

Charter of the Audit Committee

Biocept, Inc.

I. Purpose

The purpose of the Audit Committee (the “*Committee*” or “*Audit Committee*”) of the Board of Directors (the “*Board*”) of Biocept, Inc. (the “*Company*”) is to oversee the accounting and financial reporting processes of the Company and the audits of the Company’s financial statements. The Committee’s principal functions are to:

- Oversee the integrity of the Company’s financial statements and other financial information provided by the Company to its stockholders and others;
- Monitor the periodic reviews that are conducted by the Company’s financial and senior management and by the Company’s independent auditors of the adequacy of the Company’s auditing, accounting and financial reporting processes and systems of internal control;
- Oversee the qualifications, independence and performance of the Company’s independent auditors;
- Oversee compliance with legal, regulatory and public disclosure requirements;
- Facilitate communication among the Company’s independent auditors, the Company’s financial and senior management, and the Board; and
- Prepare the report of the Audit Committee required by the rules of the Securities and Exchange Commission (the “*SEC*”) to be included in the Company’s annual proxy statement.

II. Membership

The Committee shall consist of three or more members of the Board, which shall be appointed by the Board. Each member of the Committee must (1) be an “independent director” as defined under the listing rules of the stock exchange on which the Company’s securities are listed for trading, (2) satisfy the independence requirements applicable to Audit Committee members set forth in the rules and regulations promulgated by the SEC, (3) not have participated in the preparation of the financial statements of the Company at any time during the past three years, (4) be free from any relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment as a Committee member, and (5) meet any other requirements imposed by applicable laws, rules, regulations and listing standards, subject to any applicable exemptions and transition provisions.

Each member of the Committee shall be able to read and understand financial statements, including the Company’s balance sheet, income statement and cash flow statement. At least one member of the Committee shall have prior experience in accounting, financial management, financial oversight, requisite professional certification in accounting, or any other comparable experience or background, and qualify as a “financial expert” as defined under the rules promulgated by the SEC.

III. Responsibilities and Authority

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

A. Selection, Performance and Independence of Independent Auditor

The Committee shall:

1. Be directly responsible for the selection, retention, compensation and termination of the Company's independent auditor, who is engaged for the purpose of preparing and issuing an audit report, and performing other audit, review or attest services for the Company. The independent auditor will report directly to the Committee.
2. Be directly responsible for oversight of the work of the independent auditor, including receiving reports of, and resolution of, any disagreements between management and the independent auditor regarding financial reporting.
3. Evaluate the independent auditor's qualifications, performance and independence. As part of such evaluation, the Committee shall assure the regular rotation of the audit partners as required under the rules promulgated by the SEC.
4. Review the continuing independence of the Company's independent auditors, including:
 - Requiring that the independent auditor provide the Committee, on an annual basis, with the written disclosures and letter describing all relationships between the independent auditor and the Company as required to be disclosed by Rule 3526 of the Public Company Accounting Oversight Board ("**PCAOB**")¹;
 - Reviewing and discussing with management and the independent auditors their independence and any relationships between the independent auditor or any of its affiliates and the Company or persons in financial reporting oversight roles at the Company that might reasonably affect the independence of the independent auditor;
 - Requiring that the independent auditor provide the Committee written affirmation that the independent auditor is, as of the date of affirmation, independent in compliance with PCAOB Rule 3250; and
 - Taking, or recommending that the Board take, appropriate action to oversee the independence of the auditors, including discontinuing any relationships that the Committee believes could compromise the independence of the auditor.

¹ Throughout this Charter, references to the rules of the PCAOB shall be deemed to refer to such rules and any substantially equivalent rules adopted to amend or replace such rules, in each case as subsequently amended or replaced.

5. Approve the Company's hiring of employees or former employees of the independent auditor, as required by applicable laws, rules, regulations and listing standards.
6. Review and approve the independent auditor's annual audit plan.
7. Review and discuss with management and with the independent auditor the Company's annual audited financial statements and the reports delivered to the Committee by the independent auditor, including:
 - Critical accounting policies, estimates and practices used;
 - Alternative treatments of financial information within generally accepted accounting principles, the ramifications of the alternatives, and the treatment preferred by the independent auditors;
 - The Company's disclosures under "Management's Discussion and Analysis of Financial Conditions and Results of Operations" prior to the filing of the Company's Annual Report on Form 10-K;
 - Other material written communications between the independent auditor and Company management, such as any management letter or schedule of unadjusted differences; and
 - Any significant financial reporting issues that have arisen in connection with the preparation of such audited financial statements.
8. Approve the fees and other compensation to be paid to the independent auditor, and pre-approve all audit and non-audit related services of the independent auditor permitted by applicable laws, rules, regulations and listing standards. The Committee may establish pre-approval policies and procedures, as permitted by applicable laws, rules, regulations and listing standards, for the engagement of the independent auditor to render services to the Company, including, without limitation, policies that would allow the delegation of pre-approval authority to one or more members of the Committee.

B. Financial Statements and Disclosures

The Committee shall:

1. Review and discuss the Company's overall audit plan with the independent auditor and management.
2. Review and discuss with management the Company's quarterly and annual financial statements and any report or opinion by the independent auditor, prior to distribution to the public or filing with the SEC.
3. Discuss any items required to be communicated by the independent auditor in accordance with the applicable requirements of PCAOB Auditing Standard No. 16, *Communications with Audit Committees*. These discussions should include, among other things, the independent auditors' judgments about the quality and appropriateness of the Company's accounting principles, the reasonableness of significant judgments, the clarity of the disclosures in the Company's financial statements and any significant difficulties encountered

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- during the course of the audit, including any restrictions on the scope of work or access to required information.
4. Discuss with management and the independent auditors any analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative Generally Accepted Accounting Principles (“GAAP”) methods on the financial statements.
 5. Recommend to the Board whether the annual financial statements should be included in the Company’s Annual Report on Form 10-K.
 6. Prepare the Audit Committee report required for inclusion in the Company’s annual proxy statement.
 7. Discuss whether and to what extent earnings guidance and similar information shall be disclosed publicly by the Company.
 8. Review and discuss with management and the independent auditor, prior to the filing of the Company’s Quarterly Reports on Form 10-Q:
 - The Company’s quarterly financial statements and the Company’s related disclosures under “Management’s Discussion and Analysis of the Financial Condition and Results of Operations”;
 - Such issues as may be brought to the Audit Committee’s attention by the independent auditor; and
 - Any significant financial reporting issues that have arisen in connection with the preparation of the Company’s quarterly financial statements.
 9. Review and discuss the following:
 - Adequacy of the Company’s accounting and financial reporting process and systems of internal controls;
 - Any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting; and
 - Any fraud involving management or any employee of the Company with a significant role in the Company’s internal controls over financial reporting that are disclosed to the Audit Committee by the Company’s Chief Executive Officer and Chief Financial Officer.

C. Internal Controls

The Committee shall:

1. Obtain and review, at least annually, a report by the independent auditor describing: (a) the firm’s internal quality control procedures; (b) any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm and any steps taken to deal

with any such issues; and (c) all relationships between the independent auditor and the Company.

2. Discuss any comments or recommendations of the independent auditor outlined in their annual management letter or internal control reports.
3. Discuss the guidelines and policies that govern the Company's approach to risk management and risk assessment.
4. Establish procedures for (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls, or auditing matters; and (b) the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters. Review any such complaints and submissions that have been received, including the current status and the resolution if one has been reached.
5. Periodically consult with the independent auditors (without the presence of management) about internal controls, the completeness and accuracy of the Company's financial statements and any other matters that the Committee believes should be discussed with the Committee.

D. Annual Review of Charter

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

E. Risk Oversight

The Committee shall regularly consider whether the Company's overall and/or individual auditing, accounting or internal control practices, mechanisms, strategy and policies, or any other matters within the purview of the Committee, encourage undue or inappropriate risk taking by the auditors or the Company's directors, officers and/or other employees. If so, the Committee shall take appropriate steps to remedy such matters or recommend that the Board take appropriate steps to remedy such matters.

F. Additional Audit Committee Authority

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

1. Engage such independent legal, accounting and other advisors as it deems necessary or advisable to carry out its responsibilities and powers, and determine the compensation or fees payable to such counsel or other advisors.
2. Review on a regular basis the status of any legal matters that could have a significant impact on the Company's financial statements.
3. Review its composition and performance on an annual basis.

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4. Form and delegate authority to subcommittees consisting of one or more of its members as the Committee deems appropriate to carry out its responsibilities and exercise its powers.
5. Review the fairness of and approve any proposed transaction between management and other related parties of the Company, and the Company that are brought to the attention of the Committee.
6. Rely upon advice and information that it receives in its discussions and communications with management, the independent auditor and such advisors as may be engaged by the Committee.
7. Request that any officer or employee of the Company, the Company's outside legal counsel, the Company's independent auditor or any other advisor retained by the Company attend a meeting of the Audit Committee (or any subcommittee), or meet with any members of or advisors to the Audit Committee.
8. Perform other activities required by applicable laws, rules, regulations or listing standards.
9. Perform other activities consistent with this Charter, the Company's Certificate of Incorporation and Bylaws (each as amended from time to time), and applicable laws, rules, regulations or listing standards as the Committee or the Board deems necessary or appropriate.
10. Have unrestricted access to Company personnel and documents, and have authority to direct and supervise an investigation into any matters within the scope of its duties.
11. Incur such expenses as are necessary or appropriate in carrying out its duties.
12. Review periodically the terms and conditions of the Company's director and officer insurance policy and make recommendations to the Board with respect to changes thereto.
13. Review periodically the terms and conditions of the Company's indemnification arrangements and make recommendations to the Board with respect to changes thereto.
14. Perform such other functions as may be requested by the Board from time to time.

IV. Meetings and Minutes

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

V. Limitations on Audit Committee Responsibilities

Notwithstanding the responsibilities and powers of the Audit Committee set forth in this Charter, the Audit Committee does not have the responsibility of planning or conducting audits of the

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Company's financial statements or determining whether the Company's financial statements are complete, accurate or prepared in accordance with GAAP. Such responsibilities are those of management and, to the extent of the independent auditor's responsibilities, the independent auditor. In addition, it is not the duty of the Audit Committee to conduct investigations or to ensure compliance by the Company with applicable laws, rules, regulations or listing standards.