

**EPICEPT AND MAXIM**  
**UNAUDITED PRO FORMA CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS**

The following unaudited pro forma condensed consolidated financial statements give effect to the merger of EpiCept and Maxim in a transaction to be accounted for as an asset purchase by EpiCept. The unaudited pro forma condensed consolidated balance sheet combines the historical consolidated balance sheets of EpiCept and Maxim as of September 30, 2005, giving effect to the merger as if it occurred on September 30, 2005. The unaudited pro forma condensed consolidated statement of operations for the year ended December 31, 2004 combines the historical consolidated statement of operations of EpiCept for the year ended December 31, 2004 with the historical consolidated statement of operations of Maxim for the year ended September 30, 2004, adjusted to exclude the results of operations for the three months ended December 31, 2003 and to include the results of operations for the three months ended December 31, 2004. The unaudited pro forma condensed consolidated statement of operations for the nine months ended September 30, 2005 combines the historical consolidated statement of operations of EpiCept for the nine months ended September 30, 2005 with the historical consolidated statement of operations of Maxim for the for year ended September 30, 2005, adjusted to exclude the results of operations for the three months ended December 31, 2004. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2004 and the nine months ended September 30, 2005 give effect to the merger as if it occurred on January 1, 2004 and reflect only pro forma adjustments expected to have a continuing impact on the results of operations.

These unaudited pro forma condensed consolidated financial statements are for informational purposes only. They do not purport to indicate the results that would have actually been obtained had the merger been completed on the assumed date or for the periods presented, or that may be realized in the future. To produce the unaudited pro forma financial information, EpiCept preliminarily allocated the purchase price using its best estimates of fair value. These estimates are based on the most recently available information in preparing a preliminary value. To the extent there are significant changes to Maxim's business, the assumptions and estimates herein could change significantly. Furthermore, the parties may have reorganization and restructuring expenses as well as potential operating efficiencies as a result of combining the companies. The pro forma financial information does not reflect these potential expenses and efficiencies. The unaudited pro forma condensed consolidated financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the historical consolidated financial statements, including the related notes, of EpiCept and Maxim covering these periods, included in the U.S. and Swedish Prospectus.

**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**  
**As of September 30, 2005**

	<u>EpiCept</u>	<u>Maxim</u>	<u>Pro Forma Adjustments</u>	<u>Note 3 Reference</u>	<u>Pro Forma Combined</u>
	(Dollars in thousands)				
<b>ASSETS</b>					
Current assets					
Cash and cash equivalents	\$ 439	\$ 7,560	—		\$ 7,999
Investments in marketable securities	—	15,206	—		15,206
Prepaid expenses and other current assets	71	775	—		846
Total current assets	510	23,541	—		24,051
Property and equipment, net	70	2,063	974	Q	3,107
Restricted cash and cash equivalents	—	264	—		264
Deferred financing and acquisition costs	964	—	(949)	E	15
Patents and licenses, net	—	4,878	(4,878)	D	—
Intangible assets	—	—	526	S	526
Other assets	16	136	—		152
<b>Total assets</b>	<u>\$ 1,560</u>	<u>\$ 30,882</u>	<u>\$ (4,327)</u>		<u>\$ 28,115</u>
<b>LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY</b>					
Current liabilities					
Accounts payable	\$ 1,908	\$ 2,486	—		\$ 4,394
Accrued expenses	2,344	2,490	1,552	F	6,971
			(1,215)	G	
			1,800	B	
Warrant liability	143	—	(143)	H	—
Notes and loans payable, current portion	1,446	253	—		1,699
Deferred revenue, current portion	2,567	23	(23)	W	2,567
Total current liabilities	8,408	5,252	1,971		15,631
Notes and loans payable	13,509	—	(9,951)	G	3,558
Deferred revenue	5,307	—	—		5,307
Accrued and contingent interest	1,289	—	—		1,289
Deferred rent and other non-current liabilities	—	—	—		—
Total long term liabilities	20,105	—	(9,951)		10,154
Total liabilities	28,513	5,252	(7,980)		25,785
Commitments					
Redeemable convertible preferred stock	26,295	—	(26,295)	I	—
Warrants	4,584	—	(4,584)	J	—
Convertible preferred stock	8,226	—	(8,226)	I	—
Common stock	1	28	(28)	C	7
			6	A,G,I,J	
Additional paid in capital	150	404,888	(404,888)	C	104,376
			143	H	
			4,584	J	
			34,517	I	
			11,164	G	
			41,388	A	
			10,143	K	
			2,362	L	
			(75)	M	
Accumulated deficit	(65,358)	(379,165)	379,165	C	
			(1,552)	F	
			(10,143)	K	
			(2,362)	L	
			75	M	
			(49)	E	
			(21,813)	R	
				Z	
Accumulated other comprehensive loss	(776)	(121)	121	C	(101,202)
Treasury stock	(75)	—	—		(75)
Total stockholders' (deficit) equity	(57,832)	25,630	34,532		2,330
<b>Total liabilities and stockholders' (deficit) equity</b>	<u>\$ 1,560</u>	<u>\$ 30,882</u>	<u>\$ (4,327)</u>		<u>\$ 28,115</u>

**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED  
STATEMENT OF OPERATIONS  
Year Ended December 31, 2004**

	<u>EpiCept</u>	<u>Maxim</u>	<u>Pro Forma Adjustments</u>	<u>Note 3 Reference</u>	<u>Consolidated Pro Forma</u>
	(Dollars in thousands, except share and per share amounts)				
Revenue .....	\$ 1,115	\$ 3,062	—		\$ 4,177
Operating expenses:					
General and administrative .....	4,408	7,080	385	X	11,873
Business development and marketing .....	—	4,943	—		4,943
Research and development .....	1,784	35,541	788	N	38,303
			102	X	
			88	Y	
Provisions for note receivable and loan guarantee to/for officers ...	—	1,330	—		1,330
Total operating expenses .....	6,192	48,894	1,363		56,449
Loss from operations .....	(5,077)	(45,832)	(1,363)		(52,272)
Other income (expense):					
Interest and investment income ...	40	1,205	—		1,245
Foreign exchange gain .....	(176)	—	—		(176)
Interest expense .....	(2,670)	(62)	1,705	T	(1,027)
Other .....	—	5	—		5
Other (expense) income, net .....	(2,806)	1,148	1,705		47
Loss before benefit for income taxes .....	(7,883)	(44,684)	342		(52,225)
Benefit for income taxes .....	275	—	—		275
Net loss .....	(7,608)	(44,684)	342		(51,950)
Redeemable convertible preferred stock dividends .....	(1,405)	—	1,405	P	—
Loss attributable to common stockholders .....	\$ (9,013)	\$ (44,684)	\$ 1,747		\$ (51,950)
Basic and diluted loss per share ...	\$ (1.34)	\$ (1.58)			\$ (2.69)
Weighted average shares outstanding .....	6,732,797	28,356,192	(15,778,874)	O	19,310,115

**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED  
STATEMENT OF OPERATIONS  
Nine Months Ended September 30, 2005**

	<u>EpiCept</u>	<u>Maxim</u>	<u>Pro Forma Adjustments</u>	<u>Note 3 Reference</u>	<u>Consolidated Pro Forma</u>
	(Dollars in thousands, except share and per share amounts)				
Revenue .....	\$ 1,134	\$ 1,317	—		\$ 2,451
Operating expenses:					
General and administrative .....	4,589	7,276	288	X	12,153
Business development and marketing .....	—	1,336			1,336
Research and development .....	1,387	10,840	254	N	12,624
			77	X	
			66	Y	
Provisions for note receivable and loan guarantee to/for officers ...	<u>—</u>	<u>418</u>			<u>418</u>
Total operating expenses .....	5,976	19,870	685		26,531
Loss from operations .....	(4,842)	(18,553)	(685)		(24,080)
Other income (expense):					
Interest and investment income ...	15	473	—		488
Foreign exchange gain .....	325	—	—		325
Interest expense .....	(1,369)	(25)	650	U	(744)
Change in value of warrants and derivatives .....	724		(724)	V	—
Other .....	<u>—</u>	<u>(1)</u>			<u>(1)</u>
Other income (expense), net .....	(305)	447	(74)		68
Loss before benefit for income taxes .....	(5,147)	(18,106)	(759)		(24,012)
Benefit for income taxes .....	<u>—</u>	<u>—</u>	<u>—</u>		<u>—</u>
Net loss .....	(5,147)	(18,106)	(759)		(24,012)
Redeemable convertible preferred stock dividends .....	(941)	—	941	P	—
Loss attributable to common stockholders .....	<u>\$ (6,088)</u>	<u>\$ (18,106)</u>	<u>\$ 182</u>		<u>\$ (24,012)</u>
Basic and diluted loss per share ...	\$ (0.89)	\$ (0.63)			\$ (1.24)
Weighted average shares outstanding .....	6,839,287	28,563,705	(16,009,019)	O	19,393,973

**NOTES TO UNAUDITED PRO FORMA CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS**

**1. Description of Transaction and Basis of Presentation**

On September 6, 2005, EpiCept and Maxim signed an Agreement and Plan of Merger under which a wholly-owned subsidiary of EpiCept will merge with and into Maxim in a transaction to be accounted for as an asset purchase by EpiCept. The assets and liabilities of Maxim will be recorded as of the acquisition date at their estimated fair values. The reported consolidated financial condition and results of operations of EpiCept after completion of the merger will reflect these values, but will not be restated retroactively to reflect historical consolidated financial position or results of operations at Maxim. The transaction is expected to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. Under the terms of the merger agreement, each share of Maxim common stock outstanding at the closing of the merger will be exchanged for approximately 0.194034 of a share of EpiCept common stock, plus cash in lieu of fractional shares. In addition, certain options and warrants to purchase Maxim common stock that are outstanding on the closing date will be assumed by EpiCept and will thereafter constitute an option or warrant to acquire the number of shares of EpiCept common stock determined by multiplying the number of shares of Maxim common stock subject to the option or warrant immediately prior to the merger by approximately 0.194034, rounded down to the nearest whole share, with an exercise price equal to the exercise price of the assumed Maxim option or warrant divided by approximately 0.194034, rounded up to the nearest whole cent. Each of these options and warrants will be subject to the same terms and conditions that were in effect for the related Maxim options and warrants. On November 15, 2005, EpiCept completed a private placement of \$2.0 million aggregate principal amount of 8% Senior Notes due on October 30, 2006 (the November 2005 Senior Notes) with a group of existing stockholders. Upon closing of the proposed merger, the November 2005 Senior Notes including accrued interest will convert into approximately 0.7 million shares of common stock in EpiCept. As a result of the issuance of the November 2005 Senior Notes in November 2005, the exchange ratio of 0.194034 will be adjusted upward so that the former Maxim stockholders will still receive approximately 28% of the combined company after the completion of the proposed merger. Based upon an estimated closing date on or about January 4, 2006, the new exchange ratio will be approximately 0.203969. The merger is subject to customary closing conditions.

**2. Purchase Price**

A preliminary estimate of the purchase price is as follows (table in thousands):

Fair value of EpiCept shares issued .....	\$40,389
Estimated fair value of Maxim stock options exchanged for EpiCept stock options.....	621
Estimated fair value of Maxim warrants exchanged for EpiCept warrants .....	<u>378</u>
Subtotal .....	41,388
Estimated transaction costs incurred by EpiCept .....	<u>2,700</u>
Estimated purchase price .....	<u><u>\$44,088</u></u>

For pro forma purposes, the fair value of the EpiCept shares used in determining the purchase price was \$7.33 per share, which is the implied price of EpiCept common stock based on (i) the average closing price of Maxim common stock on the two full trading days immediately preceding the public announcement of the merger, the trading day the merger was announced and the two full trading days immediately following such public announcement and (ii) the exchange ratio of 0.194034. The fair value of the EpiCept stock options and warrants exchanged was determined by using the Black-Scholes option pricing model with the following assumptions: stock price of \$7.33, which is the value ascribed to the EpiCept shares in determining the purchase price; volatility of 85%; risk-free interest rate of 3.67%; and an expected life of 4.0 years.

For pro forma purposes, the estimated purchase price has been allocated based on a preliminary valuation of Maxim's tangible and intangible assets and liabilities based on their estimated fair values as of September 30, 2005 (table in thousands):

Total current assets . . . . .	\$23,541
Property and equipment . . . . .	3,037
Other assets . . . . .	400
In-process technology . . . . .	21,813
Intangible assets (assembled workforce) . . . . .	526
Total current liabilities . . . . .	<u>(5,229)</u>
Total . . . . .	<u>\$44,088</u>

The allocation of the purchase price is preliminary. The final determination of the purchase price allocation will be based on the fair values of assets acquired, including the fair values of in-process research and development, other identifiable intangibles and the fair values of liabilities assumed as of the date that the merger is consummated.

The purchase price allocation will remain preliminary until EpiCept completes a valuation of significant identifiable intangible assets acquired (including in-process research and development) and determines the fair values of other assets and liabilities acquired. The final determination of the purchase price allocation is expected to be completed as soon as practicable after completion of the merger. The final amounts allocated to assets and liabilities acquired could differ significantly from the amounts presented in the unaudited pro forma condensed consolidated financial statements.

The estimated fair value attributed to in-process research and development represents an estimate of the fair value of purchased in-process technology for research projects that, as of the expected closing date of the merger, will not have reached technological feasibility and have no alternative future use. Only those research projects that had advanced to a stage of development where management believed reasonable net future cash flow forecasts could be prepared and a reasonable likelihood of technical success existed were included in the estimated fair value. Accordingly, the in-process research and development primarily represents the estimated fair value of Ceplene, Maxim's drug currently in Phase III development for the treatment of advanced myeloid leukemia. The estimated fair value of the in-process research and development was determined based on a discounted forecast of the estimated net future cash flows for each project, adjusted for the estimated probability of technical success and Food and Drug Administration, or FDA, or European Agency for the Evaluation of Medicinal Products, or EMEA, approval for each research project. In-process research and development will be expensed immediately following completion of the merger.

### 3. Pro Forma Adjustments

(A) To record the value of the EpiCept common stock, stock options and warrants issued in the merger. Cash paid in lieu of fractional shares will be from existing cash balances and cannot be estimated at this time (see Note 2).

(B) To record the estimated EpiCept transactions costs of \$2.7 million less \$0.9 million incurred as of September 30, 2005. Transactions costs incurred by Maxim will be expensed as incurred.

(C) To eliminate Maxim's historical stockholders' equity accounts.

(D) To eliminate Maxim's capitalized patents and license acquisition costs.

(E) To adjust EpiCept's deferred financing and acquisition costs to reflect the reduction in Senior Notes outstanding upon the completion of the merger and the acquisition costs applied in the purchase accounting.

(F) To reflect the estimated liabilities assumed by EpiCept related to the change of control severance agreements. Because this expense is directly attributable to the acquisition and will not have a continuing impact, it is not reflected in the pro forma condensed statements of operations. However, this item will be recorded as an expense immediately following completion of the merger.

(G) To reflect the conversion of EpiCept's tbg convertible loan of \$2.5 million, bridge loan of \$4.8 million, \$3 million of Senior Notes and accrued interest of \$1.2 million and \$0.4 million in debt discount into common stock upon completion of the merger.

(H) To eliminate the liability for warrants issued in connection with the Senior Notes issuance. Warrants associated with \$3 million of Senior Notes converting into common stock will be canceled. Warrants associated with \$1 million of Senior Notes will be exercised upon the completion of the merger.

(I) To reflect the conversion of EpiCept preferred stock into common stock upon completion of the merger.

(J) To reflect the exercise of the Preferred Stock bridge warrants upon completion of the merger.

(K) To record the beneficial conversion feature arising from certain anti-dilution adjustments to EpiCept's preferred stock as a result of the exercise of the bridge warrants. Because this expense is directly attributable to the acquisition and will not have a continuing impact, it is not reflected in the pro forma condensed statements of operations. However, this item will be recorded as an expense immediately following completion of the merger.

(L) To record the impact of the beneficial conversion feature related to the conversion of \$3 million of EpiCept's Senior Notes into common stock at a discount to the fair value of EpiCept common stock. Because this expense is directly attributable to the acquisition and will not have a continuing impact, it is not reflected in the pro forma condensed statements of operations. However, this item will be recorded as an expense immediately following completion of the merger.

(M) To record the change in fair value of warrants arising from the exercise into EpiCept common stock of 22,096 warrants issued in connection with the Senior Notes.

(N) To adjust amounts related to Maxim's patent costs.

(O) To record the following adjustments:

	<u>Year ended December 31, 2004</u>	<u>Nine months ended September 30, 2005</u>
To eliminate Maxim's historical weighted average shares outstanding . . . . .	(28,356,192)	(28,563,705)
To reflect the issuance of EpiCept shares to Maxim stockholders' to effect the merger . . . . .	5,502,065	5,542,330
To reflect the issuance of EpiCept shares for the conversion of EpiCept's preferred stock, convertible loans and exercise of warrants . . . . .	12,124,851	12,138,888
To reflect a 1 for 4 reverse stock split, which is contingent on the closing of the merger, of EpiCept's weighted historical shares outstanding	<u>(5,049,598)</u>	<u>(5,126,532)</u>
Pro Forma Adjustments weighted average shares outstanding . . . . .	<u>(15,778,874)</u>	<u>(16,009,019)</u>

(P) To eliminate the redeemable convertible preferred stock dividends.

(Q) To record the adjustment of Maxim's property and equipment at fair value. (See Note 2)

(R) To record the estimated fair value of in-process research and development acquired in the merger. Because this expense is directly attributable to the acquisition and will not have a continuing impact, it is not reflected in the pro forma condensed statements of operations. However, this item will be recorded as an expense immediately following completion of the merger.

(S) To record the estimated fair value of intangible assets acquired in the merger.

(T) To eliminate 2004 interest expense and beneficial conversion feature resulting from the conversion of the bridge loan into common stock upon the completion of the merger.

(U) To eliminate 2005 interest expense upon conversion of the bridge loan and \$3 million of the Senior Notes into common stock upon the completion of the merger.

(V) To adjust the change in value of the warrants and derivatives upon the conversion of \$3 million of the Senior Notes. Warrants associated with \$1 million of Senior Notes will be exercised upon the completion of the merger.

(W) To eliminate Maxim's deferred revenue associated with a licensing agreement.

(X) To record the amortization and depreciation on tangible assets acquired over its remaining estimated useful life. EpiCept recorded additional depreciation resulting from the upward adjustment of Maxim's property and equipment to reflect it at estimated fair value.

(Y) To record amortization of fair value of assembled workforce over its remaining estimated useful life.