPENSE. THE PROSPECTIVE INVESTORS AGREE TO ADVISE THE COMPANY IN WRITING IF THEY ARE RELYING UPON ANY SUCH INFORMATION.

BEFORE DECIDING TO INVEST IN THE OFFERING, PROSPECTIVE INVESTORS SHOULD CAREFULLY READ THIS ENTIRE AGREEMENT, INCLUDING ALL OF ITS EXHIBITS AND THE DOCUMENTS INCORPORATED HEREIN BY THIS REFERENCE.

THE COMPANY IS PROVIDING THIS AGREEMENT AT YOUR REQUEST. THE AGREEMENT IS CONFIDENTIAL. YOU MAY NOT REPRODUCE THE AGREEMENT, IN WHOLE OR IN PART, AND YOU MAY NOT DISTRIBUTE THE AGREEMENT OR DISCLOSE ANY OF ITS CONTENTS TO ANY OTHER PERSON. THE COMPANY HAS PROVIDED THE INFORMATION CONTAINED IN THE AGREEMENT. THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND NOTHING CONTAINED IN THIS AGREEMENT OR THE DOCUMENTS DELIVERED HERewith IS, OR WILL BE RELIED UPON AS, A PROMISE OR REPRESENTATION BY THE COMPANY.

NO GENERAL SOLICITATION WILL BE CONDUCTED AND NO OFFERING LITERATURE OR ADVERTISING IN ANY FORM WILL OR MAY BE EMPLOYED IN THE OFFERING, EXCEPT FOR THIS AGREEMENT (INCLUDING AMENDMENTS OR SUPPLEMENTS HERETO) AND THE DOCUMENTS SUMMARIZED HEREIN. NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION NOT CONTAINED IN THIS AGREEMENT OR THE DOCUMENTS SUMMARIZED HEREIN AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON.

THE COMPANY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY SUBSCRIPTION FOR THE SECURITIES OFFERED HEREBY, FOR ANY REASON OR FOR NO REASON, IN WHOLE OR IN PART, OR TO ALLOT TO ANY PROSPECTIVE INVESTOR FEWER THAN THE NUMBER OF SECURITIES SUCH INVESTOR HAS SUBSCRIBED TO PURCHASE.

THIS OFFERING MAY BE WITHDRAWN AT ANY TIME BEFORE TERMINATION AND IS SPECIFICALLY MADE SUBJECT TO THE TERMS DESCRIBED IN THE AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND MUST NOT BE RELIED UPON.

BY ACCEPTING DELIVERY OF THIS AGREEMENT, YOU REPRESENT, WARRANT TO THE COMPANY THAT YOU FULLY UNDERSTAND AND AGREE TO ALL OF THE ABOVE.

BY ACCEPTING DELIVERY OF THIS AGREEMENT AND THE “CERTIFICATE OF DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS OF SERIES A PREFERRED STOCK” ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF (COLLECTIVELY, THE “TRANSACTION DOCUMENTS”) AND READING THE INFORMATION CONTAINED WITHIN, YOU REPRESENT AND WARRANT THAT YOU AGREE AND UNDERSTAND THAT INFORMATION CONTAINED HEREIN IS MATERIAL, NON-PUBLIC INFORMATION. YOU FURTHER AGREE (I) TO KEEP CONFIDENTIAL THE CONTENTS OF THE TRANSACTION DOCUMENTS AND NOT TO DISCLOSE THE SAME TO ANY THIRD PARTY OR OTHERWISE USE THE SAME FOR ANY PURPOSE OTHER THAN AN EVALUATION BY YOU OF A POTENTIAL PRIVATE INVESTMENT IN THE COMPANY, AND (II) TO RETURN THE SAME TO THE COMPANY IF (A) YOU DO NOT SUBSCRIBE TO PURCHASE ANY SECURITIES, (B) YOUR SUBSCRIPTION IS NOT ACCEPTED, OR (C) THE OFFERING IS TERMINATED OR WITHDRAWN.

#### DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

THIS TRANSACTION DOCUMENTS INCLUDE “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF VARIOUS PROVISIONS OF THE SECURITIES ACT AND THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (THE “EXCHANGE ACT”). ALL STATEMENTS, OTHER THAN STATEMENTS OF HISTORICAL FACTS, INCLUDED IN THE TRANSACTION DOCUMENTS WHICH ADDRESS FUTURE ACTIVITIES, EVENTS, OR DEVELOPMENTS, INCLUDING BUT NOT LIMITED TO SUCH THINGS AS FUTURE REVENUES, POTENTIAL MARKET, PRODUCT AND TECHNOLOGY DEVELOPMENT, MARKET ACCEPTANCE, RESPONSES FROM COMPETITORS, CAPITAL EXPENDITURES (INCLUDING THE AMOUNT AND NATURE THEREOF), BUSINESS STRATEGY AND MEASURES TO IMPLEMENT STRATEGY, COMPETITIVE STRENGTHS, GOALS, EXPANSION AND GROWTH OF THE COMPANY’S BUSINESS AND OPERATIONS, PLANS, REFERENCES TO FUTURE SUCCESS AND OTHER SUCH MATTERS, ARE “FORWARD-LOOKING STATEMENTS.” THESE STATEMENTS RELATE TO FUTURE EVENTS OR FUTURE PREDICTIONS, INCLUDING EVENTS OR PREDICTIONS RELATING TO THE COMPANY’S FUTURE FINANCIAL PERFORMANCE, AND ARE GENERALLY IDENTIFIABLE BY THE USE OF SUCH WORDS AS “MAY,” “WILL,” “SHOULD,” “EXPECT,” “PLAN,” “ANTICIPATE,” BELIEVE,” “FEEL,” “CONFIDENT,” “ESTIMATE,” “PREDICT,” “POTENTIAL” OR “CONTINUE” OR THE NEGATIVE OF SUCH TERMS OR OTHER VARIATIONS ON THESE WORDS OR COMPARABLE TERMINOLOGY. THESE STATEMENTS ARE ONLY PREDICTIONS AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS, THAT MAY CAUSE THE COMPANY’S OR ITS INDUSTRY’S ACTUAL RESULTS, LEVELS OF ACTIVITY, PERFORMANCE OR ACHIEVEMENTS TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, LEVELS OF ACTIVITY, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS.

THESE STATEMENTS ARE BASED ON CERTAIN ASSUMPTIONS AND ANALYSES MADE BY THE COMPANY IN LIGHT OF ITS EXPERIENCE AND ITS ASSESSMENT OF HISTORICAL TRENDS, CURRENT CONDITIONS AND EXPECTED FUTURE DEVELOPMENTS AS WELL AS OTHER FACTORS IT BELIEVES ARE APPROPRIATE IN THE CIRCUMSTANCES. HOWEVER, WHETHER ACTUAL RESULTS WILL CONFORM TO THE COMPANY'S EXPECTATIONS AND PREDICTIONS IS SUBJECT TO A NUMBER OF RISKS AND UNCERTAINTIES THAT MAY CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM ANY EXPECTED OR PREDICTED RESULTS, INCLUDING BUT NOT LIMITED TO: THE COMPANY'S ABILITY TO CONSUMMATE AND SUSTAIN ITS BUSINESS STRATEGY, DEVELOP ITS TECHNOLOGY, GENERAL ECONOMIC, MARKET OR BUSINESS CONDITIONS; THE OPPORTUNITIES (OR LACK THEREOF) THAT MAY BE PRESENTED TO AND PURSUED BY THE COMPANY; COMPETITIVE ACTIONS BY OTHER COMPANIES, AND OTHER FACTORS, MANY OF WHICH ARE BEYOND THE CONTROL OF THE COMPANY. CONSEQUENTLY, ALL OF THE FORWARD-LOOKING STATEMENTS MADE IN THE TRANSACTION DOCUMENTS ARE QUALIFIED BY THESE CAUTIONARY STATEMENTS AND THERE CAN BE NO ASSURANCE THAT THE ACTUAL RESULTS ANTICIPATED BY THE COMPANY WILL BE REALIZED OR, EVEN IF SUBSTANTIALLY REALIZED, THAT THEY WILL HAVE THE EXPECTED CONSEQUENCES TO OR EFFECTS ON THE COMPANY OR ITS BUSINESS OR OPERATIONS. THE FORWARD-LOOKING STATEMENTS ARE MADE AS OF THE DATE OF THIS AGREEMENT AND THE COMPANY ASSUMES NO OBLIGATION TO UPDATE THE FORWARD-LOOKING STATEMENTS. YOU SHOULD CAREFULLY REVIEW ALL OF THE INFORMATION SET FORTH HEREIN.



## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (the “*Agreement*”) is dated as of September 19, 2011 by and among BioSig Technologies, Inc., a Delaware corporation (the “*Company*”), and each of the purchasers identified on Schedule I hereto (individually, a “*Purchaser*” and collectively, the “*Purchasers*”).

**WHEREAS**, the Company is a newly formed entity and the surviving corporation of a merger with BioSig Technologies, Inc., a Nevada corporation.

**WHEREAS**, when used in this Agreement, unless expressly provided herein to the contrary, the term the “*Company*” refers to BioSig Technologies, a Delaware corporation and BioSig Technologies, Inc., a Nevada corporation.

**WHEREAS**, the Company is offering (the “*Offering*”) for sale solely to “accredited investors,” as such term is defined in the Securities Act of 1933, as amended (the “*Securities Act*”), up to \$1,000,000 of its shares of Series A Preferred Stock (the “*Shares*”) at a purchase price of \$5,000 per Share.

**WHEREAS**, the Company may retain one or more agents, each of which shall be a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”) and a member of FINRA (any such entity, an “*Agent*”) to assist in the sale of the Shares.

**WHEREAS**, the Company and the Purchasers are executing and delivering this Agreement in reliance upon an exemption from securities registration afforded by the provisions of Section 4(2), Section 4(6) and/or Regulation D (“*Regulation D*”), as promulgated by the United States Securities and Exchange Commission (the “*Commission*”) under the Securities Act.

**NOW, THEREFORE**, in consideration of the mutual covenants and other agreements contained in this Agreement, the Company and the Purchasers hereby agree as follows:

### ARTICLE I. PURCHASE AND SALE OF SERIES A PREFERRED STOCK

Section 1.01 Purchase and Sale of Stock. Upon the following terms and conditions, the Company shall issue and sell to each Purchaser, and each Purchaser shall purchase from the Company, that number of Shares as is set forth on Schedule I hereto, at a price per Share equal to \$5,000. The designation, rights, preferences and other terms and provisions of the Series A Preferred Stock are set forth in the Certificate of Designation, Preferences, Rights and Limitations of Series A Preferred Stock appended hereto as Exhibit A (the “*Certificate of Designation*”).

#### Section 1.02 Closing; Delivery.

(a) Initial Closing. The initial closing of the purchase and sale of the Shares hereunder (the “*Initial Closing*”) shall occur concurrently with the execution of this Agreement by the Company and the Purchasers. In particular, immediately following execution of this Agreement by the Purchasers and the Company, each Purchaser shall transmit to the Company, via wire transfer of immediately available funds, such Purchaser’s total purchase price hereunder, and the Company shall deliver to each Purchaser a stock certificate for the number of Shares purchased hereunder by each such Purchaser.

(b) Subsequent Sales. Following the Initial Closing, the Company may conduct one or more additional closings (each an “*Additional Closing*”) and sell to the Purchasers therein up to \$1,000,000 in Shares (minus the face amount of the Shares sold in the Initial Closing). Any Purchasers at any Additional Closing shall become a party to this Agreement and shall have the rights and obligations hereunder. At any Additional Closing, each Purchaser shall transmit to the Company, via wire transfer of immediately available funds, such Purchaser’s total purchase price hereunder, and the Company shall deliver to each Purchaser a stock certificate for the number of Shares purchased hereunder by each such Purchaser. The Initial Closing and any Additional Closings are collectively referred to as the “*Closings*”).

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## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchasers as of the date hereof and as of each Closing, that:

(a) Organization, Good Standing and Power. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to own, lease and operate its properties and assets and to conduct its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except for any jurisdiction(s) (alone or in the aggregate) in which the failure to be so qualified will not have material adverse effect on the business, operations, assets, properties or financial condition of the Company and its subsidiaries, taken as a whole, and/or any condition, circumstance, or situation that would prohibit or otherwise interfere with the ability of the Company to perform any of its obligations under the Transaction Documents (as defined below) in any material respect (each, a "**Material Adverse Effect**").

(b) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and perform this Agreement and the Certificate of Designation (together, the "**Transaction Documents**") and to issue and sell the Shares in accordance with the terms hereof and otherwise carry out its obligations thereunder. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no further consent or authorization of the Company or its Board of Directors or stockholders is required. The Transaction Documents have been duly executed and delivered by the Company. Each of the Transaction Documents constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application.

(c) Issuance of Shares. The Shares to be issued in conformity with the terms of this Agreement and the shares of common stock, par value \$.001 par value per share, of the Company (the "**Common Stock**"), issuable upon conversion of the Shares, have been duly authorized by all necessary corporate action and the Shares, when paid for or issued in accordance with the terms hereof, shall be validly issued and outstanding, fully paid and non-assessable and be entitled to the rights and preferences set forth in the Certificate of Designation.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, the performance by the Company of its obligations under the Transaction Documents and the consummation by the Company of the transactions contemplated herein and therein do not and will not (i) conflict with or violate any provision of the Company's Certificate of Incorporation or Bylaws, each as amended through the date of each Closing, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party or by which it or its properties or assets are bound, (iii) create or impose a lien, mortgage, security interest, charge or encumbrance of any nature on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound or by which any of its properties or assets are bound or (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company are bound or affected, except, in all cases other than violations pursuant to clause (i) above, for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(e) Consents. No consent, approval, authorization or order of any court, governmental agency or body or arbitrator having jurisdiction over the Company or any of its "affiliates" (as defined in Rule 144 of the Securities Act), nor of the shareholders of the Company, other than such consent, approval or authorization as has already been obtained, is required for the execution by the Company of the Transaction Documents and compliance and performance by the Company of its obligations under the Transaction Documents, including, without limitation, the issuance and sale of the Shares.

(f) Litigation. There is no pending or, to the best knowledge of the Company, threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, or any of its affiliates that would affect the execution by the Company or the performance by the Company of its obligations under the Transaction Documents. There is no pending or, to the best knowledge of the Company, basis for or threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, or any of its affiliates which litigation if adversely determined would have a Material Adverse Effect.

(g) Defaults. The Company is (i) not in default under or in violation of any agreement or instrument to which it is a party or by which it or any of its properties are bound or affected, which default or violation would have a Material Adverse Effect or (ii) not in violation of any statute, rule or regulation of any governmental authority which violation would have a Material Adverse Effect.

(h) No Undisclosed Liabilities. The Company has no liabilities or obligations which are material, individually or in the aggregate, other than those incurred in the ordinary course of the Company's businesses and which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(i) Capitalization. As of each Closing, the authorized capital stock of the Company shall consist solely of (i) 1,000,000 shares of preferred stock, of which only Shares issued pursuant to this Agreement shall be issued and outstanding and (ii) 10,000,000 shares of the Common Stock, of which 8,750,000 shares are issued and outstanding. All of the outstanding shares of the capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable.

(j) Capital Stock, Etc. There are no (i) shares of capital stock that are entitled to registration rights; (ii) outstanding options, warrants, scrip, rights to subscribe to, call or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company, or (iii) contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, securities or rights convertible into shares of capital stock of the Company. The Company is not a party to any agreement granting registration or anti-dilution rights to any person with respect to any of its equity or debt securities. The Company is not a party to, and it has no knowledge of, any agreement restricting the voting of any shares of the capital stock of the Company, or restricting the transfer of the Shares.

(k) Books and Records. The books and records of the Company accurately reflect in all material respects the information relating to the business of the Company, the location and collection of their assets, and the nature of all transactions giving rise to the obligations or accounts receivable of the Company.

(l) Absence of Certain Changes. Since its formation on February 24, 2009, there has been no Material Adverse Effect, except as disclosed to the Purchasers. Since February 24, 2009, the Company has not: (i) incurred or become subject to any material liabilities (absolute or contingent) except liabilities incurred in the ordinary course of business consistent with past practices; (ii) discharged or satisfied any material lien or encumbrance or paid any material obligation or liability (absolute or contingent), other than current liabilities paid in the ordinary course of business consistent with past practices; (iii) declared or made any payment or distribution of cash or other property to shareholders with respect to its capital stock, or purchased or redeemed, or made any agreements to purchase or redeem, any shares of its capital stock; (iv) sold, assigned or transferred any other tangible assets, or canceled any debts owed to the Company by any third party or claims of the Company against any third party, except in the ordinary course of business consistent with past practices; (v) suffered the loss of any material amount of existing business; (vi) made any increases in employee compensation, except in the ordinary course of business, in a manner consistent with similarly situated companies; or (vii) experienced any material problems with labor or management in connection with the terms and conditions of their employment.

( m ) Transactions with Affiliates and Employees. None of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company, is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$5,000 other than (i) for payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) for other employee benefits, including stock option agreements under any stock option plan of the Company.

(n) Tax Status. The Company has accurately prepared and filed all foreign, federal, state income and all other Tax Returns, reports and declarations required by law to be paid or filed by it by any jurisdiction to which the Company is subject, has paid or made provisions for the payment of all Taxes shown to be due and all additional assessments, and adequate provisions have been and are reflected in the financial statements of the Company for all current Taxes and other charges to which the Company is subject and which are not currently due and payable. None of the federal income Tax Returns of the Company have been audited by the Internal Revenue Service. The Company has no knowledge of any additional assessments, adjustments or contingent Tax liability (whether federal or state) of any nature whatsoever, whether pending or threatened against the Company for any period, nor of any basis for any such assessment, adjustment or contingency. The Company has complied in all material respects with all applicable legal requirements relating to the payment and withholding of Taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments, and paid over to the proper governments or regulatory authorities, all amounts required.

For purposes of this Section 2.01(n), “**Tax**” means any and all taxes, charges, fees, levies or other assessments, including, without limitation, local and/or foreign income, net worth, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, share capital, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, service, service use, transfer, registration, recording, ad-valorem, value-added, alternative or add-on minimum, estimated, or other taxes, assessments or charges of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, and “**Tax Return**” means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

( o ) Prior Sales of Securities. All prior sales and issuances of securities by the Company were either properly registered under the Federal and/or State securities laws or issued pursuant to an exemption therefrom and all such sales were all done in accordance with all laws, rules and regulations and no person/entity has any rescission and/or similar rights with respect to any shares of capital stock of the Company. The Company has no matured and/or unmatured rescission and/or similar rights to its shareholders.

(p) Subsidiaries. The Company has no subsidiaries.

(q) Survival. The foregoing representations and warranties shall survive for a period of one (1) year following the final Closing.

Section 2.02 Representations and Warranties of the Purchasers. Each of the Purchasers hereby makes the following representations and warranties to the Company with respect solely to itself and not with respect to any other Purchaser:

(a) Organization and Standing of the Purchasers. If the Purchaser is an entity, such Purchaser is a corporation, limited liability company or partnership duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

(b) Authorization and Power. Each Purchaser has the requisite power and authority to enter into and perform this Agreement and to purchase the Shares being sold to it hereunder. The execution, delivery and performance of this Agreement by such Purchaser and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary corporate or partnership action, and no further consent or authorization of such Purchaser or its Board of Directors, stockholders, or partners, as the case may be, is required. This Agreement has been duly authorized, executed and delivered by such Purchaser and constitutes, or shall constitute when executed and delivered, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application.

(c) Purchase For Own Account. Each Purchaser is acquiring the Shares solely for its own account and not with a view to or for sale in connection with distribution. Each Purchaser does not have a present intention to sell the Shares, nor a present arrangement (whether or not legally binding) or intention to effect any distribution of the Shares to or through any person or entity; provided, however, that by making the representations herein and subject to Section 2.02(g) below, such Purchaser does not agree to hold the Shares for any minimum or other specific term and reserves the right to dispose of the Shares at any time in accordance with federal and state securities laws applicable to such disposition. Each Purchaser acknowledges that it is able to bear the financial risks associated with an investment in the Shares and that it has been given full access to such records of the Company and its subsidiaries and to the officers of the Company and its subsidiaries and received such information as it has deemed necessary or appropriate to conduct its due diligence investigation and has sufficient knowledge and experience in investing in companies similar to the Company in terms of the Company's stage of development so as to be able to evaluate the risks and merits of its investment in the Company.

(d) Opportunities for Additional Information. Each Purchaser acknowledges that such Purchaser has had the opportunity to ask questions of and receive answers from, or obtain additional information from, the executive officers of the Company concerning the financial and other affairs of the Company, and to the extent deemed necessary in light of such Purchaser's personal knowledge of the Company's affairs, such Purchaser has asked such questions and received answers to the full satisfaction of such Purchaser, and such Purchaser desires to invest in the Company. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Company's representations and warranties contained in the Transaction Documents.

(e) No General Solicitation. Each Purchaser acknowledges that the Shares were not offered to such Purchaser by means of any form of general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (i) any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media, or broadcast over television or radio or (ii) any seminar or meeting to which such Purchaser was invited by any of the foregoing means of communications.

(f) Rule 144. Such Purchaser understands that the Shares must be held indefinitely unless such Shares are registered for resale under the Securities Act or an exemption from registration is available. Such Purchaser acknowledges that such Purchaser is familiar with Rule 144 of the rules and regulations of the Commission, as amended, promulgated pursuant to the Securities Act ("~~Rule 144~~"), and that such person has been advised that Rule 144 permits resales only under certain circumstances. Such Purchaser understands that to the extent that Rule 144 is not available, such Purchaser will be unable to sell any Shares without either registration under the Securities Act or the existence of another exemption from such registration requirement.

(g) General. Such Purchaser understands that the Shares are being offered and sold in reliance on a transactional exemption from the registration requirement of federal and state securities laws and the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of such Purchaser to acquire the Shares.

(h) Governmental Review. The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Shares.

(i) Status of Purchasers. Such Purchaser is an “accredited investor” as defined in Regulation D. The Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act and such Purchaser is not a broker-dealer.

### ARTICLE III.

#### OTHER AGREEMENTS OF THE PARTIES

##### Section 3.01 Transfer Restrictions.

(a) The Purchasers covenant that the Shares will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of any Shares other than pursuant to an effective registration statement or to the Company, or pursuant to Rule 144 at such time that the Company is not required to be in compliance with Rule 144(c) and any other limitations or requirements set forth in Rule 144, the Company may require the transferor to provide the Company with an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration under the Securities Act.

(b) The Purchasers agree to the imprinting of the following legend on any certificate evidencing the Shares (in addition to any legend required by applicable state securities or “blue sky” laws):

THESE SECURITIES REPRESENTED BY THIS CERTIFICATE (THE “SECURITIES”) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES LAWS OR THE COMPANY SHALL HAVE RECEIVED AN OPINION OF COUNSEL THAT REGISTRATION OF SUCH SECURITIES UNDER THE SECURITIES ACT AND UNDER THE PROVISIONS OF APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.

Section 3.02 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Shares in a manner that would require the registration under the Securities Act of the sale of the Shares to the Purchasers.

##### Section 3.03 Agent; Compensation.

(a) The Company may engage one or more Agents to act as a placement agent in connection with this Agreement, which the Company shall in any such case compensate as provided in Section 3.03(b).

(b) The Agent, if any, will at each Closing be (i) paid a cash commission of up to ten percent (10%) of the gross dollar amount of the Shares sold in such Closing, and (ii) issued a warrant (the “*Agent Warrant*”) to purchase that number of Shares equal to seven percent (7%) of the number of Shares sold in such Closing, which Agent Warrants shall be exercisable for a period of five (5) years from the Closing Date at an exercise price equal to \$5,000 per Share.

**ARTICLE IV.**

**MISCELLANEOUS**

Section 4.01 Fees and Expenses. The Company shall pay all fees and expenses, including, but not limited to, the legal fees of any Agent's legal counsel including, but not limited to, for blue sky work, which legal fees shall be \$15,000 in the aggregate (excluding state filing fees and other expenses), as well as its own fees and expenses, including but not limited to the fees and expenses of each such parties' advisors, counsel, accountants and other experts, if any, and all other expenses incurred incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all stamp or other similar taxes and duties levied in connection with issuance of the Shares pursuant hereto.

Section 4.02 Specific Enforcement. The Company and the Purchasers acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement or the other Transaction Documents were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement or the other Transaction Documents and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which any of them may be entitled by law or equity.

Section 4.03 Entire Agreement; Amendment. This Agreement (including all exhibits and schedules hereto) and the Transaction Documents contain the entire understanding and agreement of the parties with respect to the matters covered hereby and, except as specifically set forth herein or in the Transaction Documents, neither the Company nor any of the Purchasers makes any representations, warranty, covenant or undertaking with respect to such matters and they supersede all prior understandings and agreements with respect to said subject matter, all of which are merged herein. No provision of this Agreement may be waived or amended other than by a written instrument signed by the Company and the Purchasers holding a majority of the Shares then outstanding and held by Purchasers, and no provision hereof may be waived other than by a written instrument signed by the party against whom enforcement of any such amendment or waiver is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Shares then outstanding.

Section 4.04 Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (a) upon hand delivery by telex (with correct answer back received), telecopy, e-mail or facsimile at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be:

(a) If to the Company:

BioSig Technologies, Inc.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Attention: Chief Executive Officer

Fax No.: (702) 851-5893

with copies to:

Haynes and Boone, LLP  
30 Rockefeller Plaza, 26<sup>th</sup> Floor  
New York, New York 10112  
Attention: Rick A. Werner, Esq.  
Fax No.: (212) 884-8234

(b) If to any Purchaser at the address of such Purchaser set forth on the signature pages hereto.

Any party hereto may from time to time change its address for notices by giving at least ten (10) days written notice of such changed address to the other party hereto.

Section 4.05 Waivers. No waiver by either party of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any other provisions, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

Section 4.06 Headings. The article, section and subsection headings in this Agreement are for convenience only and shall not constitute a part of this Agreement for any other purpose and shall not be deemed to limit or affect any of the provisions hereof.

Section 4.07 Successors and Assigns; Restrictions on Transfer. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers holding a majority of the Shares then outstanding and held by Purchasers.

Section 4.08 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

Section 4.09 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all rights to a trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 4.10 Survival. The representations and warranties of the Company and the Purchasers shall survive the execution and delivery hereof and the Initial Closing or any Additional Closing, as applicable, hereunder for the applicable statute of limitations period.

Section 4.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties hereto, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

Section 4.12 Severability. The provisions of this Agreement and the Transaction Documents are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement or the Transaction Documents shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement or the Transaction Documents and such provision shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible.

Section 4.13 Further Assurances. Upon the request of any Purchaser or the Company, each of the Company and the Purchasers shall execute and deliver such instrument, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement, the Shares and the Certificate of Designation.



Section 4.14 Like Treatment of Purchasers. No consideration shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the Purchasers then holding Shares. Further, the Company shall not make any payments or issue any securities to the Purchasers in amounts which are disproportionate to the respective numbers of outstanding Shares held by any Purchasers at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of the Shares or otherwise.

Section 4.15 Agent Warrants; Certificates. The Agent Warrants, if any, and the certificates evidencing the Shares shall be deliverable to each Purchaser and/or the Agent, as the case may be, no later than five (5) business days after each Closing in which the Purchaser purchased the Shares and the Agent became entitled to Agent Warrants.

[SIGNATURE PAGES FOLLOWS]

**Company Signature Page**

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by an authorized signatory as of the date first above written.

BIOSIG TECHNOLOGIES, INC.

By: /s/ Kenneth L. Londoner

Name: Kenneth L. Londoner

Title: Chairman & CEO

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**Purchaser Signature Page**

By its execution and delivery of this signature page, the undersigned Purchaser hereby joins in and agrees to be bound by the terms and conditions of the Securities Purchase Agreement dated as of May \_\_, 2011 (the "Purchase Agreement") by and among BioSig Technologies, Inc. and the Purchasers (as defined therein), as to the number of Shares set forth below, and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof.

Name of Purchaser:

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Number of Shares: \_\_\_\_\_

Aggregate Purchase Price: \$ \_\_\_\_\_

Tax ID No. \_\_\_\_\_

Delivery Instructions (if different than above):

c/o: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No. : \_\_\_\_\_

Other Special Instructions: \_\_\_\_\_

\_\_\_\_\_

**Schedule I**

**List of Purchasers**

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**CERTIFICATE OF DESIGNATION, PREFERENCES,  
RIGHTS AND LIMITATIONS OF SERIES A PREFERRED STOCK**



**SECURITIES PURCHASE AGREEMENT**

**Dated as of December 27, 2011**

**of**

**BIOSIG TECHNOLOGIES, INC.**





## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "*Agreement*") is dated as of November 28, 2011 by and among BioSig Technologies, Inc., a Delaware corporation (the "*Company*"), and each of the purchasers identified on Schedule I hereto (individually, a "*Purchaser*" and collectively, the "*Purchasers*").

**WHEREAS**, the Company is a recently formed entity and the surviving corporation of a merger with BioSig Technologies, Inc., a Nevada corporation.

**WHEREAS**, when used in this Agreement, unless expressly provided herein to the contrary, the term the "Company" refers to BioSig Technologies, a Delaware corporation and BioSig Technologies, Inc., a Nevada corporation.

**WHEREAS**, the Company is offering (the "*Offering*") for sale solely to "accredited investors," as such term is defined in the Securities Act of 1933, as amended (the "*Securities Act*"), a minimum of \$2,000,000 and a maximum of \$3,000,000 of its shares of Series B Preferred Stock (the "*Shares*") at a purchase price of \$5,000 per Share.

**WHEREAS**, the Company may retain one or more agents, each of which shall be a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*") and a member of FINRA (any such entity, an "*Agent*") to assist in the sale of the Shares.

**WHEREAS**, the Company and the Purchasers are executing and delivering this Agreement in reliance upon an exemption from securities registration afforded by the provisions of Section 4(2) of the Securities Act, Section 4(5) of the Securities Act, and/or Regulation D ("*Regulation D*"), as promulgated by the United States Securities and Exchange Commission (the "*Commission*") under the Securities Act.

**NOW, THEREFORE**, in consideration of the mutual covenants and other agreements contained in this Agreement, the Company and the Purchasers hereby agree as follows:

### ARTICLE I.

#### PURCHASE AND SALE OF SERIES B PREFERRED STOCK

Section 1.01 Purchase and Sale of Stock. Upon the following terms and conditions, the Company shall issue and sell to each Purchaser, and each Purchaser shall purchase from the Company, that number of Shares as is set forth on Schedule I hereto, at a price per Share equal to \$5,000. The designation, rights, preferences and other terms and provisions of the Series B Preferred Stock are set forth in the Form of Certificate of Designation, Preferences, Rights and Limitations of Series B Preferred Stock appended hereto as Exhibit A (the "*Certificate of Designation*").

#### Section 1.02 Closing; Delivery.

( a ) Initial Closing. A first closing will be held when a minimum of \$2,000,000 has been deposited via wire transfer of immediately available funds in a non-interest bearing escrow account (the "Escrow Account") in the Company's name at Signature Bank (the "*Escrow Agent*"), 261 Madison Avenue, New York, New York 10016 (the "*Initial Closing*"). In particular, at the Initial Closing, the amount representing each Purchaser's total purchase price hereunder shall be transmitted to the Company by the Escrow Agent, and the Company shall deliver to each Purchaser a stock certificate for the number of Shares purchased hereunder by each such Purchaser.





(b) Subsequent Sales. Following the Initial Closing, the Company may conduct one or more additional closings (each an “*Additional Closing*”) and sell to the Purchasers therein up to \$3,000,000 in Shares (minus the face amount of the Shares sold in the Initial Closing). Any Purchasers at any Additional Closing shall become a party to this Agreement and shall have the rights and obligations hereunder. At any Additional Closing, each Purchaser shall have deposited via wire transfer of immediately available funds into the Escrow Account in, such Purchaser’s total purchase price hereunder, and upon delivery of the total purchase price to the Company by the Escrow Agent, the Company shall deliver to each Purchaser a stock certificate for the number of Shares purchased hereunder by each such Purchaser. The Initial Closing and any Additional Closings are collectively referred to as the “*Closings*”).

## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the Company. Except as set forth in any Schedule accompanying this Agreement, the Company hereby represents and warrants to the Purchasers as of the date hereof and as of each Closing, that:

(a) Organization, Good Standing and Power. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to own, lease and operate its properties and assets and to conduct its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except for any jurisdiction(s) (alone or in the aggregate) in which the failure to be so qualified will not have material adverse effect on the business, operations, assets, properties or financial condition of the Company and its subsidiaries, taken as a whole, and/or any condition, circumstance, or situation that would prohibit or otherwise interfere with the ability of the Company to perform any of its obligations under the Transaction Documents (as defined below) in any material respect (each, a “*Material Adverse Effect*”).

(b) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and perform this Agreement and the Certificate of Designation (together, the “*Transaction Documents*”) and to issue and sell the Shares in accordance with the terms hereof and otherwise carry out its obligations thereunder. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no further consent or authorization of the Company or its Board of Directors or stockholders is required, other than the consent (the “*Series A Consent*”) of the holders of the Series A Preferred Stock of the Company (the “*Series A Preferred*”). The Transaction Documents have been duly executed and delivered by the Company. Each of the Transaction Documents constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor’s rights and remedies or by other equitable principles of general application.

(c) Issuance of Shares. The Shares to be issued in conformity with the terms of this Agreement and the shares of common stock, par value \$.001 par value per share, of the Company (the “*Common Stock*”), issuable upon conversion of the Shares, have been duly authorized by all necessary corporate action and the Shares, when paid for or issued in accordance with the terms hereof, shall be validly issued and outstanding, fully paid and non-assessable and be entitled to the rights and preferences set forth in the Certificate of Designation.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, the performance by the Company of its obligations under the Transaction Documents and the consummation by the Company of the transactions contemplated herein and therein do not and will not (i) assuming the receipt of the Series A Consent, conflict with or violate any provision of the Company’s Certificate of Incorporation or Bylaws, each as amended through the date of each Closing, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights







of termination, amendment, acceleration or cancellation of, any agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party or by which it or its properties or assets are bound, (iii) create or impose a lien, mortgage, security interest, charge or encumbrance of any nature on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound or by which any of its properties or assets are bound or (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company are bound or affected, except, in all cases other than violations pursuant to clause (i) above, for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(e) Consents. Other than the Series A Consent, no consent, approval, authorization or order of any court, governmental agency or body or arbitrator having jurisdiction over the Company or any of its "affiliates" (as defined in Rule 144 of the Securities Act), nor of the shareholders of the Company, other than such consent, approval or authorization as has already been obtained, is required for the execution by the Company of the Transaction Documents and compliance and performance by the Company of its obligations under the Transaction Documents, including, without limitation, the issuance and sale of the Shares.

(f) Litigation. There is no pending or, to the best knowledge of the Company, threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, or any of its affiliates that would affect the execution by the Company or the performance by the Company of its obligations under the Transaction Documents. There is no pending or, to the best knowledge of the Company, basis for or threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, or any of its affiliates which litigation if adversely determined would have a Material Adverse Effect.

(g) Defaults. The Company is (i) not in default under or in violation of any agreement or instrument to which it is a party or by which it or any of its properties are bound or affected, which default or violation would have a Material Adverse Effect or (ii) not in violation of any statute, rule or regulation of any governmental authority which violation would have a Material Adverse Effect.

(h) No Undisclosed Liabilities. The Company has no liabilities or obligations which are material, individually or in the aggregate, other than those incurred in the ordinary course of the Company's businesses and which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(i) Capitalization. As of each Closing, the authorized capital stock of the Company shall consist solely of (i) 1,000,000 shares of preferred stock, of which only the 184.4 shares of Series A Preferred and up to 600 Shares issued pursuant to this Agreement shall be issued and outstanding and (ii) 10,000,000 shares of the Common Stock, of which 8,126,863 shares are issued and outstanding. All of the outstanding shares of the capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable.

(j) Capital Stock, Etc. Other than the Series A Preferred, there are no (i) shares of capital stock that are entitled to registration rights; (ii) outstanding options, warrants, scrip, rights to subscribe to, call or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company, or (iii) contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, securities or rights convertible into shares of capital stock of the Company. The Company is not a party to any agreement granting registration or anti-dilution rights to any person with respect to any of its equity or debt securities. The Company is not a party to, and it has no knowledge of, any agreement restricting the voting of any shares of the capital stock of the Company, or restricting the transfer of the Shares. .

(k) Books and Records. The books and records of the Company accurately reflect in all material respects the information relating to the business of the Company, the location and collection of their assets, and the nature of all transactions giving rise to the obligations or accounts receivable of the Company.



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(l) **Absence of Certain Changes.** Since its formation on February 24, 2009, there has been no Material Adverse Effect, except as disclosed to the Purchasers. Since February 24, 2009, the Company has not: (i) incurred or become subject to any material liabilities (absolute or contingent) except liabilities incurred in the ordinary course of business consistent with past practices; (ii) discharged or satisfied any material lien or encumbrance or paid any material obligation or liability (absolute or contingent), other than current liabilities paid in the ordinary course of business consistent with past practices; (iii) declared or made any payment or distribution of cash or other property to shareholders with respect to its capital stock, or purchased or redeemed, or made any agreements to purchase or redeem, any shares of its capital stock; (iv) sold, assigned or transferred any other tangible assets, or canceled any debts owed to the Company by any third party or claims of the Company against any third party, except in the ordinary course of business consistent with past practices; (v) suffered the loss of any material amount of existing business; (vi) made any increases in employee compensation, except in the ordinary course of business, in a manner consistent with similarly situated companies; or (vii) experienced any material problems with labor or management in connection with the terms and conditions of their employment.

(m) **Transactions with Affiliates and Employees.** None of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company, is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$5,000 other than (i) for payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) for other employee benefits, including stock option agreements under any stock option plan of the Company.

(n) **Tax Status.** The Company has accurately prepared and filed all foreign, federal, state income and all other Tax Returns, reports and declarations required by law to be paid or filed by it by any jurisdiction to which the Company is subject, has paid or made provisions for the payment of all Taxes shown to be due and all additional assessments, and adequate provisions have been and are reflected in the financial statements of the Company for all current Taxes and other charges to which the Company is subject and which are not currently due and payable. None of the federal income Tax Returns of the Company have been audited by the Internal Revenue Service. The Company has no knowledge of any additional assessments, adjustments or contingent Tax liability (whether federal or state) of any nature whatsoever, whether pending or threatened against the Company for any period, nor of any basis for any such assessment, adjustment or contingency. The Company has complied in all material respects with all applicable legal requirements relating to the payment and withholding of Taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments, and paid over to the proper governments or regulatory authorities, all amounts required.

For purposes of this Section 2.01(n), “Tax” means any and all taxes, charges, fees, levies or other assessments, including, without limitation, local and/or foreign income, net worth, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, share capital, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, service, service use, transfer, registration, recording, ad-valorem, value-added, alternative or add-on minimum, estimated, or other taxes, assessments or charges of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, and “Tax Return” means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

(o) **Prior Sales of Securities.** All prior sales and issuances of securities by the Company were either properly registered under the Federal and/or State securities laws or issued pursuant to an exemption therefrom and all such sales were all done in accordance with all laws, rules and regulations and no person/entity has any rescission





and/or similar rights with respect to any shares of capital stock of the Company. The Company has no matured and/or unmatured rescission and/or similar rights to its shareholders.

(p) Subsidiaries. The Company has no subsidiaries.

(q) Survival. The foregoing representations and warranties shall survive for a period of one (1) year following the final Closing.

Section 2.02 Representations and Warranties of the Purchasers. Each of the Purchasers hereby makes the following representations and warranties to the Company with respect solely to itself and not with respect to any other Purchaser:

(a) Organization and Standing of the Purchasers. If the Purchaser is an entity, such Purchaser is a corporation, limited liability company or partnership duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

(b) Authorization and Power. Each Purchaser has the requisite power and authority to enter into and perform this Agreement and to purchase the Shares being sold to it hereunder. The execution, delivery and performance of this Agreement by such Purchaser and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary corporate or partnership action, and no further consent or authorization of such Purchaser or its Board of Directors, stockholders, or partners, as the case may be, is required. This Agreement has been duly authorized, executed and delivered by such Purchaser and constitutes, or shall constitute when executed and delivered, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application.

(c) Purchase For Own Account. Each Purchaser is acquiring the Shares solely for its own account and not with a view to or for sale in connection with distribution. Each Purchaser does not have a present intention to sell the Shares, nor a present arrangement (whether or not legally binding) or intention to effect any distribution of the Shares to or through any person or entity; provided, however, that by making the representations herein and subject to Section 2.02(g) below, such Purchaser does not agree to hold the Shares for any minimum or other specific term and reserves the right to dispose of the Shares at any time in accordance with federal and state securities laws applicable to such disposition. Each Purchaser acknowledges that it is able to bear the financial risks associated with an investment in the Shares and that it has been given full access to such records of the Company and its subsidiaries and to the officers of the Company and its subsidiaries and received such information as it has deemed necessary or appropriate to conduct its due diligence investigation and has sufficient knowledge and experience in investing in companies similar to the Company in terms of the Company's stage of development so as to be able to evaluate the risks and merits of its investment in the Company.

(d) Opportunities for Additional Information. Each Purchaser acknowledges that such Purchaser has had the opportunity to ask questions of and receive answers from, or obtain additional information from, the executive officers of the Company concerning the financial and other affairs of the Company, and to the extent deemed necessary in light of such Purchaser's personal knowledge of the Company's affairs, such Purchaser has asked such questions and received answers to the full satisfaction of such Purchaser, and such Purchaser desires to invest in the Company. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Company's representations and warranties contained in the Transaction Documents.

(e) No General Solicitation. Each Purchaser acknowledges that the Shares were not offered to such Purchaser by means of any form of general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (i) any advertisement, article, notice or other communication published



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in any newspaper, magazine, or similar media, or broadcast over television or radio or (ii) any seminar or meeting to which such Purchaser was invited by any of the foregoing means of communications.

(f) Rule 144. Such Purchaser understands that the Shares must be held indefinitely unless such Shares are registered for resale under the Securities Act or an exemption from registration is available. Such Purchaser acknowledges that such Purchaser is familiar with Rule 144 of the rules and regulations of the Commission, as amended, promulgated pursuant to the Securities Act ("**Rule 144**"), and that such person has been advised that Rule 144 permits resales only under certain circumstances. Such Purchaser understands that to the extent that Rule 144 is not available, such Purchaser will be unable to sell any Shares without either registration under the Securities Act or the existence of another exemption from such registration requirement.

(g) General. Such Purchaser understands that the Shares are being offered and sold in reliance on a transactional exemption from the registration requirement of federal and state securities laws and the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of such Purchaser to acquire the Shares.

(h) Governmental Review. The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Shares.

(i) Status of Purchasers. Such Purchaser is an "accredited investor" as defined in Regulation D. The Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act and such Purchaser is not a broker-dealer.

### ARTICLE III.

#### OTHER AGREEMENTS OF THE PARTIES

##### Section 3.01 Transfer Restrictions.

(a) The Purchasers covenant that the Shares will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of any Shares other than pursuant to an effective registration statement or to the Company, or pursuant to Rule 144 at such time that the Company is not required to be in compliance with Rule 144(c) and any other limitations or requirements set forth in Rule 144, the Company may require the transferor to provide the Company with an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration under the Securities Act.

(b) The Purchasers agree to the imprinting of the following legend on any certificate evidencing the Shares (in addition to any legend required by applicable state securities or "blue sky" laws):

**THESE SECURITIES REPRESENTED BY THIS CERTIFICATE (THE "SECURITIES") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES LAWS OR THE COMPANY SHALL HAVE RECEIVED AN OPINION OF COUNSEL THAT REGISTRATION OF SUCH SECURITIES UNDER THE SECURITIES ACT AND UNDER THE PROVISIONS OF APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.**





Section 3.02 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Shares in a manner that would require the registration under the Securities Act of the sale of the Shares to the Purchasers.

Section 3.03 Agent; Compensation.

(a) The Company may engage one or more Agents to act as a placement agent in connection with this Agreement, which the Company shall in any such case compensate as provided in Section 3.03(b).

(b) The Agent, if any, will at each Closing be (i) paid a cash commission of up to ten percent (10%) of the gross dollar amount of the Shares sold in such Closing, and (ii) issued a warrant (the "*Agent Warrant*") to purchase that number of Shares equal to seven percent (7%) of the number of Shares sold in such Closing, which Agent Warrants shall be exercisable for a period of five (5) years from the Closing Date at an exercise price equal to \$5,000 per Share.

## ARTICLE IV.

### MISCELLANEOUS

Section 4.01 Fees and Expenses. The Company shall pay all fees and expenses, including, but not limited to, the legal fees of any Agent's legal counsel including, but not limited to, for blue sky work, which legal fees shall be \$15,000 in the aggregate (excluding state filing fees and other expenses), as well as its own fees and expenses, including but not limited to the fees and expenses of each such parties' advisors, counsel, accountants and other experts, if any, and all other expenses incurred incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all stamp or other similar taxes and duties levied in connection with issuance of the Shares pursuant hereto.

Section 4.02 Specific Enforcement. The Company and the Purchasers acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement or the other Transaction Documents were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement or the other Transaction Documents and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which any of them may be entitled by law or equity.

Section 4.03 Entire Agreement; Amendment. This Agreement (including all exhibits and schedules hereto) and the Transaction Documents contain the entire understanding and agreement of the parties with respect to the matters covered hereby and, except as specifically set forth herein or in the Transaction Documents, neither the Company nor any of the Purchasers makes any representations, warranty, covenant or undertaking with respect to such matters and they supersede all prior understandings and agreements with respect to said subject matter, all of which are merged herein. No provision of this Agreement may be waived or amended other than by a written instrument signed by the Company and the Purchasers holding a majority of the Shares then outstanding and held by Purchasers, and no provision hereof may be waived other than by a written instrument signed by the party against whom enforcement of any such amendment or waiver is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Shares then outstanding.

Section 4.04 Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (a) upon hand delivery by telex (with correct answer back received), telecopy, e-mail or facsimile at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be:





(a) If to the Company:

12424 Wilshire Blvd, Suite 745 Los Angeles, CA  
90025  
Attention: Chief Executive Officer Fax No.: (310) 820-  
8115

with copies to:

Gersten Savage LLP  
600 Lexington Avenue, 9<sup>th</sup> Floor New York, New York  
1022-6018 Attention: David E. Danovitch, Esq. Fax No.:  
(212) 980-5192

(b) If to any Purchaser at the address of such Purchaser set forth on the signature pages hereto.

Any party hereto may from time to time change its address for notices by giving at least ten (10) days written notice of such changed address to the other party hereto.

Section 4.05 Waivers. No waiver by either party of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any other provisions, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

Section 4.06 Headings. The article, section and subsection headings in this Agreement are for convenience only and shall not constitute a part of this Agreement for any other purpose and shall not be deemed to limit or affect any of the provisions hereof.

Section 4.07 Successors and Assigns; Restrictions on Transfer. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers holding a majority of the Shares then outstanding and held by Purchasers.

Section 4.08 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

Section 4.09 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all rights to a trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 4.10 Survival. The representations and warranties of the Company and the Purchasers shall survive the execution and delivery hereof and the Initial Closing or any Additional Closing, as applicable, hereunder for the applicable statute of limitations period.







Section 4.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties hereto, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

Section 4.12 Severability. The provisions of this Agreement and the Transaction Documents are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement or the Transaction Documents shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement or the Transaction Documents and such provision shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible.

Section 4.13 Further Assurances. Upon the request of any Purchaser or the Company, each of the Company and the Purchasers shall execute and deliver such instrument, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement, the Shares and the Certificate of Designation.

Section 4.14 Like Treatment of Purchasers. No consideration shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the Purchasers then holding Shares. Further, the Company shall not make any payments or issue any securities to the Purchasers in amounts which are disproportionate to the respective numbers of outstanding Shares held by any Purchasers at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of the Shares or otherwise.

Section 4.15 Agent Warrants; Certificates. The Agent Warrants, if any, and the certificates evidencing the Shares shall be deliverable to each Purchaser and/or the Agent, as the case may be, no later than five (5) business days after each Closing in which the Purchaser purchased the Shares and the Agent became entitled to Agent Warrants.

[SIGNATURE PAGES FOLLOW]



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**Company Signature Page**

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by an authorized signatory as of the date first above written.

BIOSIG TECHNOLOGIES, INC.

By: /s/ Kenneth L. Londoner  
Name: Kenneth L. Londoner  
Title: CEO & Chairman



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**Purchaser Signature Page**

By its execution and delivery of this signature page, the undersigned Purchaser hereby joins in and agrees to be bound by the terms and conditions of the Securities Purchase Agreement dated as of November \_\_, 2011 (the "Purchase Agreement") by and among BioSig Technologies, Inc. and the Purchasers (as defined therein), as to the number of Shares set forth below, and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof. Please note that by executing the Purchase Agreement, you will be deemed to have executed the Subscription Agreement attached as Exhibit C to the Confidential Private Placement Memorandum (the "Memorandum") dated November 28, 2011 (collectively the "Transaction Documents"), each of which are attached to the Memorandum, and will be treated for all purposes as if you did sign each such Transaction Document even though you may not have physically signed the signature pages to such documents.

Name of Purchaser:

By: \_\_\_\_\_

Name:

Title:

Address:

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Number of Shares: \_\_\_\_\_

Aggregate Purchase Price: \$

Tax ID No.

Delivery Instructions (if different than above):

c/o: \_\_\_\_\_

Address:

Telephone No.: \_\_\_\_\_

Facsimile No. : \_\_\_\_\_

Other Special Instructions:



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**Schedule I**  
**List of Purchasers**





**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this "Agreement") is dated as of February 6, 2013, between BioSig Technologies, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Certificate of Designation (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.7.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Additional Warrant" shall have the meaning ascribed to such term in Section 5.2.

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Certificate of Designation" means the Certificate of Designation to be filed prior to the Initial Closing by the Company with the Secretary of State of the State of Delaware, in the form of Exhibit A attached hereto.

"Closing" means a closing of the purchase and sale of the shares of Preferred Stock and Warrants pursuant to Section 2.1.

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“Closing Date” means a Trading Day on which all of the Transaction Documents have been executed and delivered by the Company and each of the Purchasers purchasing shares of Preferred Stock and Warrants at the relevant Closing, and all conditions precedent to (i) the Purchasers’ obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the shares of Preferred Stock and Warrants, in each case, have been satisfied or waived, but in no event later than the third Trading Day following the relevant Closing.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Haynes and Boone, LLP, with offices located at 30 Rockefeller Plaza, 26th Floor, New York, NY 10112, Fax: 212-884-8234.

“Conversion Price” shall have the meaning ascribed to such term in the Certificate of Designation.

“Disclosure Schedules” means the Disclosure Schedules of the Company delivered concurrently herewith.

“Effective Date” means the earliest of the date that (a) the initial Registration Statement has been declared effective by the Commission, (b) all of the Underlying Shares have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions or (c) following the one year anniversary of the final Closing Date hereunder provided that a holder of Underlying Shares is not an Affiliate of the Company, all of the Underlying Shares may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions or the need for the Company to provide current public information and Company counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Underlying Shares pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

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

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities and which securities and the principal terms thereof are set forth on Schedule 3.1(g), and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“G&M” shall mean Grushko & Mittman, P.C., with offices located at 515 Rockaway Avenue, Valley Stream, New York 11581, Fax: 212-697-3575.

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(z).

“Initial Closing” shall have the meaning ascribed to such term in Section 2.1(a).

“Initial Closing Date” shall have the meaning ascribed to such term in Section 2.1(a).

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Laidlaw” means Laidlaw & Co (UK) Ltd.

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Listing Date” shall have the meaning ascribed to such term in Section 4.11(c).

“Listing Default” shall have the meaning ascribed to such term in Section 4.11(c).

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(m).

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.17.

“OFAC” shall have the meaning ascribed to such term in Section 3.1(ii).

“Participation Maximum” shall have the meaning ascribed to such term in Section 4.12(a).

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” means the 4,200 shares of the Company’s 9% Series C Convertible Preferred Stock issued or issuable hereunder having the rights, preferences and privileges set forth in the Certificate of Designation, in the form of Exhibit A hereto.

“Pre-Notice” shall have the meaning ascribed to such term in Section 4.12(b).

“Pro Rata Portion” shall have the meaning ascribed to such term in Section 4.12(e).

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Public Information Failure” shall have the meaning ascribed to such term in Section 4.3(b).

“Public Information Failure Payments” shall have the meaning ascribed to such term in Section 4.3(b).

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.10.

“Registration Rights Agreement” means the Registration Rights Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit D attached hereto.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Purchaser as provided for in the Registration Rights Agreement.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon exercise in full of all Warrants or conversion in full of all shares of Preferred Stock, ignoring any conversion or exercise limits set forth therein.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Securities” means the Preferred Stock, the Warrants, the Warrant Shares and the Underlying Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Stated Value” means \$1,000 per share of Preferred Stock.

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for the Preferred Stock and Warrants purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount”.

“Subsequent Closing Date” shall have the meaning ascribed to such term in Section 2.1(a).

“Subsequent Financing” shall have the meaning ascribed to such term in Section 4.12(a).

“Subsequent Financing Notice” shall have the meaning ascribed to such term in Section 4.12(b).

“Subsidiary” means any subsidiary of the Company as set forth on Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Termination Date” shall have the meaning ascribed to such term in Section 2.1(a).



“Trading Day” means a day on which the principal Trading Market is open for trading; provided, that in the event that the Common Stock is not listed or quoted for trading on a Trading Market on the date in question, then Trading Day shall mean a Business Day.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTC QB Marketplace or the OTC QX Marketplace (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Certificate of Designation, the Warrants, the Registration Rights Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means a transfer agent for the Company’s Common Stock and the Securities, if any, subject to the approval of the Purchasers, and any successor transfer agent of the Company. If the Company does not have a transfer agent for its Common Stock on the date in question since its shares of Common Stock are not listed for trading on a stock exchange or automated quotation service, then Transfer Agent shall mean the Company.

“Triggering Event” shall have the meaning given thereto in the Certificate of Designation.

“Triggering Redemption Amount” shall have the meaning given thereto in the Certificate of Designation.

“Underlying Shares” means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock and upon exercise of the Warrants and issued and issuable in lieu of the cash payment of dividends on the Preferred Stock in accordance with the terms of the Certificate of Designation.

“Variable Rate Transaction” shall have the meaning ascribed to such term in Section 4.13(b).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported on the OTC Pink Marketplace maintained by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means, collectively, the Common Stock purchase warrants delivered to the Purchasers at each Closing in accordance with Section 2.2(a) hereof, which Warrants shall be exercisable immediately and have a term of exercise equal to 5 years, in the form of Exhibit C attached hereto.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

## ARTICLE II. PURCHASE AND SALE

### 2.1 Closing.

(a) On the initial Closing Date (the “Initial Closing Date”), upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell at the initial Closing (the “Initial Closing”), and the Purchasers, severally and not jointly, agree to purchase at the Initial Closing, an aggregate of up to \$3,500,000, but in no event less than \$800,000, of shares of Preferred Stock with an aggregate Stated Value for each Purchaser equal to such Purchaser’s Subscription Amount as set forth on the signature page hereto executed by such Purchaser, and Warrants as determined by pursuant to Section 2.2(a); provided, however, that an aggregate of up to \$4,200,000 in Stated Value of Preferred Stock may be sold and purchased, with the consent of Laidlaw (such increase in Preferred Stock sold and purchased, the “Discretionary Increase”). Thereafter, on any subsequent Closing Date (each a “Subsequent Closing Date”), upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the Purchasers purchasing shares of Preferred Stock and Warrants on such Subsequent Closing Date, the Company agrees to sell, and each Purchaser purchasing shares of Preferred Stock and Warrants at such subsequent Closing, severally and not jointly, agrees to purchase up to \$3,500,000 of shares of Preferred Stock and Warrants, subject to the Discretionary Increase, less the amount of shares of Preferred Stock and Warrants issued and sold at all previous Closings. The aggregate number of shares of Preferred Stock sold hereunder at all Closings shall be 3,500, which may increase to up to 4,200 in the event of the Discretionary Increase. Each Purchaser purchasing shares of Preferred Stock and Warrants on a Closing Date shall deliver to the Company such Purchaser’s Subscription Amount, by (i) wire transfer of immediately available funds in accordance with the Company’s written wire instructions or (ii) cancellation or conversion of any Indebtedness of the Company owed to a Purchaser (a “Debt Conversion”), and the Company shall deliver to each Purchaser its respective shares of Preferred Stock and Warrants, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, a Closing shall occur at the offices of G&M or such other location as the parties shall mutually agree. Notwithstanding anything herein to the contrary, each Closing Date shall occur on or before February 14, 2013; provided, however, that such date may be extended, without notice, to March 1, 2013 with the consent of the Company, Alpha (as defined below) and Laidlaw (such outside date, “Termination Date”).

(b) If a Closing is not held on or before the Termination Date, the Company shall cause all subscription documents and funds to be returned, without interest or deduction to each prospective Purchaser. The Company shall also cause any subscription documents or funds received following the final Closing to be returned, without interest or deduction, to each applicable prospective Purchaser. Notwithstanding the foregoing, the Company in its sole discretion may elect not to sell to any Person any or all of the shares of Preferred Stock and Warrants requested to be purchased hereunder, provided that the Company causes all corresponding subscription documents and funds received from such Person to be promptly returned.

## 2.2 Deliveries.

(a) On or prior to each Closing Date, the Company shall deliver or cause to be delivered to each Purchaser purchasing shares of Preferred Stock and Warrants on such Closing Date each of the following:

- (i) this Agreement duly executed by the Company;
- (ii) a legal opinion of Company Counsel, substantially in the form of Exhibit B attached hereto;
- (iii) the Registration Rights Agreement duly executed by the Company;

(iv) a certificate evidencing a number of shares of Preferred Stock equal to such Purchaser's Subscription Amount divided by the Stated Value, registered in the name of such Purchaser and evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Delaware;

(v) a Warrant registered in the name of such Purchaser to purchase up to a number of shares of Common Stock equal to 100% of such Purchaser's Subscription Amount divided by \$2.09, with an exercise price equal to \$2.61, subject to adjustment therein (such Warrant certificate may be delivered within three Trading Days of such Closing Date); and

(vi) the Additional Warrant.

(b) On or prior to each Closing Date, each Purchaser purchasing shares of Preferred Stock and Warrants on such Closing Date shall deliver or cause to be delivered to the Company the following:

- (i) this Agreement duly executed by such Purchaser;

(ii) the Registration Rights Agreement duly executed by such Purchaser; and  
(iii) such Purchaser's Subscription Amount by wire transfer to the account specified in writing by the Company.

### 2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects on such Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to such Closing Date shall have been performed; and

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on such Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to such Closing Date shall have been performed;

(iii) the Company shall have received executed signature pages to this Agreement with an aggregate Subscription Amount of at least \$800,000 prior to the Initial Closing, exclusive of any Debt Conversions;

(iv) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(v) there shall have been no Material Adverse Effect with respect to the Company since the date hereof; and

(vi) from the date hereof to such Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable good faith judgment of such Purchaser, makes it impracticable or inadvisable to purchase the shares of Preferred Stock and Warrants at such Closing.

**ARTICLE III.**  
**REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein only to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded except to the extent such reference speaks to a time in the past or future with respect to a Subsidiary.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby to which it is a party do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filing with the Commission pursuant to the Registration Rights Agreement and Section 4.6, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Preferred Stock and Warrant Shares and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, (iii) the filing of a Form D with the Commission and such filings as are required to be made under applicable state securities laws and (iv) the filing of the Certificate of Designation with the Secretary of State for the State of Delaware (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g). The Company has not issued any capital stock and/or Common Stock Equivalents not set forth on Schedule 3.1(g). No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities or as described on Schedule 3.1(g), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in material compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) Financial Statements. Schedule 3.1(h) attached hereto contains the audited balance sheets of the Company as of December 31, 2011 and 2010, and the related statements of operations, stockholders' equity (deficit), and cash flows for the years then ended and for the period from February 24, 2009 (date of inception) to December 31, 2011 (collectively, the "Financial Statements"). The Company Financial Statements have been prepared in accordance with generally accepted accounting principles of the United States ("GAAP") applied on a consistent basis throughout the periods covered thereby, fairly present the financial condition, results of operations and cash flows of the Company and the Subsidiaries as of the respective dates thereof and for the periods referred to therein and are consistent with the books and records of the Company and the Subsidiaries, except as may be otherwise specified in such financial statements or the notes thereto and except that the Company Financial Statements may not contain all footnotes required by GAAP and normal year-end adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included in Schedule 3.1(h), except as specifically disclosed on Schedule 3.1(i): (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans, and (vi) no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under the Exchange Act in the event that the Company was subject to the reporting requirements set forth in Section 13(a) or Section 15(d) of the Exchange Act.

(j) Litigation. Except as described on Schedule 3.1(j), there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 3.1(j), since December 31, 2010, neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission or any state securities administrator involving the Company or any current or former director or officer of the Company.



(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as presently conducted, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(n) Title to Assets. Except as set forth on Schedule 3.1(n), the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(o) Intellectual Property.

(i) The term "Intellectual Property Rights" includes:

1. the name of the Company, all fictional business names, trading names, registered and unregistered trademarks, service marks, and applications (collectively, "Marks");
2. all patents, patent applications, and inventions and discoveries that may be patentable (collectively, "Patents");
3. all copyrights in both published works and unpublished works (collectively, "Copyrights");
4. all rights in mask works (collectively, "Rights in Mask Works"); and
5. all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints (collectively, "Trade Secrets"); owned, used, or licensed by the Company as licensee or licensor.

(ii) Agreements. Schedule 3.1(o) contains a complete and accurate list of all contracts relating to the Intellectual Property Rights to which the Company is a party or by which the Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than \$10,000 under which the Company is the licensee. There are no outstanding and, to Company's knowledge, no threatened disputes or disagreements with respect to any such agreement.

(iii) Know-How Necessary for the Business. The Intellectual Property Rights are all those necessary for the operation of the Company's businesses as it is currently conducted or as represented, in writing, to the Purchasers to be conducted. The Company is the owner of all right, title, and interest in and to each of the Intellectual Property Rights, free and clear of all liens, security interests, charges, encumbrances, equities, and other adverse claims, and has the right to use all of the Intellectual Property Rights. To the Company's knowledge, no employee of the Company has entered into any contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than of the Company.

(iv) Know-How Necessary for the Business. Schedule 3.1(o) contains a complete and accurate list of all Patents. The Company is the owner of all right, title and interest in and to each of the Patents, free and clear of all Liens and other adverse claims. All of the issued Patents are currently in compliance with formal legal requirements (including payment of filing, examination, and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Initial Closing Date. No Patent has been or is now involved in any interference, reissue, reexamination, or opposition proceeding. To the Company's knowledge: (1) there is no potentially interfering patent or patent application of any third party, and (2) no Patent is infringed or has been challenged or threatened in any way. To the Company's knowledge, none of the products manufactured and sold, nor any process or know-how used, by the Company infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(v) Trademarks. Schedule 3.1(o) contains a complete and accurate list and summary description of all Marks. The Company is the owner of all right, title, and interest in and to each of the Marks, free and clear of all Liens and other adverse claims. All Marks that have been registered with the United States Patent and Trademark Office are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Initial Closing Date. Except as set forth in Schedule 3.1(o), no Mark has been or is now involved in any opposition, invalidation, or cancellation and, to the Company's knowledge, no such action is threatened with respect to any of the Marks. To the Company's knowledge: (1) there is no potentially interfering trademark or trademark application of any third party, and (2) no Mark is infringed or has been challenged or threatened in any way. To the Company's knowledge, none of the Marks used by the Company infringes or is alleged to infringe any trade name, trademark, or service mark of any third party.

(vi) Copyrights. Schedule 3.1(o) contains a complete and accurate list of all Copyrights. The Company is the owner of all right, title, and interest in and to each of the Copyrights, free and clear of all Liens and other adverse claims. All the Copyrights have been registered and are currently in compliance with formal requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the date of the Initial Closing. No Copyright is infringed or, to the Company's knowledge, has been challenged or threatened in any way. To the Company's knowledge, none of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any third party or is a derivative work based on the work of a third party. All works encompassed by the Copyrights have been marked with the proper copyright notice.

(vii) Trade Secrets. With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. The Company has taken all reasonable precautions to protect the secrecy, confidentiality, and value of its Trade Secrets. The Company has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature, and, to the Company's knowledge, have not been used, divulged, or appropriated either for the benefit of any Person (other than the Company) or to the detriment of the Company. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

(p) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. In addition, within 60 days following the Initial Closing Date, the Company shall obtain directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Transactions With Affiliates and Employees. Except as set forth on Schedule 3.1(q), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$100,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(s) Certain Fees. No brokerage, finder's fees, commissions or due diligence fees are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents except as set forth on Schedule 3.1(s). The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(s) that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(u) Registration Rights. Except as set forth on Schedule 3.1(u), No Person other than the Purchasers has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(v) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby.

(w) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(x) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information which will not be publicly disclosed in the Registration Statement or within 210 days of the Initial Closing Date, whichever occurs first. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, when taken together as a whole, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(y) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

(z) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, and the Company's good faith estimate of the fair market value of its assets, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Initial Closing Date. Schedule 3.1(z) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$250,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$250,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(aa) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(bb) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(cc) Accountants. The Company's accounting firm is set forth on Schedule 3.1(cc) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm is registered with the Public Company Accounting Oversight Board, and shall express its opinion with respect to the financial statements to be included in the Registration Statement for the fiscal year ending December 31, 2012.

(dd) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ee) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, and (iii) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents, provided that such activities do not breach the Investors' representations made in Section 3.2 of this Agreement.

(ff) Reserved.

(gg) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(hh) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated.

(ii) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date on which such Purchaser is purchasing shares of Preferred Stock and Warrants hereunder to the Company as follows (unless as of a specific date therein):



(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Understandings or Arrangements. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to a Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants or converts any shares of Preferred Stock it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act. Such Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) Opportunities for Additional Information. Each Purchaser acknowledges that such Purchaser has had the opportunity to ask questions of and receive answers from, or obtain additional information from, the executive officers of the Company concerning the financial and other affairs of the Company, and to the extent deemed necessary in light of such Purchaser's personal knowledge of the Company's affairs, such Purchaser has asked such questions and received answers to the full satisfaction of such Purchaser, and such Purchaser desires to invest in the Company. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Disclosure Schedules and the Company's representations and warranties contained in the Transaction Documents.

(f) No General Solicitation. Each Purchaser acknowledges that the Preferred Shares and the Warrants were not offered to such Purchaser by means of any form of general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (i) any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media, or broadcast over television or radio or (ii) any seminar or meeting to which such Purchaser was invited by any of the foregoing means of communications.

The Company acknowledges and agrees that the representations contained in Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby.

#### **ARTICLE IV. OTHER AGREEMENTS OF THE PARTIES**

##### **4.1 Transfer Restrictions.**

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of a Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN “ACCREDITED INVESTOR” AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an “accredited investor” as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and the Registration Rights Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledge or secure Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser’s expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, (iii) if such Underlying Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions, (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) or (v) following the Effective Date. Upon the receipt by the Company of any reasonable certifications from the Purchasers requested by the Company with respect to future sales of such Underlying Shares, the Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any shares of Preferred Stock are converted or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions, or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following such time as such legend is no longer required under this Section 4.1(c), it will, no later than five Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend and, in each case, any reasonable certifications from the Purchaser requested by the Company or the Company's counsel in order to effectuate a legend removal (such fifth Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser if the Company is then a participant in such system.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, for each \$1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), \$10 per Trading Day (increasing to \$20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Company's failure to deliver certificates representing any Securities as required by the Transaction Documents, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Commencing on the earlier of the Effective Date or nine months from the Initial Closing Date, and until the earliest of the time that (i) no Purchaser owns Securities or (ii) the Warrants have expired, the Company covenants to have obtained and will thereafter maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the earlier of (i) the Effective Date, or (ii) nine (9) month anniversary of the date hereof and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Stated Value of Preferred Stock held by such Purchaser on the day of a Public Information Failure and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion and Exercise Procedures. Each of the form of Notice of Exercise included in the Warrants and the form of Notice of Conversion included in the Certificate of Designation set forth the totality of the procedures required of the Purchasers in order to exercise the Warrants or convert the Preferred Stock. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants or convert their Preferred Stock. The Company shall honor exercises of the Warrants and conversions of the Preferred Stock and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure: Publicity. The Registration Statement will disclose the material terms of the transactions contemplated hereby, and shall include the Transaction Documents as exhibits thereto. From and after the filing of the Registration Statement, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except: (a) as required by federal securities law in connection with the filing of the Registration Statement and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have requested such information pursuant to Section 4.16 hereof, or entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of its representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

#### 4.11 Reservation and Listing of Securities.

(a) The Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 60<sup>th</sup> day after such date.

(c) The Company shall, on the sooner of (i) 30 days after the Effective Date, or (ii) 210 days after the Initial Closing Date: (a) in the time and manner required by a Trading Market, prepare and file with such Trading Market a listing application covering all of the Underlying Shares, (b) take all steps necessary to cause such Underlying Shares to be approved for listing and actually listed on a Trading Market ("Listing Date"), and provide to the Purchasers evidence of such listing, and (c) maintain the listing of such Underlying Shares on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. In the event the shares of Common stock described above are not timely listed by the Listing Date, or if the listing is not continuously maintained for the earlier of (x) two years after the Listing Date or (y) the date that no Purchaser owns any Securities (each a "Listing Default"), then in addition to any other rights the Purchasers may have hereunder or under applicable law, on the first day of a Listing Default and on each monthly anniversary of each such Listing Default date (if the applicable Listing Default shall not have been cured by such date) until the applicable Listing Default is cured, the Company shall pay to each Purchaser an amount in cash, as partial liquidated damages and not as a penalty, equal to 2% of the aggregate Stated Value of Preferred Stock held by such Purchaser on the day of a Listing Default and on every thirtieth day (pro-rated for periods less than thirty days) thereafter until the date such Listing Default is cured. If the Company fails to pay any liquidated damages pursuant to this Section in a timely manner, the Company will pay interest thereon at a rate of 1.5% per month (pro-rated for partial months) to the Purchaser.



#### 4.12 Participation in Future Financing.

(a) From the date hereof until the date that is the 12 month anniversary of the Effective Date, upon any proposed issuance by the Company or any of its Subsidiaries of Common Stock, Common Stock Equivalents for cash consideration, Indebtedness or a combination thereof, other than (i) a rights offering to all holders of Common Stock (which may include extending such rights offering to holders of Preferred Stock) or (ii) an Exempt Issuance, (a “Subsequent Financing”), each Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to 100% of the Subsequent Financing (the “Participation Maximum”) on the same terms, conditions and price provided for in the Subsequent Financing, unless the Subsequent Financing is an underwritten public offering, in which case the Company shall offer each Purchaser the right to participate in such public offering when it is lawful for the Company to do so, but no Purchaser shall be entitled to purchase any particular amount of such public offering.

(b) At least five (5) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to each Purchaser a written notice of its intention to effect a Subsequent Financing (“Pre-Notice”), which Pre-Notice shall ask such Purchaser if it wants to review the details of such financing (such additional notice, a “Subsequent Financing Notice”). Upon the request of a Purchaser, and only upon a request by such Purchaser, for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Purchaser. The requesting Purchaser shall be deemed to have acknowledged that the Subsequent Financing Notice may contain material non-public information. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(c) Any Purchaser desiring to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the fifth (5<sup>th</sup>) Trading Day after all of the Purchasers have received the Pre-Notice that the Purchaser is willing to participate in the Subsequent Financing, the amount of such Purchaser’s participation, and representing and warranting that such Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Purchaser as of such fifth (5<sup>th</sup>) Trading Day, such Purchaser shall be deemed to have notified the Company that it does not elect to participate.

(d) If by 5:30 p.m. (New York City time) on the fifth (5<sup>th</sup>) Trading Day after all of the Purchasers have received the Pre-Notice, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may affect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If by 5:30 p.m. (New York City time) on the fifth (5<sup>th</sup>) Trading Day after all of the Purchasers have received the Pre-Notice, the Company receives responses to a Subsequent Financing Notice from Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, each such Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. “Pro Rata Portion” means the ratio of (x) the Subscription Amount of shares of Preferred Stock and Warrants purchased hereunder by a Purchaser participating under this Section 4.12 and (y) the sum of the aggregate Subscription Amounts of Securities purchased hereunder by all Purchasers participating under this Section 4.12.

(f) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 4.12, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(g) The Company and each Purchaser agree that if any Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Purchaser shall be required to agree to any restrictions on trading as to any of the Securities purchased hereunder (for avoidance of doubt, the securities purchased in the Subsequent Financing shall not be considered securities purchased hereunder) or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser.

(h) Notwithstanding anything to the contrary in this Section 4.12 and unless otherwise agreed to by such Purchaser, the Company shall either confirm in writing to such Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Purchaser will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Subsequent Financing Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser, such transaction shall be deemed to have been abandoned and such Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

#### 4.13 Subsequent Equity Sales.

(a) Except as provided in paragraph (c) below, from the date hereof until 120 days after the Effective Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents pursuant to which a Person is entitled to acquire shares of Common Stock at an effective price per share that is less than \$3.25.

(b) From the date hereof until the later of (i) the date that is the one year anniversary of the final Closing Date and (ii) such time as not more than 15% of the originally issued Preferred Stock remains outstanding, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for cash consideration (or a combination of units thereof) involving a Variable Rate Transaction. “Variable Rate Transaction” means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may sell securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of (i) any rights offering, or (ii) any Exempt Issuance, except that no Variable Rate Transaction, shall be an Exempt Issuance.

4.14 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of this Agreement unless the same consideration is also offered to all of the parties to this Agreement. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.15 Most Favored Nation Provision. From the date hereof until such time as no Purchaser holds any of the Securities, in the event that the Company issues or sells any Common Stock or Common Stock Equivalents, if a Purchaser then holding Securities reasonably believes that any of the terms and conditions appurtenant to such issuance or sale are more favorable to such investors than are the terms and conditions granted to the Purchasers hereunder, upon notice to the Company by such Purchaser within five Trading Days after disclosure of such issuance or sale, the Company shall amend the terms of this transaction as to such Purchaser only so as to give such Purchaser the benefit of such more favorable terms or conditions. This Section 4.15 shall not apply with respect to an Exempt Issuance, and shall only apply as to price terms in respect of any rights offering. The Company shall provide each Purchaser with notice of any such issuance or sale in the manner for disclosure of Subsequent Financings set forth in Section 4.12.

4.16 Reporting Requirements. Until the time the Company becomes subject to the reporting provisions of the Exchange Act, the Company shall furnish to each Purchaser that holds Securities, upon request by the Purchaser, the following:

(a) As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company commencing with the fiscal year ending December 31, 2012, subject to an extension of time equal to the extension permitted under Rule 12b-25 of the Exchange Act for companies subject to the reporting provisions of the Exchange Act, audited financial statements of the Company as at the end of such fiscal year and related statements of income and expenses for such fiscal year, prepared in accordance with GAAP, with the opinion of an independent certified public accountant reasonably acceptable to the Purchaser as evidenced by the prior written consent of the Purchaser;

(b) As soon as available and in any event within forty five (45) days after the end of each fiscal quarter, subject to an extension of time equal to the extension permitted under Rule 12b-25 of the Exchange Act for companies subject to the reporting provisions of the Exchange Act, quarterly financial statements prepared by the Company and other information reasonably requested by the Purchaser;

(c) As soon as possible and in any event within five (5) Business Days after the Purchasers notify the Company of the occurrence of a Triggering Event, a statement of an authorized officer of the Company setting forth the nature and period of existence of such Triggering Event and the action which the Company has taken and proposes to take with respect thereto;

(d) Promptly after the sending or filing thereof, copies of all reports, if any, which the Company sends to any of its shareholders, and copies of all reports and registration statements, if any, which the Company files with the Commission or any Trading Market;

(e) Promptly after the filing or receiving thereof, copies of all reports and notices, if any, which the Company files under ERISA, with the Internal Revenue Service or the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or which the Company receives from any of such Persons;

(f) Promptly upon determination by the Company's Chief Executive Officer of the need for the Company or Board of Directors to obtain additional financing, all information concerning such determination if, as and when available;

(g) Information concerning offers or solicitations, and the terms and conditions thereof, for additional equity financing, given to the Purchaser not less than 10 days prior to the entering into of such financial arrangement; and

(h) Such other information respecting the condition or operations, financial or otherwise, of the Company as the Purchasers may from time to time reasonably request.

(k) If any Triggering Event occurs, notice of which has not been given by a Holder (as defined in the Certificate of Designation), then the Company will give notice to Holder of such occurrence not later than the second Trading Day after the Company has knowledge of such occurrence.

4.17 Capital Changes. Until the one year anniversary of the Effective Date, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchasers holding a majority in interest of the shares of Preferred Stock, unless such reverse split is made in conjunction with the listing of the Common Stock on a national securities exchange.

4.18 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at each Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

#### **ARTICLE V. MISCELLANEOUS**

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Initial Closing has not been consummated on or before February 14, 2013; provided, however, that such date may be extended, without notice, to March 1, 2013 with the consent of the Company, Alpha (as defined below) and Laidlaw; provided further, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Initial Closing, the Company has agreed to reimburse Alpha Capital Anstalt ("Alpha") the non-accountable sum of \$95,000 for its legal fees and due diligence expenses (the "Fee Reimbursement Amount"), of which \$5,000 has been paid prior to the Initial Closing and an additional Warrant to purchase 8,700 Warrant Shares (the "Additional Warrant"). \$62,500 of the Fee Reimbursement Amount is payable at the Initial Closing in cash (less the \$5,000 previously paid) and \$32,500 is payable at the Initial Closing in shares of Common Stock valued at the Conversion Price. Accordingly, in lieu of the foregoing payments, the aggregate amount that Alpha is to pay for the shares of Preferred Stock and Warrants at the Initial Closing may be reduced, at Alpha's election by the Fee Reimbursement Amount (less the \$5,000 previously paid) or Alpha may instruct the Company to pay such amount to Solomon Mayer and its attorney. The Additional Warrant will be issued in the name of Solomon Mayer and delivered at the Initial Closing. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees, if any (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2<sup>nd</sup>) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding at least 67% in interest of the Securities then outstanding which Purchaser must include Alpha Capital Anstalt, so long as Alpha Capital Anstalt holds not less than \$100,000 of Preferred Stock or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of a conversion of the Preferred Stock or exercise of a Warrant, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded conversion or exercise notice concurrently with the return to such Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of such Purchaser's right to acquire such shares pursuant to such Purchaser's Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.



5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any claim, action or proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the Initial Closing Date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through G&M. G&M does not represent any of the Purchasers and only represents Alpha. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

**5.22 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**BIOSIG TECHNOLOGIES, INC.**

Address for Notice:

12424 Wilshire Blvd., Suite 745  
Los Angeles, CA 90025

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chairman and Chief Executive Officer

Fax: 310-820-8115

With a copy to (which shall not constitute notice):

Rick Werner, Esq.  
Haynes and Boone, LLP  
30 Rockefeller Plaza  
26th Floor  
New York, NY 10112

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO BIOSIG SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: \_\_\_\_\_

*Signature of Authorized Signatory of Purchaser:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Email Address of Authorized Signatory: \_\_\_\_\_

Facsimile Number of Authorized Signatory: \_\_\_\_\_

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: \_\_\_\_\_

Shares of Preferred Stock: \_\_\_\_\_

Warrant Shares: \_\_\_\_\_

EIN Number: \_\_\_\_\_

[SIGNATURE PAGES CONTINUE]



## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of February 6, 2013, between BioSig Technologies, Inc., a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each Purchaser (the "Purchase Agreement").

The Company and each Purchaser hereby agrees as follows:

1. Definitions.

**Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement.** As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 210<sup>th</sup> calendar day following the date hereof and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 90<sup>th</sup> calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above (unless the Company is required to update its financial statements prior to requesting acceleration of such Registration Statement, which will require the Company to file an amendment to such Registration Statement, in which case the Company shall file any necessary amendment to such Registration Statement and request effectiveness thereof as soon as reasonably practicable and in no event later than the dates set forth above), provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, the 120<sup>th</sup> calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

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“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Initial Registration Statement” means the initial Registration Statement filed pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 5(a).

“Plan of Distribution” shall have the meaning set forth in Section 2(a).

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all of the shares of Common Stock then issuable upon conversion in full of the Preferred Stock (assuming on such date the shares of Preferred Stock are converted in full without regard to any conversion limitations therein), (b) all shares of Common Stock issuable as dividends and “Make-Whole Payments” (as defined in the Certificate of Designation) on the Preferred Stock assuming all dividend and Make-Whole Payments are made in shares of Common Stock and the Preferred Stock is held for at least 3 years, (c) all Warrant Shares then issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (d) any additional shares of Common Stock issuable in connection with any anti-dilution provisions in the Preferred Stock or the Warrants (in each case, without giving effect to any limitations on conversion set forth in the Certificate of Designation or limitations on exercise set forth in the Warrants) and (e) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company, and all Warrants are exercised by “cashless exercise” as provided in Section 2(c) of each of the Warrants), as reasonably determined by the Company, upon the advice of counsel to the Company.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Selling Stockholder Questionnaire” shall have the meaning set forth in Section 3(a).

“SEC Guidance” means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.



2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the “Plan of Distribution” attached hereto as Annex A. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company, and all Warrants are exercised by “cashless exercise” as provided in Section 2(c) of each of the Warrants) (the “Effectiveness Period”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. Eastern Time on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

- a. First, the Company shall reduce or eliminate any securities to be included by any Person other than a Holder;
- b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders); and
- c. Third, the Company shall reduce Registrable Securities represented by Conversion Shares (applied, in the case that some Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Conversion Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within fifteen (15) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than twenty (20) consecutive calendar days or more than an aggregate of forty-five (45) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "Event"), and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such fifteen (15) calendar day period is exceeded, and for purpose of clause (v) the date on which such twenty (20) or forty-five (45) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to .25% of the aggregate purchase price paid by such Holder pursuant to the Purchase Agreement. The parties agree that the maximum aggregate liquidated damages payable to a Holder under this Agreement shall be 3% of the aggregate Subscription Amount paid by such Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. Notwithstanding the above, the Company shall not be obligated to provide the Holders advance copies of any universal shelf registration statement registering securities in addition to those required hereunder, or any Prospectus prepared thereto. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of 67% or more of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4<sup>th</sup>) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus, provided, however, in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) The Company shall cooperate with any broker-dealer through which a Holder proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by any such Holder, and the Company shall pay the filing fee required by such filing within two (2) Business Days of request therefor.

(i) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; provided, that, the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(j) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement and applicable law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(k) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(k) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(l) Comply with all applicable rules and regulations of the Commission.

(m) The Company shall use its best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(n) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4 . Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities) and (D) if not previously paid by the Company, with respect to any filing that may be required to be made by any broker through which a Holder intends to make sales of Registrable Securities with FINRA pursuant to FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale, (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(h).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title), to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with any applicable prospectus delivery requirements of the Securities Act or the plan of distribution in any Registration Statement through no fault of the Company or (y) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), to the extent, but only to the extent, related to the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Holder under this Section 5(b) be greater in amount than the dollar amount of the net proceeds actually received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that, the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.



An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party; provided, that, the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no Holder shall be required to contribute pursuant to this Section 5(d), in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Except as set forth on Schedule 6(b) attached hereto, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(c) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to a Registration Statement.

(d) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 67% or more of the then outstanding Registrable Securities which Holders must include Alpha Capital Anstalt for so long as Alpha Capital Anstalt holds not less than \$100,000 of Preferred Stock (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security). If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(f). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(o) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

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*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**BIOSIG TECHNOLOGIES, INC., A DELAWARE CORPORATION**

By:           /s/ Kenneth Londoner            
Name: Kenneth Londoner  
Title: Chairman & CEO

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

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[SIGNATURE PAGE OF HOLDERS TO BIOSIG RRA]

Name of Holder: \_\_\_\_\_

*Signature of Authorized Signatory of Holder:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

[SIGNATURE PAGES CONTINUE]

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Plan of Distribution

Each Selling Stockholder (the “Selling Stockholders”) of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the OTC Bulletin Board or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

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In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities. In no event shall any broker-dealer receive fees, commissions and markups which, in the aggregate, would exceed eight percent (8%).

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Because Selling Stockholders may be deemed to be “underwriters” within the meaning of the Securities Act, they will be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder. In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus. The Selling Stockholders have advised us that there is no underwriter or coordinating broker acting in connection with the proposed sale of the resale securities by the Selling Stockholders.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of securities of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

**BIOSIG TECHNOLOGIES, INC.**

**Selling Stockholder Notice and Questionnaire**

The undersigned beneficial owner of common stock (the “Registrable Securities”) of BioSig Technologies, Inc., a Delaware corporation (the “Company”), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Registration Statement”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the “Registration Rights Agreement”) to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the “Selling Stockholder”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

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The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

### QUESTIONNAIRE

#### 1. Name.

- (a) Full Legal Name of Selling Stockholder

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- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

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- (c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

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#### 2. Address for Notices to Selling Stockholder:

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Telephone:

Fax:

Contact Person:

#### 3. Broker-Dealer Status:

- (a) Are you a broker-dealer?

Yes  No

- (b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes  No

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes  No

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

**4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

\_\_\_\_\_  
\_\_\_\_\_

**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

\_\_\_\_\_  
\_\_\_\_\_

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: \_\_\_\_\_ Beneficial Owner: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**



NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

## COMMON STOCK PURCHASE WARRANT

### BIOSIG TECHNOLOGIES, INC.

Warrant Shares: \_\_\_\_\_

Initial Exercise Date: February \_\_, 2013

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, \_\_\_\_\_ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to the close of business on the five year anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from BioSig Technologies, Inc., a Delaware corporation (the "Company"), up to \_\_\_\_\_ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated February \_\_, 2013, among the Company and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy of the Notice of Exercise Form annexed hereto. Within five (5) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless this Warrant may be exercised on a cashless basis and the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased (or cancelled, in the event of a cashless exercise). The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be **\$2.61**, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at any time after the six month anniversary of the Initial Exercise Date, there is no effective Registration Statement registering, or no current prospectus available for the resale of the Warrant Shares by the Holder, then this Warrant may only be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported on the OTC Pink Marketplace maintained by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).



d) Mechanics of Exercise.

i. Delivery of Certificates Upon Exercise. Certificates for shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise at a time when the Warrant Shares may subsequently be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, and otherwise by physical delivery to the address specified by the Holder in the Notice of Exercise by the date that is five (5) Trading Days after the latest of (A) the delivery to the Company of the Notice of Exercise, (B) surrender of this Warrant (if required) and (C) payment of the aggregate Exercise Price as set forth above (including by cashless exercise, if permitted) (such date, the "Warrant Share Delivery Date"). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder a certificate or the certificates representing the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder a certificate or the certificates representing the Warrant Shares pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not affect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon not less than 61 days' prior notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any such increase or decrease will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3.

Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If the Company or any Subsidiary thereof, as applicable, at any time while this Warrant is outstanding, shall sell or grant any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect (such lower price, the "Base Share Price" and such issuances collectively, a "Dilutive Issuance") (it being understood and agreed that if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is less than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance at such effective price), then simultaneously with the consummation of each Dilutive Issuance the Exercise Price shall be reduced and only reduced to equal the Base Share Price and the number of Warrant Shares issuable hereunder shall be increased such that the aggregate Exercise Price payable hereunder, after taking into account the decrease in the Exercise Price, shall be equal to the aggregate Exercise Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 3(b) in respect of an Exempt Issuance. The Company shall notify the Holder, in writing, no later than the Trading Day following the issuance or deemed issuance of any Common Stock or Common Stock Equivalents subject to this Section 3(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 3(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Share Price regardless of whether the Holder accurately refers to the Base Share Price in the Notice of Exercise. If the Company enters into a Variable Rate Transaction, despite the prohibition thereon in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion or exercise price at which such securities may be converted or exercised. Notwithstanding the foregoing, the issuance of any Common Stock or Common Stock Equivalents pursuant to the Purchase Agreement shall not be deemed a Dilutive Issuance.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (which shall be subject to Section 3(b)), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction that is (1) an all cash transaction, (2) a “Rule 13e-3 transaction” as defined in Rule 13e-3 under the Exchange Act, or (3) a Fundamental Transaction involving a person or entity not traded on a Trading Market, the Company or any Successor Entity (as defined below) shall, at the Holder’s option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction, purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction. “Black Scholes Value” means the value of this Warrant based on the Black and Scholes Option Pricing Model obtained from the “OV” function on Bloomberg, L.P. (“Bloomberg”) determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K if the Company is then subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4.                    Transfer of Warrant.

a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5.                    Miscellaneous.

a) No Rights as Stockholder Until Exercise. Except as set forth in Section 3(c), this Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i).

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.



c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate 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 of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and holders holding Warrants to acquire 67% of the Warrant Shares issuable pursuant to the Warrants that were issued under the Purchase Agreement, provided such holders must include Alpha Capital Anstalt so long as Alpha Capital Anstalt holds not less than \$100,000 of Warrants.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

\*\*\*\*\*

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**BIO SIG TECHNOLOGIES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**NOTICE OF EXERCISE**

TO: BIOSIG TECHNOLOGIES, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

[if permitted] the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue a certificate or certificates representing said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing Entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

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**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [\_\_\_\_] all of or [\_\_\_\_\_] shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is

\_\_\_\_\_.

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

\_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

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 whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

BIOSIG TECHNOLOGIES, INC.  
12424 Wilshire Blvd, Suite 745  
Los Angeles, CA 90025

February 25, 2013

Investors listed on signature page hereto

Re: Securities Purchase Agreement

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement, dated as of February 6, 2013 (the "*Securities Purchase Agreement*"), by and among BioSig Technologies, Inc., a Delaware corporation (the "*Company*"), and certain purchasers identified on the signature pages thereto, including the investors listed on the signature page hereto (the "*Investors*"); that certain Registration Rights Agreement, dated as of February 6, 2013 (the "*Registration Rights Agreement*"), by and among the Company and certain purchasers identified on the signature pages thereto, including the Investors, and that certain Amended and Restated Certificate of Incorporation of the Company, dated February 6, 2013 (as amended, the "*Charter*"). All capitalized terms in this letter (the "*Letter Agreement*") shall have the meanings assigned to them under the Securities Purchase Agreement, unless otherwise defined herein.

Amendments may be made to each of the Securities Purchase Agreement, the Registration Rights Agreement and the Charter by written instrument signed by the Company and the Purchasers holding at least 67% in interest of the Securities outstanding, which Purchasers must include Alpha Capital Anstalt. The Investors hold at least 67% in interest of the Securities outstanding. By signature and countersignature below, the Company and the Investors agree to the following:

- 1) Pursuant to Sections 2.1(a) and 5.1 of the Securities Purchase Agreement, the Termination Date shall be extended from March 1, 2013 to April 1, 2013 and all references to March 1, 2013 in the Securities Purchase Agreement shall be changed to April 1, 2013.
- 2) In the Registration Rights Agreement, the definition of "Effectiveness Date" shall be deleted in its entirety and replaced with the following:

“Effectiveness Date” means, with respect to the Initial Registration Statement required to be filed hereunder, the 210<sup>th</sup> calendar day following February 12, 2013 and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 90<sup>th</sup> calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above (unless the Company is required to update its financial statements prior to requesting acceleration of such Registration Statement, which will require the Company to file an amendment to such Registration Statement, in which case the Company shall file any necessary amendment to such Registration Statement and request effectiveness thereof as soon as reasonably practicable and in no event later than the dates set forth above), provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.”

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3) In the Registration Rights Agreement, the definition of “Filing Date” shall be deleted in its entirety and replaced with the following:

“ Filing Date” means, with respect to the Initial Registration Statement required hereunder, the 120<sup>th</sup> calendar day following February 12, 2013 and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.”

4) The Charter shall be amended as set forth on Exhibit A hereto.

Except as modified pursuant hereto, no other changes or modifications to either the Securities Purchase Agreement, the Registration Rights Agreement or the Charter are intended or implied and in all other respects the Securities Purchase Agreement, the Registration Rights Agreement and the Charter are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent of a conflict between the terms of this Letter Agreement and either the Securities Purchase Agreement, the Registration Rights Agreement or the Charter, the terms of this Letter Agreement shall control. The Securities Purchase Agreement and this Letter Agreement (other than sections 2 and 3 hereof) shall be read and construed as one agreement and the Registration Rights Agreement and this Letter Agreement (other than section 1 hereof) shall be read and construed as one agreement.

*[Signature Page Follows]*



*[Signature Page to Side Letter]*

Very truly yours,

BioSig Technologies, Inc.

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chief Executive Officer

Acknowledged and Agreed:

Alpha Capital Anstalt

By: /s/ Konrad Ackermann  
Name: Konrad Ackermann  
Title: Director

/s/ Jerome B. Zeldis  
Jerome B. Zeldis

/s/ Kenneth L. Londoner  
Kenneth L. Londoner

/s/ John Steinhouse  
John Steinhouse

Lau Family Fund LP  
By: /s/ S7 Capital LLC, Its General Partner  
/s/ Steven Lau  
Title: Its Manager

Brio Capital Master Fund Ltd.

By: /s/ Shaye Hirsch  
Name: Shaye Hirsch  
Title: Director

/s/ Michael N. Emmerman  
Michael N. Emmerman

/s/ Kenneth Epstein  
Kenneth Epstein

/s/ R. Ian Chaplin  
R. Ian Chaplin

**Exhibit A**

**CERTIFICATE OF SECOND AMENDMENT  
TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
BIOSIG TECHNOLOGIES, INC.**

**BioSig Technologies, Inc.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is BioSig Technologies, Inc.

SECOND: That the Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 21, 2011.

THIRD: That the Corporation's Amended and Restated Certificate of Incorporation (the "Charter") was filed with the Secretary of State of the State of Delaware on February 6, 2013.

FOURTH: That the Board of Directors of the Corporation has duly adopted resolutions proposing to amend the Charter, and that said amendment was duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware. This Certificate of Amendment amends the provisions of the Charter as set forth herein.

FIFTH: That the text of the Charter is hereby amended as follows:

1. In Exhibit C of the Charter, in the definition of "Change of Control Transaction," all references to "the date hereof" shall be deleted and replaced with "February 12, 2013".
2. In Exhibit C of the Charter, in the definition of "Exempt Issuance," all references to "the date of the Purchase Agreement" shall be deleted and replaced with "February 12, 2013".
3. In Exhibit C of the Charter, the definition of "Original Issue Date" shall be deleted in its entirety and replaced with "Original Issue Date" shall mean February 12, 2013".
4. In Section 3(a) of Exhibit C of the Charter, the reference to "February 6, 2016" shall be deleted and replaced with "February 12, 2016".
5. In Section 3(b) of Exhibit C of the Charter, the reference to "February 6, 2016" shall be deleted and replaced with "February 12, 2016".
6. In Section 3(g) of Exhibit C of the Charter, the reference to "the date of the Purchase Agreement" shall be deleted and replaced with "February 12, 2013".

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized officer, this \_\_ day of February, 2013.

**BIOSIG TECHNOLOGIES, INC.**

By: /s/ Kenneth Londoner  
Kenneth Londoner  
Chairman and Chief Executive Officer



BIOSIG TECHNOLOGIES, INC.  
12424 Wilshire Blvd, Suite 745  
Los Angeles, CA 90025

April 12, 2013

Investors listed on signature page hereto

Re: Securities Purchase Agreement

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement, dated as of February 6, 2013 (the "*Securities Purchase Agreement*"), by and among BioSig Technologies, Inc., a Delaware corporation (the "*Company*"), and certain purchasers identified on the signature pages thereto, including the investors listed on the signature page hereto (the "*Investors*") as such Securities Purchase Agreement may be amended from time to time. All capitalized terms in this letter (the "*Letter Agreement*") shall have the meanings assigned to them under the Securities Purchase Agreement, unless otherwise defined herein.

Amendments may be made to the Securities Purchase Agreement by written instrument signed by the Company and the Purchasers holding at least 67% in interest of the Securities outstanding, which Purchasers must include Alpha Capital Anstalt ("*Alpha*"). By signature and countersignature below, the Company and the Investors agree to the following:

- 1) Pursuant to Sections 2.1(a) and 5.1 of the Securities Purchase Agreement, the Termination Date shall be extended from April 1, 2013 to May 31, 2013 and all references to April 1, 2013 in the Securities Purchase Agreement shall be changed to May 31, 2013.
- 2) Each of the letter agreements between the Company and Alpha and the Company and Brio Capital Master Fund Ltd. ("*Brio*"), each dated February 6, 2013, shall be null and void and of no further force or effect. From the date hereof until the one year anniversary of the Effective Date, for a purchase price of \$1,000 per unit, with each unit consisting of one share of Preferred Stock and a Warrant to purchase 479 shares of Common Stock (each, a "*Unit*"), (i) Alpha shall have an option to purchase up to 375 Units, and (ii) Brio shall have an option to purchase up to 75 Units, in each case pursuant to the terms of the Securities Purchase Agreement.

Except as modified pursuant hereto, no other changes or modifications to the Securities Purchase Agreement are intended or implied and in all other respects the Securities Purchase Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent of a conflict between the terms of this Letter Agreement and the Securities Purchase Agreement, the terms of this Letter Agreement shall control. The Securities Purchase Agreement and this Letter Agreement shall be read and construed as one agreement.

*[Signature Page Follows]*

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*[Signature Page to Side Letter]*

Very truly yours,

BioSig Technologies, Inc.

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chief Executive Officer

Acknowledged and Agreed:

Name of Investor:

Names of Investors (if held jointly, as tenants in common, or as community property):

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

BIOSIG TECHNOLOGIES, INC.  
12424 Wilshire Blvd, Suite 745  
Los Angeles, CA 90025

June 25, 2013

Investors listed on signature page hereto

Re: Amendment Agreement

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement, dated as of February 6, 2013 (the "*Securities Purchase Agreement*"), by and among BioSig Technologies, Inc., a Delaware corporation (the "*Company*"), and certain purchasers identified on the signature pages thereto, including the investors listed on the signature page hereto (the "*Investors*"), as amended to date; and that certain Registration Rights Agreement, dated as of February 6, 2013 (the "*Registration Rights Agreement*"), by and among the Company and certain purchasers identified on the signature pages thereto, including the Investors, as amended to date. All capitalized terms in this letter (the "*Letter Agreement*") shall have the meanings assigned to them under the Securities Purchase Agreement, unless otherwise defined herein.

Amendments may be made to each of the Securities Purchase Agreement and the Registration Rights Agreement by written instrument signed by the Company and the Purchasers holding at least 67% in interest of the Securities outstanding, which Purchasers must include Alpha Capital Anstalt. By signature and countersignature below, the Company and the Investors agree to the following:

- 1) Pursuant to Sections 2.1(a) and 5.1 of the Securities Purchase Agreement, the Termination Date shall be extended from May 31, 2013 to July 15, 2013, and all references to May 31, 2013 in the Securities Purchase Agreement shall be changed to July 15, 2013.
- 2) In the Registration Rights Agreement, the definition of "Effectiveness Date" shall be deleted in its entirety and replaced with the following:

“Effectiveness Date” means, with respect to the Initial Registration Statement required to be filed hereunder, November 22, 2013 and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 90<sup>th</sup> calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above (unless the Company is required to update its financial statements prior to requesting acceleration of such Registration Statement, which will require the Company to file an amendment to such Registration Statement, in which case the Company shall file any necessary amendment to such Registration Statement and request effectiveness thereof as soon as reasonably practicable and in no event later than the dates set forth above), provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.”

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3) In the Registration Rights Agreement, the definition of “Filing Date” shall be deleted in its entirety and replaced with the following:

“**Filing Date**” means, with respect to the Initial Registration Statement required hereunder, July 22, 2013 and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.”

4) In the Registration Rights Agreement, each reference to “Warrants” shall include the Extension Warrants (as defined below).

5) In consideration of each Investor’s agreement to the above provisions 1, 2, 3 and 4, the Company shall issue to each Investor a five-year warrant, in the form of the Warrant, to purchase that number of shares of Common Stock equal to a fraction, (i) the numerator of which shall be the number of Underlying Shares with respect to the Preferred Stock acquired by such Investor under the Securities Purchase Agreement, and (ii) the denominator of which shall be four (4) (the “**Extension Warrant**”).

Except as modified pursuant hereto, no other changes or modifications to either the Securities Purchase Agreement or the Registration Rights Agreement are intended or implied and in all other respects the Securities Purchase Agreement and the Registration Rights Agreement are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent of a conflict between the terms of this Letter Agreement and either the Securities Purchase Agreement or the Registration Rights Agreement, the terms of this Letter Agreement shall control. The Securities Purchase Agreement and this Letter Agreement (other than sections 2, 3 and 4 hereof) shall be read and construed as one agreement and the Registration Rights Agreement and this Letter Agreement (other than section 1 hereof) shall be read and construed as one agreement.

Please return an executed, counter-signed copy of this Letter Agreement to Laidlaw & Company (UK) Ltd., either (i) by facsimile transmission by fax at (212) 297-0670, or (ii) by e-mail to your Laidlaw representative. If your executed, counter-signed copy of this Letter Agreement is not received by **11:59 p.m. New York time, on June 18, 2013**, you will not receive any Extension Warrants, as described in section 5 hereof.

*[Signature Page Follows]*

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*[Signature Page to Side Letter]*

Very truly yours,

BioSig Technologies, Inc.

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chief Executive Officer

Acknowledged and Agreed:

Name of Investor:

Names of Investors (if held jointly, as tenants in common, or as community property):

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**OFFICE LEASE**

**Between**

**DOUGLAS EMMETT 1993, LLC,  
a Delaware limited liability company**

**as Landlord**

**and**

**BIOSIG TECHNOLOGIES, INC.  
a Delaware corporation**

**as Tenant**

**Dated**

**August 9, 2011**

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**OFFICE LEASE  
BASIC LEASE INFORMATION**

Date: August 9, 2011  
Landlord: DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company  
Tenant: BIOSIG TECHNOLOGIES, INC., a Delaware corporation

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**SECTION**

1.1	Premises:	12424 Wilshire Boulevard, Suite 745 Los Angeles, California 90025
1.4	Rentable Area of Premises:	Approximately 2,252 square feet
1.4	Usable Area of Premises:	Approximately 1,884 square feet
2.1	Term:	Three (3) years
	Commencement Date:	The earlier of: (a) August 16, 2011 or (b) the date Tenant occupies any portion of the Premises for the purpose of conducting its business (as modified by Section 2.1)
	Expiration Date:	Three (3) years after the Commencement Date, plus as many days as may be necessary so that the Term of this Lease ends on the last day of a calendar month (as modified by Section 2.1)
3.1	Fixed Monthly Rent:	\$5,067.00
3.3	Fixed Monthly Rent Increase:	Three percent (3%) per annum
	Date of First Increase:	(The first calendar day of the thirteenth (13 <sup>th</sup> ) full calendar month of the Term) (as modified by Section 2.1)
	Frequency of Increase:	Annually
3.7	Security Deposit:	\$25,000.00
4.1	Tenant's Share:	1.50%
4.2	Base Year for Operating Expenses:	2011
6.1	Use of Premises:	General office use consistent with the operation of a first-class office building in the West Los Angeles area
16.1	Tenant's Address for Notices:	
	Before the Commencement Date:	10161 Park Run Drive, Suite 150 Las Vegas, Nevada 89145
	After the Commencement Date:	12424 Wilshire Boulevard, Suite 745 Los Angeles, California 90025
	Tenant's Billing Address:	12424 Wilshire Boulevard, Suite 745 Los Angeles, California 90025
	Contact:	Kenneth L. Londoner
	Landlord's Address for Notices:	Douglas Emmett 1993, LLC c/o Douglas Emmett Management, LLC Director of Property Management 808 Wilshire Boulevard, Suite 200 Santa Monica, California 90401
20.5	Brokers:	Douglas Emmett Management, LLC 808 Wilshire Boulevard, Suite 200 Santa Monica, California 90401
		and
		Keller Williams Realty Los Angeles, California 90025
21.1	Parking Permits:	The obligation to purchase four (4) permits for unreserved spaces on a "must-take" basis.

*Except as noted hereinbelow, the foregoing Basic Lease Information is hereby incorporated into and made a part of this Lease. The Section reference in the left margin of the Basic Lease Information exists solely to indicate where such reference initially appears in this Lease document. Except as specified hereinbelow, each such reference in this Lease document shall incorporate the applicable Basic Lease Information. However, in the event of any conflict between any reference contained in the Basic Lease Information and the specific wording of this Lease, the wording of this Lease shall control.*

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Initial    Initial    Initial    Initial

**OFFICE LEASE  
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## OFFICE LEASE

**This Office Lease** (this "Lease"), dated August 9, 2011, is by and between DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company ("Landlord"), with an office at 808 Wilshire Boulevard, Suite 200, Santa Monica, California 90401, and BIOSIG TECHNOLOGIES, INC., a Delaware corporation ("Tenant"), with an office at 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

### ARTICLE 1 DEMISE OF PREMISES

**Section 1.1. Demise.** Subject to the covenants and agreements contained in this Lease, Landlord leases to Tenant and Tenant hires from Landlord, Suite Number 745 (the "Premises") on the seven (7<sup>th</sup>) floor, in the building located at 12424 Wilshire Boulevard, Los Angeles, California 90025 (the "Building"). The configuration of the Premises is shown on Exhibit A, attached hereto and made a part hereof by reference.

Tenant acknowledges that it has made its own inspection of and inquiries regarding the Premises, which are already improved. Therefore, Tenant accepts the Premises in their "as-is" condition. Tenant further acknowledges that Landlord has made no representation or warranty, express or implied, except as are contained in this Lease and its Exhibits, regarding the condition, suitability or usability of the Premises or the Building for the purposes intended by Tenant.

The Building, the Building's parking facilities, any outside plaza areas, land and other improvements surrounding the Building which are designated from time to time by Landlord as Common Areas appurtenant to or servicing the Building, and the land upon which any of the foregoing are situated, are herein sometimes collectively referred to as the "Real Property".

**Section 1.2. Tenant's Non-Exclusive Use.** Subject to the contingencies contained herein, Tenant is granted the nonexclusive use of the common corridors and hallways, stairwells, elevators, restrooms, parking facilities, lobbies and other public or Common Areas located on the Real Property (collectively, "Common Areas"). However, the manner in which such public and Common Areas are maintained and operated shall be at the reasonable discretion of Landlord, and Tenant's use thereof shall be subject to such reasonable and non-discriminatory rules, regulations and restrictions as Landlord may make from time to time.

**Section 1.3. Landlord's Reservation of Rights.** Landlord specifically reserves to itself use, control and repair of the structural portions of all perimeter walls of the Premises, any balconies, terraces or roofs adjacent to the Premises (including any flagpoles or other installations on said walls, balconies, terraces or roofs) and any space in and/or adjacent to the Premises used for shafts, stairways, pipes, conduits, ducts, mail chutes, conveyors, pneumatic tubes, electric or other utilities, sinks, fan rooms or other Building facilities, and the use thereof, as well as access thereto through the Premises. Landlord also specifically reserves to itself the following rights:

- a) To designate all sources furnishing sign painting or lettering;
- b) To constantly have pass keys to the Premises;
- c) To grant to anyone the exclusive right to conduct any particular business or undertaking in the Building, so long as Landlord's granting of the same does not prohibit Tenant's use of the Premises for Tenant's Specified Use, as defined in Article 6;
- d) To enter the Premises at any reasonable time with reasonable notice (except for emergencies) to inspect, repair, alter, improve, update or make additions to the Premises or the Building so long as Tenant's access to and use of the Premises is not materially impaired thereby;
- e) During the last six (6) months of the Term, to exhibit the Premises to prospective future tenants upon not less than 24 hours prior notice;
- f) Subject to the provisions of Article 12, to, at any time, and from time to time, whether at Tenant's request or pursuant to governmental requirement, repair, alter, make additions to, improve, or decorate all or any portion of the Real Property, Building or Premises at any reasonable time with reasonable notice (except for emergencies), so long as Tenant's access to and use of the Premises is not materially impaired thereby. In connection therewith, and without limiting the generality of the foregoing rights, Landlord shall specifically have the right to remove, alter, improve or rebuild all or any part of the lobby of the Building as the same is presently or shall hereafter be constituted;
- g) Subject to the provisions of Article 12, Landlord reserves the right to make alterations or additions to or change the location of elements of the Real Property and any Common Areas appurtenant thereto at any reasonable time with reasonable notice (except for emergencies), so long as Tenant's access to and use of the Premises is not materially impaired thereby; and/or
- h) To take such other actions as may reasonably be necessary when the same are required to preserve, protect or improve the Premises, the Building, or Landlord's interest therein at any reasonable time with reasonable notice (except for emergencies), so long as Tenant's access to and use of the Premises is not materially impaired thereby.

**Section 1.4. Area.** Landlord and Tenant agree that the usable area (the "Usable Area") of the Premises has been measured using the 2010 ANSI/BOMA Standard published collectively by the American National Standards Institute and the Building Owners' and Managers' Association ("ANSI/BOMA Standard"), as a guideline, and that Landlord is utilizing a deemed add-on factor of 19.52% to compute the rentable area (the "Rentable Area") of the Premises. Rentable Area herein is calculated as 1.1952 times the estimated Usable Area, regardless of what the actual square footage of the Common Areas of the Building may be, and whether or not they are more or less than 19.52% of the total estimated Usable Area of the Building. The purpose of this calculation is solely to provide a general basis for

comparison and pricing of this space in relation to other spaces in the market area.

Landlord and Tenant further agree that even if the Rentable or Usable Area of the Premises and/or the total Building Area are later determined to be more or less than the figures stated herein, for all purposes of this Lease, the figures stated herein shall be conclusively deemed to be the actual Rentable or Usable Area of the Premises, as the case may be.

**Section 1.5. Quiet Enjoyment.** Contingent upon Tenant keeping, observing and performing all of the covenants, agreements, terms, provisions and conditions of this Lease on its part to be kept, observed and performed, and subject to the limitations imposed under Article 14 of this Lease, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the Term.

**Section 1.6. No Light, Air or View Easement.** Any diminution or shutting off of light, air or view by any structure which is now or may hereafter be erected on lands adjacent to the Building shall in no way affect this Lease or impose any liability on Landlord. Noise, dust or vibration or other ordinary incidents to new construction of improvements on lands adjacent to the Building, whether or not by Landlord, shall in no way affect this Lease or impose any liability on Landlord.

**Section 1.7. Relocation.** Landlord shall have the right at any time, except during the last six (6) months of the Term, and after giving Tenant a minimum of sixty (60) days' prior written notice, to:

- a) provide and furnish Tenant with space elsewhere in the Building of approximately the same size as, with improvements comparable to the improvements in the Premises (the "Substitute Premises"), and
- b) relocate Tenant to such Substitute Premises.

Landlord shall pay all reasonable costs and expenses incurred as a result of such relocation (including Tenant's reasonable reprinting costs for announcements, and to replace Tenant's existing stock of stationery and business cards). If Landlord moves Tenant to the Substitute Premises, each and every term, covenant and condition of this Lease shall remain in full force and effect and be deemed applicable to the Substitute Premises, as though Landlord and Tenant had entered into an express written amendment of this Lease with respect thereto, except that (i) if the approximate rentable square footage of the Substitute Premises is less than that of the Premises, the Fixed Monthly Rent and Tenant's Share of Operating Expense increases shall be appropriately reduced or (ii) if the approximate rentable square footage of the Substitute Premises is greater than that of the Premises, the Fixed Monthly Rent and Tenant's Share of Operating Expense increases shall be as set forth in this Lease. Landlord shall use commercially reasonable efforts to cause such relocation to occur over a weekend period.

If Tenant refuses to permit Landlord to relocate Tenant as specified above, Landlord shall have the right to terminate this Lease effective ninety (90) days from the date Landlord provided Tenant with the original notification of intent to relocate.

## ARTICLE 2 COMMENCEMENT DATE AND TERM

**Section 2.1. Commencement Date and Term.** The term of this Lease ("Term") shall commence on the earlier of August 16, 2011 or the date Tenant occupies any portion of the Premises for the purpose of conducting its business (the "Commencement Date"), and shall end, unless sooner terminated as otherwise provided herein, at midnight on the last calendar day of the calendar month which occurs three (3) years after the Commencement Date (the "Termination Date"). The anticipated Commencement Date is August 16, 2011.

Tenant's taking possession of the Premises and/or commencing Tenant's normal business operations in the Premises shall be deemed conclusive evidence that, as of the Commencement Date, the Premises are in good order and repair.

**Section 2.2. Holding Over.** If Tenant fails to deliver possession of the Premises on the Termination Date, but holds over after the expiration or earlier termination of this Lease without the express prior written consent of Landlord, such tenancy shall be construed as a tenancy at sufferance on the same terms and conditions as are contained herein, except that the Fixed Monthly Rent payable by Tenant during such period of holding over shall automatically increase as of the Termination Date to an amount equal to one hundred fifty percent (150%) of the Fixed Monthly Rent payable by Tenant for the calendar month immediately prior to the date when Tenant commences such holding over (the "Holdover Rent"). During any period of holding over Tenant shall be obligated to pay Holdover Rent for a full calendar month whether or not Tenant remains in possession of the Premises for the entire calendar month and there shall be no pro-rata apportionment of Holdover Rent. Tenant's payment of such Holdover Rent, and Landlord's acceptance thereof, shall not constitute a waiver by Landlord of any of Landlord's rights or remedies with respect to such holding over, nor shall it be deemed to be a consent by Landlord to Tenant's continued occupancy or possession of the Premises past the time period covered by Tenant's payment of the Holdover Rent.

Furthermore, if Tenant fails to deliver possession of the Premises to Landlord upon the expiration or earlier termination of this Lease, and Landlord has theretofore notified Tenant in writing that Landlord requires possession of the Premises for a succeeding tenant, then, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees and expenses) and liability resulting from such failure, including without limiting the foregoing, any claims made by any succeeding tenant arising out of Tenant's failure to so surrender, and any lost profits to Landlord resulting therefrom.

Notwithstanding the provisions contained hereinabove regarding Tenant's liability for a continuing holdover, Landlord agrees to use commercially reasonable efforts to insert into any future lease of another tenant proposing to occupy the Premises provisions similar to those contained in Section 2.1, permitting mitigation of Tenant's damages arising out of Tenant's temporary holdover.

### ARTICLE 3 PAYMENT OF RENT, LATE CHARGE

**Section 3.1. Payment of Fixed Monthly Rent and Additional Rent.** "Rent" shall mean: all payments of monies in any form whatsoever required under the terms and provisions of this Lease, and shall consist of:

- a) "Fixed Monthly Rent", which shall be payable in equal monthly installments of \$5,067.00; plus
- b) Additional Rent as provided in Article 4 and elsewhere in this Lease.

**Section 3.2. Manner of Payment.** Tenant shall pay Fixed Monthly Rent and Additional Rent immediately upon the same becoming due and payable, without demand therefor, and without any abatement, set off or deduction whatsoever, except as may be expressly provided in this Lease. Landlord's failure to submit statements to Tenant stating the amount of Fixed Monthly Rent or Additional Rent then due, including Landlord's failure to provide to Tenant a calculation of the adjustment as required in Section 3.3 or the Escalation Statement referred to in Article 4, shall not constitute Landlord's waiver of Tenant's requirement to pay the Rent called for herein. Tenant's failure to pay Additional Rent as provided herein shall constitute a material default equal to Tenant's failure to pay Fixed Monthly Rent when due.

Rent shall be payable in advance on the first day of each and every calendar month throughout the Term, in lawful money of the United States of America, to Landlord at 12400 Wilshire Boulevard, Suite 210, Los Angeles, California 90025, or at such other place(s) as Landlord designates in writing to Tenant. Tenant's obligation to pay Rent shall begin on the Commencement Date and continue throughout the Term, without abatement, setoff or deduction, except as otherwise specified hereinbelow.

Concurrent with Tenant's execution and delivery to Landlord of this Lease, Tenant shall pay to Landlord the Fixed Monthly Rent due for the first month of the Term.

**Section 3.3. Fixed Monthly Rent Increase.** Commencing the first calendar day of the thirteenth (13<sup>th</sup>) full calendar month of the Term, and continuing through the last calendar day of the twenty-fourth (24<sup>th</sup>) full calendar month of the Term, the Fixed Monthly Rent payable by Tenant shall increase from \$5,067.00 per month to \$5,219.01 per month.

Commencing the first calendar day of the twenty-fifth (25<sup>th</sup>) full calendar month of the Term, and continuing throughout the remainder of the initial Term, the Fixed Monthly Rent payable by Tenant shall increase from \$5,219.01 per month to \$5,375.58 per month.

Landlord and Tenant shall, in the Memorandum, confirm the actual dates upon which the changes in Fixed Monthly Rent specified above shall occur.

Notwithstanding the foregoing, Tenant shall be permitted to defer fifty percent (50%) of the Fixed Monthly Rent due for the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) calendar months of the initial Term (collectively, the amount of Fixed Monthly Rent deferred shall be referred to herein as the "Rent Deferral Amount"). So long as Tenant has not committed a material default during the Term, the entire Rent Deferral Amount shall be abated and forgiven as of the Termination Date; provided, however, that if Tenant does commit a material default during the Term, then (a) Tenant shall pay to Landlord upon demand the entire Rent Deferral Amount due for the months of the Term prior to the occurrence of such material default, including late charges and interest thereon at the rate of ten percent (10%) per annum, computed from the date of such deferral, as if the same had been due if the rent deferral had not occurred, and (b) Tenant shall not be entitled to any additional or future deferral of Fixed Monthly Rent.

**Section 3.4. Tenant's Payment of Certain Taxes.** Tenant shall, within five (5) business days following Tenant's receipt of Landlord's invoices, reimburse Landlord, as Additional Rent, for any and all taxes, surcharges, levies, assessments, fees and charges payable by Landlord when:

- a) assessed on, measured by, or reasonably attributable to:
  - i) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises; or
  - ii) the cost or value of any leasehold improvements in or to the Premises in excess of \$35.00 per square foot, provided the same have been made in connection with Tenant's execution of this Lease, and without regard to whether title to or payment for such improvements vests with Tenant or Landlord;
- b) on or measured by any rent payable hereunder, including, without limitation, any gross income tax, gross receipts tax, or excise tax levied by the City or County of Los Angeles or any other governmental body with respect to the receipt of such rent (computed as if such rent were the only income of Landlord), but solely when levied by the appropriate City or County agency in lieu of, or as an adjunct to, such business license(s), fees or taxes as would otherwise have been payable by Tenant directly to such taxing authority;
- c) upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or



- d) solely because Landlord and Tenant entered into this transaction or executed any document transferring an interest in the Premises to Tenant. If it becomes unlawful for Tenant so to reimburse Landlord, the rent payable to Landlord under this Lease shall be revised to net Landlord the same rent after imposition of any such tax as would have been payable to Landlord prior to the imposition of any such tax.

Said taxes shall be due and payable whether or not now customary or within the contemplation of Landlord and Tenant. Notwithstanding the above, in no event shall the provisions of this Section 3.4 serve to entitle Landlord to reimbursement from Tenant for any federal, state, county or city income tax payable by Landlord or the managing agent of Landlord.

**Section 3.5. Certain Adjustments.** If:

- a) the Commencement Date occurs on other than January 1st of a calendar year, or this Lease expires or terminates on other than December 31st of a calendar year;
- b) the size of the Premises changes during a calendar year; or
- c) any abatement of Fixed Monthly Rent or Additional Rent occurs during a calendar year, then the amount payable by Tenant or reimbursable by Landlord during such year shall be adjusted proportionately on a daily basis, and the obligation to pay such amount shall survive the expiration or earlier termination of this Lease.

If the Commencement Date occurs on other than the first day of a calendar month, or this Lease expires on a day other than the last day of a calendar month, then the Fixed Monthly Rent and Additional Rent payable by Tenant shall be appropriately apportioned on a prorata basis for the number of days remaining in the month of the Term for which such proration is calculated.

If the amount of Fixed Monthly Rent or Additional Rent due is modified pursuant to the terms of this Lease, such modification shall take effect the first day of the calendar month immediately following the date such modification would have been scheduled.

**Section 3.6. Late Charge and Interest.** Tenant acknowledges that late payment by Tenant to Landlord of Fixed Monthly Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which are extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of Fixed Monthly Rent or Additional Rent and other payment due from Tenant hereunder is not received by Landlord within five (5) days of the date it becomes due, Tenant shall pay to Landlord on demand an additional sum equal to five percent (5%) of the overdue amount as a late charge. The parties agree that this late charge represents a fair and reasonable settlement against the costs that Landlord will incur by reason of Tenant's late payment. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

Every installment of Fixed Monthly Rent and Additional Rent and any other payment due hereunder from Tenant to Landlord which is not paid within twelve (12) days after the same becomes due and payable shall, in addition to any Late Charge already paid by Tenant, bear interest at the rate of ten percent (10%) per annum from the date that the same originally became due and payable until the date it is paid. Landlord shall bill Tenant for said interest, and Tenant shall pay the same within five (5) days of receipt of Landlord's billing.

Notwithstanding the foregoing, Tenant shall not be assessed any late charge for the first late payment in each twenty-four (24) month period of the Term so long as Tenant pays such amount within five (5) days of Tenant's receipt of notice that such amount has not been paid.

**Section 3.7. Security Deposit.** Concurrent with Tenant's execution and tendering of this Lease to Landlord, Tenant shall deposit the sum of \$25,000.00 (the "Security Deposit"), which amount Tenant shall thereafter at all times maintain on deposit with Landlord as security for Tenant's full and faithful observance and performance of its obligations under this Lease (expressly including, without limitation, the payment as and when due of the Fixed Monthly Rent, Additional Rent and any other sums or damages payable by Tenant hereunder and the payment of any and all other damages for which Tenant shall be liable by reason of any act or omission contrary to any of said covenants or agreements). Landlord shall have the right to commingle the Security Deposit with its general assets and shall not be obligated to pay Tenant interest thereon.

If at any time Tenant defaults in the performance of any of its obligations under this Lease, after the expiration of notice and the opportunity to cure (if a notice and cure period is provided for under this Lease for the particular default), then, Landlord may:

- a) apply as much of the Security Deposit as may be necessary to cure Tenant's non-payment of the Fixed Monthly Rent, Additional Rent and/or other sums or damages due from Tenant, including any sums due under Section 20.26 of this Lease; and/or;
- b) if Tenant is in default of any of the covenants or agreements of this Lease; apply so much of the Security Deposit as may be necessary to reimburse all expenses incurred by Landlord in curing such default; or
- c) if the Security Deposit is insufficient to pay the sums specified in Section 3.7 (a) or (b), elect to apply the entire Security Deposit in partial payment thereof, and proceed against Tenant pursuant to the provisions of Article 17 and Article 18 herein.

Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other laws, statutes, ordinances or other governmental rules, regulations or requirements now in force or which may hereafter be enacted or promulgated, which (i) establish the time frame by which Landlord must refund a security deposit under a lease, and/or (ii) provide that Landlord may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in Article 18 below, and/or those sums reasonably necessary to compensate Landlord for any loss or damage caused by Tenant's breach of this Lease or the acts or omission of Tenant or any Tenant Party. As used in this Lease a "Tenant Party" shall mean Tenant, any employee of Tenant, or any agent, authorized representative, design consultant or construction manager engaged by or under the control of Tenant.

If, as a result of Landlord's application of any portion or all of the Security Deposit, the amount held by Landlord declines to less than \$25,000.00, Tenant shall, within ten (10) days after demand therefor, deposit with Landlord additional cash sufficient to bring the then-existing balance held as the Security Deposit to the amount specified hereinabove. Tenant's failure to deposit said amount shall constitute a material breach of this Lease.

At the expiration or earlier termination of this Lease, Landlord shall deduct from the Security Deposit being held on behalf of Tenant any unpaid sums, costs, expenses or damages payable by Tenant pursuant to the provisions of this Lease; and/or any costs required to cure Tenant's default or performance of any other covenant or agreement of this Lease, and shall, within thirty (30) days after the expiration or earlier termination of this Lease, return to Tenant, without interest, all or such part of the Security Deposit as then remains on deposit with Landlord.

#### **ARTICLE 4 ADDITIONAL RENT**

**Section 4.1. Certain Definitions.** As used in this Lease:

- a) "Escalation Statement" means a statement by Landlord, setting forth the amount payable by Tenant or by Landlord, as the case may be, for a specified calendar year pursuant to this Article 4.
- b) "Operating Expenses" means the following in a referenced calendar year, including the Base Year as hereinafter defined, calculated assuming the Building is at least ninety-five percent (95%) occupied: all costs of management, operation, maintenance, and repair of the Building.

By way of illustration only, Operating Expenses shall include, but not be limited to: management fees, which shall not exceed those reasonable and customary in the geographic area in which the Building is located; water and sewer charges; any and all insurance premiums not otherwise directly payable by Tenant; license, permit and inspection fees; air conditioning (including repair of same); heat; light; power and other utilities; steam; labor; cleaning and janitorial services; guard services; supplies; materials; equipment and tools.

Operating Expenses shall also include the cost or portion thereof of those capital improvements made to the Building by Landlord during the Term:

- i) to the extent that such capital improvements reduce other direct expenses, when the same were made to the Building by Landlord after the Commencement Date, or
- ii) that are required under any governmental law or regulation that was not applicable to the Building as of the Commencement Date.

Said capital improvement costs, or the allocable portion thereof (as referred to in clauses (i) and (ii) above), shall be amortized pursuant to generally-accepted accounting principles, together with interest on the unamortized balance at the rate of ten percent (10%) per annum.

Operating Expenses shall also include all general and special real estate taxes, increases in assessments or special assessments and any other ad valorem taxes, rates, levies and assessments paid during a calendar year (or portion thereof) upon or with respect to the Building and the personal property used by Landlord to operate the Building, whether paid to any governmental or quasi-governmental authority, and all taxes specifically imposed in lieu of any such taxes (but excluding taxes referred to in Section 3.4 for which Tenant or other tenants in the Building are liable) including fees of counsel and experts, reasonably incurred by, or reimbursable by Landlord in connection with any application for a reduction in the assessed valuation of the Building and/or the land thereunder or for a judicial review thereof, (collectively "Appeal Fees"), but solely to the extent that the Appeal Fees result directly in a reduction of taxes otherwise payable by Tenant. However, in no event shall the portion of Operating Expenses used to calculate any billing to Tenant attributable to real estate taxes and assessments for any expense year be less than the billing for real estate taxes and assessments during the Base Year.

Operating Expenses shall also include, but not be limited to, the premiums for the following insurance coverage: all-risk, structural, fire, boiler and machinery, liability, earthquake and for replacement of tenant improvements to a maximum of \$35.00 per usable square foot, and for such other coverage(s), and at such policy limit(s) as Landlord deems reasonably prudent and/or are required by any lender or ground lessor, which coverage and limits Landlord may, in Landlord's reasonable discretion, change from time to time.

If, in any calendar year following the Base Year, as defined hereinbelow (a "Subsequent Year"), a new expense item (e.g., earthquake insurance, concierge services; entry card systems), is included in Operating Expenses which was not included in the Base Year Operating Expenses, then the cost of such new item shall be added to the Base Year Operating Expenses for purposes of determining the Additional Rent payable under this Article 4 for such Subsequent Year. During each Subsequent Year, the same amount shall continue to be included in the computation of Operating Expenses for the Base Year, resulting in each such Subsequent Year Operating Expenses only including the increase in the cost of such new item over the Base Year, as so adjusted. However, if in any Subsequent Year thereafter, such new item is not included in Operating Expenses, no such addition shall be made to Base Year Operating Expenses.



Conversely, as reasonably determined by Landlord, when an expense item that was originally included in the Base Year Operating Expenses is, in any Subsequent Year, no longer included in Operating Expenses, then the cost of such item shall be deleted from the Base Year Operating Expenses for purposes of determining the Additional Rent payable under this Article 4 for such Subsequent Year. The same amount shall continue to be deleted from the Base Year Operating Expenses for each Subsequent Year thereafter that the item is not included. However, if such expense item is again included in the Operating Expenses for any Subsequent Year, then the amount of said expense item originally included in the Base Year Operating Expenses shall again be added back to the Base Year Operating Expenses.

**c) Exclusions from Operating Expenses.** Notwithstanding anything contained in the definition of Operating Expenses as set forth in Subsection 4.1(b) of this Lease, Operating Expenses shall not include the following:

- i. The costs of repairs to the Building, if and to the extent that any such costs is actually reimbursed by the insurance carried by Landlord or subject to award under any eminent domain proceeding;
- ii. Depreciation, amortization and interest payments, except as specifically permitted herein or except on materials, tools supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services. In such a circumstance, the inclusion of all depreciation, amortization and interest payments shall be determined pursuant to generally accepted accounting principles, consistently applied, amortized over the reasonably anticipated useful life of the capital item for which such amortization, depreciation or interest allocation was calculated;
- iii. Marketing costs, including leasing commissions, attorneys' fees incurred in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;
- iv. Expenses for services not offered to Tenant or for which Tenant is charged directly, whether or not such services or other benefits are provided to another tenant or occupant of the Building;
- v. Costs incurred due to Landlord's or any tenant of the Building's violation, other than Tenant, of the terms and conditions of any lease or rental agreement in the Building;
- vi. Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the land thereunder;
- vii. Costs associated with operating the entity which constitutes Landlord, as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs (including attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to Landlord's ownership of the Building;
- viii. Leasing advertising and promotional expenditures, and costs of leasing signs in or on the Building identifying the owner of the Building, or other tenants signs;
- ix. Electric, gas or other power costs for which (and only to the extent) Landlord has been directly reimbursed by another tenant or occupant of the Building, or for which any tenant directly contracts with the local public service company;
- x. Costs, including attorneys' fees and settlement judgments and/or payments in lieu thereof, arising from actual or potential claims, disputes, litigation or arbitration pertaining to Landlord and/or the Building;
- xi. Costs incurred with respect to the installation of Tenant's or other occupant's improvements or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for Tenant or other occupants of the Building;
- xii. Tax penalties and interest incurred as a result of Landlord's negligent or willful failure to make payments and/or to file any income tax or informational return(s) when due, unless such non-payment is due to Tenant's nonpayment of rent;
- xiii. Any charitable or political contributions;
- xiv. The purchase or rental price of any sculpture, paintings or other object of art (except for costs associated with any common area fountains), whether or not installed in, on or upon the Building;
- xv. Costs of repairs which would have been covered by casualty insurance but for Landlord's failure to maintain casualty insurance to cover the replacement value of the Building as required by this Lease;

xvi. Capital expenditures not otherwise permitted hereunder; and

xvii. The assessment or billing of operating expenses that results in Landlord being reimbursed more than one hundred percent (100%) of the total expenses for the calendar year in question.

d) "Tenant's Share" means 1.50%.

**Section 4.2. Calculation of Tenant's Share of Increases in Operating Expenses.** If, commencing with the calendar year 2012, the Operating Expenses for any calendar year during the Term, or portion thereof, (including the last calendar year of the Term), have increased over the Operating Expenses for the calendar year 2011 (the "Base Year"), then within thirty (30) days after Tenant's receipt of Landlord's computation of such increase (an "Escalation Statement"), Tenant shall pay to Landlord, as Additional Rent, an amount equal to the product obtained by multiplying such increase by Tenant's Share.

Landlord may, at or after the start of any calendar year subsequent to the Base Year, notify Tenant of the amount which Landlord estimates will be Tenant's monthly share of any such increase in Operating Expenses for such calendar year over the Base Year and the amount thereof shall be added to the Fixed Monthly Rent payments required to be made by Tenant in such year. If Tenant's Share of any such increase in rent payable hereunder as shown on the Escalation Statement is greater or less than the total amounts actually billed to and paid by Tenant during the year covered by such statement, then within thirty (30) days thereafter, Tenant shall pay in cash any sums owed Landlord or, if applicable, Tenant shall either receive a credit against any Fixed Monthly Rent and/or Additional Rent next accruing for any sum owed Tenant, or if Landlord's Escalation Statement is rendered after the expiration or earlier termination of this Lease and indicates that Tenant's estimated payments have exceeded the total amount to which Tenant was obligated, then provided that Landlord is not owed any other sum by Tenant, Landlord shall issue a cash refund to Tenant within thirty (30) days after Landlord's completion of such Escalation Statement.

**Section 4.3. Tenant's Payment of Direct Charges as Additional Rent.** Tenant shall promptly and duly pay all costs and expenses incurred for or in connection with any Tenant Change (as such term is defined in Section 12.12 of this Lease) or Tenant Service (as such term is defined in Section 8.10 of this Lease), and discharge any mechanic's or other lien created against the Premises, Building or the Real Property arising as a result of or in connection with any Tenant Change or Tenant Service as Additional Rent by paying the same, bonding or manner otherwise provided by law.

Any other cost, expense, charge, amount or sum (other than Fixed Monthly Rent) payable by Tenant as provided in this Lease shall also be considered Additional Rent.

Certain individual items of cost or expense may, in the reasonable determination of Landlord, be separately charged and billed to Tenant by Landlord, either alone or in conjunction with another party or parties, if they are deemed in good faith by Landlord to apply solely to Tenant and/or such other party or parties and are not otherwise normally recaptured by Landlord as part of normal operating expenses. Insofar as is reasonable, Landlord shall attempt to give Tenant prior notice and the opportunity to cure any circumstance that would give rise to such separate and direct billing.

Said separate billing shall be paid as Additional Rent, regardless of Tenant's Share. Such allocations by Landlord shall be binding on Tenant unless patently unreasonable, and shall be payable within fifteen (15) days after receipt of Landlord's billing therefor.

## **ARTICLE 5 ETHICS**

**Section 5.1. Ethics.** Landlord and Tenant agree to conduct their business or practice in compliance with any appropriate and applicable codes of professional or business practice.

## **ARTICLE 6 USE OF PREMISES**

**Section 6.1. Use.** The Premises shall only be used for general office use consistent with the operation of a first-class office building in the West Los Angeles area (the "Specified Use") and for no other purposes, without Landlord's prior written consent, which consent shall be in Landlord's sole discretion. Any proposed revision of the Specified Use by Tenant shall be for a use consistent with those customarily found in first-class office buildings. Reasonable grounds for Landlord withholding its consent shall include, but not be limited to:

- a) the proposed use will place a disproportionate burden on the Building systems;
- b) the proposed use is for governmental or medical purposes or for a company whose primary business is that of conducting boiler-room type transactions or sales;
- c) the proposed use would generate excessive foot traffic to the Premises and/or Building.

So long as Tenant is in control of the Premises, Tenant covenants and agrees that it shall not use, suffer or permit any person(s) to use all or any portion of the Premises for any purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the City or County of Los Angeles, or other lawful authorities having jurisdiction over the Building.

Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or unreasonably interfere with the rights of other tenants or occupants of the Building, or injure or annoy them. Tenant shall not use or allow the Premises to be used for any pornographic or violent purposes, nor shall Tenant cause, commit, maintain or permit the continuance of any nuisance or waste in, on or about the Premises. Tenant shall not use the Premises in any manner that in Landlord's reasonable judgment would adversely affect or interfere with any services Landlord is required to furnish to Tenant or to any other tenant or occupant of the Building, or that would interfere with or obstruct the proper and economical rendition of any such service.

**Section 6.2. Exclusive Use.** Landlord represents that Tenant's Specified Use of the Premises does not conflict with exclusive use provisions granted by Landlord in other leases for the Building. Landlord further agrees that it shall, in the future, not grant an exclusive use privilege to any other tenant in the Building that will prevent Tenant from continuing to use the Premises for its Specified Use.

Tenant acknowledges and agrees that it shall not engage in any of the uses specified hereinbelow, for which Landlord has already granted exclusive rights: (a) gym; and (b) on the ground floor, to operate a financial institution providing loan, investment and banking services to the general public, including the retail sale of financial instruments.

Provided that Tenant has received written notice of the same from Landlord, and further provided that Landlord does not grant a future exclusive use right that prohibits Tenant from engaging in the Specified Use, then Tenant agrees that it shall not violate any exclusive use provision(s) granted by Landlord to other tenants in the Building.

**Section 6.3. Rules and Regulations.** Tenant shall observe and comply with the rules and regulations set forth in Exhibit C, and such other and further reasonable and non-discriminatory rules and regulations as Landlord may make or adopt and communicate to Tenant in writing at any time or from time to time, when said rules, in the reasonable judgment of Landlord, may be necessary or desirable to ensure the first-class operation, maintenance, reputation or appearance of the Building. However, if any conflict arises between the provisions of this Lease and any such rule or regulation, the provisions of this Lease shall control.

Provided Landlord makes commercially reasonable efforts to seek compliance by all occupants of the Building with the rules and regulations adopted by Landlord, Landlord shall not be responsible to Tenant for the failure of any other tenants or occupants of the Building to comply with said rules and regulations.

## ARTICLE 7 CONDITION UPON VACATING & REMOVAL OF PROPERTY

**Section 7.1. Condition upon Vacating.** At the expiration or earlier termination of this Lease, Tenant shall:

- a) terminate its occupancy of, quit and surrender to Landlord, all or such portion of the Premises upon which this Lease has so terminated, broom-clean and in the same condition as received except for:
  - i) ordinary wear and tear, or
  - ii) loss or damage by fire or other casualty; and
- b) surrender the Premises free of any and all debris and trash and any of Tenant's personal property, furniture, fixtures and equipment that do not otherwise become a part of the Real Property, pursuant to the provisions contained in Section 7.2 hereinbelow; and
- c) at Tenant's sole expense, forthwith and with all due diligence remove any Tenant Change (as defined in Section 12.12 of this Lease) and, if requested by Landlord in Landlord's sole and absolute discretion, restore the Premises to its original condition, reasonable wear and tear excepted. However, Tenant shall only be obligated to remove said Tenant Change if (i) the Tenant Change was made without Landlord's approval; (ii) the Tenant Change is an over standard improvement; and/or (iii) Landlord notified Tenant of its obligation to do so at the time Landlord approved Tenant's request for a Tenant Change. If Tenant fails to complete such removal and/or restoration and/or to repair any damage caused by the removal or restoration of any Tenant Change, Landlord may do so and may charge the cost thereof to Tenant pursuant to Section 20.26 of this Lease or deduct the cost from the Security Deposit under Section 3.7 of this Lease. In addition, at the expiration or earlier termination of this Lease, Tenant shall (1) remove all data, telecom and other cabling and wiring installed by or for Tenant in the Premises (including any of the same installed above the ceiling plenum), and (2) remove any security system or devices installed by Tenant, in either case whether or not the installation was performed as part of the initial Improvements constructed in the Premises or after such time, and Tenant shall repair any damage caused by such removal.

**Section 7.2. Tenant's Property.** All fixtures, equipment, improvements and installations attached or built into the Premises at any time during the Term shall, at the expiration or earlier termination of this Lease, be deemed the property of Landlord; become a permanent part of the Premises and remain therein. However, if said equipment, improvements and/or installations can be removed without causing any structural damage to the Premises, then, provided after such removal Tenant restores the Premises to the condition existing prior to installation of Tenant's trade fixtures or equipment, Tenant shall be permitted, at Tenant's sole expense, to remove said trade fixtures and equipment.

The provisions of this Article 7 shall survive the expiration or earlier termination of this Lease.

**ARTICLE 8  
UTILITIES AND SERVICES**

**Section 8.1. Normal Building Hours / Holidays.** The "Normal Business Hours" of the Building, during which Landlord shall furnish the services specified in this Article 8 are defined as 8:00 A.M. to 6:00 P.M., Monday through Friday, and 9:00 A.M. to 1:00 P.M. on Saturday, any one or more Holiday(s) excepted.

The "Holidays" which shall be observed by Landlord in the Building are defined as any federally-recognized holiday and any other holiday specified herein, which are: New Years Day, Presidents' Day, Memorial Day, the 4th of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day (each individually a "Holiday"). Tenant acknowledges that the Building shall be closed on each and every such Holiday, and Tenant shall not be guaranteed access to Landlord or Landlord's managing agent(s) on each such Holiday.

**Section 8.2. Access to the Building and General Services.** Subject to Force Majeure and any power outage(s) which may occur in the Building when the same are out of Landlord's reasonable control, Landlord shall furnish the following services to the Premises twenty-four (24) hours per day, seven days per week:

- a) during Normal Business Hours, bulb replacement for building standard lights;
- b) access to and use of the parking facilities for persons holding valid parking permits;
- c) access to and use of the elevators and Premises;
- d) use of electrical lighting on an as-needed basis within the Premises; and
- e) use of a reasonable level of water for kitchen and toilet facilities in the Premises and Common Area bathrooms.

**Section 8.3. Janitorial Services.** Landlord shall furnish the Premises with reasonable and customary janitorial services five (5) days per business week, except when the Building is closed on any Holiday. Landlord shall retain the sole discretion to choose and/or revise the janitorial company providing said services to the Premises and/or Building.

**Section 8.4. Security Services.** Tenant acknowledges that Landlord currently provides uniformed guard service to the Building from 6:00 a.m. to 11:00 p.m., seven (7) days per week, solely for the purposes of providing surveillance of, and information and directional assistance to persons entering the Building.

Tenant acknowledges that such guard service shall not provide any measure of security or safety to the Building or the Premises, and that Tenant shall take such actions as it may deem necessary and reasonable to ensure the safety and security of Tenant's property or person or the property or persons of Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders. Tenant agrees and acknowledges that, except in the case of the gross negligence or willful misconduct of Landlord or its directors, employees, officers, partners or shareholders, Landlord shall not be liable to Tenant in any manner whatsoever arising out of the failure of Landlord's guard service to secure any person or property from harm.

Tenant agrees and acknowledges that Landlord, in Landlord's sole discretion, shall have the option, but not the obligation to add, decrease, revise the hours of and/or change the level of services being provided by any guard company serving the Building. Tenant further agrees that Tenant shall not engage or hire any outside guard or security company without Landlord's prior written consent, which shall be in Landlord's sole discretion.

**Section 8.5. Utilities.** During Normal Business Hours Landlord shall furnish a reasonable level of water, heat, ventilation and air conditioning ("HVAC"), and a sufficient amount of electric current to provide customary business lighting and to operate ordinary office business machines, such as a single personal computer and ancillary printer per one hundred and twenty (120) rentable square feet contained in the Premises, facsimile machines, small copiers customarily used for general office purposes, and such other equipment and office machines as do not result in above-standard use of the existing electrical system. So long as the same remain reasonably cost competitive, Landlord shall retain the sole discretion to choose the utility vendor(s) to supply such services to the Premises and the Building.

Except with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned and/or delayed, Tenant shall not install or use any equipment, apparatus or device in the Premises that requires the installation of a 220 voltage circuit; consumes more than five (5) kilowatts per hour per item; or the aggregate use of which will in any way increase the connected load to more than 5 Watts per square foot, or cause the amount of electricity to be furnished or supplied for use in the Premises to more than 1.2 kWh per usable square foot, per month.

Except with the prior written consent of Landlord, Tenant shall not connect any electrical equipment to the electrical system of the Building, except through electrical outlets already existing in the Premises, nor shall Tenant pierce, revise, delete or add to the electrical, plumbing, mechanical or HVAC systems in the Premises.

**Section 8.6. After Hours HVAC and/or Excess Utility Usage.** If Tenant requires HVAC service during other than Normal Business Hours ("Excess HVAC"), Tenant shall make its request in writing at least six (6) hours before the close of the normal business day. Otherwise, Landlord shall have no obligation to provide Excess HVAC. Tenant's request shall be deemed conclusive evidence of its willingness to pay the costs specified herein. The current charge for Excess HVAC is \$35.00 per hour, and shall be subject to increases during the Term.

If Tenant requires electric current in excess of the amounts specified hereinabove, water or gas in excess of that customarily furnished to the Premises as office space ("Excess Utility Use"), Tenant shall first procure Landlord's prior written consent to such Excess Utility Use, which

Landlord may reasonably refuse.



In lieu of Landlord's refusal, Landlord may cause a meter or sub-meter to be installed to measure the amount of water, gas and/or electric current consumed by Tenant in the Premises. The cost of any such meter(s), and the installation, maintenance, and repair thereof, shall be paid by Tenant as Additional Rent.

After completing installation of said meter(s), and/or if Tenant requests Excess HVAC, then Tenant shall pay, as Additional Rent, within thirty (30) calendar days after Tenant's receipt of Landlord's billing, for the actual amounts of all water, steam, compressed air, electric current and/or Excess HVAC consumed beyond the normal levels Landlord is required herein to provide. Said billing shall be calculated on the usage indicated by such meter(s), sub-meter(s), or Tenant's written request therefor, and shall be issued by Landlord at the rates charged for such services by the local public utility furnishing the same, plus any additional expense reasonably incurred by Landlord in providing said Excess Utility Use and/or in keeping account of the water, steam, compressed air and electric current so consumed, plus an administrative and billing fee equal to fifteen percent (15%) of the costs so billed.

**Section 8.7. Changes Affecting HVAC.** Tenant shall also pay as Additional Rent for any additional costs Landlord incurs to repair any failure of the HVAC equipment and systems to perform their function when said failure arises out of or in connection with any change in, or alterations to, the arrangement of partitioning in the Premises after the Commencement Date, or from occupancy by, on average, more than one person for every two hundred fifty (250) usable square feet of the Premises, or from Tenant's failure to keep all HVAC vents within the Premises free of obstruction.

**Section 8.8. Damaged or Defective Systems.** Tenant shall give written notice to Landlord after Tenant becomes aware of any alleged damage to, or defective condition in any part or appurtenance of the Building's sanitary, electrical, HVAC or other systems serving, located in, or passing through, the Premises. Provided that the repair or remedy of said damage or defective condition is within the reasonable control of Landlord, it shall be remedied by Landlord with reasonable diligence. Otherwise, Landlord shall make such commercially reasonable efforts as may be available to Landlord to effect such remedy or repair, but except in the case of Landlord's gross negligence and/or willful misconduct or the gross negligence and/or willful misconduct of Landlord's agents, contractors, directors, employees, officers, partners, and/or shareholders, Landlord shall not be liable to Tenant for any failure thereof.

Tenant shall not be entitled to claim any damages arising from any such damage or defective condition nor shall Tenant be entitled to claim any eviction by reason of any such damage or defective condition unless:

- a) the same was caused by Landlord's gross negligence or willful misconduct while operating or maintaining the Premises or the Building;
- b) the damage or defective condition has substantially prevented Tenant from conducting its normal business operations or obtaining access to at least fifty percent (50%) of the Premises; and
- c) Landlord shall have failed to commence the remedy thereof and proceeded with reasonable diligence to complete the same after Landlord's receipt of notice thereof from Tenant.

Furthermore, if such damage or defective condition was caused by, or is attributed to, a Tenant Change or the unreasonable or improper use of such system(s) by Tenant or its employees, licensees or invitees:

- d) the cost of the remedy thereof shall be paid by Tenant as Additional Rent pursuant to the provisions of Section 4.3;
- e) in no event shall Tenant be entitled to any abatement of rent as specified above; and
- f) Tenant shall be estopped from making any claim for damages arising out of Landlord's repair thereof.

**Section 8.9. Limitation on Landlord's Liability for Failure to Provide Utilities and/or Services.** Except in the case of Landlord's gross negligence or willful misconduct or the gross negligence or willful misconduct of Landlord's agents, contractors, directors, employees, licensees, officers, partners or shareholders, Tenant hereby releases Landlord from any liability for damages, by abatement of rent or otherwise, for any failure or delay in furnishing any of the services or utilities specified in this Article 8 (including, but not limited to telephone and telecommunication services), or for any diminution in the quality or quantity thereof.

Tenant's release of Landlord's liability shall be applicable when such failure, delay or diminution is occasioned, in whole or in part, by repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by Landlord's inability to secure electricity, gas, water or other fuel at the Building after Landlord's reasonable effort to do so, by accident or casualty whatsoever, by act or default of Tenant or parties other than Landlord, or by any other cause beyond Landlord's reasonable control. Such failures, delays or diminution shall never be deemed to constitute a constructive eviction or disturbance of Tenant's use and possession of the Premises, or serve to relieve Tenant from paying Rent or performing any of its obligations under this Lease.

Furthermore, Landlord shall not be liable under any circumstances for a loss of, injury to, or interference with, Tenant's business, including, without limitation, any loss of profits occurring or arising through or in connection with or incidental to Landlord's failure to furnish any of the services or utilities required by this Article 8.

Notwithstanding the above, Landlord shall use commercially reasonable efforts to remedy any delay, defect or insufficiency in providing the services and or utilities required hereunder.

Notwithstanding the foregoing, if Tenant is prevented from using and does not use, the Premises or any portion thereof, as a result of Landlord's failure to provide services or utilities as required by this Lease (an "Abatement Event"), then Tenant shall give Landlord notice of such Abatement Event and if such Abatement Event continues for six (6) consecutive business days after Landlord's receipt of any such Notice (the "Eligibility Period"), and such failure is not attributable to, or caused by, the acts of Tenant, then the Fixed Monthly Rent and Additional Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises, or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use ("Unusable Area"), bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, the Unusable Area for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Fixed Monthly Rent and Additional Rent for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Such right to abate Fixed Monthly Rent and Additional Rent shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event.

**Section 8.10. Tenant Provided Services.** Tenant shall make no contract or employ any labor in connection with the maintenance, cleaning or other servicing of the physical structures of the Premises or for installation of any computer, telephone or other cabling, equipment or materials provided in or to the Premises (collectively and individually a "Tenant Service") without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not permit the use of any labor, material or equipment in the performance of any Tenant Service if the use thereof, in Landlord's reasonable judgment, would violate the provisions of any agreement between Landlord and any union providing work, labor or services in or about the Premises, Building and/or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. If any violation, disturbance, interference or conflict occurs, Tenant, upon demand by Landlord, shall immediately cause all contractors or subcontractors or all materials causing the violation, disturbance, interference, difficulty or conflict, to leave or be removed from the Building or the Common Areas immediately. Tenant shall indemnify and hold Landlord harmless from and against all claims, suits, demands, damages, judgments, costs, interest and expenses (including attorneys fees and costs incurred in the defense thereof) to which Landlord may be subject or suffer when the same arise out of or in connection with the use of, work in, construction to, or actions in, on, upon or about the Premises by Tenant or Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, including any actions relating to the installation, placement, removal or financing of any Tenant Service, improvements, fixtures and/or equipment in, on, upon or about the Premises.

## ARTICLE 9 TENANT'S INDEMNIFICATION AND LIMITATION ON LANDLORD'S LIABILITY

**Section 9.1. Tenant's Indemnification and Hold Harmless.** For the purposes of this Section 9.1, "Indemnitee(s)" shall jointly and severally refer to Landlord and Landlord's agents, clients, contractors, directors, employees, officers, members, partners, and/or shareholders.

Tenant shall indemnify and hold Indemnitees harmless from and against all claims, suits, demands, damages, judgments, costs, interest and expenses (including attorneys fees and costs incurred in the defense thereof) to which any Indemnitee may be subject or suffer when the same arise out of the negligence or willful misconduct of Tenant or the negligence or willful misconduct of Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders in connection with the use of, work in, construction to, or actions in, on, upon or about the Premises, including any actions relating to the installation, placement, removal or financing of any Tenant Change, improvements, fixtures and/or equipment in, on, upon or about the Premises.

Tenant's indemnification shall extend to any and all claims and occurrences, whether for injury to or death of any person or persons, or for damage to property (including any loss of use thereof), or otherwise, occurring during the Term or prior to the Commencement Date and to all claims arising from any condition of the Premises due to or resulting from any default by Tenant in the keeping, observance or performance of any covenant or provision of this Lease, or from the negligence or willful misconduct of Tenant or the negligence or willful misconduct of Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders.

**Section 9.2. Nullity of Tenant's Indemnification in Event of Negligence.** Notwithstanding anything to the contrary contained in this Lease, Tenant's indemnification shall not extend to the negligence or willful misconduct of Landlord or the negligence or willful misconduct of Landlord's agents, contractors, directors, employees, officers, partners or shareholders, nor to such events and occurrences for which Landlord otherwise carries insurance coverage.

**Section 9.3. Tenant's Waiver of Liability.** Provided and to the extent that any injury or damage suffered by Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, officers, partners, and/or shareholders did not arise out of the gross negligence or willful misconduct of Landlord or the negligence or willful misconduct of Landlord's agents, contractors, employees, officers, partners or shareholders, Tenant shall make no claim against Landlord and Landlord shall not be liable or responsible in any way for, and Tenant hereby waives all claims against Landlord with respect to or arising out of injury or damage to any person or property in or about the Premises by or from any cause whatsoever under the reasonable control or management of Tenant.

**Section 9.4. Limitation of Landlord's Liability.** Tenant expressly agrees that, notwithstanding anything in this Lease and/or any applicable law to the contrary, the liability of Landlord and Landlord's agents, contractors, directors, employees, licensees, officers, partners or shareholders, including any successor in interest thereto (collectively and individually the "Landlord Parties"), and any recourse by Tenant against Landlord or the Landlord Parties shall be limited solely and exclusively to an amount which is equal to the interest of Landlord in the Building.

Tenant specifically agrees that neither Landlord nor any of the Landlord Parties shall have any personal liability therefor. Further, Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

**Section 9.5. Transfer of Landlord's Liability.** Tenant expressly agrees that, to the extent that any transferee assumes the obligations of Landlord hereunder in writing, and provided Landlord has either transferred the complete Security Deposit held pursuant to this Lease or refunded the same to Tenant as of the date of such transfer, then the covenants and agreements on the part of Landlord to be performed under this Lease which arise and/or accrue after the date of such transfer shall not be binding upon Landlord herein named from and after the date of transfer of its interest in the Building.

**Section 9.6. Landlord's Indemnification.** Notwithstanding any contrary provision of this Lease, Landlord shall indemnify, and hold Tenant and Tenant's agents, clients, directors, officers, partners, employees, shareholders and contractors harmless from and against, any and all claims, causes of action, liabilities, losses, reasonable costs and expenses, including reasonable attorney's fees and court costs, arising from or in connection with:

- a) Any activity occurring, or condition existing, at or in the Building and/or the Real Property (other than in the Premises) when such activity or condition is under the reasonable control of Landlord, except and to the extent the same is caused by the negligence or willful misconduct of Tenant or Tenant's employees, agents, licensee, invitees, or contractors, or by Tenant's breach or default in the performance of any obligation under this Lease;
- b) Any activity occurring, or condition existing in the Premises when and to the extent caused by the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors; or
- c) Any material breach by Landlord of any of Landlord's obligations under this Lease that extend after the expiration of any notice and cure period.

## **ARTICLE 10 COMPLIANCE WITH LAWS**

**Section 10.1. Tenant's Compliance with Laws.** Tenant shall not use, permit to be used, or permit anything to be done in or about all or any portion of the Premises which will in any way violate any laws, statutes, ordinances, rules, orders or regulations duly issued by any governmental authority having jurisdiction over the Premises, or by the Board of Fire Underwriters (or any successor thereto) (collectively "Codes").

**Section 10.2. Tenant to Comply at Sole Expense.** Tenant shall, at its sole expense, promptly remedy any violation of such Codes. Notwithstanding the foregoing, nothing contained in this Section 10.2 shall require or permit Tenant to make any structural changes to the Premises, unless such changes are required due to either Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders use of the Premises for purposes other than general office purposes consistent with a Class A office building, in which case any such change in use shall be subject to the restrictions specified in Section 6.1 of this Lease.

**Section 10.3. Conclusive Evidence of Violation.** The judgment of any court of competent jurisdiction; Tenant's admission; or the admission of any one or more of Tenant's agents, contractors, directors, employees, officers, partners or shareholders in any action against Tenant, whether or not Landlord is a party thereto, that Tenant has so violated any one or more Codes shall be conclusive evidence of such violation as between Landlord and Tenant.

## **ARTICLE 11 ASSIGNMENT AND SUBLETTING**

**Section 11.1. Permission Required for Assignment or Sublet.** Unless Landlord's prior written consent has been given, which consent shall not be unreasonably withheld, conditioned and/or delayed (subject to the express provisions of this Article 11), this Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant by operation of law; nor shall Tenant:

- a) assign Tenant's interest in this Lease; or
- b) sublet the Premises or any part thereof or permit the Premises or any part thereof to be utilized by anyone other than Tenant, whether as by a concessionaire, franchisee, licensee, permittee or otherwise (collectively, a "sublease").

In addition, except for Transfers under clauses (a) or (b), Tenant shall not mortgage, pledge, encumber or otherwise transfer this Lease, the Term and/or estate hereby granted or any interest herein without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion.

Any assignment, mortgage, pledge, encumbrance, transfer or sublease (collectively, any "Transfer") without Landlord's prior written consent shall be voidable, and, in Landlord's sole election, shall constitute a material default under this Lease.



**Section 11.2. Voluntary Assignment due to Changes in Structure of Tenant.** Any dissolution, merger, consolidation, or other reorganization of Tenant, or the single sale or other transfer of a controlling percentage of the capital stock of Tenant (other than the sale of such stock pursuant to a public offering that results in a majority of the same members of the Board and executive officers remaining in control of said corporation) and or the single sale of fifty percent (50%) or more of the value of the assets of Tenant, shall be deemed a voluntary assignment. The phrase “controlling percentage” means the ownership of, and the right to vote stock possessing fifty percent (50%) or more of the total combined voting power of all classes of Tenant’s capital stock issued, outstanding, and entitled to vote for the election of directors. Notwithstanding anything to the contrary contained herein, the preceding paragraph shall not apply to corporations whose stock is traded through a recognized United States exchange or over the counter.

Any withdrawal or change (whether voluntary, involuntary, or by operation of law) in the partnership by one or more partners who own, in the aggregate fifty percent (50%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment.

If Tenant is comprised of more than one individual, a purported assignment (whether voluntary, involuntary, or by operation of law), by any one of the persons executing this Lease shall be deemed a voluntary assignment.

**Section 11.2.1. Affiliated Companies/Restructuring of Business Organization.** Any contrary provision of this Article 11 notwithstanding, the assignment by Tenant of all of its rights under this Lease or the subletting by Tenant of all or any portion of the Premises to (i) a parent or subsidiary of Tenant, (ii) any person or entity which controls, is controlled by or under common control with Tenant, (iii) any entity which purchases all or substantially all of the assets or stock of Tenant, (iv) any entity into which Tenant is merged or consolidated, (v) any entity which results from the merger or consolidation of entities which control, are controlled by or under common control with Tenant, or (vi) the temporary use or occupancy of portions of the Premises by a party or parties in connection with the transaction of business with Tenant or with an entity which is controlled by, controls or is under common control with Tenant (all such persons or entities described in (i), (ii), (iii), (iv), (v) and (vi) being sometimes hereinafter referred to as “Affiliates”) shall not be deemed a Transfer under this Article 11 and thus shall not be subject to Landlord’s prior consent, and Landlord shall not be entitled to any Net Rental Profit resulting therefrom, provided that:

- a) Any such Affiliate was not formed as a subterfuge to avoid the obligations of this Article 11;
- b) Tenant gives Landlord prior notice of any such assignment or sublease to an Affiliate;
- c) The successor of Tenant and Tenant have as of the effective date of any such assignment or sublease a tangible net worth, in the aggregate, computed in accordance with generally accepted accounting principles (but excluding good will as an asset), which is sufficient to meet the obligations of Tenant under this Lease;
- d) Any such assignment or sublease shall be subject and subordinate to all of the terms and provisions of this Lease, and such assignee or sublessee shall be deemed to have assumed all of the obligations of Tenant under this Lease with respect to that portion of the Premises which is the subject of such Transfer (other than the amount of Fixed Monthly Rent payable by Tenant with respect to a sublease); and
- e) Tenant and any guarantor shall remain fully liable for all obligations to be performed by Tenant under this Lease.

**Section 11.3. Request to Assign or Sublease.** If at any time during the Term, Tenant wishes to assign this Lease or any interest therein, or to sublet all or any portion of the Premises, then at least thirty (30) days prior to the date when Tenant desires the assignment or sublease to be effective, Tenant shall give written notice to Landlord setting forth the name, address, and business of the proposed assignee or sublessee, business and personal credit applications completed on Landlord’s standard application forms, and information (including references and such financial documentation as Landlord shall reasonably prescribe) concerning the character and financial condition of the proposed assignee or sublessee, the effective date of the assignment or sublease, and all the material terms and conditions of the proposed assignment, and with reference solely to a sublease: a detailed description of the space proposed to be sublet, together with any rights of the proposed sublessee to use Tenant’s improvements and/or ancillary services with the Premises.

**Section 11.4. Landlord’s Consent.** Landlord shall have thirty (30) days after Tenant’s notice of assignment and/or sublease is received with the financial information reasonably requested by Landlord to advise Tenant of Landlord’s (i) consent to such proposed assignment or sublease, (ii) withholding of consent to such proposed assignment or sublease, or (iii) election to terminate this Lease, such termination to be effective as of the date of the commencement of the proposed assignment or subletting. If Landlord shall exercise its termination right hereunder, Landlord shall have the right to enter into a lease or other occupancy agreement directly with the proposed assignee or subtenant, and Tenant shall have no right to any of the rents or other consideration payable by such proposed assignee or subtenant under such other lease or occupancy agreement, even if such rents and other consideration exceed the rent payable under this Lease by Tenant. Landlord shall have the right to lease the Premises to any other tenant, or not lease the Premises, in its sole and absolute discretion. Landlord and Tenant specifically agree that Landlord’s right to terminate this Lease under clause (iii) above is a material consideration for Landlord’s agreement to enter into this Lease and such right may be exercised in Landlord’s sole and absolute discretion and no test of reasonableness shall be applicable thereto.

Tenant acknowledges that Landlord's consent shall be based upon the criteria listed in Sections 11.4 (a) through (e) below, and subject to Landlord's right to reasonably disapprove of any proposed assignment and/or sublease, based on the existence of any condition contained within Section 11.5 hereinafter. If Landlord provides its consent within the time period specified, Tenant shall be free to complete the assignment and/or sublet such space to the party contained in Tenant's notice, subject to the following conditions:

- a) The assignment and/or sublease shall be on the same terms as were set forth in the notice given to Landlord;
- b) The assignment and/or sublease shall be documented in a written format that is reasonably acceptable to Landlord, which form shall specifically include the assignee's and/or sublessee's acknowledgement and acceptance of the obligation contained in this Lease, in so far as applicable;
- c) The assignment and/or sublease shall not be valid, nor shall the assignee or sublessee take possession of the Premises, or subleased portion thereof, until an executed duplicate original of such sublease and/or assignment has been delivered to Landlord;
- d) The assignee and/or sublessee shall have no further right to assign this Lease and/or sublease the Premises;
- e) In the event of any Transfer, Landlord shall receive as Additional Rent hereunder (and without affecting or reducing any other obligation of Tenant under this Lease) fifty percent (50%) of Tenant's "Net Rental Profit" derived from such Transfer. If Tenant shall elect to Transfer, Tenant shall use reasonable and good faith efforts to secure consideration from any such Transferee which would be generally equivalent to then-current market rent, but in no event shall Tenant's monetary obligations to Landlord, as set forth in this Lease, be reduced. In the event of a Transfer which is a sublease, "Net Rental Profit" shall mean all rent, Additional Rent or other consideration actually payable (in lieu of or in addition to rent) by Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant in connection with such Transfer for (i) advertising costs, (ii) any improvement allowance or other economic concessions (e.g., space planning allowance and moving expenses) paid by Tenant in connection with such Transfer, (iii) any brokerage commissions incurred by Tenant in connection with the Transfer, and (iv) reasonable attorneys' fees incurred by Tenant in connection with the Transfer. In the event of a Transfer other than a sublease, "Net Rental Profit" shall mean key money, bonus money or other consideration paid by the Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to the Transferee for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to the Transferee in connection with such Transfer, after deducting the reasonable expenses incurred by Tenant in connection with such Transfer, as described in the preceding sentence. If part of the Net Rental Profit shall be payable by the Transferee other than in cash, then Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord.

Tenant shall deliver to Landlord a statement within thirty (30) days after the end of each calendar year and/or within thirty (30) days after the expiration or earlier termination of the Term of this Lease in which any Transfer has occurred, specifying for each such Transfer:

- i) the date of its execution and delivery, the number of square feet of the Rentable Area demised thereby, and the Term thereof, and
- ii) a computation in reasonable detail showing the amounts (if any) paid and payable by Tenant to Landlord pursuant to this Section 11.4 with respect to such Transfer for the period covered by such statement, and the amounts (if any) paid and payable by Tenant to Landlord pursuant to this Section 11.4 with respect to any payments received from a Transferee during such period but which relate to an earlier period.

**Section 11.5. Reasonable Grounds for Denial of Assignment and/or Sublease.** Landlord and Tenant agree that, in addition to such other reasonable grounds as Landlord may assert for withholding its consent, it shall be reasonable under this Lease and any applicable law for Landlord to withhold its consent to any proposed Transfer, where any one or more of the following conditions exists:

- a) The proposed sublessee or assignee (a "Transferee") is, in Landlord's reasonable judgment, of a character or reputation which is not consistent with those businesses customarily found in a Class A office building;
- b) The Transferee is engaged in a business or intends to use all or any portion of the Premises for purposes which are not consistent with those generally found in the Building or other Class A office buildings in the vicinity of the Building, provided, however, that in no event shall Landlord be permitted to decline Tenant's request for a Transfer solely on the basis of said Transferee's intent to change the Specified Use from that of Tenant, unless such proposed change shall violate any Exclusive Use provision already granted by Landlord;
- c) The Transferee is either a governmental agency or instrumentality thereof;
- d) The Transfer will result in more than a reasonable and safe number of occupants within the Premises;
- e) The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under the sublease, if a sublessee, or this Lease, if an assignee, on the date consent is requested, or has demonstrated a prior history of credit instability or unworthiness;
- f) The Transfer will cause Landlord to be in violation of another lease or agreement to which Landlord is a party, or would give another occupant of the Building a right to cancel its lease;
- g) The Transferee will retain any right originally granted to Tenant to exercise a right of renewal, right of expansion, right of first offer or other similar right held by Tenant;



- h) Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee is a tenant in the Building at the time Tenant requests approval of the proposed Transfer, or is engaged in on-going negotiations with Landlord to lease space in the Building at the time Tenant requests approval of the proposed Transfer; or
- i) The Transferee intends to use all or a portion of the Premises for medical procedures or for a primary business which is as a boiler-room type sales or marketing organization.

If Landlord withholds or conditions its consent and Tenant believes that Landlord did so contrary to the terms of this Lease, Tenant may, as its sole remedy, prosecute an action for declaratory relief to determine if Landlord properly withheld or conditioned its consent, and Tenant hereby waives all other remedies, including without limitation those set forth in California Civil Code Section 1995.310.

**Section 11.6. Tenant's Continued Obligation.** Any consent by Landlord to an assignment of this Lease and/or sublease of the Premises shall not release Tenant from any of Tenant's obligations hereunder or be deemed to be a consent by Landlord to any subsequent hypothecation, assignment, subletting, occupation or use by another person, and Tenant shall remain liable to pay the Rent and/or perform all other obligations to be performed by Tenant hereunder. Landlord's acceptance of Rent or Additional Rent from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease. Landlord's consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

If any assignee or sublessee of Tenant or any successor of Tenant defaults in the performance of any of the provisions of this Lease, whether or not Landlord has collected Rent directly from said assignee or sublessee, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, sublessee or other successor-in-interest.

Provided that in no event shall any further assignment, sublease, amendment or modification to this Lease serve to either increase Tenant's liability or expand Tenant's duties or obligations hereunder, or relieve Tenant of its liability under this Lease, then Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with any assignee, without notifying Tenant or any successor of Tenant, and without obtaining their consent thereto.

**Section 11.7. Tenant To Pay Landlord's Costs.** If Tenant assigns or sublets the Premises or requests the consent of Landlord to any assignment, subletting or other modification of this Lease, or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, whether or not Landlord shall grant consent thereto, then Tenant shall, concurrent with Tenant's submission of any written request therefor, pay to Landlord (a) the non-refundable sum of \$1,000.00 as reasonable consideration for Landlord's considering and processing the applicable request, plus (b) the amount of reasonably estimated by Landlord as its anticipated legal fees to be incurred by Landlord in connection therewith, not to exceed \$500.00 except in the event Tenant requests material modifications to Landlord's customary consent form documents (provided the same are commercially reasonable), in which case there shall be no limit on attorney fees incurred as long as such fees are reasonable.

**Section 11.8. Successors and Assigns.** Subject to the provisions contained herein, the covenants and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant, their respective successors and assigns and all persons claiming by, through or under them.

## ARTICLE 12 MAINTENANCE, REPAIRS, DAMAGE, DESTRUCTION, RENOVATION AND/OR ALTERATION

**Section 12.1. Tenant's Obligation to Maintain.** Tenant shall, at Tenant's sole expense, maintain the Premises in good order and repair, and shall also keep clean any portion of the Premises which Landlord is not obligated to clean. Such maintenance and repair obligations shall include the maintenance, clean-out; repair and/or replacement of Tenant's garbage disposal(s), Instant-Heat or other hot water producing equipment, if any, and any plumbing fixtures within the Premises (including any water dispensers or ice-makers and refrigeration devices), and the cleaning and removal of any dishes and/or food prior to the same becoming unsanitary. Tenant shall be responsible for repair of any leaks or other water migration from any plumbing fixtures located in the Premises, and shall be liable for any damage caused thereby to any Common Areas or other tenants' premises. If Tenant becomes obligated to repair anything within the Premises, Tenant shall advise Landlord's managing agent of such need, which request shall be presumed conclusive evidence of Tenant's obligation and willingness to reimburse Landlord for such repair(s).

Further, Tenant shall pay the cost of any injury, damage or breakage in, upon or to the Premises created by Tenant's gross negligence or willful misconduct or the gross negligence or willful misconduct of Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders.

Subject to Tenant's obligation for reimbursement to Landlord, as specified herein, Landlord shall make all repairs to the Premises and the exterior walls, foundation and roof of the Building, the structural portions of the floors of the Building, the systems and equipment of the Building and the Tenant Improvements installed in the Premises. However, if such repairs, maintenance or cleaning are required due to Tenant's gross negligence or willful misconduct or the gross negligence or willful misconduct of Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders, then, Tenant shall, within fifteen (15) days after receipt of Landlord's billing therefor, reimburse Landlord, as Additional Rent, for any expense of such repairs, cleaning and/or maintenance in excess of any insurance proceeds available for reimbursement thereof, including for any deductible anticipated in connection therewith.



Tenant hereby waives all right to make repairs at Landlord's expense under the provisions of Section 1932(1), 1941 and 1942 of the Civil Code of California.

**Section 12.2. Repair Period Notice.** Tenant shall give prompt notice to Landlord of Tenant's actual knowledge of any damage or destruction to all or any part of the Premises or Building resulting from or arising out of any fire, earthquake, or other identifiable event of a sudden, unexpected or unusual nature (individually or collectively a "Casualty"). The time periods specified in this Section 12.2 shall commence after Landlord receives said written notice from Tenant of the occurrence of a Casualty. After receipt of Tenant's written notice that a Casualty has occurred, Landlord shall, within the later of:

- a) sixty (60) days after the date on which Landlord determines the full extent of the damage caused by the Casualty, or
- b) thirty (30) days after Landlord has determined the extent of the insurance proceeds available to effectuate repairs, but
- c) in no event more than one hundred and twenty (120) days after the Casualty,

provide written notice to Tenant indicating the anticipated time period for repairing the Casualty (the "Repair Period Notice"). The Repair Period Notice shall also state, if applicable, Landlord's election either to repair the Premises, or to terminate this Lease, pursuant to the provisions of Section 12.3, and if Landlord elects to terminate this Lease, Landlord shall use commercially reasonable efforts to provide Tenant with a minimum period of ninety (90) days within which to fully vacate the Premises.

**Section 12.3. Landlord's Option to Terminate or Repair.** Notwithstanding anything to the contrary contained herein, Landlord shall have the option, but not the obligation to elect not to rebuild or restore the Premises and/or the Building if one or more of the following conditions is present:

- a) repairs to the Premises cannot reasonably be completed within one hundred and eighty (180) days after the date of the Casualty (when such repairs are made without the payment of overtime or other premiums);
- b) repairs required cannot be made pursuant to the then-existing laws or regulations affecting the Premises or Building, or the Building cannot be restored except in a substantially different structural or architectural form than existed before the Casualty;
- c) the holder of any mortgage on the Building or ground or underlying lessor with respect to the Real Property and/or the Building shall require that all or such large a portion of the insurance proceeds be used to retire the mortgage debt, so that the balance of insurance proceeds remaining available to Landlord for completion of repairs shall be insufficient to repair said damage or destruction;
- d) the holder of any mortgage on the Building or ground or underlying lessor with respect to the Real Property and/or the Building shall terminate the mortgage, ground or underlying lease, as the case may be;
- e) provided Landlord has carried the coverage Landlord is required to obtain under Section 19.1 of this Lease, the damage is not fully covered, except for deductible amounts, by Landlord's insurance policies;
- f) more than thirty-three and one-third percent (33 1/3%) of the Building is damaged or destroyed, whether or not the Premises is affected, provided that Landlord elects to terminate all other leases for offices of a similar size in the Building.

If Landlord elects not to complete repairs to the Building or Premises, pursuant to this Section 12.3, Landlord's election to terminate this Lease shall be stated in the Repair Period Notice, in which event this Lease shall cease and terminate as of the date contained in Landlord's Repair Period Notice.

If one hundred percent of the Building is damaged or destroyed, as certified by an independent building inspector, this Lease shall automatically terminate after Tenant's receipt of written notice of such termination from Landlord, and without action beyond the giving of such notice being required by either Landlord or Tenant.

Upon any termination of this Lease pursuant to this Section 12.3, Tenant shall pay its prorata share of Fixed Monthly Rent and Additional Rent, properly apportioned up to the date of such termination, reduced by any abatement of Rent to which Tenant is entitled under Section 12.5; after which both Landlord and Tenant shall thereafter be freed and discharged of all further obligations under this Lease, except for those obligations which by their provisions specifically survive the expiration or earlier termination of the Term.

**Section 12.4. Tenant's Option to Terminate.** If:

- a) the Repair Period Notice provided by Landlord indicates that the anticipated period for repairing the Casualty exceeds one hundred and eighty (180) days after the Casualty (the "Repair Period"), or
- b) the Casualty to the Premises occurs during the last twelve (12) months of the Term;

then Tenant shall have the option, but not the obligation, to terminate this Lease by providing written notice ("Tenant's Termination Notice") to Landlord within thirty (30) days after receiving the Repair Period Notice in the case of 12.4 (a); or within thirty (30) days after the Casualty, in the case of Section 12.4 (b). Furthermore, if:

- c) Landlord does not complete the repairs required hereinabove within the Repair Period, and
- d) further provided Landlord has not diligently commenced and continued to prosecute to completion repair of the damage and/or



e) Landlord has not completed the repairs thereafter on or before thirty (30) days after the expiration of the Repair Period,

then Tenant shall also have the option, but not the obligation, to terminate this Lease by giving Landlord written notice of its intention to so terminate, which notice shall be given not more than forty-five (45) days after expiration of the Repair Period.

Tenant's failure to provide Landlord with Tenant's Termination Notice within the time periods specified hereinabove shall be deemed conclusive evidence that Tenant has waived its option to terminate this Lease.

**Section 12.5. Temporary Space and/or Rent Abatement During Repairs or Renovation.** During the Repair Period or during any such period that Landlord completes Work (as defined hereinbelow) or Renovations (as defined in Section 12.11 hereinbelow), if available, and if requested by Tenant, Landlord shall make available to Tenant other space in the Building which, in Tenant's reasonable opinion, is suitable for the temporary conduct of Tenant's business. However, if such temporary space is smaller than the Premises, Tenant shall pay Fixed Monthly Rent and Additional Rent for the temporary space based upon the calculated rate per rentable square foot payable hereunder for the Premises, times the number of rentable square feet available for Tenant's use in the temporary space.

If no temporary space is available that is reasonably satisfactory to Tenant, and any part of the Premises is rendered untenable by reason of such Casualty, Work or Renovation; and further provided that the Casualty was not the result of the gross negligence or willful misconduct of Tenant or the gross negligence and/or willful misconduct of Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, then to the extent that all or said portion of the usable area of the Premises is so rendered untenable by reason of such Casualty, Work or Renovation, Tenant shall be provided with a proportionate abatement of Fixed Monthly Rent and Additional Rent. Said proportional abatement shall be based on the usable square footage of the Premises that cannot and is not actually used by Tenant, divided by the total usable square feet contained in the Premises. That proportional abatement, if any, shall be provided during the period beginning on the later of:

a) the date of the Casualty; or

b) the actual date on which Tenant ceases to conduct Tenant's normal business operations in all or any portion of the Premises,

and shall end on the date Landlord achieves substantial completion of restoration of the Premises. Tenant's acceptance of said abatement of Rent shall be deemed conclusive evidence of Tenant's waiver of any further claim or right of future claim for any loss or damage asserted by Tenant arising out of the Casualty Repair, Work or Renovation, as the case may be.

**Section 12.6. Tenant's Waiver of Consequential Damages.** Subject to Section 12.4, the provisions contained in Section 12.5 are Tenant's sole remedy arising out of any Casualty. Landlord shall not be liable to Tenant or any other person or entity for any direct, indirect, or consequential damage (including but not limited to lost profits of Tenant or loss of or interference with Tenant's business), unless caused by the gross negligence or willful misconduct of Landlord or the gross negligence or willful misconduct of Landlord's agents, contractors, directors, employees, licensees, officers, partners or shareholders, due to, arising out of, or as a result of the Casualty (including but not limited to the termination of this Lease in connection with the Casualty).

**Section 12.7. Repair Of The Premises When Casualty Not Caused By Tenant.** If the cost of repair of any Casualty is covered under one or more of the insurance policies Landlord is required herein to provide, then, provided such Casualty is not a result of Tenant's negligence or misconduct or the negligence or misconduct of Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, Landlord shall restore the base core and shell of the Premises to its condition prior to the Casualty and repair and/or replace the Improvements previously installed in the Premises. Tenant shall have the option to either, at Tenant's sole expense, complete the balance of repairs needed to restore the Improvements contained in the Premises to their condition prior to the Casualty or to continue Tenant's normal business operations in the Premises in the condition to which Landlord has so restored the Improvements.

If Landlord has elected to complete repairs to the Premises, and has not elected to terminate this Lease, as specified in Section 12.3, then Landlord shall complete such repairs within the Repair Period, in a manner, and at times, which do not unreasonably interfere with Tenant's use of that portion of the Premises remaining unaffected by the Casualty. Provided Landlord has elected to make the repairs required hereunder, this Lease shall not be void or voidable during the Repair Period, nor shall Landlord be deemed to have constructively evicted Tenant thereby.

**Section 12.8. Repair of the Premises When Casualty Caused by Tenant.** If the Casualty to all or any portion of the Premises resulted from the gross negligence and/or willful misconduct of Tenant or the gross negligence and/or willful misconduct of Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, Landlord shall not be required to repair any such injury or damage. Landlord shall only repair, at its expense, damage or destruction to the Building, and Tenant shall pay the cost of repairing the Premises and any deductible payable by Landlord for repair of the Building. Furthermore, Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) and the provisions of any successor or other law of like import.

If the Casualty to all or any portion of the Premises was caused by the gross negligence and/or willful misconduct of Tenant or the gross negligence and/or willful misconduct of Tenant's agents, contractors, directors, employees, officers, partners, and/or shareholders, then, except in the case of Landlord's gross negligence and/or willful misconduct, Landlord shall not be liable for any inconvenience or annoyance to Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders, or for injury to the business of Tenant resulting in any way from such damage, or from Landlord's undertaking of such repairs.

**Section 12.9. Repair of the Building.** Except as specified hereinabove, unless Landlord terminates this Lease as permitted hereinabove, Landlord shall repair the Building, parking structure or other supporting structures and facilities within two hundred and seventy (270) days after Landlord becomes aware of such damage and/or destruction.

**Section 12.10. Government-Required Repairs.** If, during the Term, additional inspections other than those standard annual or biannual inspections to which the Building may generally be subject; testing, repairs and/or reconstruction (collectively the "Work") are required by any governmental authority, or if, upon the recommendation of its engineers, Landlord independently elects to undertake all or any portion of the Work prior to being required to do so by such governmental authority, Landlord shall give notice thereof to Tenant and shall use its best efforts not to unreasonably interfere with Tenant's use of the Premises while completing the Work. Tenant shall cooperate fully with Landlord in connection with the Work and, upon the prior written request of Landlord, shall make the Premises available for completion of the Work. Tenant agrees that Landlord shall allocate all costs associated with completion of the Work to the Building's Operating Expenses, when permitted to under the provisions of Section 4.1 of this Lease.

If Landlord elects to undertake the Work during the Term, then Tenant shall be entitled to an abatement of rent, pursuant to the provisions of Section 12.5 hereinabove, and Landlord shall be completely responsible for repair of any damage to the Premises and all costs associated with the removal, moving and/or storage of Tenant's furniture, artwork, office equipment and files. Landlord will restore any and all areas damaged by completion of the Work to their previous quality and pay all clean-up costs. Landlord further agrees that it shall use commercially reasonable efforts to see that all construction, such as coring or power nailing that could be disruptive to Tenant's normal business operations shall, in so far as is reasonably possible, be performed between the hours of 7:00 p.m. to 7:00 a.m. Monday through Friday; after 1:00 p.m. on Saturdays and/or at any time on Sundays.

Except in the case of Landlord's gross negligence and/or willful misconduct or the gross negligence and/or willful misconduct of Landlord's agents, contractors, directors, employees, officers, partners, and/or shareholders, Tenant shall not have the right to terminate this Lease as a result of Landlord undertaking the Work, nor shall Tenant or any third party claiming under Tenant be entitled to make any claim against Landlord for any interruption, interference or disruption of Tenant's business or loss of profits therefrom as a result of the Work, and Tenant hereby releases Landlord from any claim which Tenant may have against Landlord arising from or relating to, directly or indirectly, the performance of the Work by Landlord.

**Section 12.11. Optional Landlord Renovation.** It is specifically understood and agreed that Landlord has no obligation to alter, remodel, improve, renovate or decorate the Premises, Building, or any part thereof and that, except as expressly set forth in this Lease, and Landlord has made no representations and/or warranties to Tenant respecting the condition of the Premises or the Building, including, without limitation, any representation or warranty regarding any upgrades or other improvements to any Common Areas of the Building or Real Property.

However, at any time and from time to time during the Term, Landlord may elect, in Landlord's sole discretion, to otherwise renovate, improve, alter or modify elements of the Real Property, the Building and/or the Premises (collectively, "Renovations") including without limitation, the parking facilities, Common Areas, systems, equipment, roof, and structural portions of the same, which Renovations may include, without limitation:

- a) modifying the Common Areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions and building safety and security, and
- b) installing new carpeting, lighting and wall covering in the Building Common Areas.

In connection with such Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in or about the Building, limit or eliminate access to portions of the Building, Common Areas or parking facilities serving the Building, or perform other work in or about the Building, which work may create noise, dust or debris that remains in the Building.

Landlord shall have the right to access through the Premises as well as the right to take into and upon and through all or any part of the Premises, or any other part of the Building, all materials that may reasonably be required to make such repairs, alterations, decorating, additions or improvements pursuant to the provisions of this Section 12.11. So long as Tenant shall maintain reasonable access to the Premises, the Building and the parking facilities, Landlord shall also have the right, in the course of the Renovations, to close entrances, doors, corridors, elevators, or other building facilities, or temporarily to abate the operation of such facilities.

So long as Tenant is not required to vacate the Premises for any reason arising out of the Renovations, and maintains reasonable access to the Premises and the parking facilities, Tenant shall permit all of the Renovations to be done, and except in the case of Landlord's gross negligence or willful misconduct or the gross negligence or willful misconduct of Landlord's contractors, directors, employees, officers, partners or shareholders, without claiming Landlord is guilty of the constructive eviction or disturbance of Tenant's use and possession.

Landlord shall not be liable to Tenant in any manner (except as expressly provided otherwise in this Lease), whether for abatement of any Rent or other charge, reimbursement of any expense, injury, loss or damage to Tenant's property, business, or any person claiming by or under Tenant, by reason of interference with the business of Tenant or inconvenience or annoyance to Tenant or the customers of Tenant resulting from any Renovations done in or about the Premises or the Building or to any adjacent or nearby building, land, street or alley. However, Landlord agrees that the Renovations shall be scheduled insofar as is commercially reasonable to permit Tenant to continue its normal business operations, with advance notice thereof, and in such commercially reasonable manner so as to minimize Tenant's inconvenience.

**Section 12.12. Optional Tenant Changes During the Term.** After completion of the initial Improvements contemplated hereunder, if any, Tenant shall make no alteration, change, addition, removal, demolition, improvement, repair or replacement in, on, upon, to or about the Premises, or at any time to any portion of the Building (collectively or individually a "Tenant Change"), without the prior written consent of Landlord, which consent shall be granted or withheld in Landlord's reasonable discretion. Notwithstanding the foregoing, Tenant shall have the right, without Landlord's consent but upon ten (10) days prior notice to Landlord and in compliance with Exhibit B-1, to make strictly cosmetic, non-structural alterations (such as new paint and carpet and minor changes to millwork) ("Cosmetic Alterations") to the Premises that (i) are equal to or better than the minimum Building standards and specifications to the Premises; (ii) do not affect the exterior appearance of the Building; (iii) do not affect the Building systems and/or the Building structure; (iv) do not interfere unreasonably with another occupant's normal and customary business; and (v) do not require a building permit or any other form of approval whatsoever from any governmental authority. Except as otherwise specified in Article 7, any Tenant Change shall, at the termination of this Lease, become a part of the Building and belong to Landlord, pursuant to the provisions of Article 7. Any application for Landlord's consent to a Tenant Change, and the completion thereof, shall be in conformance with the provisions of Exhibit B-1, attached hereto and made a part hereof by reference.

Tenant shall not knowingly permit Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to deface the walls, floors and/or ceilings of the Premises, nor mark, drive nails, screws or drill holes into, paint, or in any way mar any surface in the Building. Notwithstanding the above, Tenant is hereby permitted to install such pictures, certificates, licenses, artwork, bulletin boards and similar items as are normally used in Tenant's business, so long as such installation is carefully attached to the walls by Tenant in a manner reasonably prescribed by Landlord.

If Tenant desires, as a part of any Tenant Change, to make any revisions whatsoever to the electrical, HVAC, mechanical, life-safety, plumbing, or structural systems of the Building or Premises, such revisions, if approved by Landlord, must be completed by subcontractors specified by Landlord and in the manner and location(s) reasonably prescribed by Landlord. If Tenant desires to install any telephone outlets, the same shall be installed in the manner and location(s) reasonably prescribed by Landlord.

If Landlord consents to any requested Tenant Change, Tenant shall give Landlord a minimum of fifteen (15) days written notice prior to commencement thereof. Landlord reserves the option, but not the obligation, to enter upon the Premises for the purpose of posting and maintaining such notices on the Premises as may be reasonably necessary to protect Landlord against mechanic's liens, material man's liens or other liens, and/or for posting any other notices that may be proper and necessary in connection with Tenant's completion of the Tenant Change.

If any alterations, additions or improvements made by Tenant result in Landlord being required to make any alterations to other portions of the Building in order to comply with any applicable statutes, ordinances or regulations (e.g., "handicap ordinances") then Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in making such alterations. In addition, Tenant shall reimburse Landlord for any and all of Landlord's out of pocket costs incurred in reviewing Tenant's plans for any Tenant Change or for any other "peer review" work associated with Landlord's review of Tenant's plans for any Tenant Change, including, without limitation, Landlord's out of pocket costs incurred in engaging any third party engineers, contractors, consultants or design specialists. Tenant shall pay such costs to Landlord within five (5) business days after Landlord's delivery to Tenant of a copy of the invoice(s) for such work.

**Section 12.13. Express Agreement.** The provisions of this Lease, including those contained in this Article 12, constitute an express agreement between Landlord and Tenant that applies in the event of any Casualty to the Premises, Building or Real Property. Tenant, therefore, fully waives the provisions of any statute or regulations, including California Civil Code Sections 1932(2) and 1933(4), and any other law or statute which purports to govern the rights or obligations of Landlord and Tenant concerning a Casualty in the absence of express agreement. Tenant and Landlord expressly agree and accept that any successor or other law of like import shall have no application hereunder.

## ARTICLE 13 CONDEMNATION

**Section 13.1. Condemnation of the Premises.** If more than twenty-five percent (25%) of the Premises is lawfully condemned or taken in any manner for any public or quasi-public use, or if any portion of the Building is condemned or taken in such a manner that Tenant is reasonably prevented from obtaining access to the Building or the Premises, this Lease may, within ten (10) business days of such taking, be terminated at the option of either Landlord or Tenant by one party giving the other thirty (30) days written notice of its intent to do so. If either Landlord or Tenant provide the other party written notice of termination, the Term and estate hereby granted shall forthwith cease and terminate as of the earlier of the date of vesting of title in such condemnation or taking or the date of taking of possession by the condemning authority.

If less than twenty-five percent (25%) of the Premises is so condemned or taken, then the term and estate hereby granted with respect to such part shall forthwith cease and terminate as of the earlier of the date of vesting of title in such condemnation or taking or the date of taking of possession by the condemning authority, and the Fixed Monthly Rent payable hereunder (and Additional Rent payable pursuant to Articles 3 or 4) shall be abated on a prorated basis, by dividing the total number of usable square feet so taken by the total number of usable square feet contained in the Premises, then multiplying said percentage on a monthly basis, continuing from the date of such vesting of title to the date specified in this Lease for the expiration of the Term hereof.

**Section 13.2. Condemnation of the Building.** If less than twenty-five percent (25%) of the Building is so condemned or taken, then Landlord shall, to the extent of the proceeds of the condemnation payable to Landlord and with reasonable diligence, restore the remaining portion of the Building as nearly as practicable to its condition prior to such condemnation or taking; except that, if such proceeds constitute less than ninety percent (90%) of Landlord's estimate of the cost of rebuilding or restoration, then Landlord may terminate this Lease on thirty (30) days' prior written notice to Tenant.

If more than twenty-five percent (25%) of the Building is so condemned or taken, but the Premises are unaffected thereby, then Landlord shall have the option but not the obligation, which election shall be in Landlord's sole discretion, to terminate this Lease, effective the earlier of the date of vesting of title in such condemnation or the date Landlord delivers actual possession of the Building and Premises to the condemning authority, which election by Landlord shall be provided to Tenant in writing.

**Section 13.3. Award.** If any condemnation or taking of all or a part of the Building takes place, Tenant shall be entitled to join in any action claiming compensation therefore, and Landlord shall be entitled to receive that portion of the award made for the value of the Building, Premises, leasehold improvements made or reimbursed by Landlord, or bonus value of this Lease, and Tenant shall only be entitled to receive any award made for the value of the estate vested by this Lease in Tenant, including Tenant's proximate damages to Tenant's business and reasonable relocation expenses. Nothing shall preclude Tenant from intervening in any such condemnation proceeding to claim or receive from the condemning authority any compensation to which Tenant may otherwise lawfully be entitled in such case in respect of Tenant's property or for moving to a new location.

**Section 13.4. Condemnation for a Limited Period.** Notwithstanding the provisions of Section 13.1, 13.2 or 13.3, except during the final twelve (12) months of the Term, if all or any portion of the Premises are condemned or taken for governmental occupancy for a limited period (i.e., anticipated to be no longer than sixty (60) days), then this Lease shall not terminate; there shall be no abatement of Fixed Monthly Rent or Additional Rent payable hereunder; and Tenant shall be entitled to receive the entire award therefor (whether paid as damages, rent or otherwise).

If, during the final twelve (12) months of the Term, all or any portion of the Premises are condemned or taken for governmental occupancy for a limited period anticipated to be in excess of sixty (60) days, or for a period extended after the expiration of the initial Term, Tenant shall have the option, but not the obligation, to terminate this Lease, in which case, Landlord shall be entitled to such part of such award as shall be properly allocable to the cost of restoration of the Premises, and the balance of such award shall be apportioned between Landlord and Tenant as of the date of such termination.

If the termination of such governmental occupancy is prior to expiration of this Lease, and Tenant has not elected to terminate this Lease, Tenant shall, upon receipt thereof and to the extent an award has been made, restore the Premises as nearly as possible to the condition in which they were prior to the condemnation or taking.

## ARTICLE 14 MORTGAGE SUBORDINATION; ATTORNMEN AND MODIFICATION OF LEASE

**Section 14.1. Subordination.** This Lease, the Term and estate hereby granted, are and shall be subject and subordinate to the lien of each mortgage which may now or at any time hereafter affect Landlord's interest in the real property, Building, parking facilities, Common Areas or portions thereof and/or the land thereunder (an "underlying mortgage"), regardless of the interest rate, the terms of repayment, the use of the proceeds or any other provision of any such mortgage. Tenant shall from time to time execute and deliver such instruments as Landlord or the holder of any such mortgage may reasonably request to confirm the subordination provided in this Section 14.1.

**Section 14.2. Attornment.** Tenant confirms that if by reason of a default under an underlying mortgage the interest of Landlord in the Premises is terminated, provided Tenant is granted in writing continued quiet enjoyment of the Premises pursuant to the terms and provisions of this Lease, Tenant shall attorn to the holder of the reversionary interest in the Premises and shall recognize such holder as Tenant's landlord under this Lease, but in no event shall such holder be bound by any payment of Rent paid more than one month in advance of the date due under this Lease. Tenant shall, within fifteen (15) days after request therefor, execute and deliver, at any time and from time to time, upon the request of Landlord or of the holder of an underlying mortgage any instrument which may be necessary or appropriate to evidence such attornment. If Tenant fails to so execute and deliver any such instrument, then Tenant hereby irrevocably appoints Landlord or such holder as its attorney-in-fact to execute and deliver for and on behalf of Tenant any such instrument.

**Section 14.3. Modification of Lease; Notice of Default.** If any current or prospective mortgagee or ground lessor for the Building requires a modification or modifications of this Lease, which modification or modifications will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then in such event, Tenant agrees that this Lease may be so modified. Tenant agrees to execute and deliver to Landlord within fifteen (15) days following the request therefor whatever documents are required to effectuate said modification. Should Landlord or any such current or prospective mortgagee or ground lessor require execution of a short form of Lease for recording, containing, among other customary provisions, the names of the parties, a description of the Premises and the Term, Tenant agrees to execute and deliver to Landlord such short form of Lease within fifteen (15) days following the request therefor. Further, Tenant shall give written notice of any default by Landlord under this Lease to any mortgagee and ground lessor of the Building and shall afford such mortgagee and ground lessor a reasonable opportunity to cure such default prior to exercising any remedy under this Lease.



**ARTICLE 15**  
**ESTOPPEL CERTIFICATES**

**Section 15.1. Estoppel Certificates.** Tenant shall, within fifteen (15) days after receipt of Landlord's written request therefor, execute, acknowledge and deliver to Landlord an Estoppel Certificate, which may be conclusively relied upon by any prospective purchaser, mortgagee or beneficiary under any deed of trust covering the Building or any part thereof. Said Estoppel Certificate shall certify the following:

- a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification);
- b) the date, if any, to which rental and other sums payable hereunder have been paid;
- c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in the certificate;
- d) that Landlord is not in default under this Lease or, if so, specifying such default; and
- e) such other factual matters as may be reasonably requested by Landlord.

Tenant's failure to deliver the Estoppel Certificate within five (5) days following receipt of the Landlord's second (2nd) written request therefor shall entitle Landlord and any party relying on such certificate to conclusively presume that the facts contained in such certificate are true and correct.

**ARTICLE 16**  
**NOTICES**

**Section 16.1. Notices.** Any notice, consent, approval, agreement, certification, request, bill, demand, statement, acceptance or other communication hereunder (a "notice") shall be in writing and shall be considered duly given or furnished when:

- a) delivered personally or by messenger or overnight delivery service, with signature evidencing such delivery;
- b) upon the date of delivery, after being mailed in a postpaid envelope, sent certified mail, return receipt requested, when addressed to Landlord as set forth in the Basic Lease Information and to Tenant at the Premises and any other address for Tenant specified in the Basic Lease Information; or to such other address or addressee as either party may designate by a written notice given pursuant hereto; or
- c) upon confirmation of good transmission if sent via facsimile machine to such phone number as shall have been provided in writing by Landlord or Tenant, one to the other.

If Tenant fails to provide another valid address, other than the Premises, upon which service to Tenant can be perfected, then Tenant hereby appoints as its agent to receive the service of all dispossessory or distraint proceedings and notices thereunder the person in charge of or occupying the Premises at the time, and if no person shall be in charge of or occupy the same, then such service may be made by attaching the same to the main entrance of the Premises. For the purpose of the service of any notice by Landlord under Article 17 of this Lease, the notice will be deemed served on the date of mailing by Landlord.

**ARTICLE 17**  
**DEFAULT AND LANDLORD'S OPTION TO CURE**

**Section 17.1. Tenant's Default.** For the purposes of this Section 17.1, if the term "Tenant", as used in this Lease, refers to more than one person, then, such term shall be deemed to include all of such persons or any one of them; if any of the obligations of Tenant under this Lease are guaranteed, the term "Tenant", as used in Section 17.1(e) and Section 17.1(f), shall be deemed to also include the guarantor or, if there is more than one guarantor, all or any one of them; and if this Lease has been assigned, the term "Tenant", as used in Sections 17.1 (a) through (h), inclusive, shall be deemed to include the assignee and assignor, jointly and severally, unless Landlord shall have, in connection with such assignment, previously released the assignor from any further liability under this Lease, in which event the term "Tenant", as used in said subparagraphs, shall not include the assignor that was previously released.

Tenant's continued occupancy and quiet enjoyment of the Premises and this Lease and the covenants and estate hereby granted are subject to the limitation that:

- a) if Tenant fails to make any payment of any Fixed Monthly Rent or Additional Rent within three (3) business days after any date upon which the same becomes due; or
- b) if Tenant abandons or vacates the Premises; or
- c) if Tenant defaults in the keeping, observance or performance of any covenant or agreement set forth in Sections 6.1, 6.2, or 19.3, and if such default continues and is not cured by Tenant before the expiration of Landlord's written 3-Day Notice to Cure or Quit; or



- d) if Tenant defaults in the keeping, observance or performance of any covenant or agreement including any provisions of the rules and regulations established by Landlord (other than a default of the character referred to in Sections 17.1 (a), (b) or (c)), and if such default continues and is not cured by Tenant within thirty (30) days after Landlord has given to Tenant a notice specifying the same, or, in the case of such a default which for causes beyond Tenant's reasonable control (including occupancy of a sublessee) cannot with due diligence be cured within such period of thirty (30) days, if Tenant:
- i) does not, promptly upon Tenant's receipt of such notice, advise Landlord of Tenant's intention duly to institute all steps necessary to cure such default; or
  - ii) does not duly institute and thereafter diligently prosecute to completion all steps (including, if appropriate, legal proceedings against a defaulting sublessee) necessary to cure the same; or
- e) intentionally omitted; or
- f) if Tenant:
- i) applies for or consents to the appointment of, or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property;
  - ii) admits in writing its inability, or is generally unable, to pay its debts as such debts become due;
  - iii) makes a general assignment for the benefit of its creditors;
  - iv) commences a voluntary case under federal bankruptcy laws (as now or hereafter in effect);
  - v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts;
  - vi) fails to controvert in a timely or appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under such bankruptcy laws;
  - vii) takes any action for the purpose of effecting any of the foregoing; or
- g) if a proceeding or case is commenced, without the application or consent of Tenant, in any court of competent jurisdiction, seeking:
- i) the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts, of Tenant; or
  - ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Tenant or of all or a substantial part of its assets; or
  - iii) similar relief with respect of Tenant under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case shall continue undismitted, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days, or an order for relief against Tenant shall be entered in an involuntary case under such bankruptcy laws; or
- h) if Tenant fails to take possession of and move into the Premises within fifteen (15) calendar days after Landlord tenders the same in writing to Tenant, unless Tenant acknowledges and accepts the Commencement Date as occurring within such fifteen-day time period, and pays Rent thereon from such Commencement Date;

then, in any or each such event, Tenant shall be deemed to have committed a material default under this Lease.

**Section 17.2. Landlord's Option to Cure Tenant's Default.** If Tenant enters into a default under this Lease, in lieu of Landlord's issuance of a written notice, as specified hereinbelow, Landlord may cure the same at the sole expense of Tenant:

- a) immediately and without notice in the case of emergency; if said default is specified in Sections 17.1 (a), (b) or (c), or if such default unreasonably interferes with the use by any other tenant of the Building; with the efficient operation of the Building; or will result in a violation of law or in a cancellation of any insurance policy maintained by Landlord, and
- b) after the expiration of Landlord's 3-Day Notice of Intent to Cure, in the case of any default other than those specified in Section 17.2 (a) hereinabove.

Within fifteen (15) business days after receiving a statement from Landlord, Tenant shall pay to Landlord the amount of the expense reasonably incurred by Landlord in performing Tenant's obligation. If Tenant fails to pay such amount to Landlord within the specified time period, Landlord may (in addition to any other remedies of Landlord under this Lease or applicable law) deduct the amount due from the Security Deposit under Section 3.7.

**Section 17.3. Landlord's Option to Terminate this Lease.** In addition to any other remedies Landlord may have at law or in equity, Landlord shall be entitled to give to Tenant a written notice of intention to terminate this Lease at the expiration of three (3) days from the date of the giving of such notice, and if such notice is given by Landlord, and Tenant fails to cure the defaults specified therein, then this Lease and the Term and estate hereby granted (whether or not the Commencement Date has already occurred) shall terminate upon the expiration of such three (3) day period (a "Default Termination"), with the same effect as if the last of such three (3) days were the Termination Date, except that Tenant shall remain liable for damages as provided hereinbelow or pursuant to law.

**Section 17.4. Certain Payments.** Bills for all reasonable costs and expenses incurred by Landlord in connection with any performance by it under Section 17.2 shall be payable, as Additional Rent, pursuant to the provisions of Section 4.3.

**Section 17.5. Certain Waivers.** Unless Tenant has submitted documentation that it validly disputes Landlord's billing for Fixed Monthly Rent hereunder, or is completing an audit of Landlord's Operating Expense Statement, if Tenant is in default in payment of Fixed Monthly Rent or Additional Rent hereunder, Tenant waives the right to designate the items against which any payments made by Tenant are to be credited. In lieu thereof, Landlord may apply any payments received from Tenant to the then-oldest billing remaining unpaid on Tenant's rental account or to any other payment due from Tenant, as Landlord sees fit.

**Section 17.6. Landlord Default.** Notwithstanding anything to the contrary set forth in this Lease, Landlord shall not be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease unless:

- a) in the event such default is with respect to the payment of money, Landlord fails to pay such unpaid amounts within five (5) business days of written notice from Tenant that the same was not paid when due, or
- b) in the event such default is other than the obligation to pay money, Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) days period and thereafter diligently pursue the same to completion within a reasonable time period.

Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity.

## **ARTICLE 18 DAMAGES; REMEDIES; RE-ENTRY BY LANDLORD; ETC.**

**Section 18.1. Damages.** If Landlord terminates this Lease, pursuant to the provisions of Section 17.3 (a "Default Termination"), then Landlord may recover from Tenant the total of:

- a) the worth at the time of award of the unpaid Fixed Monthly Rent and Additional Rent earned to the date of such Default Termination; and
- b) the worth at the time of award of the amount by which the unpaid Fixed Monthly Rent and Additional Rent which would have been earned after the date of such Default Termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and
- c) the worth at the time of award of the amount by which the unpaid Fixed Monthly Rent and Additional Rent which would have been earned for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and
- d) any other amount reasonably necessary to compensate Landlord for all of the detriment proximately caused by Tenant's failure to observe or perform any of its covenants and agreements under this Lease or which in the ordinary course of events would be likely to result therefrom, including, without limitation, the payment of the reasonable expenses incurred or paid by Landlord in re-entering and securing possession of the Premises and in the reletting thereof (including, without limitation, altering and preparing the Premises for new tenants and brokers' commission); and
- e) at Landlord's sole election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable California laws.

**Section 18.2. Computations:** The "worth at the time of award" is computed:

- a) in paragraphs (a) and (b) above, by allowing interest at the rate of ten percent (10%) per annum (but in no event in excess of the maximum rate permitted by law); and
- b) in paragraph (c) above, by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).
- c) For purposes of computing unpaid rental which would have accrued and become payable under this Lease, unpaid rental shall consist of the sum of:
  - i) the total Fixed Monthly Rent for the balance of the Term, plus
  - ii) a computation of Tenant's Share of Additional Rent due under this Lease including, without limitation, Tenant's Share of any increase in Operating Expenses (including real estate taxes) for the balance of the Term. For purposes of computing any increases due Landlord hereunder, Additional Rent for the calendar year of the default and for each future calendar year in the Term shall be assumed to be equal to the Additional Rent for the calendar year prior to the year in which default occurs, compounded at a rate equal to the mean average rate of inflation for the preceding five calendar years as determined by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Urban Consumers, all items, 1982-84 equals 100) for the metropolitan area or region of which Los Angeles, California is a part. If such index is discontinued or revised, the average rate of inflation shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.



### Section 18.3. Re-Entry by Landlord.

- a) If a Default Termination occurs or any default specified in Sections 17.1 (a) through (g) occurs and continues beyond the period of grace (if any) therefor, Landlord or Landlord's authorized representatives may re-enter the Premises and remove all persons and all property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, without being liable to indictment, prosecution or damages therefor, and may repossess and enjoy the Premises. No re-entry or repossession of the Premises by Landlord or its representatives under this Section 18.3 shall be construed as an election to terminate this Lease unless a notice of such election is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. The words "re-enter", "re-entry" and "re-entering" as used herein are not restricted to their technical legal meanings.
- b) If any default specified in Sections 17.1 (a) through (g) occurs and continues beyond the period of grace (if any) therefor, then if Landlord does not elect to terminate this Lease Landlord may, from time to time and without terminating this Lease, enforce all its rights and remedies under this Lease, including the right to recover the Fixed Monthly Rent and Additional Rent as the same becomes payable by Tenant hereunder.
- i) If Landlord consents thereto, Tenant may sublet the Premises or any part thereof (which consent Landlord agrees will not be unreasonably withheld), subject to Tenant's compliance with the requirements of Article 11 of this Lease. So long as Landlord is exercising this remedy it will not terminate Tenant's right to possession of the Premises, but it may engage in the acts permitted by Section 1951.4(c) of the California Civil Code.
- c) If Tenant abandons the Premises in breach of this Lease, Landlord shall have the right to relet the Premises or any part thereof on such terms and conditions and at such rentals as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs in and to the Premises necessary to reletting. If Landlord so elects to relet, then gross rentals received by Landlord from the reletting shall be applied:
- i) **first**, to the payment of the reasonable expenses incurred or paid by Landlord in re-entering and securing possession of the Premises and in the reletting thereof (including, without limitation, altering and preparing the Premises for new tenants and brokers' commissions);
- ii) **second**, to the payment of the Fixed Monthly Rent and Additional Rent payable by Tenant hereunder; and
- iii) **third**, the remainder, if any, to be retained by Landlord and applied to the payment of future Fixed Monthly Rent and Additional Rent as the same become due.

Should the gross rentals received by Landlord from the reletting be insufficient to pay in full the sums stated in Section 18.3 (a) and (b) hereinabove, Tenant shall, upon demand, pay the deficiency to Landlord.

**Section 18.4. Certain Waivers.** After Landlord has actually obtained possession of the Premises pursuant to any lawful order of possession granted in a valid court of law, Tenant thereafter waives and surrenders for Tenant, and for all claiming under Tenant, all rights and privileges now or hereafter existing to redeem the Premises (whether by order or judgment of any court or by any legal process or writ); to assert Tenant's continued right to occupancy of the Premises; or to have a continuance of this Lease for the Term hereof. Tenant also waives the provisions of any law relating to notice and/or delay in levy of execution in case of an eviction or dispossession for nonpayment of rent, and of any successor or other law of like import.

**Section 18.5. Cumulative Remedies.** The remedies of Landlord provided for in this Lease are cumulative and are not intended to be exclusive of any other remedies to which Landlord may be lawfully entitled. The exercise by Landlord of any remedy to which it is entitled shall not preclude or hinder the exercise of any other such remedy.

## ARTICLE 19 INSURANCE

### Section 19.1. Landlord Obligations:

- a) Landlord shall secure and maintain during the Term of this Lease the following insurance:
- i) Commercial General Liability and Umbrella Liability insurance relating to Landlord's operation of the Building, for personal and bodily injury and death, and damage to other's property.
- ii) All risk of standard fire insurance and extended coverage including vandalism and malicious mischief and sprinkler leakage endorsements relating to the Building, the parking facilities, the Common Area improvements and any and all improvements installed in, on or upon the Premises and affixed thereto (but excluding Tenant's fixtures, furnishings, equipment, personal property or other elements of Tenant's Property), and provided that the premium cost for coverage of the Improvements to the Premises in excess of a total value equal to Thirty-Five Dollars (\$35.00) per square foot of Usable Area in the Premises shall be directly reimbursed from Tenant to Landlord, pursuant to the provisions of Section 4.3 of this Lease;
- iii) Such other insurance (including, without limitation, boiler and machinery, rental loss, earthquake and/or flood insurance) as Landlord reasonably elects to obtain or any Lender requires.
- b) Insurance effected by Landlord under this Section 19.1 will be:
- i) In amounts which Landlord from time to time determines sufficient or which any Lender requires; and

**ii)** Subject to such deductibles and exclusions as Landlord deems appropriate.

**c)** Notwithstanding any contribution by Tenant to the cost of insurance premiums as provided herein, Tenant acknowledges that Tenant has no right to receive any proceeds from any insurance policies carried by Landlord.

## **Section 19.2. Tenant Obligations.**

- a) At least ten (10) days prior to the earlier of the Commencement Date or Tenant's anticipated early access date of the Premises and thereafter during the Term of this Lease, Tenant shall secure and maintain, at its own expense throughout the Term of this Lease the following minimum types and amounts of insurance, in form and in companies acceptable to Landlord, insuring Tenant, its employees, agents and designees:
- i) Workers' Compensation Insurance, the amount and scope of which shall be the amount and scope required by statute or other governing law;
  - ii) Employer's Liability Insurance in amounts equal to the greater of (1) the insurance currently maintained by Tenant, or (2) the following: Bodily Injury by accident - \$1,000,000 each accident; Bodily Injury by disease - \$1,000,000 policy limit; and Bodily Injury by disease - \$1,000,000 each employee;
  - iii) Commercial General Liability and Umbrella Liability Insurance on an occurrence basis, without claims-made features, with bodily injury and property damage coverage in an amount equal to a combined single limit of not less than \$2,000,000; and such insurance shall include the following coverages: (A) Premises and Operations coverage with X, C, and U exclusions for explosion, collapse, and underground property damage deleted under both premises/operations and contractual liability coverage parts, if applicable; (B) Owner and Contractor Protective coverage; (C) Products and Completed Operations coverage; (D) Blanket Contractual coverage, including both oral and written contracts; (E) Personal Injury coverage; (F) Broad Form Comprehensive General Liability coverage (or its equivalent); and (G) Broad Form Property Damage coverage, including completed operations;
  - iv) All risk of standard fire insurance and extended coverage with vandalism and malicious mischief and sprinkler leakage endorsements, insuring fixtures, glass, equipment, merchandise, inventory and other elements of Tenant's Property in and all other contents of the Premises. Such insurance shall be in an amount equal to 100% of the replacement value thereof (and Tenant shall re-determine the same as frequently as necessary in order to comply herewith). The proceeds of such insurance, so long as this Lease remains in effect, shall be used to repair and/or replace the items so insured;
  - v) A commercially reasonable and customary policy of business interruption insurance with respect to the operation of Tenant's business; and
  - vi) Any other forms of insurance Landlord may reasonably require from time to time, in form and amounts and for insurance risks against which a prudent tenant of comparable size in a comparable business would protect itself.
- b) All insurance policies maintained to provide the coverages required herein shall:
- i) Be issued by insurance companies authorized to do business in the state in which the leased premises are located, and with companies rated, at a minimum "A- VII" by A.M. Best;
  - ii) Be subject to the prior approval of Landlord (which approval shall not be unreasonably withheld) as to form, substance and insurer;
  - iii) Provide for a deductible only so long as Tenant shall remain liable for payment of any such deductible in the event of any loss;
  - iv) Contain appropriate cross-liability endorsements denying Tenant's insurers the right of subrogation against Landlord as to risks covered by such insurance, without prejudice to any waiver of indemnity provisions applicable to Tenant and any limitation of liability provisions applicable to Landlord hereunder, of which provisions Tenant shall notify all insurance carriers;
  - v) Contain provisions for at least ten (10) days advance written notice to Landlord of cancellation due to non-payment and thirty (30) days advance written notice to Landlord of material modification or cancellation for any reason other than non-payment; and
  - vi) Stipulate that coverages afforded under such policies are primary insurance as respects Landlord and that any other insurance maintained by Landlord are excess and non-contributing with the insurance required hereunder.
- c) No endorsement limiting or excluding a required coverage is permitted.
- d) Tenant shall deliver to Landlord upon execution of this Lease, written evidence of insurance coverages required herein. Tenant shall deliver to Landlord no less than fifteen (15) days prior to the expiration of any required coverage, written evidence of the renewal or replacement of such coverage. Landlord's failure at any time to object to Tenant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance) shall not be deemed as a waiver of Tenant's obligations under this Section.
- e) Landlord shall be named as an additional insured on the Tenant's policies of General Liability and Umbrella Liability insurance and as a loss payee on the Tenant's policies of All Risk insurance as their interest may appear. Tenant shall deliver to Landlord the appropriate endorsements evidencing additional insured and loss payee status. Any claim for loss under said insurance policies shall be payable notwithstanding any act, omission, negligence, representation, misrepresentation or other conduct or misconduct of Tenant which might otherwise cause cancellation, forfeiture or reduction of such insurance.
- f) The insurance requirements in this Section shall not in any way limit, in either scope or amount, the indemnity obligations separately owed by Tenant to Landlord under this Lease.





- g) Nothing herein shall in any manner limit the liability of Tenant for non-performance of its obligations or for loss or damage for which Tenant is responsible. The aforementioned minimum limits of policies shall in no event limit the liability of Tenant hereunder.
- h) Tenant may, at its option, satisfy its insurance obligations hereunder by policies of so-called blanket insurance carried by Tenant provided that the same shall, in all respects, comply with the provisions hereof. In such event, Tenant shall not be deemed to have complied with its obligations hereunder until Tenant shall have obtained and delivered to Landlord a copy of each such policy together with an appropriate endorsement or certificate applicable to and evidencing full compliance with the specific requirements of this Lease (irrespective of any claim which may be made with respect to any other property or liability covered under such policy), and until the same shall have been approved by Landlord in writing.

**Section 19.3. Compliance with Building Insurance Requirements.** After Tenant takes occupancy of the Premises, Tenant shall not violate or permit in, on or upon the Premises the violation of any condition imposed by such standard fire insurance policies as are normally issued for office buildings in the City or County in which the Building is located. Tenant shall not do, suffer or permit anything to be done, or keep, suffer or permit anything to be kept, in the Premises which would increase the risk ratings or premium calculation factors on the Building or property therein (collectively an "Increased Risk"), or which would result in insurance companies of good standing refusing to insure the Building or any property appurtenant thereto in such amounts and against such risks as Landlord may reasonably determine from time to time are appropriate.

Notwithstanding the above, if additional insurance is available to cover such Increased Risk, Tenant shall not be in default hereunder if:

- a) Tenant authorizes Landlord in writing to obtain such additional insurance; and
- b) prepays the annual cost thereof to Landlord for such additional coverage, as well as the additional costs, if any, of any increase in Landlord's other insurance premiums resulting from the existence or continuance of such Increased Risk.

**Section 19.4. Mutual Waiver of Subrogation.** Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claims, actions or causes of actions against each other, their respective agents, officers and employees, for any loss or damage that may occur to the Premises, Building or Project, or personal property within the Building, regardless of cause or origin, including the negligence of Landlord and Tenant and their respective agents, officers, employees and contractors. Each party agrees to give immediately to its respective insurance company which has issued policies of insurance covering any risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section 19.4, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers. If either Landlord or Tenant fails to provide the insurance policy or policies required hereinabove, the waiver of subrogation contained in this Section 19.4 shall no longer inure to the benefit of the party failing to provide such insurance, and the party claiming against such uninsured party shall be entitled to restitution of all damages and expenses suffered and/or claimed, without limitation.

**Section 19.5. Failure to Secure.** If at any time during the Term, and after expiration of ten (10) business days' prior written demand therefore from Landlord, Tenant fails to:

- a) provide Landlord with access to a registered insurance broker of record that can verify Tenant's compliance with the requirement contained in this Article 19; or
- b) provide documentation reasonably acceptable to Landlord that Tenant has secured and maintained the insurance coverage required hereunder,

then such failure shall be considered a material default under this Lease, and Landlord shall have the option, but not the obligation, without further notice or demand to obtain such insurance on behalf of or as the agent of Tenant and in Tenant's name.

Tenant shall pay Landlord's billing for the premiums associated with such insurance policy or policies within five (5) days after receipt of Landlord's billing, as well as such other reasonable costs and fees arising out of such default, together with interest on the entire amount so advanced by Landlord, at the rate of ten percent (10%) per annum, computed from the date of such advance. Such advances, if made by Landlord, shall be construed as and considered Additional Rent under this Lease.

## ARTICLE 20 MISCELLANEOUS

**Section 20.1. Entire Agreement.** This Lease, including the exhibits and guaranty of lease, if any, annexed hereto, contains all of the agreements and understandings relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection therewith and neither party and no agent or representative thereof has made or is making, and neither party in executing and delivering this Lease is relying upon, any warranties or representations, except to the extent set forth in this Lease. All understandings and agreements heretofore had between Landlord and Tenant relating to the leasing of the Premises are merged in this Lease, which alone fully and completely expresses their agreement. The Riders (if any) and Exhibits annexed to this Lease and the Construction Agreement are hereby incorporated herein and made a part hereof.

**Section 20.2. No Waiver or Modification.** The failure of Landlord or Tenant to insist in any instance upon the strict keeping, observance or performance of any covenant or agreement contained in this Lease or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or agreement, but the same shall continue and remain in full force and effect. No waiver or modification by either Landlord or Tenant of any covenant or agreement contained in this Lease shall be deemed to have been made unless the same is in writing executed by the party whose rights are being waived or modified. No surrender of possession of any part of the Premises shall release Tenant from any of its obligations hereunder unless accepted in writing by Landlord. The receipt and retention by Landlord, and the payment by Tenant, of Fixed Monthly Rent or Additional Rent with knowledge of the breach of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach by either Landlord or Tenant.

**Section 20.3. Time of the Essence.** Time is of the essence of this Lease and of all provisions hereof (including, without limitation, Exhibit B), except in respect to the delivery of possession of the Premises at the Commencement Date.

**Section 20.4. Force Majeure.** For the purposes of this Lease, "Force Majeure" shall be defined as any or all prevention, delays or stoppages and/or the inability to obtain services, labor, materials or reasonable substitutes therefor, when such prevention, delay, stoppage or failure is due to strikes, lockouts, labor disputes, terrorist acts, acts of God, governmental actions, civil commotion, fire or other casualty, and/or other causes beyond the reasonable control of the party obligated to perform, except that Force Majeure may not be raised as a defense for Tenant's non-performance of any obligations imposed by this Lease with regard to the payment of Fixed Monthly Rent and/or Additional Rent.

Notwithstanding anything to the contrary contained in this Lease, Force Majeure shall excuse the performance of such party for a period equal to any such prevention, delay, stoppage or inability. Therefore, if this Lease specifies a time period for performance of an obligation by either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

**Section 20.5. Broker.** Landlord and Tenant represent to one another that each has dealt with no broker or agent in connection with this Lease or its negotiations other than **Douglas Emmett Management, LLC** and **Keller Williams Realty**. Landlord and Tenant shall hold one another harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit or obligation arising out of or relating to a breach by the indemnifying party of such representation. Landlord agrees to pay all commissions due to the brokers listed above created by Tenant's execution of this Lease.

**Section 20.6. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

**Section 20.7. Submission of Lease.** Whether or not rental deposits have been received by Landlord from Tenant, and whether or not Landlord has delivered to Tenant an unexecuted draft version of this Lease for Tenant's review and/or signature, no contractual or other rights shall exist between Landlord and Tenant with respect to the Premises, nor shall this Lease be valid and/or in effect until this Lease has been fully executed and a duplicate original of said fully-executed Lease has been delivered to both Landlord and Tenant.

The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or an option for Tenant to lease, or otherwise create any interest by Tenant in the Premises or any other offices or space situated in the Building. Execution of this Lease by Tenant and its return to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has in fact executed and delivered a fully-executed duplicate original of this Lease to Tenant. Landlord and Tenant agree hereby to authorize transmission of all or portions of documents, including signature lines thereon, by facsimile machines, and further authorize the other party to rely conclusively upon such facsimile transmissions as if the original had been received.

**Section 20.8. Captions.** The captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

**Section 20.9. Singular and Plural, Etc.** The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord or Tenant the obligations hereunder imposed upon Landlord and Tenant shall be joint and several.

**Section 20.10. Independent Covenants.** Except where the covenants contained in one Article of this Lease are clearly affected by or contingent upon fulfillment by either party of another Article or paragraph of this Lease, this Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any actions hereunder at Landlord's expense or to any set-off of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for the violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building, Real Property or any portion thereof, of whose address Tenant has theretofore been notified, and an opportunity is granted to Landlord and such holder to correct such violations as provided above.

**Section 20.11. Severability.** If any covenant or agreement of this Lease or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, then and in each such event the remainder of this Lease or the application of such covenant or agreement to any other person or any other circumstance shall not be thereby affected, and each covenant and agreement hereof shall remain valid and enforceable to the fullest extent permitted by law.

**Section 20.12. Warranty of Authority.** If Landlord or Tenant signs as a corporation, limited liability company or a partnership, each of the persons executing this Lease on behalf of Landlord or Tenant hereby covenant and warrant that each is a duly authorized and existing entity, that each has and is qualified to do business in California, that the persons signing on behalf of Landlord or Tenant have full right and authority to enter into this Lease, and that each and every person signing on behalf of either Landlord or Tenant are authorized to do so.

**Section 20.13. No Representations or Warranties.** Neither Landlord nor Landlord's agents or attorneys have made any representations or warranties with respect to the Premises, the Building or this Lease, except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise.

**Section 20.14. No Joint Venture or Partnership.** This Lease shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

**Section 20.15. Tenant's Obligations At Its Sole Expense.** Notwithstanding the fact that certain references in this Lease to acts required to be performed by Tenant hereunder, or to breaches or defaults of this Lease by Tenant, omit to state that such acts shall be performed at Tenant's sole expense, or omit to state that such breaches or defaults by Tenant are material, unless the context clearly implies to the contrary each and every act to be performed or obligation to be fulfilled by Tenant pursuant to this Lease shall be performed or fulfilled at Tenant's sole expense, and all breaches or defaults by Tenant hereunder shall be deemed material.

**Section 20.16. Attorneys' Fees.** If litigation is instituted between Landlord and Tenant, the cause for which arises out of or in relation to this Lease, the prevailing party in such litigation shall be entitled to receive its costs (not limited to court costs), expenses and reasonable attorneys' fees from the non-prevailing party as the same may be awarded by the court.

**Section 20.17. Waiver of Trial by Jury.** In the interest of saving time and expense, Landlord and Tenant hereby consent to trial without a jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other or their successor-in-interest in respect to any matters arising out of or relating to this Lease.

**Section 20.18. No Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

**Section 20.19. Prohibition Against Recording.** Except as provided in Section 14.3 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

**Section 20.20. Hazardous Waste.** Tenant specifically agrees that, except for such limited quantities of office materials and supplies as are customarily used in Tenant's normal business operations, Tenant shall not engage or permit at any time, any operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, for the purpose of or in any way involving the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any hazardous substances, materials or wastes, or any wastes regulated under any local, state or federal law.

Tenant shall, during the Term, remain in full compliance with all applicable laws governing its use and occupancy of the Premises, including, without limitation, the handling, manufacturing, treatment, storage, disposal, discharge, use, and transportation of hazardous substances, materials or wastes, and any wastes regulated under any local, state or federal law. Tenant will remain in full compliance with the terms and conditions of all permits and licenses issued to it by any governmental authority on account of any or all of its activities on the Premises.

**Section 20.21. Transportation Management.** Tenant shall, at Tenant's sole expense, fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Building, when the same have been mandated by an outside governmental authority having jurisdiction therefor and not when required for the convenience of Landlord.

In connection therewith, Tenant shall be responsible for the transportation planning and management for all of Tenant's employees while located at the Premises, by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities reasonably designated by Landlord. Such programs may include, without limitation:

- a) restrictions on the number of peak-hour vehicle trips generated by Tenant;
- b) requirements for increased vehicle occupancy;
- c) implementing an in-house ride-sharing program and/or appointing an employee transportation coordinator;
- d) working with employees of any Building (or area-wide) ridesharing program manager;
- e) instituting employer-sponsored incentives (financial or in-kind) to encourage employees to ridesharing; and
- f) utilizing flexible work shifts for employees.

**Section 20.22. Signage.** Tenant may not install, inscribe, paint or affix any awning, shade, sign, advertisement or notice on or to any part of the outside or inside of the Building, or in any portion of the Premises visible to the outside of the Building or Common Areas without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion.

All signage and/or directory listings installed on behalf of Tenant, whether installed in, on or upon the public corridors, doorways, Building directory and/or parking directory (if any), or in any other location whatsoever visible outside of the Premises, shall be installed by Landlord, at Tenant's sole expense.

Tenant's identification on or in any Common Area of the Building shall be limited to Tenant's name and suite designation, and in no event shall Tenant be entitled to the installation of Tenant's logo in any portion of the Building or Common Areas. Furthermore, the size, style, and placement of letters to be used in any of Tenant's signage shall be determined by Landlord, in Landlord's sole discretion, in full conformance with the previously established signage program for the Building.

Except as specified hereinbelow, Tenant shall only be entitled to one (1) listing on the Building directory, or any parking directory ancillary thereto, which shall only show Tenant's business name and suite designation. Tenant shall also be entitled to a maximum of one (1) additional listings on said Building and/or parking directory, which listings shall be limited solely to Tenant's officers, employees, subsidiaries, affiliates and/or sublessees, if any. All of said listings shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

**Section 20.23. Intentionally Omitted.**

**Section 20.24. Confidentiality.** Landlord and Tenant agree that the covenants and provisions of this Lease shall not be divulged to anyone not directly involved in the management, administration, ownership, lending against, or subleasing of the Premises, which permitted disclosure shall include, but not be limited to, the board members, legal counsel and/or accountants of either Landlord or Tenant.

**Section 20.25. Intentionally Omitted.**

**Section 20.26. Landlord's Right to Perform Tenant's Obligations.** All obligations to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's expense (unless this Lease expressly provides otherwise) without any reduction of or offset against Rent. Except to the extent set forth in Section 17.2 herein, in the event of a default by Tenant of any obligation under this Lease, Landlord may, after delivering notice to Tenant and allowing Tenant ten (10) business days to cure such default, perform the obligation on Tenant's behalf, without waiving any of Landlord's rights, remedies, claims or defenses with respect to Tenant's failure to perform any obligations and without releasing Tenant from such obligations. If Landlord determines that such default reasonably requires additional time for cure, then Landlord's notice may state such other time period, provided that Tenant commences its cure within ten (10) business days after notice and thereafter continuously prosecutes such cure to completion. Within fifteen (15) business days after receiving a statement from Landlord, Tenant shall pay to Landlord the amount of the expense reasonably incurred by Landlord in performing Tenant's obligation. If Tenant fails to pay such amount to Landlord within the specified time period, Landlord may (in addition to any other remedies of Landlord under this Lease or applicable law) deduct the amount due from the Security Deposit under Section 3.7. The terms of this Section 20.26 shall survive the expiration or earlier termination of this Lease.

**ARTICLE 21  
PARKING**

**Section 21.1. Parking.** Throughout the Term, Tenant shall have the obligation to purchase and assign to its employees on a "must-take" basis four (4) unreserved parking permits as set forth in Section 21.1 of the Basic Lease Information ("BLI"). Except as otherwise permitted by Landlord's management agent in its reasonable discretion, and based on the availability thereof, in no event shall Tenant be entitled to purchase more than the number of parking permits listed in the BLI. If additional parking permits are available on a month-to-month basis, which determination shall be in the sole discretion of Landlord's parking agent, Tenant shall be permitted to purchase one or more of said permits on a first-come, first-served basis.

Said parking permits shall allow Tenant to park in the Building parking facility at the posted monthly parking rates and charges then in effect, plus any and all applicable taxes, provided that such rates may be changed from time to time, in Landlord's sole discretion. Landlord shall retain sole discretion to designate the location of each parking space, and whether it shall be assigned, or unassigned, unless specifically agreed to otherwise in writing between Landlord and Tenant.

Guests and invitees of Tenant shall have the right to use, in common with guests and invitees of other tenants of the Building, the transient parking facilities of the Building at the then-posted parking rates and charges, or at such other rate or rates and charges as may be agreed upon from time to time between Landlord and Tenant in writing. Such rate(s) or charges may be changed by Landlord from time to time in Landlord's sole discretion, and shall include, without limitation, any and all fees or taxes relating to parking assessed to Landlord for such parking facilities.

Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders continued use of said transient, as well as monthly parking, shall be contingent upon Tenant and Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders continued compliance with the reasonable and non-discriminatory rules and regulations adopted by Landlord, which rules and regulations may change at any time or from time to time during the Term hereof in Landlord's sole discretion.

**ARTICLE 22  
CONCIERGE SERVICES**

**Section 22.1. Provision of Services.** Landlord and Tenant acknowledge and understand that Landlord, through one or more of its affiliates, may, from time to time, make it possible for Tenant to use or purchase a variety of personal services which may include, but not be limited to, personal shopping, assistance with choosing or obtaining travel reservations, accommodations and/or tickets; tickets to performances, recommendations to eating establishments; and the like, as well as construction administration services (collectively "Concierge Services").

Tenant acknowledges that said Concierge Services are provided by Landlord's affiliate solely as an accommodation to and for the convenience of Tenant and Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, and Landlord does not make any representation, warranty or guarantee, express or implied, as to the quality, value, accuracy, or completeness of said Concierge Services, or whether or not Tenant shall be satisfied with the services and/or goods so provided and/or recommended. Landlord hereby disclaims any control over the variety or sufficiency of such services to be provided.

Tenant acknowledges that Tenant is not required to use such Concierge Services as a condition precedent to compliance with this Lease; that Tenant's use of such Concierge Services is strictly voluntary, and at the sole discretion and control of Tenant. Tenant shall independently make such financial arrangements for payment of the services provided as Tenant deems reasonable and of value.

**ARTICLE 23  
OPTION TO EXTEND TERM**

**Section 23.1. Option to Extend Term.** Subject to the rights of pre-existing tenants as of the execution date of this Lease, and provided Tenant is not in material default after the expiration of notice and the opportunity to cure on the date or at any time during the remainder of the Term after Tenant gives notice to Landlord of Tenant's intent to exercise its rights pursuant to this Article 23, Tenant is given the option to extend the term for an additional five (5) year period (the "Extended Term"), commencing the next calendar day after the expiration of the Term (the "Option"). The Option shall apply only to the entirety of the Premises, and Tenant shall have no right to exercise the Option as to only a portion of the Premises.

Tenant's exercise of this Option is contingent upon Tenant giving written notice to Landlord (the "Option Notice") of Tenant's election to exercise its rights pursuant to this Option by Certified Mail, Return Receipt Requested, no more than twelve (12) and no less than nine (9) months prior to the Termination Date.

**Section 23.2. Fixed Monthly Rent Payable.** The Rent payable by Tenant during the Extended Term ("Option Rent") shall be equal to the Fair Market Value of the Premises as of the commencement date of the Extended Term but shall not be less than the sum of Fixed Monthly Rent and Tenant's Share of Operating Expenses payable by Tenant for the last month of the initial Term. The term "Fair Market Value" shall be defined as the effective rent reasonably achievable by Landlord, and shall include but not be limited to, all economic benefits obtainable by Landlord, such as Fixed Monthly Rent (including periodic adjustments), Additional Rent in the form of Operating Expense reimbursements, and any and all other monetary or non-monetary consideration that may be given in the market place to a non-renewal tenant, as is chargeable for a similar use of comparable space in the geographic area of the Premises.

Said computation shall specifically be based on the Premises in its "as-is" condition, without payment of any brokerage commission to any broker.

Landlord and Tenant shall have thirty (30) days (the "Negotiation Period") after Landlord receives the Option Notice in which to agree on the Fair Market Value. If Landlord and Tenant agree on the Fair Market Value during the Negotiation Period, they shall immediately execute an amendment to the Lease extending the Term and stating the Fair Market Value.

**Section 23.3. Appraisers to Set Fixed Monthly Rent.** If Landlord and Tenant are unable to agree on the Fair Market Value during the Negotiation Period, then:

a) Landlord and Tenant, each at its own cost, shall select an independent real estate appraiser with at least ten (10) years full-time commercial appraisal experience in the area in which the Premises are located, and shall provide written notice to the other party of the identity and address of the appraiser so appointed. Landlord and Tenant shall make such selection within ten (10) days after the expiration of the Negotiation Period.

b) Within thirty (30) days of having been appointed to do so (the "Appraisal Period"), the two (2) appraisers so appointed shall meet and set the Fair Market Value for the Extended Term. In setting the Fair Market Value, the appraisers shall solely consider the use of the Premises for general office purposes.

**Section 23.4. Failure by Appraisers to Set Fair Market Value.** If the two (2) appointed appraisers are unable to agree on the Fair Market Value within ten (10) days after expiration of the Appraisal Period, they shall elect a third appraiser of like or better qualifications, and who has not previously acted in any capacity for either Landlord or Tenant. Landlord and Tenant shall each bear one half of the costs of the third appraiser's fee.

Within thirty (30) days after the selection of the third appraiser (the "Second Appraisal Period") the Fair Market Value for the Extended Term shall be set by a majority of the appraisers now appointed.

If a majority of the appraisers are unable to set the Fair Market Value within the Second Appraisal Period, the three (3) appraisers shall individually render separate appraisals of the Fair Market Value, and their three (3) appraisals shall be added together, then divided by three (3); resulting in an average of the appraisals, which shall be the Fair Market Value during the Extended Term.

However, if the low appraisal or high appraisal varies by more than Ten Percent (10%) from the middle appraisal, then one (1) or both shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2), and the resulting average shall be the Fair Market Value. If both the low and high appraisal are disregarded, the middle appraisal shall be the Fair Market Value for the Premises during the Extended Term. The appraisers shall immediately notify Landlord and Tenant of the Fair Market Value so established, and Landlord and Tenant shall immediately execute an amendment to the Lease, extending the Term and revising the Fixed Monthly Rent payable pursuant to the Fair Market Value so established.

Tenant's failure to execute such amendment establishing the Fair Market Value within fifteen (15) days after the other party's request therefor shall constitute a material default under the Lease.

**Section 23.5. No Right of Reinstatement or Further Extension.** Once Tenant has failed to exercise its rights to extend the term pursuant to this Article 23, it shall have no right of reinstatement of its Option to Extend the Term, nor shall Tenant have any right to a further or second extension of the Term beyond the period stated in Section 23.1 hereinabove.

**Section 23.6. No Assignment of Option.** This Option is personal to the original Tenant signing the Lease, and shall be null, void and of no further force or effect as of the date that Tenant assigns the Lease to an unaffiliated entity and/or subleases more than forty-nine percent (49%) of the total Rentable Area of the Premises.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, effective the later of the date(s) written below.

**LANDLORD:**

DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company

By: Douglas Emmett Management, LLC,  
a Delaware limited liability company, its Agent

By: Douglas Emmett Management, Inc.,  
a Delaware corporation, its Manager

By: /s/ Michael J. Means  
Michael J. Means,  
Senior Vice President

Dated: August 9, 2011

**TENANT:**

BIOSIG TECHNOLOGIES, INC., a Delaware corporation

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chairman and CEO

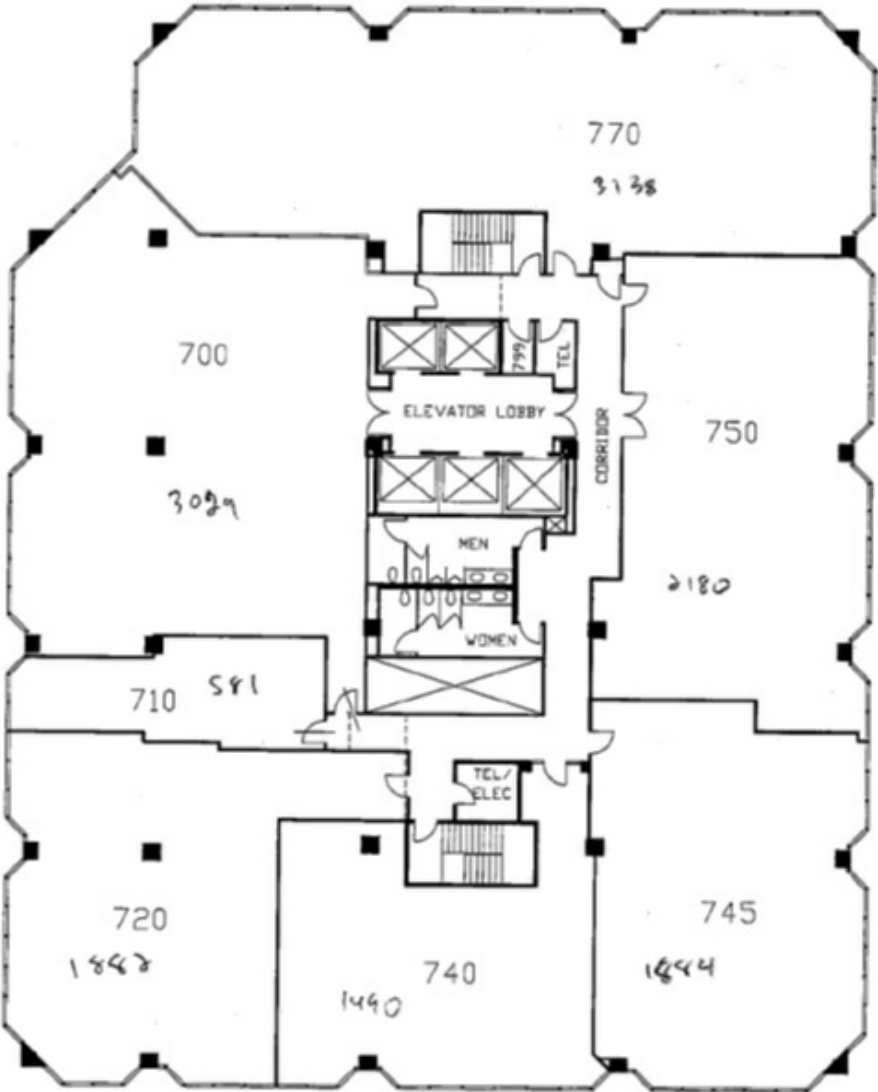
Dated: August 9, 2011

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

EXHIBIT A – PREMISES PLAN

Suite 745 at 12424 Wilshire Boulevard, Los Angeles, California 90025  
Rentable Area: approximately 2,252 square feet  
Usable Area: approximately 1,884 square feet  
(Measured pursuant to the provisions of Section 1.4 of the Lease)





**EXHIBIT B**  
**INTENTIONALLY OMITTED**

B-1

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## EXHIBIT B-1

### CONSTRUCTION BY TENANT DURING TERM

1. If Tenant wishes to make a Tenant Change, as specified in Section 12.12 of the Lease, such Tenant Change shall be completed pursuant to the provisions of Section 12.12 of the Lease and this Exhibit B-1. Tenant shall bear all costs of said Tenant Change, which shall be paid directly to Tenant's general contractor ("Contractor").
2. Contractor shall complete construction to the Premises pursuant to the final Plans and Specifications approved in writing by Landlord and Tenant (the "Tenant Change"), in compliance with all applicable codes and regulations. Tenant's selections of finishes and materials shall be indicated on the Plans and Specifications, and shall be equal to or better than the minimum Building standards and specifications. All work not shown on the final Plans and Specifications, but which is to be included in the Tenant Change, including but not limited to, telephone service installation, furnishings or cabinetry, shall be installed pursuant to Landlord's reasonable directives.
3. Prior to commencing any work:
  - a) Tenant's proposed Contractor and the Contractor's proposed subcontractors and suppliers shall be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. As a condition of such approval, so long as the same are reasonably cost competitive, then Contractor shall use Landlord's Heating, Venting, and Air-conditioning, plumbing, and electrical subcontractors for such work.
  - b) During completion of any Tenant Change, neither Tenant or Contractor shall permit any sub-contractors, workmen, laborers, material or equipment to come into or upon the Building if the use thereof, in Landlord's reasonable judgment, would violate Landlord's agreement with any union providing work, labor or services in or about the Building or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. If any violation, disturbance, interference or conflict occurs, Tenant, upon demand by Landlord, shall immediately cause all contractors or subcontractors or all materials causing the violation, disturbance, interference, difficulty or conflict, to leave or be removed from the Building or the Common Areas immediately. Tenant shall indemnify and hold Landlord harmless from and against all claims, suits, demands, damages, judgments, costs, interest and expenses (including attorneys fees and costs incurred in the defense thereof) to which Landlord may be subject or suffer when the same arise out of or in connection with the use of, work in, construction to, or actions in, on, upon or about the Premises by Tenant or Tenant's agents, contractors, directors, employees, licensees, officers, partners or shareholders, including any actions relating to the installation, placement, removal or financing of any Tenant Change, improvements, fixtures and/or equipment in, on, upon or about the Premises.
  - c) Contractor shall submit to Landlord and Tenant a written bid for completion of the Tenant Change. Said bid shall include Contractor's overhead, profit, and fees, and, if the proposed Tenant Change is for cosmetic work in excess of \$5,000 in aggregate value per occurrence or for structural work of any kind, Contractor shall:
    - i pre-pay to Landlord's managing agent \$250.00 as partial payment of said managing agent's construction administration fee, as specified hereinbelow, and
    - ii upon completion of said Tenant Change, pay an administration fee for supervision of said Tenant Change equal to seven and one-half percent (7.5%) of the total cost of the Tenant Change, to defray said agent's costs for supervision of the construction.
4. Tenant or Contractor shall submit all Plans and Specifications to Landlord, and no work on the Premises shall be commenced before Tenant has received Landlord's final written approval thereof, which shall not be unreasonably withheld, delayed or conditioned. In addition, Tenant shall reimburse Landlord for any and all of Landlord's out of pocket costs incurred in reviewing Tenant's plans for any Tenant Change or for any other "peer review" work associated with Landlord's review of Tenant's plans for any Tenant Change, including, without limitation, Landlord's out of pocket costs incurred in engaging any third party engineers, contractors, consultants or design specialists. Tenant shall pay such costs to Landlord within five (5) business days after Landlord's delivery to Tenant of a copy of the invoice(s) for such work.
5. Contractor shall complete all architectural and planning review and obtain all permits, including signage, required by the city, state or county in which the Premises are located.
6. Contractor shall submit to Landlord verification of public liability and worker's compensation insurance adequate to fully protect Landlord and Tenant from and against any and all liability for death or injury to persons or damage to property caused in or about or by reason of the construction of any work done by Contractor or Contractor's subcontractors or suppliers.
7. Unless otherwise waived in writing by Landlord, which waiver shall be in Landlord's sole discretion, Contractor shall provide payment and performance bonds in an amount equal to 100% of the estimated amount of Tenant Change, as specified to Landlord pursuant to Paragraph 2.
8. Contractor and Contractor's subcontractors and suppliers shall be subject to Landlord's reasonable administrative control and supervision. Landlord shall provide Contractor and Contractor's subcontractors and suppliers with reasonable access to the Premises.
9. During construction of the Tenant Change, Contractor shall adhere to the procedures contained hereinbelow, which represent Landlord's minimum requirements for completion of the Tenant Change.



## **EXHIBIT B-1**

### **CONSTRUCTION BY TENANT DURING TERM (cont'd)**

10. Upon completion of the Tenant Change, Tenant shall provide Landlord with such evidence as Landlord may reasonably request that the Contractor has been paid in full, and Contractor shall provide Landlord with lien releases as requested by Landlord, confirmation that no liens have been filed against the Premises or the Building. If any liens arise against the Premises or the Building as a result of the Tenant Change, Tenant shall immediately, at Tenant's sole expense, remove such liens and provide Landlord evidence that the title to the Building and Premises have been cleared of such liens.

11. Whether or not Tenant or Contractor timely complete the Tenant Change, unless the Lease is otherwise terminated pursuant to the provisions contained therein, Tenant acknowledges and agrees that Tenant's obligations under the Lease to pay Fixed Monthly Rent and/or Additional Rent shall continue unabated.

### **CONSTRUCTION POLICY**

The following policies outlined are the construction procedures for the Building. As a material consideration to Landlord for granting Landlord's permission to Tenant to complete the construction contemplated hereunder, Tenant agrees to be bound by and follow the provisions contained hereinbelow:

#### **1. Administration**

- a) Contractors to notify the management office for the Building prior to starting any work. All jobs must be scheduled by the general contractor or sub-contractor when no general contractor is being used.
- b) The general contractor is to provide the Building Manager with a copy of the projected work schedule for the suite, prior to the start of construction.
- c) Contractor will make sure that at least one set of drawings will have the Building Manager's initials approving the plans and a copy delivered to the Building Office.
- d) As-built construction, including mechanical drawings and air balancing reports will be submitted at the end of each project.
- e) The HVAC contractor is to provide the following items to the Building Manager upon being awarded the contract from the general contractor:
  - i) A plan showing the new ducting layout, all supply and return air grille locations and all thermostat locations. The plan sheet should also include the location of any fire dampers.
  - ii) An Air Balance Report reflecting the supply air capacity throughout the suite, which is to be given to the Chief Building Engineer at the finish of the HVAC installation.
- f) All paint bids should reflect a one-time touch-up paint on all suites. This is to be completed approximately five (5) days after move-in date.
- g) The general contractor must provide for the removal of all trash and debris arising during the course of construction. At no time are the building's trash compactors and/or dumpsters to be used by the general contractor's clean-up crews for the disposal of any trash or debris accumulated during construction. The Building Office assumes no responsibility for bins. Contractor is to monitor and resolve any problems with bin usage without involving the Building Office. Bins are to be emptied on a regular basis and never allowed to overflow. Trash is to be placed in the bin.
- h) Contractors will include in their proposals all costs to include: parking, elevator service, additional security (if required), restoration of carpets, etc. Parking will be validated only if contractor is working directly for the Building Office.
- i) Any problems with construction per the plan, will be brought to the attention of and documented to the Building Manager. Any changes that need additional work not described in the bid will be approved in writing by the Building Manager. All contractors doing work on this project should first verify the scope of work (as stated on the plans) before submitting bids; not after the job has started.

#### **2. Building Facilities Coordination**

- a) All deliveries of material will be made through the parking lot entrance.
- b) Construction materials and equipment will not be stored in any area without prior approval of the Building Manager.
- c) Only the freight elevator is to be used by construction personnel and equipment. Under no circumstances are construction personnel with materials and/or tools to use the "passenger" elevators.

**EXHIBIT B-1**  
**CONSTRUCTION BY TENANT DURING TERM (cont'd)**

**3. Housekeeping**

- a) Suite entrance doors are to remain closed at all times, except when hauling or delivering construction materials.
- b) All construction done on the property that requires the use of lobbies or Common Area corridors will have carpet or other floor protection. The following are the only prescribed methods allowed:
  - i) Mylar: Extra heavy-duty to be taped from the freight elevator to the suite under construction.
  - ii) Masonite: 1/4 inch Panel, Taped to floor and adjoining areas. All corners, edges and joints to have adequate anchoring to provide safe and "trip-free" transitions. Materials to be extra heavy-duty and installed from freight elevator to the suite under construction.
- c) Restroom wash basins will not be used to fill buckets, make pastes, wash brushes, etc. If facilities are required, arrangements for utility closets will be made with the Building Office.
- d) Food and related lunch debris are not to be left in the suite under construction.
- e) All areas the general contractor or their sub-contractors work in must be kept clean. All suites the general contractor works in will have construction debris removed prior to completion inspection. This includes dusting of all window sills, light diffusers, cleaning of cabinets and sinks. All Common Areas are to be kept clean of building materials at all times so as to allow tenants access to their suites or the building.

**4. Construction Requirements**

- a) All Life and Safety and applicable Building Codes will be strictly enforced (i.e., tempered glass, fire dampers, exit signs, smoke detectors, alarms, etc.). Prior coordination with the Building Manager is required.
- b) Electric panel schedules must be brought up to date identifying all new circuits added.
- c) All electrical outlets and lighting circuits are to be properly identified. Outlets will be labeled on back side of each cover plate.
- d) All electrical and phone closets being used must have panels replaced and doors shut at the end of each day's work. Any electrical closet that is opened with the panel exposed must have a work person present.
- e) All electricians, telephone personnel, etc. will, upon completion of their respective projects, pick up and discard their trash leaving the telephone and electrical rooms clean. If this is not complied with, a clean-up will be conducted by the building janitors and the general contractor will be back-charged for this service.
- f) Welding or burning with an open flame will not be done without prior approval of the Building Manager. Fire extinguishers must be on hand at all times.
- g) All "anchoring" of walls or supports to the concrete are not to be done during normal working hours (7:30 AM - 6:00 PM, Monday through Friday). This work must be scheduled before or after these hours during the week or on the weekend.
- h) All core drilling is not to be done during normal working hours (7:30 AM - 6:00 PM, Monday through Friday). This work must be scheduled before or after these hours during the week or on the weekend.
- i) All HVAC work must be inspected by the Building Engineer. The following procedures will be followed by the general contractor:
  - i) A preliminary inspection of the HVAC work in progress will be scheduled through the Building Office prior to the reinstallation of the ceiling grid.
  - ii) A second inspection of the HVAC operation will also be scheduled through the Building Office and will take place with the attendance of the HVAC contractor's Air Balance Engineer. This inspection will take place when the suite in question is ready to be air-balanced.
  - iii) The Building Engineer will inspect the construction on a periodic basis as well.
- j) All existing thermostats, ceiling tiles, lighting fixtures and air conditioning grilles shall be saved and turned over to the Building Engineer.

**Good housekeeping rules and regulations will be strictly enforced. The building office and engineering department will do everything possible to make your job easier. However, contractors who do not observe the construction policy will not be allowed to perform within this building. The cost of repairing any damages that are caused by Tenant or Tenant's contractor during the course of construction shall be deducted from Tenant's Security Deposit.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

B1-3

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**EXHIBIT B-1**  
**CONSTRUCTION BY TENANT DURING TERM (cont'd)**

**LANDLORD:**

DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company

By: Douglas Emmett Management, LLC,  
a Delaware limited liability company, its Agent

By: Douglas Emmett Management, Inc.,  
a Delaware corporation, its Manager

By: /s/ Michael J. Means  
Michael J. Means,  
Senior Vice President

Dated: August 9, 2011

**TENANT:**

BIOSIG TECHNOLOGIES, INC., a Delaware corporation

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chairman and CEO

Dated: August 9, 2011

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT C**  
**RULES AND REGULATIONS**  
**BUILDING RULES AND REGULATIONS**

**1. Access.** Tenant and/or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders shall only use the sidewalks, entrances, lobby(ies), garage(s), elevators, stairways, and public corridors as a means of ingress and egress, and shall take such actions as may reasonably be necessary to ensure that the same remain unobstructed at all times.

The entrance and exit doors to the Premises are to be kept closed at all times except as required for orderly passage to and from the Premises. Except on balconies available for the joint or exclusive use of Tenant as otherwise specified hereinabove, Tenant shall not permit its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to loiter in any part of the Building or obstruct any means of ingress or egress. Tenant shall not cover any doors, and shall not cover any window, other than with vertical or mini-blinds pre-approved in writing by Landlord. Landlord specifically disapproves the installation of any film or foil covering whatsoever on the windows of the Premises.

Neither Tenant, nor its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders shall go up on the roof or onto any balcony serving the Building, except upon such roof, portion thereof, or balcony as may be contiguous to the Premises and is designated in writing by Landlord as a roof-deck, roof-garden area, or exclusive use balcony area.

**2. Restroom Facilities.** The toilet rooms, toilets, urinals, wash bowls and other apparatus (the "Restroom Facilities"), whether contained in the Common Areas of the Building and/or the interior of the Premises, shall not be used for any purpose other than that for which they were designed. Tenant shall not permit its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to throw foreign substances of any kind whatsoever or papers not specifically designated for use in the Restroom facilities down any toilet, or to dispose of the same in any way not in keeping with the instructions provided to Tenant by the management of the Building regarding same, and Tenant hereby specifically agrees to reimburse Landlord directly for the expense of any breakage, stoppage or damage resulting from Tenant's violation of this rule.

**3. Heavy Equipment.** Landlord reserves the right, in Landlord's sole discretion, to decline, limit or designate the location for installation of any safes, other unusually heavy, or unusually large objects to be used or brought into the Premises or the Building. In each case where Tenant requests installation of one or more such unusually heavy item(s), which request shall be conclusively evidenced by Tenant's effort to bring such item(s) into the Building or Premises, Tenant shall reimburse Landlord for the costs of any engineering or structural analysis required by Landlord in connection therewith. In all cases, each such heavy object shall be placed on a metal stand or metal plates or such other mounting detail of such size as shall be prescribed by Landlord.

Tenant hereby indemnifies Landlord against any damage or injury done to persons, places, things or the Building or its Common Areas when such damage or injury primarily arises out of Tenant's installation or use of one or more unusually heavy objects. Tenant further agrees to reimburse Landlord for the costs of repair of any damage done to the Building or property therein by putting in, taking out, or maintaining such safes or other unusually heavy objects.

**4. Transportation of Freight.** Except as otherwise agreed to by Landlord in writing, Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders shall only carry freight, furniture or bulky materials in or out of the Building before or after Normal Business Hours, (as that term is defined in Section 8.1 of the Lease). Tenant may only install and/or move such freight, furniture or bulky material after previous written notice of its intention to complete such a move, given to the Office of the Building. The persons and/or company employed by Tenant for such work must be professional movers, reasonably acceptable to Landlord, and said movers must provide Landlord with a certificate of insurance evidencing the existence of worker's compensation and all risk liability coverage in a minimum amount of \$2,000,000.

Tenant may, subject to the provisions of the immediately preceding paragraph, move freight, furniture, bulky matter and other material in or out of the Premises on Saturdays between the hours of 8:00 A.M. and 6:00 P.M., provided that Tenant pays in advance for Landlord's reasonably anticipated additional costs, if any, for elevator operators, security guards and other expenses arising by reason of such move by Tenant.

**5. Flammable Materials.** Except for such limited quantities of office materials and supplies as are customarily utilized in Tenant's normal business operations, Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline, flammable or combustible fluid or material, other than those limited quantities of normal business operating materials as may reasonably be necessary for the operation or maintenance of office equipment. Nor shall Tenant keep or bring into the Premises or the Building any other toxic or hazardous material specifically disallowed pursuant to California state law.

**6. Cooking / Odors / Nuisances.** Tenant shall not permit its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to engage in the preparation and/or serving of foods unless the Premises includes a self-contained kitchen area. Nor shall Tenant permit the odors arising from such cooking, or any other improper noises, vibrations, or odors to be emanate from the Premises. Tenant shall not obtain for use in the Premises, ice, drinking water, food, beverage, towel or other similar services except at such reasonable hours and under such reasonable regulations as may be specified by Landlord.



**EXHIBIT C**  
**RULES AND REGULATIONS (cont'd)**

Tenant hereby agrees to instruct all persons entering the Premises to comply with the requirements of the Building, by advising all persons entering the Premises that smoking of any tobacco or other substance is prohibited at all times, except in such Common Areas located outside the Building as may be designated by the Building management.

Tenant shall not permit Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to interfere in any way with other tenants of the Building or with those having business with them.

Tenant shall not permit its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders to bring or keep within the Building any animal, bird or bicycle, except such seeing-eye dog or other disability assistance type animal as may comply with the requirements of any handicapped ordinances having jurisdiction therefor.

Tenant shall store its trash and garbage within the Premises. No material shall be placed in the trash boxes or receptacles if such material is a hazardous waste or toxic substance or is of such a nature that its disposal in Landlord's ordinary and customary manner of removing and disposing of trash and garbage would be a violation of any law, ordinance or company regulation governing such disposal. All garbage and refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate. As and when directed by Landlord and/or if required by any governmental agency having jurisdiction therefor, Tenant shall comply with all directives for recycling and separation of trash.

Tenant shall not employ any person to do janitorial work in any part of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

Landlord reserves the right to exclude or expel from the Building any person who in Landlord's sole discretion is intoxicated or under the influence of liquor or drugs or who, in any manner, engages in any act in violation of the Rules and Regulations of the Building.

Tenant shall not conduct any public or private auction, fire sale or other sale of Tenant's personal property, furniture, fixtures or equipment or any other property located in or upon the Premises, without Landlord's prior written consent, which consent shall be in Landlord's sole discretion.

**7. Storage.** Tenant may only store goods, wares, or merchandise on or in the Premises in areas specifically designated by Landlord for such storage.

**8. Directives to Management.** Tenant's requirements, other than those Landlord specifically agrees to perform elsewhere in this Lease, shall only be attended to upon the Building management's receipt of Tenant's written request therefor. Landlord's employees shall not perform any work or do anything outside of their regular duties unless under special instruction from the Building management. No security guard, janitor or engineer or other employee of the Building management shall admit any person (Tenant or otherwise) to the Premises without specific instructions from the Office of the Building and written authorization for such admittance from Tenant.

**9. Keys and Locks.** Landlord shall furnish Tenant with two keys to each door lock existing in the Premises. Tenant shall reimburse Landlord a reasonable charge for these and any additional keys. Tenant shall not be permitted to have keys made, nor shall Tenant alter any lock or install a new or additional lock or bolts on any door of the Premises without Landlord's prior written consent. Tenant shall, in each case, furnish Landlord with a key for any additional lock installed or changed by Tenant or Tenant's agent(s). Tenant, upon the expiration or earlier termination of this Lease, shall deliver to Landlord all keys in the possession of Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders for doors in the Building, whether or not furnished to Tenant by Landlord. If Tenant, or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders, lose or misplace any key(s) to the Building, Landlord shall, in Landlord's sole discretion, either replace said key(s) or re-key such locks as may be affected thereby, and Tenant shall reimburse Landlord for all such costs of such re-keying and/or replacement.

**10. Solicitation.** Tenant and/or its agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders shall not permit any canvassing, peddling, soliciting and/or distribution of handbills or any other written materials to occur in the Premises and/or the Building, nor shall Tenant or Tenant's agents, clients, contractors, directors, employees, invitees, licensees, officers, partners or shareholders engage in such solicitation or distribution activities.

**11. Retail Sales, Services and Manufacturing Prohibited.** Except with the prior written consent of Landlord, Tenant shall not sell, or permit the retail sale of, newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises, nor shall Tenant carry on or permit or allow any employee or other person to carry on the independent business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of other occupants of any other portion of the Building. Tenant shall not permit the Premises to be used for manufacturing or for any illegal activity of any kind, or for any business or activity other than for Tenant's specific use.

**12. Change in Name or Address.** Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.

**EXHIBIT C**  
**RULES AND REGULATIONS (cont'd)**

**13. Projections from Premises.** Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or the exterior walls of the Building or in any area projecting outside the interior walls of the Premises. Tenant shall not install or permit to be installed any awnings, air conditioning units or other projections, without the prior written consent of Landlord.

**14. Superiority of Lease.** These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the covenants, agreements or provisions of this Lease. If a conflict or disagreement between the Lease and these Rules becomes apparent, this Lease shall prevail.

**15. Changes to Rules and Regulations.** Provided such changes do not materially harm Tenant's ability to conduct its normal business operations, Landlord shall retain the right to change, add or rescind any rule or regulation contained herein, or to make such other and further reasonable and non-discriminatory Rules and Regulations as in Landlord's sole judgment may, from time to time, become necessary for the management, safety, care and cleanliness of the Premises, the Building or the Parking Facilities, or for the preservation of good order therein, or for the convenience of other occupants and tenants therein, so long as such rescission, addition, deletion or change is thereafter reasonably applied to all occupants of the Building affected thereby.

**PARKING RULES AND REGULATIONS**

- A. Tenant shall strictly comply with all posted speed limits, directional signs, yield signs, stops signs and all other signs within or about the parking facilities.
- B. Tenant shall register all vehicle license plate numbers with the Building management.
- C. Tenant shall be responsible for the cost of repairing any damage to the parking facilities or cleaning any debris created or left by Tenant, including, without limitation, oil leakage from motor vehicles parked in the parking facilities under its auspices.
- D. Landlord, in addition to reserving the right to designate one or more areas solely for visitor parking, which areas may be changed by Landlord from time to time with or without prior notice to Tenant, reserves the right to allocate additional visitor spaces on any floor of the parking facilities. Tenant shall not park any vehicles in any spaces designated as visitor only spaces or customer spaces within the parking facilities.
- E. Tenant shall strictly comply with all rules, regulations, ordinances, speed limits, and statutes affecting handicapped parking and/or access, and shall not park any vehicles within the fire lanes, along parking curbs or in striped areas.
- F. Tenant shall only use the number of parking permits allocated to it and shall not permit more than one of its employees to utilize the same parking permit. Landlord reserves the right to assign or re-assign parking spaces within the Parking facilities to Tenant from time to time, and provided Landlord is required to do so by reason of any action arising out of a governmental mandate imposed on Landlord, Landlord further reserves the right at any time to substitute an equivalent number of parking spaces in a parking facilities or subterranean or surface parking facility within a reasonable distance of the Premises.
- G. Except with Landlord's managing agent(s)' prior written consent, Tenant shall not leave vehicles in the parking facilities overnight, nor park any vehicles in the parking facilities other than automobiles, motorcycles, motor-driven or non-motor-driven bicycles or four-wheeled trucks or vans. Landlord may, in its sole discretion, designate separate areas for bicycles and motorcycles. Tenant shall ensure that vehicles parking in the parking facilities by using the parking permits assigned to Tenant shall be parked entirely within the striped lines designating a single space and are not so situated or of such a width or length as to impede access to or egress from vehicles parked in adjacent areas or doors or loading docks. Further, all vehicles utilizing Tenant's parking permits shall not be higher than any height limitation that may be posted, or of such a size, weight or dimension so that entry of such vehicle into the parking facilities would cause any damage or injury thereto.
- H. Tenant shall not allow any of the vehicles parked using Tenant's permits, or the vehicles of any of Tenant's suppliers, shippers, customers or invitees to be loaded or unloaded in any area other than those specifically designated by Landlord for loading.
- I. Tenant shall not use or occupy the parking facilities in any manner which will unreasonably interfere with the use of the parking facilities by other tenants or occupants of the Building. Without limitation, Tenant agrees to promptly turn off any vehicle alarm system activated and sounding an alarm in the parking facilities. In the event said alarm system fails to turn off and no longer sound an intruder alert fifteen (15) minutes after commencing such an alarm, Landlord shall reserve the right to remove the vehicle from the parking facilities at Tenant's sole expense.
- J. Tenant acknowledges that the Rules and Regulations as posted herein shall be in effect twenty-four hours per day, seven days per week, without exception.

**EXHIBIT C**  
**RULES AND REGULATIONS (cont'd)**

**K.** Tenant acknowledges that the uniformed guard officers and parking attendants serving the parking facilities are authorized to issue verbal and written warnings of Tenant's violations of any of the rules and regulations contained herein. Except in the case of a car alarm continuing to sound in excess of a maximum of fifteen (15) minutes, in which case no further notice by Landlord shall be required. If Tenant or Tenant's agents, contractors, directors, employees, officers, partners or shareholders continue to materially breach these rules and regulations after expiration of written notice and the opportunity to cure has been given to Tenant, then in addition to such other remedies and request for injunctive relief it may have, Landlord shall have the right, without additional notice, to remove or tow away the vehicle involved and store the same, all costs of which shall be borne exclusively by Tenant and/or revoke Tenant's parking privileges and rights under the Lease.

**LANDLORD:**

DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company

By: Douglas Emmett Management, LLC,  
a Delaware limited liability company, its Agent

By: Douglas Emmett Management, Inc.,  
a Delaware corporation, its Manager

By: /s/ Michael J. Means  
Michael J. Means,  
Senior Vice President

Dated: August 9, 2011

**TENANT:**

BIOSIG TECHNOLOGIES, INC., a Delaware corporation

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chairman and CEO

Dated: August 9, 2011

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT D**  
**MEMORANDUM OF LEASE TERM DATES AND RENT**

To: Biosig Technologies, Inc.  
12424 Wilshire Boulevard, Suite 745  
Los Angeles, California 90025

Re: Lease dated August 9, 2011 between DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company ("Landlord"), and BIOSIG TECHNOLOGIES, INC., a Delaware corporation ("Tenant") concerning Suite 745 on the seventh (7<sup>th</sup>) floor of the office building located at 12424 Wilshire Boulevard, Los Angeles, California 90025.

Ladies and Gentlemen:

In accordance with the Office Lease (the "Lease"), we wish to advise you of and confirm the following:

1. The Lease Term shall commence on or has commenced on August 16, 2011 ("Commencement Date") for a term of three (3) years ending on August 31, 2014.

2. Tenant acknowledges and agrees commencing August 16, 2011, and continuing through August 31, 2012, Tenant shall pay the initial Fixed Monthly Rent of \$5,067.00 per month.

Commencing September 1, 2012, and continuing through August 31, 2013, the Fixed Monthly Rent payable by Tenant shall increase from \$5,067.00 per month to \$5,219.01 per month; and

Commencing September 1, 2013, and continuing throughout the remainder of the initial Term,    the Fixed Monthly Rent payable by Tenant shall increase from \$5,219.01 per month to \$5,375.58 per month;

Notwithstanding the foregoing, Tenant shall be permitted to defer fifty percent (50%) of the Fixed Monthly Rent due for the months of October 2011 and November 2011.

3. If the Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the Fixed Monthly Rent as provided for in the Lease.

4. Tenant acknowledges and agrees that Landlord has completed the Improvements for which Landlord was obligated under the Lease to Tenant's satisfaction, and, as of the Commencement Date, the Premises were in good order and repair.

5. Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Memorandum and that each person signing on behalf of Tenant is authorized to do so.

6. In the event Tenant fails to execute and return this Memorandum to Landlord or fails to deliver written notice to Landlord of Tenant's bona fide objection, if any (set forth in reasonable detail, including how any of the terms set forth herein conflict with the terms of the Lease), to the terms contained herein, in either case within five (5) business days after Tenant's receipt hereof, then such failure shall be construed as an acknowledgement that all of the terms set forth in the Memorandum are true and correct, without exception.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**LANDLORD:**

DOUGLAS EMMETT 1993, LLC, a Delaware limited liability company

By: Douglas Emmett Management, LLC,  
a Delaware limited liability company, its Agent

By: Douglas Emmett Management, Inc.,  
a Delaware corporation, its Manager

By: /s/ Michael J. Means  
Michael J. Means,  
Senior Vice President

Dated: September 6, 2011

**TENANT:**

BIOSIG TECHNOLOGIES, INC., a Delaware corporation

By: /s/ Kenneth Londoner  
Name: Kenneth Londoner  
Title: Chairman and CEO

Dated: August 25, 2011

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_



**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this "*Agreement*") is dated as of March 1, 2013 and is entered into by and between Kenneth Londoner (the "*Executive*") and BioSig Technologies, Inc. (the "*Company*"). The Company and the Executive shall be referred to herein as the "*Parties*."

**RECITALS**

A. The Company desires to employ the Executive as its Chief Executive Officer, and the Executive desires to be employed by the Company as its Chief Executive Officer;

B. The Company and the Executive desire to set forth in writing the terms and conditions of their agreement and understandings with respect to the employment of the Executive as its Chief Executive Officer; and

C. In consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

**ARTICLE I.  
EMPLOYMENT**

1.01 **Employment.** The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company for the period and upon the terms and conditions contained in this Agreement.

1.02 **Office and Duties.** The Executive shall serve in the position of Chief Executive Officer, and shall perform services for the Company as requested or as needed to perform his job. The duties of the Executive shall be those duties which can reasonably be expected to be performed by a person with the title of Chief Executive Officer of a publicly-traded company and its affiliated organizations. The Executive shall report to the Company's Board of Directors (the "*Board*"). The Executive has received and is familiar with the Company's ethics and insider trading policies and procedures, and understands and agrees his duties include compliance with such policies and procedures, as amended from time to time.

1.03 **Performance.** During the Executive's employment by the Company, the Executive shall devote on a full-time basis all of his time, energy, skill and best efforts to the performance of his duties hereunder in a manner that will faithfully and diligently further the business and interests of the Company, and shall exercise reasonable best efforts to perform his duties in a diligent, trustworthy, good faith and business-like manner, all for the purpose of advancing the business of the Company. The Executive shall at all times conduct himself in a manner consistent with his position. The Executive agrees to act all times in accordance with high business and ethical standards. The Executive shall comply with the policies and written manuals of the Company.

1.04 **Term of Employment.** The term of the Executive's employment under this Agreement shall begin on March 1, 2013 (the "*Effective Date*") and shall continue in effect through March 1, 2015 (the "*Term*"). If the Executive remains employed with the Company after the Term expires, then the Executive's employment shall be on an at-will basis, meaning either the Company or the Executive may terminate the Executive's employment at any time with or without cause and the Company shall owe the Executive no further obligations. The Executive's post-termination obligations in Article III and Article IV shall continue as provided in this Agreement.

1.05 **Base Salary.** The Company shall pay the Executive an annual base salary of \$225,000.00, less applicable payroll deductions and tax withholdings (the "**Base Salary**") for all services rendered by the Executive under this Agreement. The Company shall pay the Base Salary in accordance with the normal payroll policies of the Company.

1.06 **Discretionary Bonuses.** During the Term, the Executive shall be eligible to receive periodic bonuses based on various targets and performance criteria established by the Board in its sole discretion (the "**Bonus**"). The evaluation of the Executive's performance, as measured by the applicable targets and the awarding of applicable bonuses, if any, shall be at the Board's sole discretion. Any Bonus may be awarded in whole or in part, based on the level of incentive bonus plan performance criteria achieved by the Executive, in the Board's sole judgment. The Executive must be employed on the date a Bonus is paid in order to be eligible for such bonus. The payment of any Bonus shall be subject to all federal, state and withholding taxes, social security deductions and other general withholding obligations. Award of a Bonus in with respect to a particular calendar year during the Term does not guarantee the award of a Bonus in any subsequent calendar year.

1.07 **Equity Awards.** The Company establishes equity-based incentives for its executives from time to time under the BioSig 2012 ESOP or such other stock-based compensation plans as the Company may establish from time to time (collectively, the "**Plan**"). The Company may, but is not obligated to, make grants of equity-based incentive compensation to the Executive under the terms of the Plan.

1.08 **Expenses.** The Company agrees that, during the Executive's employment, it will reimburse the Executive for out-of-pocket expenses reasonably incurred in connection with the Executive's performance of his services hereunder, upon the presentation by the Executive of an itemized accounting of such expenditures, with supporting receipts. Reimbursement shall be in compliance with the Company's expense reimbursement policies.

1.09 **Vacation.** During the Term, the Executive shall be entitled to paid vacation in accordance with the standard written policies of the Company with regard to vacations of senior executives, but in no event less than four (4) weeks per calendar year (with proration for partial years).

1.10 **Other Benefits.** The Executive is entitled to participate in any group health insurance plan, option or similar incentive compensation plan, 401(k) plan, disability plan, group life plan, and any other benefit or welfare program or policy that is made generally available, from time to time, to other employees of the Company, on a basis consistent with such participation and subject to the terms of the plan documents, as such plans may be modified, amended, terminated, or replaced from time to time.

## **ARTICLE II. TERMINATION**

2.01 **The Company's Obligations to the Executive upon Termination for Cause.** In the event the Company terminates the Executive's employment for Cause (defined below), the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination.

2.02 **The Company's Obligations to the Executive upon Termination Due to Death or Disability.** In the event the Executive's employment terminates for death or Disability, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination. For purposes of this Agreement, "**Disability**" means the Executive is incapacitated due to physical or mental illness and such incapacity, with or without reasonable accommodation, prevents the Executive from satisfactorily performing the essential functions of his job for the Company on a full-time basis of not less than 90 consecutive days.



**2.03 The Company's Obligations to the Executive Upon Termination Without Cause.** In the event the Company terminates the Executive's employment without Cause, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, (ii) any unreimbursed expenses properly incurred prior to the Date of Termination, and (iii) severance pay equal to the Base Salary that would have been payable to the Executive for the remainder of the Term had his employment not terminated, less applicable withholdings and taxes. Severance pay, if any, shall be paid in accordance with the Company's normal payroll practices beginning on the first payroll date occurring after the 60<sup>th</sup> day following the Executive's termination and applicable payroll taxes and withholdings shall be withheld. As a precondition to receiving the severance pay, the Executive shall execute and deliver within 60 days following the Executive's termination a release prepared by the Company and providing for the Executive's release of any and all claims against the Company and its subsidiaries and affiliates (and those acting on behalf of them) that may have arisen on or before the date of the release, which release shall contain such other reasonable and customary terms as are specified by and acceptable to the Company. Notwithstanding any provisions to the contrary, no severance pay shall be paid unless and until such binding release is effective. If such executed release is not delivered within 60 days of the Executive's termination date, all rights of the Executive with respect to any severance benefit under this Section 2.03 shall be forfeited. For purposes of this Agreement, "**Cause**" means termination because of: (i) an act or acts of willful or material misrepresentation, fraud or willful dishonesty by the Executive; (ii) any willful misconduct by the Executive with regard to the Company; (iii) any violation by the Executive of any fiduciary duties owed by him to the Company; (iv) the Executive's conviction of, or pleading nolo contendere or guilty to, a felony (other than a traffic infraction) or (v) any other material breach by the Executive of this Agreement that is not cured by the Executive within twenty (20) days after receipt by the Executive of a written notice from the Company of such breach specifying the details thereof. No action or inaction should be deemed willful if not demonstrably willful and if taken or not taken by the Executive in good faith as not being adverse to the best interests of the Company. Reference in this Section 2.03 to the Company shall also include direct and indirect subsidiaries of the Company. If the Executive shall resign or otherwise terminate his employment with the Company, the Executive shall be deemed for purposes of this Agreement to have been terminated for Cause, and the Company shall have no further obligations hereunder from and after such resignation or termination.

**2.04 Voluntary Termination by the Executive.** In the event that the Executive terminates his employment for any reason, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination.

**2.05 Termination Procedure.** Termination of the Executive's employment by the Company or by the Executive shall be communicated in writing to the other party hereto. "**Date of Termination**" shall mean (i) if the Executive's employment is terminated by his death, the date of his death, (ii) if the Executive's employment is terminated for Disability, with or without Cause by the Company, or by the Executive for any reason, on the date specified in the notice of termination. After delivery of a notice of termination, the Company may require that the Executive cease representing the Company, cease taking any action on behalf of the Company and cease being present at any Company location without implicating [Section 2.03](#).

**ARTICLE III.  
CONFIDENTIAL INFORMATION**

3.01 **Confidential Information.** The Company shall provide the Executive Confidential Information (defined below), specialized training, and access to its customers and clients. The Executive recognizes that during the Executive's employment with the Company, the Company shall grant the Executive otherwise prohibited access to its trade secrets and confidential information which is not known to the Company's competitors or within the Company's industry generally, which was developed by the Company over a long period of time and/or at its substantial expense, and which is of great competitive value to the Company, and access to the Company's customers and clients. For purposes of this Agreement, "**Confidential Information**" includes any trade secrets or confidential or proprietary information of the Company, including, but not limited to, the following: products, services, processes, know-how, technical data, policies, strategies, designs, formulas, developmental or experimental work, improvements, discoveries, research, plans for research or future products and services, database schemas or tables, development tools or techniques, training procedures, training techniques, training manuals, business information, marketing and sales plans and strategies, business plans, budgets, financial data and information, customer and client information, prices and costs, customer and client lists and profiles, employee, customer and client nonpublic personal information, supplier lists, business records, product construction, product specifications, audit processes, pricing strategies, business strategies, marketing and promotional practices (including internet-related marketing), management methods and information, plans, reports, recommendations and conclusions, information regarding the skills and compensation of employees and contractors of the Company, and other business information disclosed to the Executive by the Company, either directly or indirectly, in writing, orally, or by drawings or observation.

3.02 **No Unauthorized Use or Disclosure.** The Executive acknowledges and agrees that Confidential Information is proprietary to and a trade secret of the Company and, as such, is a special and unique asset of the Company, and that any disclosure or unauthorized use of any Confidential Information by the Executive will cause irreparable harm and loss to the Company. The Executive understands and acknowledges that each and every component of the Confidential Information (i) has been developed by the Company at significant effort and expense and is sufficiently secret to derive economic value from not being generally known to other parties, and (ii) constitutes a protectable business interest of the Company. The Executive acknowledges and agrees that the Company owns the Confidential Information. The Executive agrees not to dispute, contest, or deny any such ownership rights either during or after the Executive's employment with the Company. The Executive agrees to preserve and protect the confidentiality of all Confidential Information. The Executive agrees that the Executive shall not at any time (whether during or after the Executive's employment), directly or indirectly, disclose to any unauthorized person or use for the Executive's own account any Confidential Information without the Company's consent. Throughout the Executive's employment and at all times thereafter: (i) the Executive shall hold all Confidential Information in the strictest confidence, take all reasonable precautions to prevent its inadvertent disclosure to any unauthorized person, and follow all Company policies protecting the Confidential Information; (ii) the Executive shall not, directly or indirectly, utilize, disclose or make available to any other person or entity, any of the Confidential Information, other than in the proper performance of the Executive's duties; (iii) the Executive shall not use the Confidential Information or trade secrets to attempt to solicit, induce, recruit, or take away clients or customers of the Company; and (iv) if the Executive learns that any person or entity is taking or threatening to take any actions which would compromise any Confidential Information, the Executive shall promptly advise the Company of all facts concerning such action or threatened action. The Executive understands that his obligations under this Section terminate only at such time (if any) as the Confidential Information in question becomes generally known to the public other than through a breach of the Executive's obligations under this Agreement. The Executive shall use all reasonable efforts to obligate all persons to whom any Confidential Information shall be disclosed by the Executive hereunder to preserve and protect the confidentiality of such Confidential Information.

3.03 **Return of Property and Information.** Upon the termination of the Executive's employment for any reason, the Executive shall immediately return and deliver to the Company any and all Confidential Information, software, devices, cell phones, personal data assistants, credit cards, data, reports, proposals, lists, correspondence, materials, equipment, computers, hard drives, papers, books, records, documents, memoranda, manuals, e-mail, electronic or magnetic recordings or data, including all copies thereof, which belong to the Company or relate to the Company's business and which are in the Executive's possession, custody or control, whether prepared by the Executive or others. If at any time after termination of the Executive's employment the Executive determines that the Executive has any Confidential Information in the Executive's possession or control, the Executive shall immediately return to the Company all such Confidential Information in the Executive's possession or control, including all copies and portions thereof.

#### **ARTICLE IV. COVENANTS**

4.01 **Restrictive Covenants.** In consideration for (i) the Company's promise to provide Confidential Information and specialized training to the Executive, (ii) the substantial economic investment made by the Company in the Confidential Information and goodwill of the Company, and/or the business opportunities disclosed or entrusted to the Executive, (iii) access to the Company's customers and clients, and (iv) the Company's employment of the Executive pursuant to this Agreement and the compensation and other benefits provided by the Company to the Executive, to protect the Company's Confidential Information and business goodwill of the Company, the Executive agrees to the following restrictive covenants.

( a ) Non-Competition. The Executive agrees that during the Restricted Period (defined below), other than in connection with his duties under this Agreement, the Executive shall not, and shall not use any Confidential Information to, without the prior written consent of the Company, directly or indirectly, either individually or as a principal, partner, stockholder, manager, agent, consultant, contractor, distributor, employee, lender, investor, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, become employed by, control, carry on, join, lend money for, operate, engage in, establish, perform services for, invest in, solicit investors for, consult for, do business with or otherwise engage in any Competing Business within the Restricted Area. Notwithstanding the restrictions contained in this Section 4.01, the Executive may own an aggregate of not more than five percent (5%) of the outstanding stock of any class of any corporation engaged in a Competing Business, if such stock is listed on a national securities exchange in the United States (or a comparable exchange in a foreign jurisdiction) or regularly traded in the over-the-counter market by a member of a national securities exchange in the United States, without violating the provisions of Section 4.01; provided, however, that the Executive does not have the power, directly or indirectly, to control or direct the management or affairs of any such corporation and is not involved in the management of such corporation.

For purposes of this Agreement:

(i) “**Restricted Period**” means during the Executive’s employment with the Company and for a period of one (1) year immediately following the date of his termination from employment for any reason.

(ii) As Chief Executive Officer of the Company, Executive has responsibility for the Company’s business world-wide and access to its Confidential Information world-wide. Therefore, the “**Restricted Area**” includes each State of the United States and each country in which the Company conducted business and for which Executive had responsibility for the Company during his employment.

(iii) “**Competing Business**” means any business, individual, partnership, firm, corporation or other entity that is competing or that is preparing to compete with any aspect of the Company’s business, which includes, but is not limited to the development, marketing and sale of technology and/or medical devices related to cardiac recordings, electrophysiology, and the diagnosis and treatment of abnormal heart rhythms.

(b) **Non-Solicitation.** The Executive agrees that during the Restricted Period, other than in connection with his duties under this Agreement, he shall not, and shall not use any Confidential Information to, directly or indirectly, either as a principal, manager, agent, employee, consultant, officer, director, stockholder, partner, investor or lender or in any other capacity, and whether personally or through other persons:

(i) Solicit business from, interfere with, attempt to solicit business with, or do business with any customer, client, manufacturer or vendor of the Company with whom the Company did business or who the Company solicited within the preceding two (2) years, and who or which: (1) the Executive contacted, called on, serviced or did business with during the Executive’s employment with the Company; (2) the Executive learned of as a result of the Executive’s employment with the Company; or (3) about whom the Executive received Confidential Information. This restriction applies only to business which is in the scope of services or products provided by the Company or any affiliate thereof; or

(ii) Solicit, induce or attempt to solicit or induce, engage or hire, on behalf of himself or any other person or entity, any person who is an employee or consultant of the Company or who was employed by the Company within the preceding 12 months.

4.02 **Non-Disparagement.** The Executive shall refrain, both during and after the Term, from publishing any oral or written statements about the Company or any of the Company’s directors, managers, officers, employees, consultants, agents or representatives that (i) are slanderous, libelous or defamatory; or (ii) place the Company or any of its directors, managers, officers, employees, consultants, agents or representatives in a false light before the public. A violation or threatened violation of this prohibition may be enjoined by the courts. The rights afforded the Company under this provision are in addition to any and all rights and remedies otherwise afforded by law.

4.03 **Tolling.** If the Executive violates any of the restrictions contained in this Article IV, the Restricted Period shall be suspended and shall not run in favor of the Executive from the time of the commencement of any violation until the time when the Executive cures the violation to the satisfaction of the Company.

4.04 **Remedies.** The Executive acknowledges that the restrictions contained in Articles III and IV of this Agreement, in view of the nature of the Company's business and his position with the Company, are reasonable and necessary to protect the Company's legitimate business interests and that any violation of Articles III and/or IV of this Agreement would result in irreparable injury to the Company. In the event of a breach by the Executive of Articles III and/or IV of this Agreement, then the Company shall be entitled to (i) a temporary restraining order and injunctive relief restraining the Executive from the commission of any breach, and (ii) to recover any severance pay under Section 2.03 from the date of breach and cease payment of any further severance pay. Such remedies shall not be deemed the exclusive remedies for a breach or threatened breach of this Article IV but shall be in addition to all remedies available at law or in equity, including the recovery of damages from the Executive, the Executive's agents, any future employer of the Executive, and any person that conspires or aids and abets the Executive in a breach or threatened breach of this Agreement.

4.05 **Reasonableness.** The Executive hereby represents to the Company that the Executive has read and understands, and agrees to be bound by, the terms of this Article IV. The Executive acknowledges that the geographic scope and duration of the covenants contained in this Article IV are fair and reasonable in light of (i) the nature and wide geographic scope of the operations of the Company's business; (ii) the Executive's level of control over and contact with the business in the Restricted Area; and (iii) the amount of compensation, trade secrets and Confidential Information that the Executive is receiving in connection with the Executive's employment by the Company. It is the desire and intent of the parties that the provisions of Article IV be enforced to the fullest extent permitted under applicable law, whether now or hereafter in effect and therefore, to the extent permitted by applicable law, the Executive and the Company hereby waive any provision of applicable law that would render any provision of Article IV invalid or unenforceable.

4.06 **Reformation.** The Company and the Executive agree that the foregoing restrictions set forth in Articles III and IV are reasonable under the circumstances and that any breach of the covenants contained in Articles III or IV would cause irreparable injury to the Company. The Executive understands that the foregoing restrictions may limit the Executive's ability to engage in certain businesses anywhere in or involving the Restricted Area during the Restricted Period, but acknowledges that the Executive shall receive Confidential Information and trade secrets, as well as sufficiently high remuneration and other benefits as an employee of the Company to justify such restrictions. If any of the aforesaid restrictions are found by a court of competent jurisdiction to be unreasonable, or overly broad as to geographic area or time, or otherwise unenforceable, the parties intend for the restrictions herein set forth to be modified by the court making such determination so as to be reasonable and enforceable and, as so modified, to be fully enforced. By agreeing to this contractual modification prospectively at this time, the Company and the Executive intend to make this provision enforceable under the law or laws of all applicable jurisdictions so that the entire agreement not to compete and this Agreement as prospectively modified shall remain in full force and effect and shall not be rendered void or illegal.

4.07 **No Previous Restrictive Agreements.** The Executive represents that, except as disclosed in writing to the Company, the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of the Executive's employment with the Company or to refrain from competing, directly or indirectly, with the business of such previous employer or any other party. The Executive further represents that the Executive's performance of all the terms of this Agreement and the Executive's work duties for the Company do not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by the Executive in confidence or in trust prior to the Executive's employment with the Company. The Executive shall not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others.

**ARTICLE V.  
GENERAL**

5.01 **Notices.** For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when personally delivered, or mailed by certified mail, return receipt requested by nationally recognized overnight or second-day delivery service with proof of receipt maintained, at the following addresses (or any other address that any party may designate by written notice to the other party, in accordance herewith, except that such notice shall be effective only upon receipt):

If to the Company to:

BioSig Technologies, Inc.  
12424 Wilshire Boulevard, Suite 745  
Los Angeles, CA 90025

Attn:

If to the Executive to:

Kenneth Londoner  
12424 Wilshire Boulevard, Suite 745  
Los Angeles, CA 90025

Any such notice shall (i) if delivered personally, be deemed received upon delivery; (ii) if delivered by certified mail, be deemed received upon the earlier of actual receipt thereof or five (5) business days after the date of deposit in the United States mail, as the case may be; and (iii) if delivered by nationally recognized overnight or second-day delivery service, be deemed received on the second business day after the date of deposit with the delivery service.

5.02 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware. Venue of any litigation arising from this Agreement or any disputes relating to the Executive's employment shall be in the United States District Court for the District of Delaware, or a state district court of competent jurisdiction in New Castle County, Delaware. The Executive consents to personal jurisdiction of the United States District Court for District of Delaware, or a state district court of competent jurisdiction in New Castle County, Delaware for any dispute relating to or arising out of this Agreement or the Executive's employment, and the Executive agrees that the Executive shall not challenge personal or subject matter jurisdiction in such courts.

5.03 **Headings.** The paragraph headings contained in this Agreement are for convenience only and shall in no way or manner be construed as a part of this Agreement.

5.04 **Severability.** In the event that any court of competent jurisdiction holds any provision in this Agreement to be invalid, illegal or unenforceable in any respect, the remaining provisions shall not be affected or invalidated and shall remain in full force and effect.

5.05 **Reformation.** In the event any court of competent jurisdiction holds any restriction in this Agreement to be unreasonable and/or unenforceable as written, the court may reform this Agreement to make it enforceable, and this Agreement shall remain in full force and effect as reformed by the court.

5.06 **Entire Agreement.** This Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way, including without limitation the Employment Agreement. The parties have executed this Agreement based upon the express terms and provisions set forth herein and have not relied on any communications or representations, oral or written, which are not set forth in this Agreement. No oral statements or prior written material not specifically incorporated in this Agreement shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized, unless incorporated in this Agreement by written amendment, such amendment to become effective on the date stipulated in it. Any amendment to this Agreement must be signed by all parties to this Agreement. The parties represent and acknowledge that, in executing this Agreement, they do not rely, and have not relied, on any representation(s), oral or written, by the other party, except as expressly contained in this Agreement. The parties represent that they relied on their own judgment in entering into this Agreement.

5.07 **Waiver.** No waiver of any breach of this Agreement shall be construed to be a waiver as to succeeding breaches. The failure of either party to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition but the obligations of either party with respect thereto shall continue in full force and effect. The breach by one party to this Agreement shall not preclude equitable relief or the obligations in Articles III or IV.

5.08 **Modification.** The provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Company and the Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall be construed as a waiver of such provisions or affect the validity, binding effect or enforceability of this Agreement or any provision hereof.

5.09 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. The Executive may not assign this Agreement to a third party. The Company may assign its rights, together with its obligations hereunder, to any affiliate and/or subsidiary of the Company or any successor thereto or any purchaser of substantially all of the assets of the Company.

5.10 **Dispute Resolution.** With the exception of claims for injunctive or other equitable relief for the enforcement of Article III and Article IV of this Agreement, any dispute, controversy, or claim, whether contractual or non-contractual, including without limitation any federal or state statutory claim, common law or tort claim, or claim for attorneys fees, between the parties hereto arising directly or indirectly out of or connected with this Agreement and/or the parties' employment relationship, unless mutually settled by the parties hereto, shall be resolved by binding arbitration conducted pursuant to the Federal Arbitration Act and in accordance with the Employment Arbitration Rules of the American Arbitration Association (the "AAA"). The parties agree that before proceeding to arbitration, they will mediate their disputes before a mutually selected mediator. If the parties are unable to mutually select a mediator, then the parties shall jointly request that the AAA appoint a mediator. Any arbitration shall be conducted by an arbitrator mutually selected by the parties. If the parties are unable to mutually select an arbitrator, the parties shall jointly request that the AAA appoint an arbitrator. All such disputes, controversies or claims shall be conducted by a single arbitrator, unless the parties mutually agree that the arbitration shall be conducted by a panel of three arbitrators. The resolution of the dispute by the arbitrator(s) shall be final, binding, nonappealable, and fully enforceable by a court of competent jurisdiction under the Federal Arbitration Act. The arbitrator(s) may award damages to the prevailing party. The arbitration award shall be in writing and shall include a statement of the reasons for the award. The arbitration shall be held in Los Angeles, California. The Company shall initially pay all AAA, mediation, and arbitrator's fees and costs. The arbitrator(s) may award reasonable attorneys' fees and/or costs to the prevailing party.

5.11 **Section 409A.**

(a) It is intended that this Agreement be drafted and administered in compliance with Section 409A of the Code, including, but not limited to, any future amendments to Section 409A of the Code, and any other Internal Revenue Service or other governmental rulings or interpretations (“*IRS Guidance*”) issued pursuant to Section 409A of the Code so as not to subject the Executive to payment of interest or any additional tax under Section 409A of the Code. In furtherance thereof, if payment or provision of any amount or benefit hereunder that is subject to Section 409A of the Code at the time specified herein would subject such amount or benefit to any additional tax under Section 409A of the Code, the payment or provision of such amount or benefit shall be postponed to the earliest commencement date on which the payment or provision of such amount or benefit could be made without incurring such additional tax. In addition, to the extent that any IRS Guidance issued under Section 409A of the Code would result in the Executive being subject to the payment of interest or any additional tax under Section 409A of the Code, the parties agree to amend this Agreement as required by law in order to avoid the imposition of any such interest or additional tax under Section 409A of the Code, which amendment shall have the minimum economic effect necessary and be reasonably determined in good faith by the Company and the Executive. For purposes of Section 409A of the Code, each payment of any severance pursuant to Article III shall be treated a separate payment. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a “separation from service” (within the meaning of Section 409A of the Code and IRS Guidance). Notwithstanding the foregoing, nothing contained herein shall be construed as a representation, guarantee or other undertaking on the part of the Company that any payment made pursuant to this Agreement (including, without limitation, the Bonus, any severance amount), is or will be found to comply with the requirements of Section 409A of the Code or any other regulations or guidance issued thereunder. The Executive shall be solely responsible for determining the tax consequences to him of the payments made pursuant to this Agreement, including, without limitation, any possible tax consequences under Section 409A of the Code.

(b) To the extent (i) any payments to which the Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with the Executive’s separation from service with the Company constitute deferred compensation subject to Section 409A of the Code; (ii) the Executive is deemed at the time of his separation from service to be a “specified employee” under Section 409A of the Code; and (iii) at the time of the Executive’s separation from service, the Company is publicly traded (as defined in Section 409A of the Code), then such payments (other than any payments permitted by Section 409A of the Code to be paid within six (6) months of the Executive’s separation from service) shall not be made until the earlier of (x) the first day of the seventh month following the Executive’s separation from service or (y) the date of the Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this Section 5.11 shall be paid to the Executive or the Executive's beneficiary in one lump sum.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the Company and the Executive have caused this Agreement to be executed on the day and year indicated below to be effective on the day and year first written above.

**EXECUTIVE:**

/s/ Kenneth Londoner  
Kenneth Londoner

March 1, 2013  
Date

**COMPANY:**

**BioSig Technologies, Inc.**

By: /s/ Lora Mikolaitis, Director of Operations

March 1, 2013  
Date



**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this "*Agreement*") is dated as of March 1, 2013 and is entered into by and between Budimir Drakulic (the "*Executive*") and BioSig Technologies, Inc. (the "*Company*"). The Company and the Executive shall be referred to herein as the "*Parties*."

**RECITALS**

A. The Company desires to employ the Executive as its Chief Technology Officer, and the Executive desires to be employed by the Company as its Chief Technology Officer;

B. The Company and the Executive desire to set forth in writing the terms and conditions of their agreement and understandings with respect to the employment of the Executive as its Chief Technology Officer; and

C. In consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

**ARTICLE I.  
EMPLOYMENT**

1.01 **Employment.** The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company for the period and upon the terms and conditions contained in this Agreement.

1.02 **Office and Duties.** The Executive shall serve in the position of Chief Technology Officer, and shall perform services for the Company as requested or as needed to perform his job. The duties of the Executive shall be those duties which can reasonably be expected to be performed by a person with the title of Chief Technology Officer of a publicly-traded company and its affiliated organizations. The Executive shall report to the Company's Chief Executive Officer and the Company's Board of Directors (the "*Board*"). The Executive has received and is familiar with the Company's ethics and insider trading policies and procedures, and understands and agrees his duties include compliance with such policies and procedures, as amended from time to time.

1.03 **Performance.** During the Executive's employment by the Company, the Executive shall devote on a full-time basis all of his time, energy, skill and best efforts to the performance of his duties hereunder in a manner that will faithfully and diligently further the business and interests of the Company, and shall exercise reasonable best efforts to perform his duties in a diligent, trustworthy, good faith and business-like manner, all for the purpose of advancing the business of the Company. The Executive shall at all times conduct himself in a manner consistent with his position. The Executive agrees to act all times in accordance with high business and ethical standards. The Executive shall comply with the policies and written manuals of the Company.

1.04 **Term of Employment.** The term of the Executive's employment under this Agreement shall begin on March 1, 2013 (the "*Effective Date*") and shall continue in effect through March 1, 2015 (the "*Term*"). If the Executive remains employed with the Company after the Term expires, then the Executive's employment shall be on an at-will basis, meaning either the Company or the Executive may terminate the Executive's employment at any time with or without cause and the Company shall owe the Executive no further obligations. The Executive's post-termination obligations in Article III and Article IV shall continue as provided in this Agreement.

1.05 **Base Salary.** The Company shall pay the Executive an annual base salary of \$225,000.00 (the “**Base Salary**”) for all services rendered by the Executive under this Agreement. The Company shall pay the Base Salary as \$156,000 less applicable payroll deductions and tax withholdings in accordance with the normal payroll policies of the Company to the Executive and \$69,000 to Miko Consulting Group, Inc., a Nevada corporation, as an R&D consultant (\$5,750 payable on the 15<sup>th</sup> of each month).

1.06 **Discretionary Bonuses.** During the Term, the Executive shall be eligible to receive periodic bonuses based on various targets and performance criteria established by the Board in its sole discretion (the “**Bonus**”). The evaluation of the Executive’s performance, as measured by the applicable targets and the awarding of applicable bonuses, if any, shall be at the Board’s sole discretion. Any Bonus may be awarded in whole or in part, based on the level of incentive bonus plan performance criteria achieved by the Executive, in the Board’s sole judgment. The Executive must be employed on the date a Bonus is paid in order to be eligible for such bonus. The payment of any Bonus shall be subject to all federal, state and withholding taxes, social security deductions and other general withholding obligations. Award of a Bonus in with respect to a particular calendar year during the Term does not guarantee the award of a Bonus in any subsequent calendar year.

1.07 **Equity Awards.** The Company establishes equity-based incentives for its executives from time to time under the BioSig 2012 ESOP or such other stock-based compensation plans as the Company may establish from time to time (collectively, the “**Plan**”). The Company may, but is not obligated to, make grants of equity-based incentive compensation to the Executive under the terms of the Plan.

1.08 **Expenses.** The Company agrees that, during the Executive's employment, it will reimburse the Executive for out-of-pocket expenses reasonably incurred in connection with the Executive's performance of his services hereunder, upon the presentation by the Executive of an itemized accounting of such expenditures, with supporting receipts. Reimbursement shall be in compliance with the Company’s expense reimbursement policies.

1.09 **Vacation.** During the Term, the Executive shall be entitled to paid vacation in accordance with the standard written policies of the Company with regard to vacations of senior executives, but in no event less than four (4)weeks per calendar year (with proration for partial years).

1.10 **Other Benefits.** The Executive is entitled to participate in any group health insurance plan, option or similar incentive compensation plan, 401(k) plan, disability plan, group life plan, and any other benefit or welfare program or policy that is made generally available, from time to time, to other employees of the Company, on a basis consistent with such participation and subject to the terms of the plan documents, as such plans may be modified, amended, terminated, or replaced from time to time.

## **ARTICLE II. TERMINATION**

2.01 **The Company’s Obligations to the Executive upon Termination for Cause.** In the event the Company terminates the Executive’s employment for Cause (defined below), the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination.

2.02 **The Company's Obligations to the Executive upon Termination Due to Death or Disability.** In the event the Executive's employment terminates for death or Disability, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination. For purposes of this Agreement, "***Disability***" means the Executive is incapacitated due to physical or mental illness and such incapacity, with or without reasonable accommodation, prevents the Executive from satisfactorily performing the essential functions of his job for the Company on a full-time basis of not less than 90 consecutive days.

2.03 **The Company's Obligations to the Executive Upon Termination Without Cause.** In the event the Company terminates the Executive's employment without Cause, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, (ii) any unreimbursed expenses properly incurred prior to the Date of Termination, and (iii) severance pay equal to the Base Salary that would have been payable to the Executive for the remainder of the Term had his employment not terminated, less applicable withholdings and taxes. Severance pay, if any, shall be paid in accordance with the Company's normal payroll practices beginning on the first payroll date occurring after the 60<sup>th</sup> day following the Executive's termination and applicable payroll taxes and withholdings shall be withheld. As a precondition to receiving the severance pay, the Executive shall execute and deliver within 60 days following the Executive's termination a release prepared by the Company and providing for the Executive's release of any and all claims against the Company and its subsidiaries and affiliates (and those acting on behalf of them) that may have arisen on or before the date of the release, which release shall contain such other reasonable and customary terms as are specified by and acceptable to the Company. Notwithstanding any provisions to the contrary, no severance pay shall be paid unless and until such binding release is effective. If such executed release is not delivered within 60 days of the Executive's termination date, all rights of the Executive with respect to any severance benefit under this Section 2.03 shall be forfeited. For purposes of this Agreement, "***Cause***" means termination because of: (i) an act or acts of willful or material misrepresentation, fraud or willful dishonesty by the Executive; (ii) any willful misconduct by the Executive with regard to the Company; (iii) any violation by the Executive of any fiduciary duties owed by him to the Company; (iv) the Executive's conviction of, or pleading nolo contendere or guilty to, a felony (other than a traffic infraction) or (v) any other material breach by the Executive of this Agreement that is not cured by the Executive within twenty (20) days after receipt by the Executive of a written notice from the Company of such breach specifying the details thereof. No action or inaction should be deemed willful if not demonstrably willful and if taken or not taken by the Executive in good faith as not being adverse to the best interests of the Company. Reference in this Section 2.03 to the Company shall also include direct and indirect subsidiaries of the Company. If the Executive shall resign or otherwise terminate his employment with the Company, the Executive shall be deemed for purposes of this Agreement to have been terminated for Cause, and the Company shall have no further obligations hereunder from and after such resignation or termination.

2.04 **Voluntary Termination by the Executive.** In the event that the Executive terminates his employment for any reason, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his employment hereunder, except for (i) any unpaid Base Salary accrued through the Date of Termination, and (ii) any unreimbursed expenses properly incurred prior to the Date of Termination.

2.05 **Termination Procedure.** Termination of the Executive's employment by the Company or by the Executive shall be communicated in writing to the other party hereto. "***Date of Termination***" shall mean (i) if the Executive's employment is terminated by his death, the date of his death, (ii) if the Executive's employment is terminated for Disability, with or without Cause by the Company, or by the Executive for any reason, on the date specified in the notice of termination. After delivery of a notice of termination, the Company may require that the Executive cease representing the Company, cease taking any action on behalf of the Company and cease being present at any Company location without implicating [Section 2.03](#).

**ARTICLE III.  
CONFIDENTIAL INFORMATION**

3.01 **Confidential Information.** The Company shall provide the Executive Confidential Information (defined below), specialized training, and access to its customers and clients. The Executive recognizes that during the Executive's employment with the Company, the Company shall grant the Executive otherwise prohibited access to its trade secrets and confidential information which is not known to the Company's competitors or within the Company's industry generally, which was developed by the Company over a long period of time and/or at its substantial expense, and which is of great competitive value to the Company, and access to the Company's customers and clients. For purposes of this Agreement, "**Confidential Information**" includes any trade secrets or confidential or proprietary information of the Company, including, but not limited to, the following: products, services, processes, know-how, technical data, policies, strategies, designs, formulas, developmental or experimental work, improvements, discoveries, research, plans for research or future products and services, database schemas or tables, development tools or techniques, training procedures, training techniques, training manuals, business information, marketing and sales plans and strategies, business plans, budgets, financial data and information, customer and client information, prices and costs, customer and client lists and profiles, employee, customer and client nonpublic personal information, supplier lists, business records, product construction, product specifications, audit processes, pricing strategies, business strategies, marketing and promotional practices (including internet-related marketing), management methods and information, plans, reports, recommendations and conclusions, information regarding the skills and compensation of employees and contractors of the Company, and other business information disclosed to the Executive by the Company, either directly or indirectly, in writing, orally, or by drawings or observation.

3.02 **No Unauthorized Use or Disclosure.** The Executive acknowledges and agrees that Confidential Information is proprietary to and a trade secret of the Company and, as such, is a special and unique asset of the Company, and that any disclosure or unauthorized use of any Confidential Information by the Executive will cause irreparable harm and loss to the Company. The Executive understands and acknowledges that each and every component of the Confidential Information (i) has been developed by the Company at significant effort and expense and is sufficiently secret to derive economic value from not being generally known to other parties, and (ii) constitutes a protectable business interest of the Company. The Executive acknowledges and agrees that the Company owns the Confidential Information. The Executive agrees not to dispute, contest, or deny any such ownership rights either during or after the Executive's employment with the Company. The Executive agrees to preserve and protect the confidentiality of all Confidential Information. The Executive agrees that the Executive shall not at any time (whether during or after the Executive's employment), directly or indirectly, disclose to any unauthorized person or use for the Executive's own account any Confidential Information without the Company's consent. Throughout the Executive's employment and at all times thereafter: (i) the Executive shall hold all Confidential Information in the strictest confidence, take all reasonable precautions to prevent its inadvertent disclosure to any unauthorized person, and follow all Company policies protecting the Confidential Information; (ii) the Executive shall not, directly or indirectly, utilize, disclose or make available to any other person or entity, any of the Confidential Information, other than in the proper performance of the Executive's duties; (iii) the Executive shall not use the Confidential Information or trade secrets to attempt to solicit, induce, recruit, or take away clients or customers of the Company; and (iv) if the Executive learns that any person or entity is taking or threatening to take any actions which would compromise any Confidential Information, the Executive shall promptly advise the Company of all facts concerning such action or threatened action. The Executive understands that his obligations under this Section terminate only at such time (if any) as the Confidential Information in question becomes generally known to the public other than through a breach of the Executive's obligations under this Agreement. The Executive shall use all reasonable efforts to obligate all persons to whom any Confidential Information shall be disclosed by the Executive hereunder to preserve and protect the confidentiality of such Confidential Information.

3.03 **Return of Property and Information.** Upon the termination of the Executive's employment for any reason, the Executive shall immediately return and deliver to the Company any and all Confidential Information, software, devices, cell phones, personal data assistants, credit cards, data, reports, proposals, lists, correspondence, materials, equipment, computers, hard drives, papers, books, records, documents, memoranda, manuals, e-mail, electronic or magnetic recordings or data, including all copies thereof, which belong to the Company or relate to the Company's business and which are in the Executive's possession, custody or control, whether prepared by the Executive or others. If at any time after termination of the Executive's employment the Executive determines that the Executive has any Confidential Information in the Executive's possession or control, the Executive shall immediately return to the Company all such Confidential Information in the Executive's possession or control, including all copies and portions thereof.

#### **ARTICLE IV. COVENANTS**

4.01 **Restrictive Covenants.** In consideration for (i) the Company's promise to provide Confidential Information and specialized training to the Executive, (ii) the substantial economic investment made by the Company in the Confidential Information and goodwill of the Company, and/or the business opportunities disclosed or entrusted to the Executive, (iii) access to the Company's customers and clients, and (iv) the Company's employment of the Executive pursuant to this Agreement and the compensation and other benefits provided by the Company to the Executive, to protect the Company's Confidential Information and business goodwill of the Company, the Executive agrees to the following restrictive covenants.

( a ) **Non-Competition.** The Executive agrees that during the Restricted Period (defined below), other than in connection with his duties under this Agreement, the Executive shall not, and shall not use any Confidential Information to, without the prior written consent of the Company, directly or indirectly, either individually or as a principal, partner, stockholder, manager, agent, consultant, contractor, distributor, employee, lender, investor, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, become employed by, control, carry on, join, lend money for, operate, engage in, establish, perform services for, invest in, solicit investors for, consult for, do business with or otherwise engage in any Competing Business within the Restricted Area. Notwithstanding the restrictions contained in this Section 4.01, the Executive may own an aggregate of not more than five percent (5%) of the outstanding stock of any class of any corporation engaged in a Competing Business, if such stock is listed on a national securities exchange in the United States (or a comparable exchange in a foreign jurisdiction) or regularly traded in the over-the-counter market by a member of a national securities exchange in the United States, without violating the provisions of Section 4.01; provided, however, that the Executive does not have the power, directly or indirectly, to control or direct the management or affairs of any such corporation and is not involved in the management of such corporation.

For purposes of this Agreement:

(i) “**Restricted Period**” means during the Executive’s employment with the Company and for a period of one (1) year immediately following the date of his termination from employment for any reason.

(ii) As Chief Technology Officer of the Company, Executive has responsibility for the Company’s business world-wide and access to its Confidential Information world-wide. Therefore, the “**Restricted Area**” includes each State of the United States and each country in which the Company conducted business and for which Executive had responsibility for the Company during his employment.

(iii) “**Competing Business**” means any business, individual, partnership, firm, corporation or other entity that is competing or that is preparing to compete with any aspect of the Company’s business, which includes, but is not limited to the development, marketing and sale of technology and/or medical devices related to cardiac recordings, electrophysiology, and the diagnosis and treatment of abnormal heart rhythms.

(b) **Non-Solicitation.** The Executive agrees that during the Restricted Period, other than in connection with his duties under this Agreement, he shall not, and shall not use any Confidential Information to, directly or indirectly, either as a principal, manager, agent, employee, consultant, officer, director, stockholder, partner, investor or lender or in any other capacity, and whether personally or through other persons:

(i) Solicit business from, interfere with, attempt to solicit business with, or do business with any customer, client, manufacturer or vendor of the Company with whom the Company did business or who the Company solicited within the preceding two (2) years, and who or which: (1) the Executive contacted, called on, serviced or did business with during the Executive’s employment with the Company; (2) the Executive learned of as a result of the Executive’s employment with the Company; or (3) about whom the Executive received Confidential Information. This restriction applies only to business which is in the scope of services or products provided by the Company or any affiliate thereof; or

(ii) Solicit, induce or attempt to solicit or induce, engage or hire, on behalf of himself or any other person or entity, any person who is an employee or consultant of the Company or who was employed by the Company within the preceding 12 months.

4.02 **Non-Disparagement.** The Executive shall refrain, both during and after the Term, from publishing any oral or written statements about the Company or any of the Company’s directors, managers, officers, employees, consultants, agents or representatives that (i) are slanderous, libelous or defamatory; or (ii) place the Company or any of its directors, managers, officers, employees, consultants, agents or representatives in a false light before the public. A violation or threatened violation of this prohibition may be enjoined by the courts. The rights afforded the Company under this provision are in addition to any and all rights and remedies otherwise afforded by law.



4.03 **Tolling.** If the Executive violates any of the restrictions contained in this Article IV, the Restricted Period shall be suspended and shall not run in favor of the Executive from the time of the commencement of any violation until the time when the Executive cures the violation to the satisfaction of the Company.

4.04 **Remedies.** The Executive acknowledges that the restrictions contained in Articles III and IV of this Agreement, in view of the nature of the Company's business and his position with the Company, are reasonable and necessary to protect the Company's legitimate business interests and that any violation of Articles III and/or IV of this Agreement would result in irreparable injury to the Company. In the event of a breach by the Executive of Articles III and/or IV of this Agreement, then the Company shall be entitled to (i) a temporary restraining order and injunctive relief restraining the Executive from the commission of any breach, and (ii) to recover any severance pay under Section 2.03 from the date of breach and cease payment of any further severance pay. Such remedies shall not be deemed the exclusive remedies for a breach or threatened breach of this Article IV but shall be in addition to all remedies available at law or in equity, including the recovery of damages from the Executive, the Executive's agents, any future employer of the Executive, and any person that conspires or aids and abets the Executive in a breach or threatened breach of this Agreement.

4.05 **Reasonableness.** The Executive hereby represents to the Company that the Executive has read and understands, and agrees to be bound by, the terms of this Article IV. The Executive acknowledges that the geographic scope and duration of the covenants contained in this Article IV are fair and reasonable in light of (i) the nature and wide geographic scope of the operations of the Company's business; (ii) the Executive's level of control over and contact with the business in the Restricted Area; and (iii) the amount of compensation, trade secrets and Confidential Information that the Executive is receiving in connection with the Executive's employment by the Company. It is the desire and intent of the parties that the provisions of Article IV be enforced to the fullest extent permitted under applicable law, whether now or hereafter in effect and therefore, to the extent permitted by applicable law, the Executive and the Company hereby waive any provision of applicable law that would render any provision of Article IV invalid or unenforceable.

4.06 **Reformation.** The Company and the Executive agree that the foregoing restrictions set forth in Articles III and IV are reasonable under the circumstances and that any breach of the covenants contained in Articles III or IV would cause irreparable injury to the Company. The Executive understands that the foregoing restrictions may limit the Executive's ability to engage in certain businesses anywhere in or involving the Restricted Area during the Restricted Period, but acknowledges that the Executive shall receive Confidential Information and trade secrets, as well as sufficiently high remuneration and other benefits as an employee of the Company to justify such restrictions. If any of the aforesaid restrictions are found by a court of competent jurisdiction to be unreasonable, or overly broad as to geographic area or time, or otherwise unenforceable, the parties intend for the restrictions herein set forth to be modified by the court making such determination so as to be reasonable and enforceable and, as so modified, to be fully enforced. By agreeing to this contractual modification prospectively at this time, the Company and the Executive intend to make this provision enforceable under the law or laws of all applicable jurisdictions so that the entire agreement not to compete and this Agreement as prospectively modified shall remain in full force and effect and shall not be rendered void or illegal.

4.07 **No Previous Restrictive Agreements.** The Executive represents that, except as disclosed in writing to the Company, the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of the Executive's employment with the Company or to refrain from competing, directly or indirectly, with the business of such previous employer or any other party. The Executive further represents that the Executive's performance of all the terms of this Agreement and the Executive's work duties for the Company do not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by the Executive in confidence or in trust prior to the Executive's employment with the Company. The Executive shall not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others.

**ARTICLE V.  
GENERAL**

5.01 **Notices.** For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when personally delivered, or mailed by certified mail, return receipt requested by nationally recognized overnight or second-day delivery service with proof of receipt maintained, at the following addresses (or any other address that any party may designate by written notice to the other party, in accordance herewith, except that such notice shall be effective only upon receipt):

If to the Company to:	BioSig Technologies, Inc. 12424 Wilshire Boulevard, Suite 745 Los Angeles, CA 90025  Attn: CEO
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If to the Executive to:	Budimir Drakulic 12424 Wilshire Boulevard, Suite 745 Los Angeles, CA 90025
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Any such notice shall (i) if delivered personally, be deemed received upon delivery; (ii) if delivered by certified mail, be deemed received upon the earlier of actual receipt thereof or five (5) business days after the date of deposit in the United States mail, as the case may be; and (iii) if delivered by nationally recognized overnight or second-day delivery service, be deemed received on the second business day after the date of deposit with the delivery service.

5.02 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware. Venue of any litigation arising from this Agreement or any disputes relating to the Executive's employment shall be in the United States District Court for the District of Delaware, or a state district court of competent jurisdiction in New Castle County, Delaware. The Executive consents to personal jurisdiction of the United States District Court for District of Delaware, or a state district court of competent jurisdiction in New Castle County, Delaware for any dispute relating to or arising out of this Agreement or the Executive's employment, and the Executive agrees that the Executive shall not challenge personal or subject matter jurisdiction in such courts.

5.03 **Headings.** The paragraph headings contained in this Agreement are for convenience only and shall in no way or manner be construed as a part of this Agreement.

5.04 **Severability.** In the event that any court of competent jurisdiction holds any provision in this Agreement to be invalid, illegal or unenforceable in any respect, the remaining provisions shall not be affected or invalidated and shall remain in full force and effect.

5.05 **Reformation.** In the event any court of competent jurisdiction holds any restriction in this Agreement to be unreasonable and/or unenforceable as written, the court may reform this Agreement to make it enforceable, and this Agreement shall remain in full force and effect as reformed by the court.

5.06 **Entire Agreement.** This Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way, including without limitation the Employment Agreement. The parties have executed this Agreement based upon the express terms and provisions set forth herein and have not relied on any communications or representations, oral or written, which are not set forth in this Agreement. No oral statements or prior written material not specifically incorporated in this Agreement shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized, unless incorporated in this Agreement by written amendment, such amendment to become effective on the date stipulated in it. Any amendment to this Agreement must be signed by all parties to this Agreement. The parties represent and acknowledge that, in executing this Agreement, they do not rely, and have not relied, on any representation(s), oral or written, by the other party, except as expressly contained in this Agreement. The parties represent that they relied on their own judgment in entering into this Agreement.

5.07 **Waiver.** No waiver of any breach of this Agreement shall be construed to be a waiver as to succeeding breaches. The failure of either party to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition but the obligations of either party with respect thereto shall continue in full force and effect. The breach by one party to this Agreement shall not preclude equitable relief or the obligations in Articles III or IV.

5.08 **Modification.** The provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Company and the Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall be construed as a waiver of such provisions or affect the validity, binding effect or enforceability of this Agreement or any provision hereof.

5.09 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. The Executive may not assign this Agreement to a third party. The Company may assign its rights, together with its obligations hereunder, to any affiliate and/or subsidiary of the Company or any successor thereto or any purchaser of substantially all of the assets of the Company.

5.10 **Dispute Resolution.** With the exception of claims for injunctive or other equitable relief for the enforcement of Article III and Article IV of this Agreement, any dispute, controversy, or claim, whether contractual or non-contractual, including without limitation any federal or state statutory claim, common law or tort claim, or claim for attorneys fees, between the parties hereto arising directly or indirectly out of or connected with this Agreement and/or the parties' employment relationship, unless mutually settled by the parties hereto, shall be resolved by binding arbitration conducted pursuant to the Federal Arbitration Act and in accordance with the Employment Arbitration Rules of the American Arbitration Association (the "AAA"). The parties agree that before proceeding to arbitration, they will mediate their disputes before a mutually selected mediator. If the parties are unable to mutually select a mediator, then the parties shall jointly request that the AAA appoint a mediator. Any arbitration shall be conducted by an arbitrator mutually selected by the parties. If the parties are unable to mutually select an arbitrator, the parties shall jointly request that the AAA appoint an arbitrator. All such disputes, controversies or claims shall be conducted by a single arbitrator, unless the parties mutually agree that the arbitration shall be conducted by a panel of three arbitrators. The resolution of the dispute by the arbitrator(s) shall be final, binding, nonappealable, and fully enforceable by a court of competent jurisdiction under the Federal Arbitration Act. The arbitrator(s) may award damages to the prevailing party. The arbitration award shall be in writing and shall include a statement of the reasons for the award. The arbitration shall be held in Los Angeles, California. The Company shall initially pay all AAA, mediation, and arbitrator's fees and costs. The arbitrator(s) may award reasonable attorneys' fees and/or costs to the prevailing party.

#### 5.11 Section 409A.

(a) It is intended that this Agreement be drafted and administered in compliance with Section 409A of the Code, including, but not limited to, any future amendments to Section 409A of the Code, and any other Internal Revenue Service or other governmental rulings or interpretations (“*IRS Guidance*”) issued pursuant to Section 409A of the Code so as not to subject the Executive to payment of interest or any additional tax under Section 409A of the Code. In furtherance thereof, if payment or provision of any amount or benefit hereunder that is subject to Section 409A of the Code at the time specified herein would subject such amount or benefit to any additional tax under Section 409A of the Code, the payment or provision of such amount or benefit shall be postponed to the earliest commencement date on which the payment or provision of such amount or benefit could be made without incurring such additional tax. In addition, to the extent that any IRS Guidance issued under Section 409A of the Code would result in the Executive being subject to the payment of interest or any additional tax under Section 409A of the Code, the parties agree to amend this Agreement as required by law in order to avoid the imposition of any such interest or additional tax under Section 409A of the Code, which amendment shall have the minimum economic effect necessary and be reasonably determined in good faith by the Company and the Executive. For purposes of Section 409A of the Code, each payment of any severance pursuant to Article III shall be treated a separate payment. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a “separation from service” (within the meaning of Section 409A of the Code and IRS Guidance). Notwithstanding the foregoing, nothing contained herein shall be construed as a representation, guarantee or other undertaking on the part of the Company that any payment made pursuant to this Agreement (including, without limitation, the Bonus, any severance amount), is or will be found to comply with the requirements of Section 409A of the Code or any other regulations or guidance issued thereunder. The Executive shall be solely responsible for determining the tax consequences to him of the payments made pursuant to this Agreement, including, without limitation, any possible tax consequences under Section 409A of the Code.

(b) To the extent (i) any payments to which the Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with the Executive’s separation from service with the Company constitute deferred compensation subject to Section 409A of the Code; (ii) the Executive is deemed at the time of his separation from service to be a “specified employee” under Section 409A of the Code; and (iii) at the time of the Executive’s separation from service, the Company is publicly traded (as defined in Section 409A of the Code), then such payments (other than any payments permitted by Section 409A of the Code to be paid within six (6) months of the Executive’s separation from service) shall not be made until the earlier of (x) the first day of the seventh month following the Executive’s separation from service or (y) the date of the Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this Section 5.11 shall be paid to the Executive or the Executive's beneficiary in one lump sum.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Company and the Executive have caused this Agreement to be executed on the day and year indicated below to be effective on the day and year first written above.

**EXECUTIVE:**

/s/ Budimir Drakulic  
Budimir Drakulic

Mar 1, 2013  
Date

**COMPANY:**

**BioSig Technologies, Inc.**

By: /s/ Kenneth Londoner, CEO  
Date

Mar 1, 2013



**INDEMNITY AGREEMENT**

**This Indemnity Agreement** (this “**Agreement**”) dated as of May 2, 2013, is made by and between **Biosig Technologies, Inc.** (the “**Company**”), and **Seth H.Z. Fischer** (“**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 Bylaws (as amended, the “**Bylaws**”) require that the Company indemnify its directors and officers, and empowers the Company to indemnify its employees and agents, as authorized by the Delaware General Corporation Law, 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) Proceeding.** 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 or officer 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 (5) 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 or her 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.

**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 twenty (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.

**(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 sixty (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.

**(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, stockholders 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 is an actual or potential 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.

## 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 Certificate of Incorporation (the "**Certificate of Incorporation**") 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 stockholders.

**(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 SEC 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; Primacy of Indemnification.** 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 Company’s Certificate of Incorporation, 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 Company’s Certificate of Incorporation, 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.

The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by certain of its affiliates and that Indemnitee may have other sources of indemnification or insurance, whether currently in force or established in the future (collectively, the “**Outside Indemnitors**”). The Company hereby agrees: (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Outside Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee is secondary); (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all indemnifiable expenses to the extent legally permitted and as required by the Certificate of Incorporation and Bylaws (or any agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Outside Indemnitors and (iii) that it irrevocably waives, relinquishes and releases the Outside Indemnitors from any and all claims against the Outside Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Outside Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Outside Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Outside Indemnitors are express third party beneficiaries of the terms hereof.

**12. Term.** This Agreement shall continue until and terminate upon the later of: (a) five (5) years after the date that Indemnitee shall have ceased to serve as a director or and/or officer, employee or agent of the Company; or (b) one (1) 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 (5) 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, termination, 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 (3) 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 Delaware.

**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.

**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 Company's Certificate of Incorporation, 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.

**BIOSIG TECHNOLOGIES, INC.**

By: /s/ Kenneth Londoner

Name: Kenneth Londoner

Title: Chairman and Chief Executive Officer

**INDEMNITEE**

/s/ Seth H.Z. Fischer

Signature of Indemnatee

Seth H.Z. Fischer

Print or Type Name of Indemnatee



**CONSULTING AGREEMENT**

This Consulting Agreement ("**Agreement**") is by and between BioSig Technologies, Inc., a Delaware corporation (the "**Company**"), and Asher Holzer ("**Consultant**"). This Agreement is entered into as of August 1, 2012 ("**Effective Date**"). The parties agree to this Agreement as follows:

**RECITALS**

The Company wishes to utilize certain services which can be performed by Consultant, and Consultant can provide and desires to render to the Company such services, and the parties agree that it would be to their mutual advantage to execute this Agreement and thereby define the terms and conditions which shall control the rendering of services provided to the Company by Consultant. This Agreement does not purport to set forth all of the terms and conditions of the services provided to the Company by Consultant.

In consideration of the promises and mutual covenants in this Agreement, the Company and Consultant agree as follows:

**I. SERVICES TO BE PROVIDED BY CONSULTANT**

**A. Description of Consulting Services.** Subject to the terms of this Agreement, the Company retains Consultant, and Consultant agrees with the Company, to serve as a consultant to the Company for the purpose of **becoming Chief Scientific Officer**. Consultant's duties shall include:

- Assisting CTO in validating system features and design elements, and finalizing our system prototype.
- Positioning the technology in the medical community in coordination with Management's plan and strategy.
- Bridging technology development with commercialization strategy and field activities. Assisting in helping the company achieving a CE Mark.
- Surveillance of the EP technology opportunities for partnership, licensing, or acquisition in Israel.
- Assist in targeting and approaching additional medical centers of excellence, both inside and outside the United States.
- Assist CEO in planning and strategy
- Assist team with medical marketing planning and strategy

(collectively, the services to be performed by Consultant shall be the "**Consulting Services**"). It is agreed that other consulting services may be undertaken that are outside the foregoing scope of these services by mutual consent.

**B. Company's Reliance.** The Company is entering into this Agreement in reliance on Consultant's special and unique abilities in rendering the Consulting Services and Consultant will use Consultant's best effort, skill, judgment, and ability in rendering the Consulting Services.

**C. Representations by Consultant.** Consultant represents to the Company that Consultant is under no contractual, legal or fiduciary obligation or burden that reasonably may be expected to interfere with Consultant's ability to perform the Consulting Services in accordance with the Agreement's terms, including without limitation any agreement or obligation to or with any other company, and that Consultant is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of Consultant's engagement by the Company or to refrain from competing, directly or indirectly, with the business of any other party. Consultant agrees that Consultant will not use, distribute or provide to anyone at the Company any confidential or proprietary information belonging to any other company or entity, at any time during Consultant's performance under this Agreement. Consultant further represents that Consultant's performance of the Consulting Services will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Consultant in confidence or in trust prior this Agreement, and Consultant will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any other party.

**D. Nature of Relationship Between Parties.** Consultant will render the Consulting Services in this Agreement as an independent contractor, while specifically adhering to the rules, policies, regulations and procedures of the Company, as may be amended by the Company at anytime. Except as otherwise specifically agreed to by the Company in writing, Consultant shall have no authority or power to bind the Company with respect to third parties and Consultant shall not represent to third parties that Consultant has authority or power to bind the Company. It is not the intention of the parties to this Agreement to create, by virtue of this Agreement, any employment relationship, trust, partnership, or joint venture between Consultant and the Company or any of its affiliates, except as specifically provided in this Agreement, to make them legal representatives or agents of each other or to create any fiduciary relationship or additional contractual relationship among them.

## II. COMPENSATION FOR CONSULTING SERVICES

**A. Consulting Fee.** The Company shall pay Consultant as follows for all services that Consultant provides under this Agreement: \$10,000 per month for Consulting Services performed during the term if this Agreement. Consultant shall present necessary and appropriate documentation for each specific task performed in the course of Consultant's provision of the Consulting Services, as requested by the Company. The Consulting Fee constitutes the sole compensation to which Consultant will be entitled for performance of the Consulting Services.

**B. Expense Reimbursement.** The Company shall reimburse Consultant for all reasonable business expenses Consultant incurs in performing the Consulting Services, provided that Consultant receives prior written approval from the Company for any expenses that, in the aggregate, exceed \$2,500 and the expenses are in compliance with the Company's travel and expense policies. Consultant shall submit all appropriate and supporting documentation for expense reimbursement. Reimbursement will be made in accordance with the Company's expense reimbursement policies.

**C. Benefits.** Consultant shall at all times be an independent contractor (and not an employee or agent of the Company); therefore, Consultant shall not be entitled to participate in any benefit plans or programs that the Company provides or may provide to its employees, including, but not limited to, pension, profit-sharing, medical, dental, workers' compensation, occupational injury, life insurance and vacation or sick benefits.

**D. Workers' Compensation.** Consultant understands and acknowledges that the Company shall not obtain workers' compensation insurance covering Consultant.

### III. PAYMENT OF TAXES

**A. Federal, State, and Local Taxes.** Neither federal, state, or local income tax nor payroll tax of any kind shall be withheld or paid by the Company on behalf of Consultant. Consultant shall not be treated as an employee of the Company with respect to services performed under the Agreement for federal, state, or local tax purposes.

**B. Notices to Contractor About Tax Duties And Liabilities.** Consultant understands that Consultant is responsible to pay, according to the applicable law, Consultant's income taxes. The parties agree that any tax consequences or liability arising from the Company's payments to Consultant shall be the sole responsibility of Consultant. Should any state or federal taxing authority determine that any of the payments under Section II.A constitute income subject to withholding under any federal or state law, then Consultant agrees to indemnify and hold the Company harmless for any and all tax liability, including, but not limited to, taxes, levies, assessments, fines, interest, costs, expenses, penalties, and attorneys' fees.

### IV. INDEMNIFICATIONS AND COVENANTS

**A. Limitations on the Company's Liability and Consultant's Indemnification of the Company.** By entering into this Agreement and receiving the Consulting Services, but subject to the other Agreement terms, the Company will not be liable for any Damages (defined below) caused by Consultant's dishonesty, willful misconduct, or gross negligence or for Consultant's breach of this Agreement. Consultant shall indemnify and hold harmless the Company from and against all losses, judgments, damages, expenses (including, without limitation, reasonable fees and expenses of counsel), liabilities, judgments, and amounts paid in settlement (collectively "**Damages**") incurred by or asserted against the Company arising from, as a result of, in connection with, or relating to Consultant's dishonesty, willful misconduct, or gross negligence in performing this Agreement or for Consultant's breach of this Agreement.

**B. Consultant's Standard of Care.** Subject to the other Agreement provisions, Consultant will provide Consultant's services under this Agreement with the same degree of care, skill, and prudence that would be customarily exercised in the Company's best interest.

**C. Confidential Information, Non-Disclosure Agreement and Work Product Ownership.**

(i) **Confidential Information.** The Company shall provide Consultant Confidential Information (defined below). Consultant acknowledges and agrees that during the Term of this Agreement, the Company shall grant Consultant otherwise prohibited access to its trade secrets and other confidential information which is not known to the Company's competitors or within the Company's industry generally, which was developed by the Company over a long period of time and/or at its substantial expense, and which is of great competitive value to the Company. For purposes of this Agreement, "**Confidential Information**" includes all trade secrets and confidential and proprietary information of the Company, including, but not limited to, the following: (a) supplier and customer lists, supplier and customer-specific information, user lists, vendor lists and content provider lists; (b) planning data and selling and marketing strategies; (c) product and process designs, formulae, processes, plans, drawings, concepts, techniques, systems, strategies, software programs and works of authorship; (d) manufacturing and operating methods; (e) research and development data and materials, including those related to the research and development of products, materials or manufacturing and other processes; (f) financial and accounting information, financial and accounting records, pricing information, projects, budgets, projections and forecasts; (g) all industrial and intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, databases, algorithms, computer programs and other software, knowhow, trade secrets, proprietary processes and formulae, inventions, trade dress, logos, design and all documentation and media constituting, describing or relating to the above; (h) other information with respect to the Company or Consultant, which, if divulged to the other party's competitors, would impair the other party's ability to compete in the marketplace; (i) personnel information regarding the Company's employees and employee, customer and client nonpublic personal information; and (j) and other business information disclosed or made available to Consultant by the Company, either directly or indirectly, in writing, orally, or by drawings or observation.

(ii) Non-Disclosure.

(a) In exchange for the Company's agreement to provide Consultant with Confidential Information and to protect the Company's legitimate business interests, Consultant shall hold all Confidential Information in strict confidence. Consultant shall not, during the Term of this Agreement or at any time thereafter, disclose to anyone, or publish, use for any purpose, exploit, or allow or assist another person to use, disclose or exploit, except for the benefit of the Company, without prior written authorization, any Confidential Information or part thereof, except as permitted: (1) in the ordinary course of the Company's business or Consultant's work for the Company; or (2) by law. Consultant shall use all reasonable precautions to assure that all Confidential Information is properly protected and kept from unauthorized persons. Further, Consultant shall not directly or indirectly, use the Company's Confidential Information to: (1) call upon, solicit business from, attempt to conduct business with, conduct business with, interfere with or divert business away from any customer, client, vendor or supplier of the Company with whom or which the Company conducted business within the eighteen (18) months prior to Consultant's termination from Consultant's engagement with the Company; and/or (2) recruit, solicit, hire or attempt to recruit, solicit, or hire, directly or by assisting others, any persons employed by or associated with the Company.

(b) Subject to Section IV.C.(ii)(c), Consultant agrees that Consultant shall not use or disclose any confidential or trade secret information belonging to any former employer or third party, and Consultant shall not bring onto the premises of the Company or onto any Company property any confidential or trade secret information belonging to any former employer or third party without such third parties' consent.

(c) During the Term of this Agreement, the Company will receive from third parties their confidential and/or proprietary information, subject to a duty on the Company's part to maintain the confidentiality of and to use such information only for certain limited purposes. Consultant agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or organization or to use it except as necessary in the course of Consultant's Consulting Services with the Company and in accordance with the Company's agreement with such third party.

(iii) Work Product.

(a) Prior Proprietary Information Retained and Licensed. Consultant has attached hereto as Exhibit "A" a list describing all work product, information, inventions, original works of authorship, ideas, know-how, processes, designs, computer programs, photographs, illustrations, developments, trade secrets and discoveries, including improvements Consultant conceived, created, developed, made, reduced to practice or completed, either alone or with others (collectively, "**Work Product**") that Consultant: (i) made, created, developed or invented by Consultant prior to the term of this Agreement; (ii) claims a proprietary right or interest in; and (iii) does not assign to the Company hereunder (collectively referred to as the "**Prior Proprietary Information**"). If no such list is attached, Consultant represents that there is no such Prior Proprietary Information. Consultant understands and agrees that the Company makes no attempt to verify Consultant's claim of ownership to any of the Prior Proprietary Information. Consultant agrees that Consultant shall not incorporate in any work that Consultant performs for the Company any Prior Proprietary Information or any of the technology described in any Prior Proprietary Information. Nonetheless, if in the course of Consultant's Consulting Services, Consultant incorporates into a Company product, process or machine Prior Proprietary Information, Consultant agrees to grant and hereby grants the Company a nonexclusive, royalty-free, irrevocable, sublicensable, transferable, perpetual, and worldwide license to make, have made, modify, use, have used, import, export, reproduce, distribute, prepare and have prepared derivative works of, offer to sell, sell and otherwise exploit such Prior Proprietary Information, and provided further that all of the foregoing rights of the Company shall extend to any derivative works so prepared.

(b) Assignment of Work Product. During the term of the Agreement and for a period of one year following the termination of Consultant's Consulting Services under this Agreement for any reason, Consultant agrees that Consultant shall promptly make full written disclosure to the Company, shall hold in trust for the sole right and benefit of the Company, and shall assign and hereby assigns to the Company or its designee, including the United States pursuant to a contract between the Company and the United States or any of its agencies, all of Consultant's right, title, and interest in and to any and all Work Product that has been or may be developed, conceived, reduced to practice or otherwise made by Consultant solely or jointly with others during the term of this Agreement which (i) relates in any manner to the existing or contemplated business, work, or investigations of the Company; (ii) is suggested by, results from, or arises out of any work that Consultant may do for or on behalf of the Company; (iii) results from or arises out of any Work Product that may have been disclosed or otherwise made available to Consultant as a result of duties assigned Consultant by the Company; or (iv) is otherwise made through the use of the Company's time, information, facilities, or materials, even if developed, conceived, reduced to practice or otherwise made during non-working hours. Such Work Product and the benefits thereof shall immediately become the sole and absolute property of the Company. Consultant understands and agrees that Work Product developed by Consultant solely or jointly with others in the course and scope of Consultant's Consulting Services with the Company is within the Company's sole discretion and for the Company's sole benefit. Consultant further acknowledges that the parties intend that all original works of authorship that are included in the Work Product and that are protectable by copyright are "Works Made for Hire," as that term is defined in the United States Copyright Act, and the Company will be considered the owner and author thereof. Consultant understand and agrees that the decision whether or not to commercialize or market any Work Product is within the Company's sole discretion and for the Company's sole benefit, and that no royalty will be due to Consultant as a result of the Company's efforts to commercialize or market any such item.

(c) Maintenance of Records. Consultant agrees to keep and maintain adequate and current hard-copy and electronic records of all Work Product made by Consultant (solely or jointly with others) during the term of this Agreement. The records will be available to and remain the sole property of the Company during the term of the Agreement and at all times thereafter.

(d) Patent and Copyright Registrations. Consultant agrees to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in Work Product in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, affidavits, and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Work Product. Consultant further agrees that Consultant's obligation to execute or cause to be executed, when it is in Consultant's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

(iv) **Return of Company Property.** Upon the termination of Consultant's Consulting Services under this Agreement for any reason or no reason, Consultant shall immediately return and deliver to the Company any and all Confidential Information, software, devices, data, reports, proposals, lists, correspondence, materials, equipment, computers, hard drives, papers, books, records, documents, memoranda, manuals, e-mail, electronic or magnetic recordings or data, including all copies thereof, books of account, drawings, prints, plans, and the like which belong to the Company or relate to the Company's business and which are in Consultant's possession, custody or control, whether prepared by Consultant or others. If at any time after termination of Consultant's Consulting Services under this Agreement, for any reason, Consultant determines that Consultant has any Confidential Information in Consultant's possession or control, Consultant shall immediately return to the Company all such Confidential Information in Consultant's possession or control, including all copies and portions thereof. Further, Consultant shall not retain any Confidential Information, data, information or documents belonging to the Company or any copies thereof (in electronic or hard copy format).

## V. PERIOD OF AGREEMENT; TERMINATION

**A. Period.** This Agreement is effective from the Effective Date and shall continue until December 31, 2013 ("**Term**"). This Agreement governs all Consulting Services performed by Consultant for the Company during the Term of this Agreement. The Company or the Consultant may terminate this Agreement for any reason, at any time, upon 15 days prior written notice to the other party. If this Agreement is terminated, either prior to or at the expiration of the Term, and the parties fail to execute a new agreement, all services will be discontinued as of the date of such termination; provided, however, Consultant shall use Consultant's best efforts to complete all services commenced prior to such termination at the discretion of the Company.

**B. Survival.** The provisions set forth in Section shall survive termination or expiration of this Agreement. In addition, all provisions of this Agreement, which expressly continue to operate after the termination of this Agreement, shall survive the Agreement's termination or expiration.

## VI. OTHER PROVISIONS

**A. Non-Disparagement.** Consultant agrees that the Company's goodwill and reputation are assets of great value to the Company which have been obtained and maintained through great costs, time and effort. Therefore, Consultant agrees that during the term of this Agreement and at all times thereafter, Consultant shall not in any way disparage, libel or defame the Company, its business or business practices, its products or services, or its Consultants, officers or directors. Consultant further agrees that during the term of this Agreement and at all times thereafter, Consultant shall not, directly or indirectly, communicate in any manner with any member of the press or media concerning the Company, its affiliates, current or former officers, directors, or Consultants except as permitted by law and/or Company policy.

**B. Partial Invalidity.** In the event any court of competent jurisdiction holds any provision of this Agreement to be invalid or unenforceable, such invalid or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required, and the remaining provisions shall not be affected or invalidated and shall remain in full force and effect.

**C. Reformation.** Consultant agrees that in the event any of the covenants contained in this Agreement shall be held by any court to be effective in any particular area or jurisdiction only if said covenant is modified to limit its duration or scope, then the court shall have such authority to so reform the covenant and the parties hereto shall consider such covenant(s) and/or other provisions so as to comply with the order of any such court and, as to all other jurisdictions, the covenants contained herein shall remain in full force and effect as originally written.

**D. Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and fully supersedes any and all prior agreements, understandings, or representations between the parties, whether oral or written, pertaining to the subject matter of this Agreement. Consultant represents and acknowledges that in executing this Agreement, Consultant does not rely, and has not relied, upon any representation(s) by the Company or its agents except as expressly contained in this Agreement. Consultant agrees that Consultant has used Consultant's own judgment in executing this Agreement. This Agreement may not be amended unless it is in writing and signed by Consultant and the Company.

**E. Controlling Law.** Any dispute in the meaning, effect, or validity of this Agreement and/or any dispute arising out of Consultant's relationship with the Company shall be resolved in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof. Venue of any litigation arising from this Agreement or Consultant's relationship with the Company shall be in a state district court of competent jurisdiction in New York County, New York, or the United States District Court for the Southern District of New York. Consultant consents to personal jurisdiction of the state district courts of New York County, New York and to the United States District Court for the Southern District of New York, and agrees that Consultant shall not challenge personal jurisdiction in such courts. Consultant waives any objection that Consultant may now or hereafter have to the venue or jurisdiction of any proceeding in such courts or that any such proceeding was brought in an inconvenient forum (and agrees not to plead or claim the same).

**F. Voluntary Agreement.** Consultant acknowledges that Consultant has had an opportunity to consult with an attorney or other counselor concerning the meaning, import, and legal significance of this Agreement, and Consultant has read this Agreement, as signified by Consultant's signature hereto, and Consultant is voluntarily executing the same after, if sought, advice of counsel for the purposes and consideration herein expressed.

**G. Limitations on Assignment.** In entering into this Agreement, the Company is relying on the unique services of Consultant; services from another company or contractor will not be an acceptable substitute. Except as provided in this Agreement, Consultant may not assign this Agreement or any of the rights or obligations set forth in this Agreement without the explicit written consent of the Company. Any attempted assignment by Consultant in violation of this paragraph shall be void.

**H. Headings.** The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

**I. Counterparts.** This Agreement and amendments to it will be in writing and may be executed in counterparts. Each counterpart will be deemed an original, but both counterparts together will constitute one and the same instrument.

**J. Ambiguities.** Any rule of construction to the effect that ambiguities shall be resolved against the drafting party shall not apply to the interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**The signatures below indicate that the Parties have read, understand and will comply with this Agreement.**

CONSULTANT:

Signature: /s/ Asher Holzer

Printed Name: Asher Holzer

Date: Oct 7, 2012

BIOSIG TECHNOLOGIES, INC.

Signature: /s/ Kenneth L. Londoner

Name: Kenneth L. Londoner

Title: CEO



**EXHIBIT "A"**  
**LIST OF PRIOR PROPRIETARY INFORMATION**

Title	Date	Identifying Number or Brief Description

\_\_\_\_ No inventions or improvements  
\_\_\_\_ Additional Sheets Attached

\_\_\_\_  
Signature of Consultant

\_\_\_\_  
Print Name of Consultant

\_\_\_\_  
Date





Rosenberg Rich Baker Berman & Company  
265 Davidson Avenue Suite 210  
Somerset, N.J. 08873-4120

July 22, 2013

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Ladies and Gentlemen:

We have read the statements made by BioSig Technologies, Inc. (copy attached), which we understand will be filed with the Securities and Exchange Commission, pursuant to “Change in and Disagreements with Accountants on Accounting and Financial Disclosures” disclosure as part of the Form S-1 of BioSig Technologies, Inc. dated July 22, 2013. We agree with the statements concerning our Firm in such Form S-1.

/s/ Rosenberg Rich Baker Berman & Company  
Rosenberg Rich Baker Berman & Company

Rosenberg Rich Baker Berman & Company  
265 Davidson Avenue Suite 210  
Somerset, N.J. 08873-4120

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of BioSig Technologies, Inc. of our report dated May 7, 2013 relating to the financial statements of BioSig Technologies, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

Somerset, NJ  
July 22, 2013

/s/ Rosenberg Rich Baker Berman & Company