

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

**FORM SB-2  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**ZIOPHARM Oncology, Inc.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
Incorporation or organization)

2834  
(Primary Standard Industrial  
Classification Code Number)

84-1475642  
(I.R.S. Employer  
Identification No.)

1180 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, NY 10036  
(646) 214-0700  
(Address and telephone number off principal executive offices and principal place of business)

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**Approximate date of proposed sale to the public:** From time to time after the effective date of this registration statement, as shall be determined by the selling stockholders identified herein.

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. o

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. o

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. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. o

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Number of shares to be registered (1)	Proposed maximum offering price per unit (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common stock, par value \$.001 per share	4,870,281	\$ 16.00	\$ 77,924,496	\$ 9,171.71

- (1) There is also being registered hereunder an indeterminate number of additional shares of common stock as shall be issuable pursuant to Rule 416 to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457 of the Securities Act based upon the last trade of the registrant's common stock on the OTC Bulletin Board, which occurred on August 23, 2005 at a price per share equal to \$16.00 (adjusted to reflect a 1-for-40 share combination that was effective August 24, 2005).

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.

**The information in this prospectus is preliminary and incomplete and may be changed. Securities included in the registration statement of which this prospectus is a part may not be sold until the registration statement filed with the securities and exchange commission becomes effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

## OFFERING PROSPECTUS



**ZIOPHARM Oncology, Inc.**

**4,870,281 shares of common stock**

The selling stockholders identified on pages 41-49 of this prospectus are offering on a resale basis a total of 4,870,281 shares of our common stock, including 482,407 shares issuable upon the exercise of outstanding warrants. We will not receive any proceeds from the sale of these shares by the selling stockholders.

Our common stock is quoted on the Over-the-Counter Bulletin Board under the symbol "ZIOP." The last sale of our common stock as reported on the OTC Bulletin Board occurred on August 23, 2005 at a price per share equal to \$16.00 (adjusted to reflect a 1-for-40 share combination that was effective August 24, 2005).

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**The securities offered by this prospectus involve a high degree of risk.  
See "Risk Factors" beginning on page 5.**

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

The date of this prospectus is \_\_\_\_\_, 2005

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## PROSPECTUS SUMMARY

*This summary highlights certain information found in greater detail elsewhere in this prospectus. This summary may not contain all of the information that may be important to you. We urge you to read this entire prospectus carefully, including the risks of investing in our common stock discussed under “Risk Factors” and the financial statements and other information that is incorporated by reference into this prospectus, before making an investment decision. In addition, this prospectus summarizes other documents which we urge you to read. All references in this prospectus to the “Company,” “we,” “us” and “our” refer to ZIOPHARM Oncology, Inc.*

### Our Company

We are a development-stage company that is seeking to develop and commercialize a diverse, risk-sensitive portfolio of in-licensed cancer drugs that address unmet medical needs. Our management and advisors are focused on licensing proprietary drug candidate families that are related to cancer therapeutics on the market where the application of new biological understanding and our drug development expertise will lead to a lower risk for clinical development failure while expediting clinical registration. We expect to commercialize our products on our own in North America but recognize that promising clinical trial results in cancers with a high incidence and prevalence might also be addressed in a commercial partnership with another company with the requisite financial resources. Currently, we are in U.S. Phase I studies for two product candidates known as ZIO-101 and ZIO-201. We currently intend to continue with clinical development of ZIO-101 for advanced myeloma and ZIO-201 for advanced sarcoma. None of our product candidates have been approved by the United States Food and Drug Administration (the “FDA”) or any other regulatory body. Further, we have not received any commercial revenues to date, and until we receive the necessary approvals from the FDA or a similar foreign regulatory authority, we will not have any commercial revenues.

- **ZIO-101** is an organic arsenic compound covered by an issued U.S. patent and applications internationally. A form of commercially available inorganic arsenic (arsenic trioxide (Trisenox<sup>®</sup>) or ATO) has been approved for the treatment of acute promyelocytic leukemia (APL), a precancerous condition, and is on the compendia listing for the therapy of multiple myeloma as well as having been studied for the treatment of various other cancers. Nevertheless, ATO has been shown to be toxic to the heart and liver, limiting its use as an anti-cancer agent. Inorganic arsenic has also been shown to cause cancer of the skin and lung in humans. The toxicity of arsenic generally is correlated to its accumulation in organs and tissues. The Company’s preclinical studies demonstrated that ZIO-101 (and organic arsenic in general) is considerably less toxic than inorganic arsenic, particularly with regard to heart toxicity. *In vitro* testing of ZIO-101 using the National Cancer Institute’s human cancer cell panel detected activity against lung, colon, brain, melanoma, ovarian and kidney cancer. Moderate activity was detected against breast and prostate cancer. In addition to solid tumors, *in vitro* testing in both the National Cancer Institute’s cancer cell panel and *in vivo* testing in a leukemia animal model demonstrated substantial activity against hematological cancers (cancers of the blood and blood-forming tissues) such as leukemia, lymphoma, myelodysplastic syndromes and multiple myeloma. Leukemia is a cancer that begins in blood-forming tissue such as the bone marrow and causes large numbers of blood cells to be produced and enter the bloodstream. Lymphomas are cancers that begin in cells of the immune system. Myelodysplastic syndromes, also called preleukemia or smoldering leukemia, are diseases in which the bone marrow does not function normally.
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· **ZIO-201**, or isophosphoramidate mustard (IPM), is a proprietary stabilized metabolite of ifosfamide that is also related to cyclophosphamide. A patent application for pharmaceutical composition has been filed. Cyclophosphamide and ifosfamide are alkylating agents. Cyclophosphamide is the most widely used alkylating agent in cancer therapy and is used to treat breast cancer and non-Hodgkin's lymphoma. Ifosfamide has been shown to be effective in high dose by itself, or in combination in treating sarcoma and lymphoma. Although ifosfamide-based treatment generally represents the standard of care for sarcoma, it is not licensed for this indication by the FDA. Our preclinical studies have shown that, in animal and laboratory models, IPM evidences activity against leukemia and solid tumors. These studies also indicate that ZIO-201 has a better pharmacokinetic and safety profile than ifosfamide or cyclophosphamide, offering the possibility of safer and more efficacious therapy with ZIO-201. Ifosfamide is metabolized to IPM. In addition to IPM, another metabolite of ifosfamide is acrolein, which is toxic to the kidneys and bladder. The presence of acrolein can mandate extensive in-hospital hydration and the administration of a protective agent called Mesna<sup>®</sup>, which is inconvenient and expensive. Chloroacetaldehyde is another metabolite of ifosfamide and is toxic to the central nervous system, causing "fuzzy brain" syndrome for which there is currently no protective measure. Similar toxicity concerns pertain to high-dose cyclophosphamide, which is widely used in bone marrow and blood cell transplantation. Because ZIO-201 is independently active—without acrolein or chloroacetaldehyde metabolites—the Company believes that the administration of ZIO-201 may avoid the toxicities of ifosfamide and cyclophosphamide without compromising efficacy. In addition to anticipated lower toxicity, ZIO-201 may have other advantages over ifosfamide and cyclophosphamide. ZIO-201 likely cross-links DNA differently than ifosfamide or cyclophosphamide metabolites, resulting in a different activity profile. Moreover, in some instances ZIO-201 appears to show activity in ifosfamide- and/or cyclophosphamide-resistant cancer cells.

We were originally incorporated in Colorado in September 1998 (under the name Net Escapes, Inc.) and later changed our name to "EasyWeb, Inc." in February 1999. We were re-incorporated in Delaware on May 16, 2005 under the same name. On September 13, 2005, we completed a "reverse" acquisition of privately held ZIOPHARM, Inc., a Delaware corporation. To effect this transaction, we caused ZIO Acquisition Corp., our wholly-owned subsidiary, to merge with and into ZIOPHARM, Inc., with ZIOPHARM, Inc. surviving as our wholly owned subsidiary. In accordance with the terms of the merger, the outstanding common stock of ZIOPHARM, Inc. automatically converted into the right to receive an aggregate of approximately 97.3% of our outstanding common stock (after giving effect to the transaction). Following the merger, we caused ZIOPHARM, Inc. to merge with and into us and we changed our name to "ZIOPHARM Oncology, Inc."

Our executive offices are located at 1180 Avenue of the Americas, 19th Floor, New York, NY 10036, and our telephone number is (646) 214-0700. Our internet site is [www.ziopharm.com](http://www.ziopharm.com). None of the information on our internet site is part of the prospectus.

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## Recent Developments

### *Reverse Stock Split*

On August 24, 2005, we effected a 1-for-40 share combination (i.e., reverse stock split) of our capital stock. The share combination was approved by our stockholders at a special stockholder meeting held on February 28, 2005. As a result of the share combination, we had 189,922 shares of common stock outstanding immediately prior to the Merger.

### *Acquisition of ZIOPHARM, Inc.*

Pursuant to an Agreement and Plan of Merger dated August 3, 2005 (the "Merger Agreement") by and among us, ZIO Acquisition Corp., a Delaware corporation and our wholly owned subsidiary, and ZIOPHARM, Inc., a Delaware corporation ("ZIOPHARM"), ZIO Acquisition Corp. merged with and into ZIOPHARM, with ZIOPHARM remaining as the surviving corporation and our wholly-owned subsidiary. This transaction is referred to throughout this report as the "Merger." The Merger was effective as of September 13, 2005, upon the filing of a certificate of merger with the Delaware Secretary of State. In consideration for their shares of ZIOPHARM capital stock and in accordance with the Agreement, the stockholders of ZIOPHARM received an aggregate of 6,967,941 shares or approximately 97.3% of our common stock. In addition, all securities convertible into and exercisable for shares of ZIOPHARM capital stock outstanding immediately prior to the Merger were cancelled, and the holders thereof received similar securities convertible into an aggregate of 1,366,846 shares of our common stock.

All share and per share data in this prospectus (other than in our financial statements and in Item 26) have been adjusted to give effect to the conversions effected as part of the merger.

The Merger Agreement was filed as Exhibit 10.1 to our current report on Form 8-K filed with the Securities and Exchange Commission on August 9, 2005, and is incorporated herein by reference. The foregoing description of the Merger Agreement and the Merger do not purport to be complete and is qualified in its entirety by reference to the Merger Agreement.

On September 13, 2005, our board of directors approved a transaction pursuant to which ZIOPHARM merged with and into us, leaving us as the surviving corporation. In connection with this parent-subsiidiary merger, we relinquished our prior corporate name, EasyWeb, Inc., and assumed in its place the name "ZIOPHARM Oncology, Inc." The parent-subsiidiary merger and name change became effective on September 14, 2005.

### *Changes in Board of Directors*

At the effective time of the Merger, our board of directors was reconstituted by the appointment of Jonathan Lewis, Richard Bagley, Murray Brennan, James Cannon, Senator Wyche Fowler, Jr., Gary S. Fragin, Timothy McInerney and Michael Weiser as directors (all of whom were directors of ZIOPHARM immediately prior to the Merger), and the resignations of David C. Olson and David Floor from their roles as our directors.

## Risk Factors

For a discussion of the risks you should consider before purchasing shares of our common stock, you are urged to carefully review and consider the section entitled "Risk Factors" beginning on page 5 of this prospectus.

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## The Offering

The selling stockholders identified on pages 41-49 of this prospectus are offering on a resale basis a total of 4,870,281 shares of our common stock, of which 482,407 shares are issuable upon exercise of outstanding warrants and options.

Common stock offered	4,870,281 shares
Common stock outstanding before the offering (1)	7,241,211 shares
Common stock outstanding after the offering (2)	7,723,618 shares
Common stock OTC Bulletin Board trading symbol	ZIOP

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- (1) Based on the number of shares outstanding as of October 12, 2005, not including 1,449,674 shares issuable upon exercise of various warrants and options to purchase our common stock.
- (2) Assumes the issuance of all shares offered hereby that are issuable upon exercise of warrants.

## RISK FACTORS

*An investment in our common stock is very risky. You may lose the entire amount of your investment. Prior to making an investment decision, you should carefully review this entire prospectus and consider the following risk factors:*

***We currently have no product revenues and will need to raise additional capital to operate our business.***

To date, we have generated no product revenues. Until and unless we receive approval from the U.S. Food and Drug Administration (the "FDA") and/or other regulatory authorities for our product candidates, we cannot sell our drugs and will not have product revenues. Currently, our only product candidates are ZIO-101 (organic arsenic) and ZIO-201 (isophosphoramidate mustard), and they are not approved by the FDA for sale.

***We will need to seek additional sources of financing which may not be available on favorable terms, if at all.***

Currently, we expect that we will have sufficient cash to fund our operations into the second quarter of 2006. However, changes may occur that would consume our existing capital prior to that time, including the progress of our research and development efforts, changes in governmental regulation and acquisitions of additional product candidates. If we do not succeed in raising additional funds on acceptable terms, we may be unable to complete planned preclinical and clinical trials or obtain approval of any product candidates from the FDA and other regulatory authorities. In addition, we could be forced to discontinue product development, reduce or forego sales and marketing efforts or forego attractive business opportunities. Any additional sources of financing will likely involve the issuance of our equity securities, which will have a dilutive effect on our existing stockholders.

***We are not currently profitable and may never become profitable.***

We have a history of losses and expect to incur substantial losses and negative operating cash flow for the foreseeable future, and we may never achieve or maintain profitability. Even if we succeed in developing and commercializing one or more product candidates, we expect to incur substantial losses for the foreseeable future and may never become profitable. We expect also to continue to incur significant operating and capital expenditures and anticipate that our expenses will increase substantially in the foreseeable future as we:

- continue to undertake preclinical development and clinical trials for product candidates;
- scale up the formulation and manufacturing of our product candidates;
- seek regulatory approvals for product candidates;
- implement additional internal systems and infrastructure; and
- hire additional personnel.

We also expect to experience negative cash flow for the foreseeable future as we fund our operating losses and capital expenditures. This may result in a negative impact on the value of our common stock.

***We have a limited operating history upon which to base an investment decision.***

Prior to the Merger, ZIOPHARM was a development-stage company that was incorporated in September 2003. To date, we have not demonstrated an ability to perform the functions necessary for the successful commercialization of any product candidates. The successful commercialization of any product candidates will require us to perform a variety of functions, including:



- continuing to undertake preclinical development and clinical trials;
- participating in regulatory approval processes;
- formulating and manufacturing products; and
- conducting sales and marketing activities.

Our operations have been limited to organizing and staffing our Company, acquiring, developing and securing our proprietary product candidates, undertaking preclinical trials and clinical trials of our product candidates ZIO-101 and ZIO-201, and manufacturing ZIO-101 and ZIO-201. These operations provide a limited basis for you to assess our ability to commercialize our product candidates and the advisability of investing in our securities.

***We may not obtain the necessary U.S. or worldwide regulatory approvals to commercialize any product candidate.***

We may not be able to obtain the approvals necessary to commercialize our product candidates, ZIO-101 and ZIO-201, or any product candidate that we may acquire or develop in the future for commercial sale. We will need FDA approval to commercialize our product candidates in the U.S. and approvals from regulatory authorities in foreign jurisdictions equivalent to the FDA to commercialize our product candidates in those jurisdictions. In order to obtain FDA approval of any product candidate, we must submit to the FDA a New Drug Application, or “NDA,” demonstrating that the product candidate is safe for humans and effective for its intended use. This demonstration requires significant research and animal tests, which are referred to as preclinical studies, as well as human tests, which are referred to as clinical trials. Satisfaction of the FDA’s regulatory requirements typically takes many years, depending upon the type, complexity and novelty of the product candidate, and will require substantial resources for research, development and testing. We cannot predict whether our research, development, and clinical approaches will result in drugs that the FDA considers safe for humans and effective for their intended uses. The FDA has substantial discretion in the drug approval process and may require us to conduct additional preclinical and clinical testing or to perform post-marketing studies. The approval process may also be delayed by changes in government regulation, future legislation or administrative action or changes in FDA policy that occur prior to or during our regulatory review. Delays in obtaining regulatory approvals may:

- delay commercialization of, and our ability to derive product revenues from, our product candidates;
- impose costly procedures on us; and
- diminish any competitive advantages that we may otherwise enjoy.

Even if we comply with all FDA requests, the FDA may ultimately reject one or more of our NDAs. We cannot be sure that we will ever obtain regulatory clearance for our product candidates, ZIO-101 and ZIO-201. Failure to obtain FDA approval of our product candidates will severely undermine our business by leaving us without a saleable product, and therefore without any potential revenue source, until another product candidate can be developed. There is no guarantee that we will ever be able to develop or acquire another product candidate.

In foreign jurisdictions, we similarly must receive approval from applicable regulatory authorities before we can commercialize any drugs. Foreign regulatory approval processes generally include all of the risks associated with the FDA approval procedures described above.

***Our product candidates are in early stages of clinical trials, and we cannot be certain when we will be able to file an NDA with the FDA.***

Our product candidates, ZIO-101 and ZIO-201, are in early stages of development and require extensive clinical testing. In 2005 we initiated two ZIO-101 phase I clinical trials; one in hematological cancers and the other in solid tumors. A phase I trial for ZIO-201 was initiated in 2004. Notwithstanding our current clinical trial plans for each of our existing product candidates, we may not be able to commence additional trials or see results from these trials within our anticipated timelines. As such, we cannot predict with any certainty if or when we might submit an NDA for regulatory approval of our product candidates or whether such an NDA will be accepted.

***Clinical trials are very expensive, time-consuming and difficult to design and implement.***

Human clinical trials are very expensive and difficult to design and implement, in part because they are subject to rigorous regulatory requirements. The clinical trial process is also time consuming. We estimate that clinical trials of our product candidates will take at least several years to complete. Furthermore, failure can occur at any stage of the trials, and we could encounter problems that cause us to abandon or repeat clinical trials. The commencement and completion of clinical trials may be delayed by several factors, including:

- unforeseen safety issues;
- determination of dosing issues;
- lack of effectiveness during clinical trials;
- slower than expected rates of patient recruitment;
- inability to monitor patients adequately during or after treatment; and
- inability or unwillingness of medical investigators to follow our clinical protocols.

We are hopeful that we may be able to obtain “Fast Track” status from the FDA for one or more of our product candidates. Fast Track status means that the FDA will perform an expedited review of our data upon the completion of clinical trials, which will thereby decrease the amount of time it will take a product candidate that has achieved such designation to reach the commercial market. However, there is no guarantee that any of our product candidates will be granted Fast Track status by the FDA or that, even if such product candidate is granted such status, the product candidate’s clinical development and regulatory approval process will not be delayed or will be successful.

In addition, we or the FDA may suspend our clinical trials at any time if it appears that we are exposing participants to unacceptable health risks or if the FDA finds deficiencies in our IND submission or in the conduct of these trials. Therefore, we cannot predict with any certainty the schedule for future clinical trials.

***The results of our clinical trials may not support our product candidate claims.***

Even if our clinical trials are completed as planned, we cannot be certain that their results will support approval of our product candidates. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and preclinical testing. The clinical trial process may fail to demonstrate that our product candidates are safe for humans and effective for indicated uses. This failure would cause us to abandon a product candidate and may delay development of other product candidates. Any delay in, or termination of, our clinical trials will delay the filing of our NDAs with the FDA and, ultimately, our ability to commercialize our product candidates and generate product revenues. In addition, our clinical trials involve small patient populations. Because of small sample size, the results of these clinical trials may not be indicative of future results.

Physicians and patients may not accept and use our drugs. Even if the FDA approves our product candidates, physicians and patients may not accept and use them. Acceptance and use of our products will depend upon a number of factors including:

- perceptions by members of the health care community, including physicians, regarding the safety and effectiveness of our drugs;
- cost-effectiveness of our products relative to competing products;
- availability of reimbursement for our products from government or other healthcare payers; and
- effectiveness of marketing and distribution efforts by us and our licensees and distributors, if any.

Because we expect sales of our current product candidates, if approved, to generate substantially all of our product revenues for the foreseeable future, the failure of a drug to find market acceptance would harm our business and could require us to seek additional financing in order to fund the development of future product candidates.

***Our drug-development program materially depends upon third-party researchers who are outside our control.***

We materially rely upon independent investigators and collaborators, such as 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. If outside collaborators fail to devote sufficient time and resources to our drug development programs, or if their performance is substandard, the approval of our FDA applications, if any, and our introduction of new drugs, if any, will be delayed. These collaborators may also have relationships with other commercial entities, some of whom may compete with us. If our collaborators assist our competitors to our detriment, our competitive position would be harmed.

***We rely exclusively on third parties to formulate and manufacture our product candidates.***

We do not have experience in drug formulation or manufacturing and do not intend to establish our own manufacturing facilities. We lack the resources and expertise to formulate or manufacture our own product candidates. We currently are contracting for the commercial scale manufacture of our product candidates. We intend to contract with one or more manufacturers to manufacture, supply, store and distribute drug supplies for our clinical trials. If a product candidate we develop or acquire in the future receives FDA approval, we will rely on one or more third-party contractors to manufacture our drugs. Our anticipated future reliance on a limited number of third-party manufacturers exposes us to the following risks:

- We may be unable to identify manufacturers on acceptable terms or at all because the number of potential manufacturers is limited and the FDA must approve any replacement contractor. This approval would require new testing and compliance inspections. In addition, a new manufacturer would have to be educated in, or develop substantially equivalent processes for, production of our products after receipt of FDA approval, if any.
- Our third-party manufacturers might be unable to formulate and manufacture our drugs in the volume and of the quality required to meet our clinical needs and commercial needs, if any.

- Our future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to supply our clinical trials or to successfully produce, store and distribute our products.
- Drug manufacturers are subject to ongoing periodic unannounced inspection by the FDA, the Drug Enforcement Administration (the “DEA”), and corresponding state agencies to ensure strict compliance with good manufacturing practices and other government regulations and corresponding foreign standards. We do not have control over third-party manufacturers’ compliance with these regulations and standards.
- If any third-party manufacturer makes improvements in the manufacturing process for our products, we may not own, or may have to share, the intellectual property rights to the innovation.

Each of these risks could delay our clinical trials, the approval, if any, of our product candidates by the FDA or the commercialization of our product candidates or result in higher costs or deprive us of potential product revenues.

***We do not have experience selling, marketing or distributing products and we have no internal capability to do so.***

We currently have no marketing, sales or distribution capabilities. If and when we become reasonably certain that we will be able to commercialize our current or future products, we anticipate allocating resources to the marketing, sales and distribution of our proposed products in North America. However, we cannot assure that we will be able to market, sell and distribute our products successfully. Our future success also may depend, in part, on our ability to enter into and maintain collaborative relationships for such capabilities, the collaborator’s strategic interest in the products under development and such collaborator’s ability to successfully market and sell any such products. Although we intend to pursue collaborative arrangements regarding the sale and marketing of our products, there can be no assurance that we will be able to establish or maintain our own sales operations or affect collaborative arrangements, or that if we are able to do so, our collaborators will have effective sales forces. There can also be no assurance that we will be able to establish or maintain relationships with third party collaborators or develop in-house sales and distribution capabilities. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and there can be no assurance that such efforts will be successful. In addition, there can also be no assurance that we will be able to market and sell our products in the United States or overseas.

***If we cannot compete successfully for market share against other drug companies, we may not achieve sufficient product revenues and our business will suffer.***

The market for our product candidates, ZIO-101 and ZIO-201, is characterized by intense competition and rapid technological advances. If a product candidate receives FDA approval, it will compete with a number of existing and future drugs and therapies developed, manufactured and marketed by others. Existing or future competing products may provide greater therapeutic convenience or clinical or other benefits for a specific indication than our products, or may offer comparable performance at a lower cost. If our products fail to capture and maintain market share, we may not achieve sufficient product revenues and our business will suffer.

We will compete against fully integrated pharmaceutical companies and smaller companies that are collaborating with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors have products already approved or in development. In addition, many of these competitors, either alone or together with their collaborative partners, operate larger research and development programs or have substantially greater financial resources than we do, as well as significantly greater experience in:

- developing drugs;
- undertaking preclinical testing and human clinical trials;
- obtaining FDA and other regulatory approvals of drugs;
- formulating and manufacturing drugs; and
- launching, marketing and selling drugs.

***If we fail to adequately protect or enforce our intellectual property rights or secure rights to patents of others, the value of our intellectual property rights would diminish.***

Our success, competitive position and future revenues will depend in part on our ability and the abilities of our licensors to obtain and maintain patent protection for our products, methods, processes and other technologies, to preserve our trade secrets, to prevent third parties from infringing on our proprietary rights and to operate without infringing the proprietary rights of third parties.

To date, we have exclusive rights to certain U.S. and foreign intellectual property. We anticipate filing additional patent applications both in the U.S. and in other countries, as appropriate. 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 patents will issue;
- 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 whether we win or lose.

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 generally to require 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.

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

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

- obtain licenses, which may not be available on commercially reasonable terms, if at all;
- abandon an infringing drug candidate;
- redesign our products or processes to avoid infringement;
- stop using the subject matter claimed in the patents held by others;
- pay damages; or
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our valuable management resources.

***Our ability to generate product revenues will be diminished if our drugs sell for inadequate prices or patients are unable to obtain adequate levels of reimbursement.***

Our ability to commercialize our drugs, alone or with collaborators, will depend in part on the extent to which reimbursement will be available from:

- government and health administration authorities;
- private health maintenance organizations and health insurers; and
- other healthcare payers.

Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. Healthcare payers, including Medicare, are challenging the prices charged for medical products and services. Government and other healthcare payers increasingly attempt to contain healthcare costs by limiting both coverage and the level of reimbursement for drugs. Even if our product candidates are approved by the FDA, insurance coverage may not be available, and reimbursement levels may be inadequate, to cover our drugs. If government and other healthcare payers do not provide adequate coverage and reimbursement levels for our products, once approved, market acceptance of such products could be reduced.

***We may not be able to successfully manage our growth.***

Our success will depend upon the expansion of our operations and the effective management of our growth, which will place a significant strain on our management and on our administrative, operational and financial resources. To manage this growth, we must expand our facilities, augment our operational, financial and management systems and hire and train additional qualified personnel. If we are unable to manage our growth effectively, our business may be harmed.

***Our business will subject us to the risk of liability claims associated with the use of hazardous materials and chemicals.***

Our contract research and development activities may involve the controlled use of hazardous materials and chemicals. Although we believe that our safety procedures for using, storing, handling and disposing of these materials comply with federal, state and local laws and regulations, we cannot completely eliminate the risk of accidental injury or contamination from these materials. In the event of such an accident, we could be held liable for any resulting damages and any liability could have a materially adverse effect on our business, financial condition and results of operations. In addition, the federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous or radioactive materials and waste products may require our contractors to incur substantial compliance costs that could materially adversely affect our business, financial condition and results of operations.

***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 principal scientific, regulatory and medical advisors. We do not have “key person” life insurance policies on 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 operating results.

***If we are unable to hire additional qualified personnel, our ability to grow our business may be harmed.***

We will need to hire additional qualified personnel with expertise in preclinical testing, clinical research and testing, government regulation, formulation and manufacturing, as well as sales and marketing. We compete for qualified individuals with numerous biopharmaceutical companies, universities and other research institutions. Competition for such individuals is intense, and we cannot be certain that our search for such personnel will be successful. Attracting and retaining qualified personnel will be critical to our success.

***We may incur substantial liabilities and may be required to limit commercialization of our products in response to product liability lawsuits.***

The testing and marketing of medical products entail an inherent risk of product liability. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of pharmaceutical products we develop, alone or with collaborators. We currently carry clinical trial insurance and product liability insurance.

***There are certain interlocking relationships among us and certain affiliates of Paramount, which may present potential conflicts of interest.***

Lindsay A. Rosenwald, M.D., who may be deemed to beneficially own approximately 20.13% of our common stock, is Chairman and Chief Executive Officer of Paramount BioCapital, Inc., an investment banking firm that served as placement agent in connection with a private placement of ZIOPHARM's Series A Convertible Preferred Stock that was completed in May 2005. Paramount also served as a finder in connection with the Company's option and research agreements with Southern Research Institute. The Company paid fees and issued securities to Paramount or its designees in connection with these transactions and Paramount currently has a right of first refusal to act as the placement agent for the private sale of our securities until May 31, 2008. Dr. Michael Weiser and Timothy McInerney, each of whom is a member of the Company's board of directors, are also full-time employees of Paramount. See "Certain Transactions and Relationships - ZIOPHARM Transactions and Relationship."

Paramount, Dr. Rosenwald, Dr. Weiser, and Mr. McInerney are not obligated pursuant to any agreement or understanding with us to make any additional products or technologies available to us, nor can there be any assurance that any biomedical or pharmaceutical products or technologies identified in the future by such parties will be made available to us. In addition, certain of our current officers and directors, as well as officers or directors that may be hereafter appointed, may from time to time serve as officers or directors of other biopharmaceutical or biotechnology companies. There can be no assurance that such other companies will not have interests in conflict with our own.

***The resale of shares covered by this registration statement could adversely affect the market price of our common stock in the public market, which result in turn negatively affect the Company's ability to raise additional equity capital.***

The sale, or availability for sale, of common stock in the public market pursuant to this registration statement may adversely affect the prevailing market price of our common stock and may impair our ability to raise additional capital by selling equity or equity-linked securities. Once effective, this registration statement will register the resale of a significant number of shares of our common stock. In fact, the registration statement will make publicly available for resale an additional 4,870,281 shares of our common stock, assuming the issuance of all shares of common stock offered hereunder. This figure represents approximately 67% of the shares of our common stock outstanding immediately after the effectiveness of this registration statement, assuming the issuance of all shares of common stock offered hereunder.

As of October 12, 2005, we had approximately 7,241,211 shares of common stock outstanding, and approximately 0.1% of such shares were available for sale without restriction. When the registration statement that includes this prospectus is declared effective, all 4,870,281 shares being offered hereby will be available for resale. The resale of a substantial number of shares of our common stock in the public market pursuant to this offering, and afterwards, could adversely affect the market price for our common stock and make it more difficult for you to sell our shares at times and prices that you feel are appropriate. Furthermore, we expect that, because there is a large number of shares registered hereunder, selling stockholders will continue to offer shares covered by this registration statement for a significant period of time, the precise duration of which we cannot predict. Accordingly, the adverse market and price pressures resulting from this offering may continue for an extended period of time and continued negative pressure on the market price of our common stock could have a material adverse effect on our ability to raise additional equity capital.

***Because we became public by means of a reverse merger, we may not be able to attract the attention of major brokerage firms.***

Additional risks may exist as a result of our becoming a public reporting company through a “reverse merger.” Security analysts of major brokerage firms may not provide coverage of the Company. Because we became public through a reverse merger, there is no incentive to brokerage firms to recommend the purchase of our common stock. No assurance can be given that brokerage firms will want to provide analyst coverage of our Company in the future.

***We are subject to Sarbanes-Oxley and the reporting requirements of federal securities laws, which can be expensive.***

As a public reporting company, we are subject to the Sarbanes-Oxley Act of 2002, as well as the information and reporting requirements of the Securities Exchange Act of 1934, as amended, and other federal securities laws. The costs of compliance with the Sarbanes-Oxley Act and of preparing and filing annual and quarterly reports, proxy statements and other information with the SEC, and furnishing audited reports to stockholders, will cause our expenses to be higher than they would be if ZIOPHARM had remained privately held and did not consummate the Merger.

***Our common stock trades only in an illiquid trading market.***

Trading of our common stock is conducted on the over-the-counter bulletin board. This has an adverse effect on the liquidity of our common stock, not only in terms of the number of shares that can be bought and sold at a given price, but also through delays in the timing of transactions and reduction in security analysts’ and the media’s coverage of our Company and its common stock. This may result in lower prices for our common stock than might otherwise be obtained and could also result in a larger spread between the bid and asked prices for our common stock.

***There is not now, and there may not ever be an active market for shares of our common stock.***

In general, there has been very little trading activity in shares of the Company’s common stock. The small trading volume will likely make it difficult for our stockholders to sell their shares as and when they choose. Furthermore, small trading volumes generally depress market prices. As a result, you may not always be able to resell shares of our common stock publicly at the time and prices that you feel are fair or appropriate.



***Because it is a “penny stock,” you may have difficulty selling shares of our common stock.***

Our common stock is a “penny stock” and is therefore subject to the requirements of Rule 15g-9 under the Securities and Exchange Act of 1934. Under this rule, broker-dealers who sell penny stocks must provide purchasers of these stocks with a standardized risk-disclosure document prepared by the Securities and Exchange Commission. Under applicable regulations, our common stock will generally remain a “penny stock” until and for such time as it meets certain per share price requirements (as determined in accordance with SEC regulations), or until we meet certain net asset or revenue thresholds. These thresholds include the possession of net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$2,000,000 in the event we have been operating for at least three years or \$5,000,000 in the event we have been operating for fewer than three years, and the recognition of average revenues equal to at least \$6,000,000 for each of the last three years. We do not anticipate meeting any of the foregoing thresholds in the foreseeable future.

The penny stock rules severely limit the liquidity of securities in the secondary market, and many brokers choose not to participate in penny stock transactions. As a result, there is generally less trading in penny stocks. If you become a holder of our common stock, you may not always be able to resell shares of our common stock publicly at the time and prices that you feel are fair or appropriate.

***We have never paid dividends and do not intend to do so for the foreseeable future.***

We have never paid dividends on our capital stock and we do not anticipate that we will pay any dividends for the foreseeable future. Accordingly, any return on an investment in our Company will be realized, if at all, only when you sell shares of our common stock.

## NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in this prospectus that are forward-looking in nature are based on the current beliefs of our management as well as assumptions made by and information currently available to management, including statements related to the markets for our products, general trends in our operations or financial results, plans, expectations, estimates and beliefs. In addition, when used in this prospectus, the words “may,” “could,” “should,” “anticipate,” “believe,” “estimate,” “expect,” “intend,” “plan,” “predict” and similar expressions and their variants, as they relate to us or our management, may identify forward-looking statements. These statements reflect our judgment as of the date of this prospectus with respect to future events, the outcome of which is subject to risks, which may have a significant impact on our business, operating results or financial condition. You are cautioned that these forward-looking statements are inherently uncertain. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results or outcomes may vary materially from those described herein. We undertake no obligation to update forward-looking statements. The risks identified under the heading “Risk Factors” in this prospectus, among others, may impact forward-looking statements contained in this prospectus.

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

***Plan of Operation***

Our plan of operation for the 12-month period commencing on the date of this prospectus, is to continue implementing our business strategy, including the clinical development of our two lead product candidates, ZIO-101 and ZIO-201. We also intend to expand our drug candidate portfolio by seeking additional drug candidates through in-licensing arrangements. We expect our principal expenditures during the next 12 months to include:

- fees and milestone payments required under the license agreements relating to our existing product candidates;
- clinical trial expenses, including the costs incurred with respect to the conduct of clinical trials for ZIO-101 and ZIO-201 and preclinical costs associated with back-up candidates ZIO-102 and ZIO-202;
- costs related to the scale-up and manufacture of ZIO-101 and ZIO-201;
- rent for our facilities; and
- general corporate and working capital, including general and administrative expenses.

As part of our plan for additional employees, we anticipate hiring at least three to four additional full-time employees in medical, regulatory and administrative support. In addition, we intend to use senior advisors, consultants, clinical research organizations and third parties to perform certain aspects of product development, manufacturing, clinical and preclinical development, and regulatory and quality assurance functions.

At our current and desired pace of clinical development of our two product candidates, over the next 12 months we expect to spend approximately \$4.6 million on clinical trials (including milestone payments that we expect to be triggered under the license agreements relating to our product candidates), approximately \$3.7 million on manufacturing costs, \$215,000 on facilities rent, and approximately \$6.8 million on general corporate and working capital.

We believe we currently have sufficient capital to fund development and commercialization activities of ZIO-101 and ZIO-201 into the second quarter of 2006. Because our business does not generate any cash flow, however, we will need to raise additional capital to continue development of the product candidates beyond that time. We expect to raise such additional capital by either borrowing money or by selling shares of our capital stock. To the extent additional capital is not available when we need it, we may be forced to abandon our development and commercialization efforts, which would have a material adverse effect on the prospects of our business. Further, our assumptions relating the expected costs of development and commercialization and timeframe for completion are dependent on numerous factors other than available financing, including significant unforeseen delays in the clinical trial and regulatory approval process, which could be extremely costly. In addition, our estimates assume that we will be able to enroll a sufficient number of patients in each clinical trial.

***Product Candidate Development and Clinical Trials***

ZIO-101, organic arsenic, is being developed presently to treat advanced myeloma. As a follow-on to the ongoing phase I trials, a phase I/II trial in advanced multiple myeloma is in the advanced planning stage. With the completion of this trial in 2006, we expect to initiate a registration trial in advanced multiple myeloma. We will continue to explore the use of ZIO-101 in solid tumors as well as a phase II trial in advanced multiple myeloma using a different dosing regimen. Preclinical development will continue with a back-up compound designated as ZIO-102. Additional compounds are being synthesized under our agreement with the University of Texas M.D. Anderson Cancer Center and the Texas A&M University System. Technology transfer and scale-up for the commercial manufacture of the active pharmaceutical ingredient, its lyophilization, and final product specification will continue through the period leading to the expected registration trial in the first half of 2007.

ZIO-201, stabilized isophosphoramidate mustard, is being developed presently to treat advanced sarcoma. As follow-on to the ongoing phase I trial, a phase I/II trial or a phase II trial in advanced sarcoma is in the advanced planning stage. With the completion of this trial in 2006, we expect to initiate a registration trial in advanced sarcoma in the first half of 2007. We will explore the potential to test ZIO-201 in pediatric sarcoma in a phase II trial. Preclinical development will continue with back-up analogues, one of which we would expect to be designated ZIO-202. Technology transfer and scale-up for the commercial manufacture of the active pharmaceutical ingredient, its lyophilization, and final product specification will continue through the period leading to the expected registration trial in the first half of 2007.

***Off-Balance Sheet Arrangements***

We have not entered into any off-balance sheet arrangements.

## DESCRIPTION OF BUSINESS

### *General*

ZIOPHARM Oncology, Inc. is a development-stage company that is seeking to develop and commercialize a diverse, risk-sensitive portfolio of in-licensed cancer drugs that address unmet medical needs. Our management and advisors are focused on licensing proprietary drug candidate families that are related to cancer therapeutics on the market where the application of new biological understanding and our drug development expertise will lead to a lower risk for clinical development failure while expediting clinical registration. We expect to commercialize our products on our own in North America but recognize that promising clinical trial results in cancers with a high incidence and prevalence might also be addressed in a commercial partnership with another company with the requisite financial resources. Currently, we are in U.S. Phase I studies for two product candidates known as ZIO-101 and ZIO-201. We currently intend to continue with clinical development of ZIO-101 for advanced myeloma and ZIO-201 for advanced sarcoma.

Our corporate office is located at 1180 Avenue of the Americas, 19th Floor, New York, NY 10036, and our telephone number is (646) 214-0700. Our business and development operations are located in Charlestown, Massachusetts.

### *Cancer Overview*

Cancer is a group of diseases characterized by either the runaway growth of cells or the failure of cells to die normally. Often, cancer cells spread to distant parts of the body, where they can form new tumors. Cancer can arise in any organ of the body and, according to the American Cancer Society, strikes one of every two American men and one of every three American women at some point in their lives.

It is reported that there are more than 100 different varieties of cancer divided into six major categories. Carcinomas, the most common type of cancer, originate in tissues that cover a surface or line a cavity of the body. Sarcomas begin in tissue that connects, supports or surrounds other tissues and organs. Lymphomas are cancers of the lymph system, the circulatory system that bathes and cleanses the body's cells. Leukemias involve blood-forming tissues and blood cells. As their name indicates, brain tumors are cancers that begin in the brain, and skin cancers, including dangerous melanomas, originate in the skin. Cancers are considered metastatic if they spread via the blood or lymphatic system to other parts of the body to form secondary tumors.

Cancer is caused by a series of mutations, or alterations, in genes that control cells' ability to grow and divide. Some mutations are inherited; others arise from environmental factors such as smoking or exposure to chemicals, radiation, or viruses that damage cells' DNA. The mutations cause cells to divide relentlessly or lose their normal ability to die.

The cost of cancer to the healthcare system is significant. The National Institute of Health estimates that the overall cost of cancer in 2003 was \$189.5 billion. This cost includes an estimate of \$64.2 billion in direct medical expenses, \$16.3 billion in indirect morbidity costs, and \$109 billion in indirect mortality costs.

### *Cancer Treatments*

Major treatments for cancer include surgery, radiotherapy, and chemotherapy. There are many different drugs that are used to treat cancer, including cytotoxics or antineoplastics, hormones, and biologics. There are also many experimental treatments under investigation including radiation sensitizers, vaccines, gene therapy and immunotoxins. We believe cancer treatment represents a significant unmet medical need.

*Radiotherapy.* Also called radiation therapy, radiotherapy is the treatment of cancer and other diseases with ionizing radiation. Ionizing radiation deposits energy that injures or destroys cells in the area being treated - the target tissue - by damaging their genetic material, making it impossible for these cells to continue growing. Although radiation damages both cancer cells and normal cells, the latter are able to repair themselves and regain proper function. Radiotherapy may be used to treat localized solid tumors, such as cancers of the skin, tongue, larynx, brain, breast, or uterine cervix. It can also be used to treat leukemia and lymphoma.

Scientists are also looking for ways to increase the effectiveness of radiation therapy. Two types of investigational drugs are being studied for their effect on cells exposed to radiation. Radiosensitizers increase the damage done to tumor cells by radiation; and radioprotectors protect normal tissues from the effects of radiation.

*Cytotoxics.* Cytotoxics are anticancer drugs that destroy cancer cells by stopping them from multiplying. Healthy cells can also be harmed with the use of cytotoxics, especially those that divide quickly. Harm to healthy cells is what causes side effects. These cells usually repair themselves after chemotherapy. Chemotherapy can be used for different purposes which include curing cancer (when the patient remains free of evidence of cancer cells), controlling cancer (by preventing the cancer from spreading), and to relieving symptoms of cancer (such as pain, helping patients live more comfortably).

Cytotoxic agents act primarily on macromolecular synthesis, repair or activity, which affects the production or function of DNA, RNA or protein. Although there are many cytotoxic agents, there is a considerable amount of overlap in their mechanisms of action. As such, the choice of a particular agent or group of agents is generally not a consequence of a prior prediction of antitumor activity by the drug, but instead the result of empirical clinical trials.

*Supportive Care.* The treatment of a cancer may include the use of chemotherapy, radiation therapy, biologic response modifiers, surgery, or some combination of all of these or other therapeutic options. All of these treatment options are directed at killing or eradicating the cancer that exists in the patient's body. Unfortunately, the delivery of many cancer therapies adversely affects the body's normal organs. The undesired consequence of harming an organ not involved with cancer is referred to as a complication of treatment or a side effect.

Side effects, or complications of treatment cause inconvenience, discomfort, and occasionally, may even be fatal. Additionally and perhaps more importantly, side effects may also prevent doctors from delivering the prescribed dose of therapy at the specific time and schedule of the treatment plan. Therefore, side effects not only cause discomfort, but may also limit a patient's ability to achieve the best outcome from treatment by preventing the delivery of therapy at its optimal dose and time.

In addition to anemia, fatigue, hair-loss, reduction in blood platelets and white and red blood cells, and bone pain, one of the most common side effects of chemotherapy is nausea and vomiting. Several drugs have been developed to help prevent and control chemotherapy-induced nausea and vomiting, which have led to improvements in the management of symptoms associated with this cancer treatment, allowing for greater accuracy and consistency concerning the administration of cancer treatment. Nausea and vomiting induced by chemotherapy are treated by drugs such as 5HT3 receptor antagonists, like ondansetron, which is a selective blocking agent of the hormone serotonin.

## Product Candidates

### *ZIO-101*

*General.* ZIO-101 is an organic arsenic compound covered by an issued U.S. patent and applications internationally. A form of commercially available inorganic arsenic (arsenic trioxide (Trisenox<sup>®</sup>) or ATO) has been approved for the treatment of acute promyelocytic leukemia (APL), a precancerous condition, and is on the compendia listing for the therapy of multiple myeloma as well as having been studied for the treatment of various other cancers. Nevertheless, ATO has been shown to be toxic to the heart and liver, limiting its use as an anti-cancer agent. Inorganic arsenic has also been shown to cause cancer of the skin and lung in humans. The toxicity of arsenic generally is correlated to its accumulation in organs and tissues. Our preclinical studies demonstrated that ZIO-101 (and organic arsenic in general) is considerably less toxic than inorganic arsenic, particularly with regard to heart toxicity.

*In vitro* testing of ZIO-101 using the National Cancer Institute's human cancer cell panel detected activity against lung, colon, brain, melanoma, ovarian and kidney cancer. Moderate activity was detected against breast and prostate cancer.

In addition to solid tumors, *in vitro* testing in both the National Cancer Institute's cancer cell panel and *in vivo* testing in a leukemia animal model demonstrated substantial activity against hematological cancers (cancers of the blood and blood-forming tissues) such as leukemia, lymphoma, myelodysplastic syndromes and multiple myeloma. Leukemia is a cancer that begins in blood-forming tissue such as the bone marrow and causes large numbers of blood cells to be produced and enter the bloodstream. Lymphomas are cancers that begin in cells of the immune system. Myelodysplastic syndromes, also called preleukemia or smoldering leukemia, are diseases in which the bone marrow does not function normally.

*Clinical Lead Indications: Multiple Myeloma.* Multiple myeloma, a common hematological malignancy, is among a group of plasma cell cancers associated with the overproduction of monoclonal immunoglobulin (M-protein). Primary treatment for multiple myeloma is systemic chemotherapy. Approximately 15-20% of patients who have the disease are resistant to aggressive primary treatment. Even with prompt institution of systemic treatment, the drug-sensitive phase of the disease usually lasts only two to three years for most patients before resistance appears (although in a small patient population sensitivity to systemic therapy can last for five to ten years). The median survival of patients with progressive or resistant disease is three to four years.

The standard of care for progressive or resistant multiple myeloma may be in transition. Recent clinical trials offer evidence supporting the use of thalidomides and proteasome inhibitors, either alone or in combination with other agents. Unfortunately, neither treatment is universally effective, each can be quite toxic, and all patients who receive them will likely develop progressive disease. As a result, we expect that the medical community will continue to embrace new agents that provide incremental benefit to patients without undue toxicity. We are hopeful that the novel mechanism of action of ZIO-101, combined with its anticipated safety profile, will encourage its use in the treatment of advanced myeloma and possibly a variety of other tumors. Currently, we expect that advanced myeloma will be the indication for which it is most likely to seek initial regulatory approval for ZIO-101.

*Clinical Development Plan for ZIO-101.* We have commenced two phase I clinical trials (hematological and solid tumor) at the University of Texas M.D. Anderson Cancer Center using ZIO-101 in refractory disease. Phase I testing is primarily focused on assessing drug safety; however, one patient in the solid tumor trial has evidenced a response without toxicity (as reported by the investigator). The starting dose in both phase I trials was about 14 times the labeled dose of inorganic arsenic. The dose has been escalated to the next level in one trial, and to date has been well tolerated.

The goal of the phase I trials are to determine dose-limiting toxicity and maximum tolerated dose. In addition, assessments of pharmacokinetic data will be obtained along with any indication of efficacy. We expect to follow these phase I trials with a phase I/II trial in advanced myeloma. We currently anticipate reporting some phase I/II trial results in the first half of 2006. A second phase II trial in myeloma is under consideration for initiation in early 2006. It is expected that a pivotal trial in multiple myeloma would begin in the first half of 2007.

The solid tumor trial is seeking to confirm data collected during preclinical studies that indicated activity in a variety of solid tumors. While the current focus for product registration is myeloma, these phase I study results will be instructive for further development plans in solid tumors.

### *ZIO-201*

*General.* ZIO-201, or isophosphoramide mustard (IPM), is a proprietary stabilized metabolite of ifosfamide that is also related to cyclophosphamide. A patent application for pharmaceutical composition has been filed. Cyclophosphamide and ifosfamide are alkylating agents. Cyclophosphamide is the most widely used alkylating agent in cancer therapy and is used to treat breast cancer and non-Hodgkin's lymphoma. Ifosfamide has been shown to be effective in high dose by itself, or in combination in treating sarcoma and lymphoma. Although ifosfamide-based treatment generally represents the standard of care for sarcoma, it is not licensed for this indication by the FDA.

Our preclinical studies have shown that, in animal and laboratory models, IPM evidences activity against leukemia and solid tumors. These studies also indicate that ZIO-201 has a better pharmacokinetic and safety profile than ifosfamide or cyclophosphamide, offering the possibility of safer and more efficacious therapy with ZIO-201.

Ifosfamide is metabolized to IPM. In addition to IPM, another metabolite of ifosfamide is acrolein, which is toxic to the kidneys and bladder. The presence of acrolein can mandate extensive in-hospital hydration and the administration of a protective agent called Mesna<sup>®</sup>, which is inconvenient and expensive. Chloroacetaldehyde is another metabolite of ifosfamide and is toxic to the central nervous system, causing "fuzzy brain" syndrome for which there is currently no protective measure. Similar toxicity concerns pertain to high-dose cyclophosphamide, which is widely used in bone marrow and blood cell transplantation. Because ZIO-201 is independently active—without acrolein or chloroacetaldehyde metabolites—the Company believes that the administration of ZIO-201 may avoid the toxicities of ifosfamide and cyclophosphamide without compromising efficacy.

In addition to anticipated lower toxicity, ZIO-201 may have other advantages over ifosfamide and cyclophosphamide. ZIO-201 likely cross-links DNA differently than ifosfamide or cyclophosphamide metabolites, resulting in a different activity profile. Moreover, in some instances ZIO-201 appears to show activity in ifosfamide- and/or cyclophosphamide-resistant cancer cells.

*Potential Lead Indications for ZIO-201: Sarcomas.* Sarcomas are cancers of the bone, cartilage, fat, muscle, blood vessels, or other connective or supportive tissue. Soft tissue sarcomas, the expected lead indication for ZIO-201, are relatively rare; there are 8,000 to 10,000 new cases each year in adults in the United States. On the other hand, in children, soft tissue sarcomas account for approximately 10% of all childhood cancers. There are more than 50 histological or tissue types of soft tissue sarcomas. The prognosis for patients with adult soft tissue sarcomas depends on several factors, including the patient's age, size of the primary tumor, histological grade, and stage of the tumor. Factors associated with a poorer prognosis include age greater than 60 years, tumors larger than five centimeters, and high-grade histology. While small, low-grade tumors are usually curable by surgery alone, higher-grade or larger sarcomas are associated with higher local treatment failure rates and increased metastatic potential. Ifosfamide-based chemotherapy is a frequent standard of care for the treatment of metastatic tumors. It may also be used in the adjuvant setting for high-risk primary tumors.

ZIO-201 may be a useful agent that, either alone or in combination, can deliver therapeutic activity with fewer to no side effects of the type that have been associated with ifosfamide. In the United States, ifosfamide is regularly included in combination regimens for the treatment of sarcomas, testicular cancers, head and neck cancer and some types of non-Hodgkin's lymphomas. We believe that ZIO-201 may be able to replace ifosfamide in any or all of these combination protocols.



*Clinical Development Plan for ZIO-201.* A phase I clinical trial is being conducted at two centers with the objective of establishing maximum tolerated dose. The current dose level in this phase I trial is believed to be comparable to a relatively high dose of ifosfamide. The drug is being administered without Mesna<sup>®</sup>. Furthermore, one patient has evidence of stable disease. We intend to initiate a phase I/II trial in advanced sarcoma and expects early results in the first half of 2006. We are also planning to implement a high dose phase I study in sarcoma and is exploring a phase II study in pediatric sarcoma. These trials would support the design and implementation of a phase III registration study in the first half of 2007.

### **Competition**

The development and commercialization for new products to treat cancer is highly competitive, and there will be considerable competition from major pharmaceutical, biotechnology, and specialty cancer companies. Many of our competitors have substantially more resources than the Company, including both financial and technical. In addition, many of these companies have more experience than the Company in preclinical and clinical development, manufacturing, regulatory, and global commercialization. The Company is also competing with academic institutions, governmental agencies and private organizations that are conducting research in the field of cancer. Competition for highly qualified employees is intense.

There are a number of companies developing chemotherapies for cancer and in particular for multiple myeloma and sarcoma. Millennium Pharmaceuticals, Inc. and Celgene Corporation have marketed products to treat multiple myeloma, and many other product candidates are in clinical trials and preclinical research. There are a more limited number of competitors developing new approaches to treat sarcoma, Ariad Pharmaceuticals principal among them.

In addition to competitive companies, treatments for cancer that compete with our product candidates are summarized under the caption "Cancer Treatments."

### **License Agreements and Intellectual Property**

Our goal is to obtain, maintain and enforce patent protection for our products, formulations, processes, methods and other proprietary technologies, to preserve our trade secrets, and to operate without infringing the proprietary rights of other parties, both in the United States and in other countries. Our policy is to actively seek the broadest possible intellectual property protection for our product candidates through a combination of contractual arrangements and patents, both in the United States and abroad.

*Patent and Technology License Agreement — University of Texas M. D. Anderson Cancer Center and the Texas A&M University System.* On August 24, 2004, the Company entered into a Patent and Technology License Agreement with The Board of Regents of the University of Texas System, acting on behalf of the University of Texas M. D. Anderson Cancer Center and the Texas A&M University System (collectively, the "Licensors"). Under this agreement, the Company was granted an exclusive, worldwide license to rights (including rights to U.S. and foreign patent and patent applications and related improvements and know-how) for the manufacture and commercialization of two classes of organic arsenicals (water- and lipid-based) for human and animal use. The class of water-based organic arsenicals includes ZIO-101.

In October 2004, we received a notice of allowance for U.S. Patent Application No. 10/337969, entitled "S-dimethylarsino-thiosuccinic acid S-dimethylarsino-2-thiobenzoic acid S-(simethylarsino) glutathione as treatments for cancer." The patent was granted on June 28, 2005. The patent application claims both therapeutic uses and pharmaceutical compositions containing a novel class of organic arsenicals, including ZIO-101, for the treatment of cancer.

As partial consideration for the license rights obtained by us, we paid the Licensors an upfront, nonrefundable \$125,000 fee and issued 250,487 shares of our common stock to University of Texas M. D. Anderson Cancer Center and granted it an option to purchase an additional 50,222 shares of our common stock for approximately \$0.002 per share (such share amounts and option exercise price have been adjusted to reflect to the Merger). The option will vest and become exercisable with respect to 50% of its shares upon completion of the dosing of the last patient for both the blood and solid tumor phase I trials for ZIO-101. Another 25% of the shares subject to the option will vest upon enrollment of the first patient in a multi-center pivotal clinical trial (i.e., a human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable New Drug Application (“NDA”) for ZIO-101, with the remaining 25% vesting upon the filing of an Investigational New Drug (“IND”) for ZIO-101. As additional consideration for the license, the Licensors are entitled to receive up to an aggregate of \$4.85 million in cash payments, payable in varying amounts, upon the achievement of certain milestones, including \$100,000 that we paid upon the commencement of the phase I clinical trial for ZIO-101 in May 2005. The Licensors are entitled to receive royalty payments from sales of a licensed product (should such a product be approved for commercial sale), as well and a portion of any fees that we may receive from a sublicensee. Finally, the license agreement provides that we will enter into two separate sponsored research agreements with the Licensors, each of which will require that we make annual payments of \$100,000 for no less than two years. We will have the exclusive right to all intellectual property rights resulting from such research pursuant to the terms of the agreements.

The agreement also contains other provisions customary and common in similar agreements within the industry, such as our right to sublicense our rights under the agreement. Nevertheless, if we sublicense our rights prior to the commencement of a pivotal clinical trial (i.e., a human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable NDA), the Licensors will generally be entitled to receive a share of the payments we receive in exchange for the sublicense (subject to certain exceptions).

*License Agreement with DEKK-Tec, Inc.* On October 15, 2004, we entered into a license agreement with DEKK-Tec, Inc., pursuant to which we were granted an exclusive, worldwide license to the second of our lead product candidates, ZIO-201.

As partial consideration for the license rights obtained by us, we paid DEKK-Tec an upfront, non-refundable \$50,000 fee. In addition, DEKK-Tec is entitled to receive cash payments in the aggregate amount of up to \$3.9 million, which are payable in varying amounts upon the occurrence of certain milestone events. The majority of these milestone payments will be creditable against future royalty payments, as referenced below. We also issued DEKK-Tec an option to purchase up to 27,616 shares of our common stock for approximately \$0.02 per share (such share amount and option exercise price have been adjusted to reflect to the Merger), which option vested with respect to 6,904 post-Merger shares upon the execution of the license agreement. The option will vest with respect to the remaining shares upon certain milestone events culminating with final FDA approval of the first NDA submitted by us (or by our sublicensee) for ZIO-201. Finally, DEKK-Tec also is entitled to receive royalty payments on the sales of ZIO-201 should it be approved for commercial sale. The license agreement also contains other provisions customary and common in similar agreements within the industry.

*Option and Research Agreements with Southern Research Institute (“SRI”).* On December 22, 2004, we entered into an Option Agreement with SRI, pursuant to which we were granted an exclusive option to obtain an exclusive license to SRI’s interest in certain intellectual property, including exclusive rights related to certain isophosphoramidate mustard analogs. Also on December 22, 2004, we entered into a Research Agreement with SRI pursuant to which we agreed to spend a sum not to exceed \$200,000 between the execution of the agreement and December 21, 2006, including a \$25,000 payment that we made simultaneously with the execution of the agreement, to fund research and development work by SRI in the field of isophosphoramidate mustard analogs. Under the terms of the option agreement, our exclusive right to exercise the option will expire 60 days after the termination or expiration of the SRI’s research and development work in the field of isophosphoramidate mustard analogs, and the delivery of the certain required reports.

*Other Intellectual Property Rights and Protection.* We depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as those of our advisors, consultants and other contractors, none of which is patentable. To help protect proprietary know-how, which is not patentable, and for inventions for which patents may be difficult to enforce, we currently rely, and in the future will continue to rely, on trade secret protection and confidentiality agreements to protect our interests. To this end, we generally require employees, consultants, advisors and other contractors to enter into confidentiality agreements that 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.

### ***Governmental Regulation***

The research, development, testing, manufacture, labeling, promotion, advertising, distribution, and marketing, among other things, of our products are extensively regulated by governmental authorities in the United States and other countries. In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or the “FDCA,” and its implementing regulations. Failure to comply with the applicable U.S. requirements may subject us to administrative or judicial sanctions, such as FDA refusal to approve pending New Drug Applications, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, and/or criminal prosecution.

*Drug Approval Process.* None of our drugs may be marketed in the U.S. until the drug has received FDA approval. The steps required before a drug may be marketed in the U.S. include:

- preclinical laboratory tests, animal studies, and formulation studies;
- submission to the FDA of an IND for human clinical testing, which must become effective before human clinical trials may begin;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug for each indication;
- submission to the FDA of an NDA;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current good manufacturing practices, or “cGMPs”; and
- FDA review and approval of the NDA.

Preclinical tests include laboratory evaluation of product chemistry, toxicity, and formulation, as well as animal studies. The conduct of the preclinical tests and formulation of the compounds for testing must comply with federal regulations and requirements. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an IND, which must become effective before human clinical trials may begin. An IND will automatically become effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions about issues such as the conduct of the trials as outlined in the IND. In such a case, the IND sponsor and the FDA must resolve any outstanding FDA concerns or questions before clinical trials can proceed. The Company cannot be sure that submission of an IND will result in the FDA allowing clinical trials to begin.

Clinical trials involve the administration of the investigational drug to human subjects under the supervision of qualified investigators. Clinical trials are conducted under protocols detailing the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND.

Clinical trials typically are conducted in three sequential phases, but the phases may overlap. The study protocol and informed consent information for study subjects in clinical trials must also be approved by an Institutional Review Board for each institution where the trials will be conducted. Study subjects must sign an informed consent form before participating in a clinical trial. Phase I usually involves the initial introduction of the investigational drug into people to evaluate its short-term safety, dosage tolerance, metabolism, pharmacokinetics and pharmacologic actions, and, if possible, to gain an early indication of its effectiveness. Phase II usually involves trials in a limited patient population to (i) evaluate dosage tolerance and appropriate dosage; (ii) identify possible adverse effects and safety risks; and (iii) evaluate preliminarily the efficacy of the drug for specific indications. Phase III trials usually further evaluate clinical efficacy and test further for safety by using the drug in its final form in an expanded patient population. There can be no assurance that phase I, phase II, or phase III testing will be completed successfully within any specified period of time, if at all. Furthermore, a company or the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

The FDCA permits FDA and the IND sponsor to agree in writing on the design and size of clinical studies intended to form the primary basis of an effectiveness claim in an NDA application. This process is known as Special Protocol Assessment. These agreements may not be changed after the clinical studies begin, except in limited circumstances.

Assuming successful completion of the required clinical testing, the results of the preclinical studies and of the clinical studies, together with other detailed information, including information on the manufacture and composition of the drug, are submitted to the FDA in the form of an NDA requesting approval to market the product for one or more indications. The testing and approval process requires substantial time, effort, and financial resources. The agencies review the application and may deem it to be inadequate to support the registration, and companies cannot be sure that any approval will be granted on a timely basis, if at all. The FDA may also refer the application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

The FDA has various programs, including fast track, priority review, and accelerated approval, that are intended to expedite or simplify the process for reviewing drugs, and/or provide for approval on the basis surrogate endpoints. Generally, drugs that may be eligible for one or more of these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that provide meaningful benefit over existing treatments. A company cannot be sure that any of its drugs will qualify for any of these programs, or that, if a drug does qualify, that the review time will be reduced.

Section 505(b)(2) of the FDCA allows the FDA to approve a follow-on drug on the basis of data in the scientific literature or a prior FDA approval of an NDA for a related drug. This procedure potentially makes it easier for generic drug manufacturers to obtain rapid approval of new forms of drugs based on proprietary data of the original drug manufacturer.

Before approving an NDA, the FDA usually will inspect the facility or the facilities at which the drug is manufactured and will not approve the product unless cGMP compliance is satisfactory. If the FDA evaluates the NDA and the manufacturing facilities as acceptable, the FDA may issue an approval letter, or in some cases, an approvable letter followed by an approval letter. Both letters usually contain a number of conditions that must be met in order to secure final approval of the NDA. When and if those conditions have been met to the FDA's satisfaction, the FDA will issue an approval letter. The approval letter authorizes commercial marketing of the drug for specific indications. As a condition of NDA approval, the FDA may require post-marketing testing and surveillance to monitor the drug's safety or efficacy, or impose other conditions.

After approval, certain changes to the approved product, such as adding new indications, making certain manufacturing changes, or making certain additional labeling claims, are subject to further FDA review and approval. Before a company can market products for additional indications, it must obtain additional approvals from FDA. Obtaining approval for a new indication generally requires that additional clinical studies be conducted. A company cannot be sure that any additional approval for new indications for any product candidate will be approved on a timely basis, or at all.

*Post-Approval Requirements.* Often times, even after a drug has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies. If such post-approval conditions are not satisfied, the FDA may withdraw its approval of the drug. In addition, holders of an approved NDA are required to: (i) report certain adverse reactions to the FDA, (ii) comply with certain requirements concerning advertising and promotional labeling for their products, and (iii) continue to have quality control and manufacturing procedures conform to cGMP after approval. The FDA periodically inspects the sponsor's records related to safety reporting and/or manufacturing facilities; this latter effort includes assessment of compliance with cGMP. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. We intend to use third party manufacturers to produce our products in clinical and commercial quantities, and future FDA inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution, or require substantial resources to correct. In addition, discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including withdrawal of the product from the market.

### ***Employees***

As of the date of this current report, we have 11 employees, all of which are full-time employees. We intend to hire an additional three to four employees prior to the end of 2005.

### ***Description of Property***

Our corporate office is located at 1180 Avenue of the Americas, 19th Floor, New York, NY 10036. The New York office space is subject to a five-year lease agreement that expires in June 2010. Under the terms of the lease, we lease approximately 2,580 square feet and are required to make monthly rental payments of approximately \$10,100 until December 31, 2007, with such payments increasing to approximately \$11,000 thereafter through the remainder of the term of the lease. Our business and development operations are located as 197 Eighth Street, Suite 300, Charlestown, Massachusetts 02129. The Charlestown office space is subject to a five-year lease agreement that expires in October 2009. Under the terms of the lease, we lease approximately 2,800 square feet and are required to make monthly rental payments that range from \$4,200 during the first year of the lease to \$4,900 during the last year of the lease. Effective November 2005, we amended our lease in Charlestown, Massachusetts to expand our commercial space by approximately 830 square feet.

### ***Legal Proceedings***

We are not currently involved in any material legal proceedings.

## MANAGEMENT

### *Directors and Executive Officers*

At the effective time of the Merger, our board of directors was reconstituted by the appointment of Jonathan Lewis, Richard Bagley, Murray Brennan, James Cannon, Senator Wyche Fowler, Jr., Gary S. Fragin, Timothy McInerney and Michael Weiser as directors (all of whom were directors of ZIOPHARM immediately prior to the Merger), and the resignations of David C. Olson and David Floor from their roles as our directors. Our executive management team was also reconstituted and David C. Olson resigned from his positions as our President, Treasurer and Secretary. The following table sets forth the name, age and position of each of our directors and executive officers as of the date of this prospectus.

<u>Name</u>	<u>Age</u>	<u>Positions</u>
Jonathan Lewis, M.D., Ph.D.	47	Director & Chief Executive Officer
Richard Bagley	62	Director, President, Chief Operating Officer & Treasurer
Robert Peter Gale, M.D., Ph.D, DSc.	60	Senior Vice President Research
Murray Brennan, M.D.	65	Director
James Cannon	67	Director
Senator Wyche Fowler, Jr., JD	64	Director
Gary S. Fragin	59	Director
Timothy McInerney	44	Director
Michael Weiser, M.D., Ph.D.	43	Director

The biographies of the directors and executive officers listed above are set forth below, all of whom began serving us in their respective positions at the effective time of the Merger.

**Jonathan Lewis** is our Chief Executive Officer and a director, and has served as Chief Executive Officer and a director of ZIOPHARM since January 2004. From July 1994 until June 2001, Dr. Lewis served as Professor of Surgery and Medicine at Memorial Sloan-Kettering Cancer Center and he served as Chief Medical Officer and Chairman of the Medical Board at Antigenics, Inc. from June 2000 until November 2003. He serves as a director on the Board of POPPA (the Police Organization Providing Peer Assistance) of the New York Police Department (NYPD).

**Richard Bagley** serves as our President, Chief Operating Officer, Treasurer and Director and has served as President and Chief Operating Officer of ZIOPHARM since July 2004 and as ZIOPHARM's Treasurer since March 2005. Prior to that, he served as a consultant to ZIOPHARM while serving as a senior advisor to The University of Texas M.D. Anderson Cancer Center. Mr. Bagley served in several capacities at Squibb Corporation from 1985-1990, including as President E. R. Squibb & Sons, U.S. in 1988 and 1989. He served as Director, Chief Executive Officer and President of ImmuLogic Pharmaceutical Corporation from 1990 to 1994, as Director, Chief Executive Officer and Chairman of ProScript, Inc. from 1994 to 1998, as Director, President and Chief Executive Officer of AltaRex Corp. from 1998 to May 2003, and thereafter as a part time consultant and advisor in life sciences until joining ZIOPHARM full time. Mr. Bagley initiated a career in pharmaceuticals in 1968 with Smith Kline and French Laboratories, leaving in 1985 after serving as President of the consumer products division.

**Robert Peter Gale** is our Senior Vice President Research and has served ZIOPHARM in that capacity since January 2004. Dr. Gale is also on the medical staff of UCLA School of Medicine in the Department of Medicine, Division of Hematology and Oncology and is Visiting Professor of Hematology at Imperial College of Science, Technology and Medicine, Hammersmith Hospital, London. Dr. Gale served as Senior Vice President for Medical Affairs at Antigenics, Inc. from April 2001 until May 2002 and as a consultant to that company from May 2002 through May 2004.

**Murray Brennan** is a director of the Company and has served as a member of ZIOPHARM's board of directors since December 22, 2004. Dr. Brennan has been Chairman of Memorial Sloan-Kettering Cancer Center's Department of Surgery since 1985, and is a former Vice President of the American College of Surgeons, a position he held from 2004 to 2005. Dr. Brennan is also a member of the National Academy of Sciences. He served as director of the American Board of Surgery from 1984 to 1990, Chairman of the American College of Surgeons' Commission on Cancer from 1992 to 1994, President of the Society of Surgical Oncology from 1995 to 1996, and President of the American Surgical Association from 2002 to 2003.

**James Cannon** is a director of the Company and has served as a member of ZIOPHARM's board of directors since December 22, 2004. Mr. Cannon is Vice Chairman, Chief Financial Officer and a member of the board of directors of BBDO Worldwide. Mr. Cannon joined BBDO in 1967, was appointed Chief Financial Officer of the agency in 1984, and was elected to its board of directors in 1985. In 1986, Mr. Cannon was appointed Comptroller and a member of the board of directors of Omnicom, a company affiliated with BBDO Worldwide, and served in those capacities through May 2002. In 1987, Mr. Cannon also served as Director of Financial Operations of the Omnicom Group from 1987 to 1989, when he rejoined BBDO Worldwide as Executive Vice President and Chief Financial Officer. Mr. Cannon was appointed Vice Chairman of BBDO Worldwide in 1990.

**Senator Wyche Fowler, Jr.** is a director of the Company and has served as a member of ZIOPHARM's board of directors since December 22, 2004. Senator Fowler has been engaged in an international business and law practice since May 2001, and has served as chairman of the board of the Middle East Institute, a non-profit foundation in Washington, DC, since September 2001. Senator Fowler served as U.S. Senator from Georgia from January 1987 to January 1993, and had previously served in the U.S. House of Representatives from 1977 until his senatorial election. During his time in the U.S. Senate, Senator Fowler served as a member of the Senate Appropriations, Budget, Energy and Agriculture Committees. While in the U.S. House of Representatives, he was a member of the House Ways and Means and Foreign Affairs Committees, as well as the Select Committee on Intelligence. President Clinton appointed Senator Fowler as Ambassador to the Kingdom of Saudi Arabia in 1996, where he served through 2001. Senator Fowler is a member of the board of directors of Brandywine Realty Trust, a real estate investment trust traded on the New York Stock Exchange.

**Gary S. Fragin** is a director of the Company and has served as a member of ZIOPHARM's board of directors since December 22, 2004. Mr. Fragin is currently managing partner of Osborn Partners, LP and managing partner of Fragin Asset Management, LP, positions. Mr. Fragin was the General Partner and Chief Administrative/Operating Officer of Steinhardt Organization, prior to which he was a partner, Director of Trading and member of the Management Committee and Executive Committee at Oppenheimer and Co.

**Timothy McInerney** is a director of the Company and has served on ZIOPHARM board of directors since July 20, 2005. Since 1992, Mr. McInerney has been a Managing Director of Paramount BioCapital, Inc. where he oversees the overall distribution of Paramount's private equity product. Prior to 1992, Mr. McInerney was a research analyst focusing on the biotechnology industry at Ladenburg, Thalman & Co. Prior to that, Mr. McInerney held equity sales positions at Bear, Stearns & Co. and Shearson Lehman Brothers, Inc. Mr. McInerney also has worked in sales and marketing for Bristol-Myers Squibb.

**Michael Weiser** is a director of the Company and has served on ZIOPHARM's board of directors since ZIOPHARM's inception. Dr. Weiser is the Director of Research of Paramount BioCapital. In addition to serving on the boards of directors of several privately-held companies, Dr. Weiser currently serves on the board of directors of Manhattan Pharmaceuticals, Inc., VioQuest Pharmaceuticals, Inc., Hana BioSciences, Inc. and Chelsea Therapeutics, Inc., all publicly-traded biotechnology companies.

The board of directors of ZIOPHARM, the Company's wholly owned subsidiary after the Merger, consists of the same persons currently serving as Company directors. Furthermore, the executive officers of ZIOPHARM are the same persons currently serving in such roles for the Company.

There are no family relationships among our executive officers or directors.

#### ***Audit Committee***

Effective as of the Merger, we formed an audit committee of the board of directors. The current members of the audit committee are Mr. James Cannon, who serves as the committee's Chairman, and Messrs. Fragin and Bagley. The audit committee assists the Board of Directors in fulfilling its responsibilities of ensuring that management is maintaining an adequate system of internal controls such that there is reasonable assurance that assets are safeguarded and that financial reports are properly prepared; that there is consistent application of generally accepted accounting principles; and that there is compliance with management's policies and procedures. In performing these functions, the audit committee will meet periodically with the independent auditors and management to review their work and confirm that they are properly discharging their respective responsibilities. In addition, the audit committee recommends the independent auditors for appointment by the board of directors. Prior to the Merger, the Company did not have an audit committee. Two members of the audit committee are independent, as independence is defined in Rule 4200(a)(15) of the Nasdaq listing standards and Rule 10A-3 under the Securities Exchange Act of 1934.

The board of directors has determined that each of the audit committee members is able to read and understand fundamental financial statements. In addition, the board of directors has determined that at least one member of the audit committee, Mr. James Cannon, is an "audit committee financial expert" as that term is defined in Item 401(e)(2) of Regulation S-B promulgated under the Securities and Exchange Act of 1934. Mr. Cannon's relevant experience includes his current service as the Chief Financial Officer of BBDO Worldwide, a position he has held for the past 20 years, and his past service as director of financial operations of the Omnicom Group.



## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth the cash and non-cash compensation for awarded to or earned by (i) each individual serving as our chief executive officer during the fiscal year ended December 31, 2004; and (ii) each other individual that served as an executive officer of us or of ZIOPHARM, Inc. as of December 31, 2004 and who received in excess of \$100,000 in the form of salary and bonus during such fiscal year (collectively, the “named executives”).

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation Awards
		Salary (\$)	Bonus (\$)	Other Annual Compensation (\$)	Securities Underlying Options (#)
Dr. Jonathan Lewis, Chief Executive Officer <sup>(1)</sup>	2004	344,167	500,000 <sup>(2)</sup>	9,099	268,653
Richard Bagley, President, Chief Operating Officer and Treasurer <sup>(3)</sup>	2004	43,750	75,000 <sup>(4)</sup>	4,057	150,668
Dr. Robert Peter Gale, Senior Vice President Research <sup>(5)</sup>	2004	239,583	150,000 <sup>(6)</sup>	2,543	25,110
David C. Olson Former Chief Executive Officer <sup>(7)</sup>	2004	0	—	—	—
	2003	0	—	—	—
	2002	0	—	—	—

(1) Dr. Lewis became our Chief Executive Officer effective as of the Merger. Prior to the Merger, Dr. Lewis served as Chief Executive Officer of ZIOPHARM, Inc. since January 8, 2004.

(2) Includes a signing bonus of \$250,000 paid on February 23, 2004 and a guaranteed bonus of \$250,000 for work performed in fiscal 2004 that was paid on April 22, 2005.

(3) Mr. Bagley became the President, Chief Operating Officer and Treasurer of the Company effective as of the Merger. Prior to the Merger, Mr. Bagley served President and Chief Operating Officer of ZIOPHARM, Inc. since July 21, 2004 and as Treasurer of ZIOPHARM, Inc. since March, 2005.

(4) Mr. Bagley received a signing bonus of \$50,000 on July 15, 2004 and was due \$25,000, a portion of his guaranteed bonus, as of December 31, 2004.

(5) Dr. Gale became the Company’s Senior Vice President Research effective as of the Merger. Prior to the Merger, Dr. Gale served as Senior Vice President Research of ZIOPHARM, Inc. since January 15, 2004.

(6) Includes a guaranteed bonus of \$150,000 for work performed in fiscal 2004 that was paid on April 16, 2005.

(7) During fiscal year 2004, Mr. Olson received no cash compensation for services rendered in his capacity as our President, Chief Operating Officer and Treasurer. Mr. Olson resigned as an executive officer effective upon the Merger and, in connection with the Merger, we paid Mr. Olson a one-time fee of \$57,500 pursuant to his December 9, 2004 employment agreement.

## Stock Options

Upon the Merger, we assumed ZIOPHARM's 2003 Stock Option Plan as our Stock Option Plan. Since January 1, 2005, there have been 581,451 stock options awarded to the named executives through September 13, 2005, and all such grants have been made under the 2003 Stock Option Plan. Prior to the Merger, we had an Incentive Stock Option Plan of EasyWeb, Inc. under which 175,000 shares of common stock were reserved for issuance. That stock option plan was terminated effective as of the Merger.

### Option Grants in Last Fiscal Year

The following table sets forth the information concerning individual grants of stock options made by us or ZIOPHARM to the named executives during the fiscal year ended December 31, 2004. All share numbers and dollar amounts are set forth on a post-Merger basis.

Name	Number of Securities Underlying Options Granted (#)	Percent of Total Options Granted to Employees In Fiscal Year	Exercise of Base Price (\$/share)	Expiration Date(s)
Dr. Jonathan Lewis <sup>(1)</sup>	25,674	5.2%	\$0.08	1/8/14
Dr. Jonathan Lewis <sup>(1)</sup>	242,979	48.9%	\$0.08	1/27/14
Richard Bagley <sup>(2)</sup>	150,668	30.4%	\$1.70	7/1/14
Dr. Robert Peter Gale	2,567	0.5%	\$0.44	1/15/14
Dr. Robert Peter Gale	22,543	4.5%	\$0.44	1/27/14
David C. Olson	0	0%	—	—

(1) The number of securities underlying options is subject to an anti-dilution provision pursuant to which Dr. Lewis is entitled to purchase no less than 5% of the Company's common stock until such time as the Company has raised \$25 million in financing.

(2) The number of securities underlying options is subject to an anti-dilution provision pursuant to which Mr. Bagley is entitled to purchase no less than 3% of the Company's common stock until such time as the Company has raised \$25 million in financing.

### Aggregated Option Exercises and Fiscal Year-End Option Values

The following table sets forth the total amount of shares acquired by the named executives upon exercises of stock options during fiscal year 2004, the aggregate dollar value realized upon such exercise, the total number of securities underlying unexercised options held at the conclusion of fiscal year 2004 (separately identifying then-exercisable and unexercisable options), and the aggregate dollar value of in-the-money, unexercised options held at the conclusion of fiscal year 2004 (separately identifying then-exercisable and unexercisable options). All share numbers and dollar amounts with respect to Dr. Lewis and Gale and Mr. Bagley have been adjusted to reflect the exchange of ZIOPHARM, Inc. securities in the Merger.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)	Number of Unexercised Securities Underlying Options at FY- End (#) Exercisable / Unexercisable	Value of Unexercised In- the-Money Options at FY- End (\$) Exercisable / Unexercisable <sup>(1)</sup>
Dr. Jonathan Lewis	0	0	0 / 268,653	0 / 1,136,873
Richard Bagley	0	0	0 / 150,668	0 / 393,982
Dr. Robert Peter Gale	0	0	0 / 25,110	0 / 97,237
David C. Olson	0	0	0 / 0	0 / 0

- (1) Value of unexercised in-the-money options on December 31, 2004 is based on a \$2.16 per share value of ZIOPHARM, Inc. stock (\$4.31 per share of the Company's common stock on a post-Merger basis), as determined by the ZIOPHARM, Inc. Board of Directors at such time. As of December 31, 2004, no trades of the Company's common stock had been conducted on the Over-the-Counter Bulletin Board.

#### Employment and Change-in-Control Agreements

On December 9, 2004, we entered into an employment agreement with David C. Olson. Under the terms of the agreement, we agreed to pay Mr. Olson a one-time fee of \$100,000 if and when we completed a merger, acquisition, or related transaction. In connection with the Merger, Mr. Olson agreed to reduce this amount to the extent that our unconsolidated liabilities immediately following the Merger exceeded \$425,000. On December 10, 2004, we entered into a management consulting services agreement with David Floor. Under the terms of the agreement, we agreed to pay Mr. Floor a one-time fee of \$10,000 plus expenses, upon the closing of any transaction leaving us with a positive business direction and available finances. In connection with the Merger, we paid Messrs. Olson and Floor \$57,500 and \$100,000, respectively, under the terms of their agreements with us. Each such agreement was terminated in its entirety in connection with the Merger.

On January 8, 2004, ZIOPHARM entered into a three-year employment agreement with Dr. Jonathan Lewis, under which we succeeded to ZIOPHARM's rights and obligations upon the Merger. Under the agreement, Dr. Lewis receives an annual base salary of \$350,000 and a guaranteed annual bonus of \$250,000. In addition, Dr. Lewis is eligible to receive an annual discretionary bonus of up to 100% of his base salary, as determined by our board of directors. ZIOPHARM also paid Dr. Lewis a one-time bonus of \$250,000 upon execution of his employment agreement. Depending upon the events surrounding a possible termination of Dr. Lewis' employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Dr. Lewis' stock options may accelerate in whole or in part upon such termination. Dr. Lewis has agreed not to compete with us during the term of the employment agreement and for a one-year period thereafter, provided that we continue to pay his base salary and guaranteed bonus for that one-year period.

Pursuant to the terms of his employment agreement, we have granted Dr. Lewis options to purchase up to 410,603 shares of common stock at \$0.08 per share (adjusted to give effect to the Merger). The options vest in three equal annual installments, the first of which vested on January 8, 2005, with the remaining installments vesting on January 8, 2006 and January 8, 2007. The option is subject to anti-dilution protection from the issuance of equity securities in financing transactions to the extent that Dr. Lewis will maintain potential equity ownership of at least 5% of our stock until such time as we have received \$25 million in gross proceeds from such transactions. The options are governed by our 2003 Stock Option Plan.

On July 21, 2004, ZIOPHARM entered into a three-year employment agreement with Mr. Richard Bagley, under which we succeeded to ZIOPHARM's rights and obligations upon the Merger. Under the agreement, Mr. Bagley receives an annual base salary of \$250,000 and a guaranteed annual bonus of \$50,000. In addition, Mr. Bagley is eligible to receive an annual discretionary bonus, as determined by our board of directors. ZIOPHARM also paid Mr. Bagley a one-time bonus of \$50,000 upon execution of his employment agreement. Depending upon the events surrounding a possible termination of Mr. Bagley's employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Mr. Bagley's stock options may accelerate in whole or in part upon such termination. Mr. Bagley has agreed not to compete with us during the term of the employment agreement and for a one-year period thereafter, provided that we continue to pay his base salary for that one-year period.

Pursuant to the terms of his employment agreement, we granted Mr. Bagley options to purchase up to 241,282 shares common stock at \$1.70 per share (adjusted to give effect to the Merger). The options vest in three equal annual installments, the first of which vested on July 1, 2005, with the remaining installments vesting on July 1, 2006 and July 1, 2007. The option is subject to certain anti-dilution protections from the issuance of equity securities in financing transactions so that Mr. Bagley will maintain potential equity ownership of at least 3% of our stock until such time as we have received \$25 million in gross proceeds from such transactions. The options are governed by our 2003 Stock Option Plan.

On January 14, 2004, ZIOPHARM entered into a three-year employment agreement with Dr. Robert Peter Gale, under which we succeeded to ZIOPHARM's rights and obligations upon the Merger. Under the agreement, Dr. Gale receives an annual base salary of \$250,000 and a guaranteed annual bonus of \$150,000. In addition, Dr. Gale is eligible to receive an annual discretionary bonus, as determined by our board of directors. Depending upon the events surrounding a termination of Dr. Gale's employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Dr. Gale's stock options may accelerate in whole or in part upon such termination. Dr. Gale has agreed not to compete with us during the term of the employment agreement and for one-year following the expiration of his employment agreement.

Pursuant to the terms of his employment agreement, we granted Dr. Gale options to purchase up to 25,110 shares of common stock at \$0.44 per share, respectively (adjusted to give effect to the Merger). The options vest in three equal annual installments, the first of which vested on January 15, 2005, with the remaining installments vesting on January 15, 2006 and January 15, 2007. The options are governed by our 2003 Stock Option Plan.

### ***Compensation of Directors***

Prior to the Merger, our directors received no compensation pursuant to any standard arrangement for their services as directors. Nevertheless, during the year ended December 31, 2004, we issued Mr. David Floor 5,000 shares of our common stock (adjusted to reflect to the 1-for-40 share combination effected immediately prior to the Merger) in exchange for directors fees.

Our Board of Directors currently schedules monthly telephonic board meetings and quarterly in-person meetings held at our principal corporate office. Each director receives quarterly compensation of \$3,000 in arrears. The non-management members of the Board also receive stock options as granted from time to time and as recommended by the Compensation Committee.

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

The following table summarizes certain information regarding the beneficial ownership (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934) of our outstanding common stock as of September 29, 2005 by (i) each person known by us to be the beneficial owner of more than 5% of our outstanding common stock, (ii) each of our directors, (iii) each of the named executives, and (iv) all current executive officers and directors as a group. Except as indicated in the footnotes below, the persons listed below possess sole voting and investment power with respect to their shares. Except as otherwise indicated, the address of the persons listed below is 1180 Avenue of the Americas, 19<sup>th</sup> Floor, New York, NY 10036.

Name and Address of Beneficial Owner	Shares of Common Stock Beneficially Owned (#) <sup>(1)</sup>	Percentage of Common Stock Beneficially Owned (%)
Dr. Jonathan Lewis <sup>(2)</sup>	136,868	1.88%
Richard Bagley <sup>(3)</sup>	80,428	1.11%
Robert Peter Gale <sup>(4)</sup>	8,371	*
Murray Brennan	0	*
James Cannon	0	*
Hon. Wyche Fowler	0	*
Gary Fragin	0	*
Timothy McInerney <sup>(5)</sup>	79,972	1.11%
Michael Weiser <sup>(6)</sup>	119,011	1.65%
All current executive officers and directors as a group <sup>(7)</sup>	424,650	5.71%
Mibars, LLC 365 West End Avenue New York, NY 10024	1,214,456	16.97%
Lindsay A. Rosenwald <sup>(8)</sup> 787 Seventh Avenue, 48th Floor New York, NY 10019	1,498,087 <sup>(8)</sup>	20.13%
Atlas Equity I, Ltd. 181 W. Madison, Suite 3600 Chicago, IL 60602	695,797	9.72%
Lester E. Lipschutz 1650 Arch Street, 22nd Floor Philadelphia, PA 19103	463,864 <sup>(9)</sup>	6.48%
David C. Olson <sup>(10)</sup> 6025 South Quebec Street, Suite 135 Englewood, CO 80111	54,008 <sup>(10)</sup>	*

\* Less than 1%

(1) Beneficial ownership is determined in accordance with SEC rules, beneficial ownership includes any shares as to which the security or stockholder has sole or shared voting power or investment power, and also any shares which the security or stockholder has the right to acquire within 60 days of the date hereof, whether through the exercise or conversion of any stock option, convertible security, warrant or other right. The indication herein that shares are beneficially owned is not an admission on the part of the security or stockholder that he, she or it is a direct or indirect beneficial owner of those shares.

(2) Includes 136,868 shares issuable upon the exercise of stock options that are currently exercisable or will become exercisable within the next 60 days.

- (3) Includes 80,428 shares issuable upon the exercise of stock options that are currently exercisable or will become exercisable within the next 60 days.
- (4) Includes 8,371 shares issuable upon the exercise of stock options that are currently exercisable or will become exercisable within the next 60 days.
- (5) Includes 20,767 shares issuable upon the exercise of warrants that are currently exercisable or will become exercisable within the next 60 days.
- (6) Includes 35,566 shares issuable upon the exercise of warrants that are currently exercisable or will become exercisable within the next 60 days.
- (7) Includes 282,000 shares issuable upon the exercise of convertible securities that are currently exercisable or will become exercisable within the next 60 days.
- (8) Excludes 463,864 shares held by certain trusts for the benefit of Dr. Rosenwald and his family for which Dr. Rosenwald disclaims beneficial ownership. Includes 221,011 shares issuable upon the exercise of warrants granted to Dr. Rosenwald and 62,621 shares issuable upon the exercise of warrants granted to Paramount BioCapital Investments, LLC, of which Dr. Rosenwald is the managing member, both such warrants are currently exercisable or will become exercisable within the next 60 days. Also includes 737,777 shares that Dr. Rosenwald has the right to acquire from existing stockholders under certain circumstances pursuant to the terms of pledge agreements between Dr. Rosenwald and such stockholders.
- (9) Includes 463,864 shares held by separate trusts for the benefit of Dr. Rosenwald or his family with respect to which Mr. Lifschutz is either trustee or investment manager and has investment and voting power. Dr. Rosenwald disclaims beneficial ownership of these shares.
- (10) Mr. Olson served as the Company's Chief Executive Officer for the full fiscal years indicated until the consummation of the Merger. Share ownership is based on the Company's most recent annual report on Form 10-KSB for the year ended December 31, 2004, after giving effect to the 1-for-40 share combination.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### *Pre-Merger Company Transactions and Relationships*

Because of their previous management positions, organizational efforts and/or percentage share ownership (prior to the Merger), Messrs. David C. Olson and Robert J. Zappa may be deemed to be “promoters,” as those terms are defined in the Securities Act of 1933 and the applicable rules and regulations thereunder. Because of the above-described relationships, transactions between and among us and Messrs. Olson and Zappa, such as the sale of our common stock to each of them as described herein, should not be considered to have occurred at arm’s-length.

### *Common Stock Transactions*

During July 2005, we sold 333,333 shares of our common stock to David Floor for \$10,000, or \$.03 per share.

In August and December 2004, David Olson loaned us a total of \$1,300 for working capital. During May 2005, Mr. Olson advanced us an additional \$788. The loans carried no interest rate and were due on demand. On June 28, 2005, we issued Mr. Olson 69,600 shares of common stock as full repayment of the amounts stated above. The shares were valued at \$.03 per share, or \$2,088, based on contemporaneous common stock sales to unrelated third parties.

On May 13, 2004, the Company issued 400,000 shares of common stock to Summit Financial Relations, Inc. (“Summit”) valued at \$10,000, at \$.025 per share as repayment for expenses paid on behalf of us. The shares were valued based on contemporaneous sales to unrelated third party investors. David Olson, who was then our President, Treasurer and one of our directors, is also Summit’s President, director and sole stockholder.

During May 2004, we issued 200,000 shares of common stock to Thomas Olson, the brother of David Olson, in exchange for corporate governance services. The shares were valued based on contemporaneous sales to unrelated third party investors, at \$.025 per share. The Company recorded stock-based compensation of \$5,000 related to the transaction.

During May 2004, we issued 200,000 shares of common stock to David Floor in exchange for director fees. The shares were valued based on contemporaneous sales to unrelated third party investors, at \$.025 per share. We recorded stock-based compensation of \$5,000 related to the transaction.

At December 31, 2004, we owed Summit \$12,268 for professional fees and other administrative expenses paid on our behalf. David Olson, who was then our President, Treasurer and one of our directors, is also Summit’s President, director and sole stockholder. During the six months ended June 30, 2005, Summit paid an additional \$1,007 in expenses on our behalf. On February 4, 2005, the Company repaid Summit \$7,000 and on June 28, 2005 the Company issued Summit 209,180 shares of common stock as full repayment of all amounts stated above. The shares issued to Summit were valued at \$.03 per share, or \$6,275, based on contemporaneous common stock sales to unrelated third parties.

During January 2002, we sold 33,333 and 16,667 shares of our common stock to David Olson and Barbara Petrinsky, respectively, at \$.03 per share (gross proceeds totaling \$1,500). At the time of issuance, both Mr. Olson and Ms. Petrinsky were our officers.



### ***Office Space and Administrative Support***

Summit has contributed the use of office space and administrative support (including reception, secretarial and bookkeeping services) to us for the years ended December 31, 2004 and 2003. David Olson, who was our President, Treasurer and one of our directors prior to the Merger, is also the President, director and sole stockholder of Summit.

The office space and administrative support contributed by Summit has a fair market value of approximately \$500 and \$1,000 per month, respectively. We have recognized expenses for rent and administrative support based on fair market value. Any period in which the amount paid to Summit for office space and administrative support was below the fair market value, the remaining balance was considered contributed by Summit and recorded as a credit to additional paid-in capital in our financial statements. During the years ended December 31, 2004 and 2003, we did not pay Summit for office space and we paid Summit \$173 and \$510, respectively, for administrative support. Accordingly, Summit contributed the remaining fair values for the use of the office space and administrative support. Contributed office space totaled \$6,000 and \$6,000, and contributed administrative support totaled \$11,827 and \$11,490 for the years ended December 31, 2004 and 2003, respectively.

### ***Related Party Liabilities***

In August and December 2004, Mr. Olson loaned us a total of \$1,300 for working capital. The loans carried no interest rate and were due on demand.

At December 31, 2003, the Company owed Summit \$18,111 for professional fees and other administrative expenses it paid on our behalf. During the year ended December 31, 2004, Summit paid expenses totaling \$4,187 on our behalf. A portion of the May 13, 2004 issuance of 400,000 restricted common described above under "Certain Relationships and Related Transactions - Common Stock Transactions" was used to repay Summit for these fees. As of December 31, 2004, we owed Summit \$12,298.

We owed Barbara Petrinsky, our former Secretary and Treasurer, \$10,000 for the work she performed over the previous five years to keep our books and records, assist in all of our filings with regulatory authorities, states and the Internal Revenue Service, among others.

All of the above-referenced liabilities were satisfied in their entirety immediately following the Merger.

In connection with the Merger, we paid Messrs. Olson and Floor \$57,000 and \$100,000, respectively, pursuant to a December 9, 2004 employment agreement with David Olson and a December 10, 2004 management consulting services agreement with David Floor.

### ***Consulting Agreement with Summit Financial***

On December 10, 2004, we entered into a consulting services fee agreement under which Summit provided certain services to us including, but not limited to, consultation related to mergers and acquisitions, reorganizations and divestitures. Pursuant to the agreement, Summit lent us funds and helped us raise funds at no extra cost. Under the terms of the agreement, we paid Summit a one-time fee of \$106,697.90 in connection with the closing of the Merger.

## ***ZIOPHARM Transactions and Relationships***

In connection with a private placement of its Series A Convertible Preferred Stock that terminated in May 2005, ZIOPHARM and Paramount BioCapital, Inc. ("Paramount") entered into an introduction agreement in January 2005. Upon the Merger, we succeeded to ZIOPHARM's rights and obligations under such agreement. Pursuant to the introduction agreement, ZIOPHARM agreed to compensate Paramount or its designees for their services through the payment of (a) cash commissions equal to 7% of the gross proceeds from the offering, and (b) warrants to acquire an aggregate of 837,956 share of ZIOPHARM's Series A Convertible preferred Stock per share exercise price of \$2.38. Upon the Merger, this warrant was exchanged for a warrant to purchase an aggregate of 419,772 shares of our common stock at a per share exercise price of \$4.75. Cash commissions will also be payable by us if we sell additional of our securities, prior to May 31, 2006, to investors introduced to ZIOPHARM by the Paramount. Pursuant to the introduction agreement, Paramount has the right of first refusal to act as the placement agent for the private sale of our securities until May 31, 2008.

In connection with ZIOPHARM's December 22, 2004 Option Agreement with Southern Research Institute ("SRI"), ZIOPHARM entered into an Finders Agreement dated December 23, 2004 with Paramount, pursuant to which ZIOPHARM agreed to compensate Paramount for services in connection with the ZIOPHARM's introduction to SRI through the payment of (a) a cash fee of \$60,000 and (b) a warrant to purchase 125,000 shares of ZIOPHARM's common stock at a price of \$2.38 per share. Upon the Merger, this warrant was exchanged for a warrant to purchase an aggregate of 62,619 shares of our common stock at a per share exercise price of \$4.75.

Lindsay A. Rosenwald, M.D., who may beneficially own approximately 20.13% of our common stock, is Chairman and Chief Executive Officer of Paramount and its affiliates. Dr. Michael Weiser and Timothy McInerney, each of whom is a director of the Company (and director of ZIOPHARM), are also full-time employees of Paramount.

## MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Prior to the consummation of the Merger, our common stock traded on the over-the-counter bulletin board under the symbol "ESWB." As a result of the Company's name change to ZIOPHARM Oncology, Inc., our common stock now trades under the symbol "ZIOP." The following table sets forth the high and low bid prices for our common stock as reported by the over-the-counter bulletin board since our common stock began trading over the counter in 2004. These quotations reflect inter-dealer prices, without retail markup, markdown or commission, and may not represent actual transactions. Throughout the periods indicated below, only one trade in our common stock was consummated. Prices set forth below do not reflect the 1-for-40 share combination effected on August 24, 2005.

<b>Fiscal Year 2005 (Quarter Ended)</b>	<b>Price Range</b>	
	<b>High</b>	<b>Low</b>
June 30, 2005	\$ 0.05	\$ 0.00
March 31, 2005	\$ 0.05	\$ 0.00

  

<b>Fiscal Year 2004 (Quarter Ended)</b>	<b>High</b>	<b>Low</b>
	December 31, 2004	\$ 0.00
September 30, 2004	\$ 0.00	\$ 0.00
June 30, 2004	\$ 0.00	\$ 0.00
March 31, 2004	\$ 0.00	\$ 0.00

The approximate number of stockholders of record of our common stock as of September 29, 2005 was 306. We have never declared or paid a cash dividend on our common stock and do not anticipate paying any cash dividends in the foreseeable future.

### USE OF PROCEEDS

We will not receive any proceeds from the resale of any of the shares offered by this prospectus by the selling stockholders.

## SELLING STOCKHOLDERS

This prospectus covers the resale by the selling stockholders identified below of 4,870,281 shares of our common stock, including 4,197,952 shares of our common stock issued to the former stockholders of ZIOPHARM, Inc. in connection with the Merger, 482,407 shares issuable upon the exercise of warrants held by such former ZIOPHARM, Inc. stockholders and 189,922 shares of which were outstanding prior to the merger. The following table sets forth the number of shares of our common stock beneficially owned by the selling stockholders as of October 12, 2005, and after giving effect to this offering.

Selling Stockholder	Shares Beneficially Owned Before Offering (1)	Number of Outstanding Shares Offered by Selling Stockholder	Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants	Percentage Beneficial Ownership After Offering (2)
Robert Guercio	7,515	7,515	0	—
Ennio DePianto	6,012	6,012	0	—
Millennium Partners, L.P.	231,932	231,932	0	—
Michael A. Mullen	5,010	5,010	0	—
Philip J. Abdalla and Joyce V. Abdalla JTWROS	6,012	6,012	0	—
Frank Calcutta	12,524	12,524	0	—
The Henry H. Bahr QTIP Trust Dated 2/22/88	11,597	11,597	0	—
The Bahr Family Limited Partnership	11,597	11,597	0	—
Robert L. Bahr Revocable Trust 1985 U/A dated 3-14-85	3,826	3,826	0	—
Stephen C. Rabbitt	10,019	10,019	0	—
Delaware Charter Guarantee Trust FBO Richard S. Simms II Keogh Plan	3,479	3,479	0	—
Lind Family Investments LP	8,117	8,117	0	—
John and Debra Landsberger Family Trust	12,524	12,524	0	—
Balanced Investment, LLC	46,386	46,386	0	—
Riverside Contracting LLC	12,524	12,524	0	—
Walter B. Martin and Paloma Munoz JTWROS	5,798	5,798	0	—
MSB Family Trust DTD 6/25/93 Michael Blechman, TTEE	23,194	23,194	0	—
Richard S. Simms II and Cynthia Simms JTWROS	3,479	3,479	0	—
Lawrence M. Silver	23,194	23,194	0	—
Rick J. Goad	10,019	10,019	0	—
Barry Lind Revocable Trust	46,386	46,386	0	—
Stephen N. Kitchens and Martha M. Kitchens JTWROS	23,194	23,194	0	—

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
Wayne K. Adams	11,597	11,597	0	—
Jerrold Abrahams	6,958	6,958	0	—
Shoup Revocable Trust DTD April 29, 2003	11,598	11,598	0	—
Shea Ventures, LLC	23,193	23,193	0	—
James J. Solano, Jr.	5,798	5,798	0	—
National Investors Services Corp. FBO Stephen J. Nelson	23,194	23,194	0	—
James C. Shepler and Diana B. Shepler JTWROS	6,958	6,958	0	—
Steven Lisi	14,027	14,027	0	—
Phil Lifshitz	23,195	23,195	0	—
Louis Sanzo, Jr.	5,010	5,010	0	—
Barry P. McIntosh	5,798	5,798	0	—
Hill Blalock, Jr.	23,195	23,195	0	—
Joel Braun	5,798	5,798	0	—
Far Ventures	10,019	10,019	0	—
Brino Investment Ltd.	5,798	5,798	0	—
Grapemeadow, NV	115,966	115,966	0	—
Tisu Investment Ltd.	17,395	17,395	0	—
Edmund A. Debler	17,033	17,033	0	—
Daniel Krieger	5,798	5,798	0	—
Andrew W. Albstein and Carolyn Albstein JTWROS	23,194	23,194	0	—
Elizabeth R. Moore	5,798	5,798	0	—
Ursuline Co.	12,524	12,524	0	—
Carl S. Sorenson	11,597	11,597	0	—
Carucci Family Partners	34,790	34,790	0	—
Anthony J. Ottavio	12,524	12,524	0	—
Daniel J. Kevles and Betty Ann Kevles JTWROS	8,117	8,117	0	—
Gavin Kent	5,798	5,798	0	—
Michael Luftman	5,798	5,798	0	—
Anthony J. Gerace	11,598	11,598	0	—
Isaac R. Dweck	23,193	23,193	0	—
Fae Moore	5,798	5,798	0	—
Ben Heller	69,579	69,579	0	—
Elizabeth Maas	5,798	5,798	0	—
Robert Masters	11,597	11,597	0	—

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
Klaus Kretschmer	46,591	46,591	0	—
Dean Glasser	3,757	3,757	0	—
Murry J. McCabe	34,790	34,790	0	—
Cooper A. McIntosh, MD	11,597	11,597	0	—
Harry Newton and Susan Newton JTWROS	17,534	17,534	0	—
Nicholas Ponzio	25,049	25,049	0	—
Gary J. Strauss	23,194	23,194	0	—
Scott D. Whitaker	11,597	11,597	0	—
Wolcot Capital, Inc.	25,049	25,049	0	—
Joseph J. Vale	115,966	115,966	0	—
Carolyn N. Taylor	3,507	3,507	0	—
David P. Luci	2,319	2,319	0	—
Atlas Equity I, Ltd.	695,797	695,797	0	—
Alan H. Auerbach	5,798	5,798	0	—
Gregory J. Dovolis	10,019	10,019	0	—
Michele Markowitz	5,798	5,798	0	—
Praful Desai	5,010	5,010	0	—
Eric Reed	5,010	5,010	0	—
Delaware Charter Guarantee Trust FBO Mark Berg IRA	57,612	57,612	0	—
Nicole Berg	57,612	57,612	0	—
Ivy Scheinholz Revocable Trust U/A Dated 1/26/05	5,010	5,010	0	—
S. Alan Lisenby	25,049	25,049	0	—
Judah Schorr	34,790	34,790	0	—
Mark Mazzer	6,262	6,262	0	—
Domaco Venture Capital Fund	5,799	5,799	0	—
Fiserv Securities, Inc. A/C/F Jack Polar IRA	5,799	5,799	0	—
Paul D. Newman and Judith E. Newman JTWROS	6,012	6,012	0	—
Neil J. Laird	6,012	6,012	0	—
Rachel Family Partnership	34,790	34,790	0	—
Baruch Z. Halberstam	5,798	5,798	0	—
Paul J. Solit	5,798	5,798	0	—
David Jaroslawicz	69,579	69,579	0	—
Lucile Slocum	10,019	10,019	0	—

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
Harvey Lustig and Ronnie Lustig JTWROS	5,010	5,010	0	—
Stephen H. Lebovitz	1,002	1,002	0	—
Joe L. Key and Mary Lynn Key JTWROS	1,002	1,002	0	—
Delaware Charter Guarantee & Trust Co. FBO Howard M. Tanning MD IRA	25,049	25,049	0	—
Gitel Family Partnership, LP	23,193	23,193	0	—
Joseph Strassman and Barbara Strassman	6,958	6,958	0	—
David G. Pudelsky and Nancy H. Pudelsky JTWROS	10,019	10,019	0	—
Louis R. Reif	22,544	22,544	0	—
John O. Dunkin	6,012	6,012	0	—
Michael Pinney	2,505	2,505	0	—
Neel B. Ackerman and Martha N. Ackerman JTWROS	25,049	25,049	0	—
Fiserv Securities, Inc. A/C/F Ronald M. Lazar, STD IRA	5,799	5,799	0	—
RL Capital Partners, LP	11,598	11,598	0	—
Neil Herskowitz	6,262	6,262	0	—
Anthony G. Polak "S"	5,799	5,799	0	—
Fiserv Securities, Inc. A/C/F Anthony G. Polak Std. IRA	5,799	5,799	0	—
Tim P. Cooper	4,634	4,634	0	—
Benito Bucay	11,597	11,597	0	—
Edwin A. Buckham and Wendy F. Buckham, JTWROS	11,597	11,597	0	—
Laya Perlysky 2003 Grantor Retained Annuity Trust	23,193	23,193	0	—
Kinder Investments L.P.	34,790	34,790	0	—
Reuben Taub	12,524	12,524	0	—
Waterspout Investments Pte Ltd	4,639	4,639	0	—
Matador Investments Pte Ltd.	16,235	16,235	0	—
Ramsay Investments Pte. Ltd.	2,319	2,319	0	—
Mega International Corporation	8,581	8,581	0	—
Alfred Abraham	4,639	4,639	0	—
Paul Sallwasser and Teri Sallwasser JTWROS	17,395	17,395	0	—

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
William S. Tyrell	11,597	11,597	0	—
Alan J. Young	34,790	34,790	0	—
William McCahey and Lisa Krivacka JTWROS	5,799	5,799	0	—
Dennis F. Steadman	5,799	5,799	0	—
John H. Miller, CGM IRA Custodian Smith Barney #670-80424-18	6,262	6,262	0	—
Paul Bermanski and Barbara Bermanski JTWROS	11,597	11,597	0	—
Tokenhouse Trading Pte. Ltd.	46,386	46,386	0	—
James E. Daly, CGM IRA Custodian #670-80477	6,262	6,262	0	—
Howard Sorkin	23,193	23,193	0	—
Janis H. Camp	5,798	5,798	0	—
Robert McEntire	46,387	46,387	0	—
Andrew H. Sabreen and Carol Sabreen JTWROS	11,597	11,597	0	—
Michael Blechman and Barry J. Lind, Tenants in Common	11,597	11,597	0	—
Paul F. Berlin	5,798	5,798	0	—
Eli Jaconson	23,194	23,194	0	—
Andrew W. Schonzeit	12,524	12,524	0	—
Nora O'Donoghue	5,798	5,798	0	—
Mario Pasquel and Begona Miranda JTWROS	16,235	16,235	0	—
Suzanne Schiller	5,010	5,010	0	—
William S. Silver and Elinor Silver JTWROS	6,012	6,012	0	—
Suzette T. Seigel	5,798	5,798	0	—
Robert J. Sechan II	5,798	5,798	0	—
Coqui Capital Partners	57,984	57,984	0	—
Carolyn P. Dietrich	6,007	6,007	0	—
Smithfield Fiduciary LLC	231,932	231,932	0	—
Michael S. Walsh	5,798	5,798	0	—
Vintage Filings LLC	5,799	5,799	0	—
Keith Rubenstein	5,798	5,798	0	—
Dr. Jeffrey R. Shapiro	5,798	5,798	0	—
Bernard Wachsman	5,798	5,798	0	—
Concordia Partners L.P.	175,341	175,341	0	—
Bristol Investment, Ltd.	69,579	69,579	0	—



<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
The Lindsay A. Rosenwald 2000 Irrevocable Trust U/A dated 5/24/2000	231,932	231,932	0	—
The Lindsay Rosenwald 2000 Family Trust U/A dated 12/15/00	231,932	231,932	0	—
Mark J. Ahn	5,798	5,798	0	—
Jeffrey Kraws & Patricia Kraws	5,798	5,798	0	—
Jack B. Petersen	5,798	5,798	0	—
Charles Earl Cartmill	11,597	11,597	0	—
Robert J. Whetten	11,597	11,597	0	—
Paramount BioCapital, Inc.	62,621	0	62,621	—
Steven Markowitz	6,480	0	6,480	—
Fabio Migliaccio	2,504	0	2,504	—
Denise Mormile-Liglino	1,252	0	1,252	—
Michael Mullen	13,534	0	13,534	—
Robert Petrozzo	11,083	0	11,083	—
Joseph Sorbara	6,480	0	6,480	—
Robert D. Millstone	3,479	0	3,479	—
Steven A. Sherman	1,739	0	1,739	—
Sandgrain Securities, Inc.	579	0	579	—
Lindsay A. Rosenwald	1,498,087(3)	0	221,011	16.53%
Michael Weiser	119,011	0	35,566	1.08%
Harris Lydon	22,349	0	22,349	—
Timothy McInerney	79,972	0	20,767	*
Michael Rosenman	31,854	0	19,709	*
Scott Katzman	28,817	0	19,709	*
Jill Meleski	19,674	0	16,638	*
Bernard Gross	10,285	0	8,767	*
Karl Rugeberg	9,368	0	7,850	*
Jeana Somers	1,808	0	290	*
<b>EasyWeb Shareholders:</b>				
Lawrence Alpert	500	500	0	*
Associate Capital Consulting Inc.	50	50	0	*
Vicki D E Barone	25	25	0	*
Edward W Bellarose	100	100	0	*
Black Marlen Inc	100	100	0	*
Craig M Blake	50	50	0	*
Darrell J Brunken	25	25	0	*

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
Scot Bryant	100	100	0	*
Charles Schwab & Co. Inc.	100	100	0	*
John Cleaver & Karen Cleaver JTEN	100	100	0	*
William D. Cronin	100	100	0	*
Paul Dragul	10,418	10,418	0	*
Michael M Edmonds	100	100	0	*
Doyle S Elliott	25	25	0	*
David W. Floor	18,334	18,334	0	*
Tyler Floor	3,750	3,750	0	*
William R Going	25	25	0	*
B Kathleen Goldstone	25	25	0	*
Allen R Goldstone	25	25	0	*
Timothy S Greufe	150	150	0	*
C. Eugene Gronning C. Eugene Gronning	1,250	1,250	0	*
Michael Gundzik C. Eugene Gronning	100	100	0	*
Johanna Guttman & Robert Herskowitz JTEN	10,750	10,750	0	*
L. Dee Hall	250	250	0	*
Mark Hatsis C. Eugene Gronning	1,500	1,500	0	*
Anderson J Henshaw C. Eugene Gronning	100	100	0	*
Brad Henshaw C. Eugene Gronning	100	100	0	*
Brent Henshaw	13,709	13,709	0	*
Brent Henshaw	250	250	0	*
Robert Herskowitz	6,875	6,875	0	*
Al Hoff	100	100	0	*
James E Hosch	100	100	0	*
Joseph W. Hovorka	1,667	1,667	0	*
Reed Jensen	1,250	1,250	0	*
Key Investments	2,500	2,500	0	*
Bryant Kligerman	100	100	0	*
Harvey Levin	25	25	0	*
VLA LLP	50	50	0	*
Curtis M McQueen	50	50	0	*
Mathew Meister c/o Beeman Holdings	25	25	0	*
Gary Mendenhall	25	25	0	*
Jeffrey Myers	25	25	0	*
Jeffrey Myers	1,667	1,667	0	*
Morri L Namaste	100	100	0	*

<b>Selling Stockholder</b>	<b>Shares Beneficially Owned Before Offering (1)</b>	<b>Number of Outstanding Shares Offered by Selling Stockholder</b>	<b>Number of Shares Offered by Selling Stockholder upon Exercise of Certain Warrants</b>	<b>Percentage Beneficial Ownership After Offering (2)</b>
National Financial Services LLC	25	25	0	*
NF Clearing Inc.	75	75	0	*
Robert E Ohman	25	25	0	*
David C. Olson	43,616	43,616	0	*
Thomas B. Olson	5,000	5,000	0	*
Butternut Partners	5,000	5,000	0	*
Jeff Peterson	1,250	1,250	0	*
Jonathan Peterson	1,000	1,000	0	*
Barbara Petrinsky	442	442	0	*
Merrill Lynch Pierce Fenner & Smith Inc.	25	25	0	*
Brad Rhodes	200	200	0	*
Jeff Rodriguez	25	25	0	*
Lamar F Schild	500	500	0	*
Sanford Schwartz	25	25	0	*
Susan Schwartz	25	25	0	*
Scott Shovea	50	50	0	*
Don F. Sims	50	50	0	*
Carlene Smith	25	25	0	*
Ryan Spencer	3,750	3,750	0	*
Michael J Stallone	200	200	0	*
Summit Financial Relations Inc.	17,314	17,314	0	*
James H Swalwell & Judith A Swalwell JTEN	50	50	0	*
Thomas M. Vickers	5,000	5,000	0	*
James J Trainor	125	125	0	*
Thomas M. Vickers Revocable Trust	5,000	5,000	0	*
Thomas M. Vickers	250	250	0	*
Douglas a Wilkerson & Leola A Wilkerson JTEN	25	25	0	*
Lyn C Wilkerson	30	30	0	*
Derek J. Zappa	100	100	0	*
Robert J. Zappa	24,000	24,000	0	*
Albert J. Zirkelbach	50	50	0	*

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\* Less than 1%

- (1) Beneficial ownership is determined in accordance with SEC rules, beneficial ownership includes any shares as to which the security or stockholder has sole or shared voting power or investment power, and also any shares which the security or stockholder has the right to acquire within 60 days of the date hereof, whether through the exercise or conversion of any stock option, convertible security, warrant or other right. The indication herein that shares are beneficially owned is not an admission on the part of the security or stockholder that he, she or it is a direct or indirect beneficial owner of those shares.
- (2) Assumes sales of all shares by each selling stockholder.
- (3) In addition to 221,011 shares issuable upon the exercise of warrants being offered hereunder, this amounts includes 476,678 shares of common stock held by Dr. Rosenwald, 62,621 shares issuable upon the exercise of warrants granted to Paramount BioCapital Investments, LLC, of which Dr. Rosenwald is the managing member, and 737,777 shares that Dr. Rosenwald has the right to acquire from existing stockholders under certain circumstances pursuant to the terms of pledge agreements between Dr. Rosenwald and such stockholders. Excludes 463,864 shares held by certain trusts for the benefit of Dr. Rosenwald and his family for which Dr. Rosenwald disclaims beneficial ownership.

## PLAN OF DISTRIBUTION

We are registering the resale of certain shares of common stock offered by this prospectus on behalf of the selling stockholders. As used in this prospectus, the term “selling stockholders” include donees, pledges, transferees and other successors in interest selling shares received from the selling stockholders after the date of this prospectus, whether as a gift, pledge, partnership distribution or other form of transfer. All costs, expenses and fees in connection with the registration of the shares of common stock offered hereby will be borne by the Company. Brokerage commissions and similar selling expenses, if any, attributable to the sale of shares of common stock will be borne by the selling stockholders.

Sales of shares of common stock offered hereby may be effected by the selling stockholders from time to time in one or more types of transactions (which may include block transactions):

- 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;
- short sales;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholder to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may effect sales of shares of common stock offered hereby at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at privately negotiated prices. Any of these transactions may or may not involve brokers or dealers. Any such broker-dealers may receive compensation in the form of discounts, concessions or commissions from the selling stockholders and/or the purchaser(s) of shares of common stock for whom those broker-dealers may act as agents or to whom they sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions). The selling stockholders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their securities, nor is there any underwriter or coordinating broker acting in connection with the proposed sale of shares of common stock by the selling stockholders.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and registered hereby and, if any such selling stockholder defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our 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 our common stock short and deliver these securities to close out their short positions, 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 aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. The selling stockholders reserve the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders may also resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any broker-dealers that act in connection with the sale of securities might be deemed to be “underwriters” within the meaning of Section 2(11) of the Securities Act, and any commissions received by such broker-dealers and any profit on the resale of the securities sold by them while acting as principals might be deemed to be underwriting discounts or commissions under the Securities Act. In addition, each broker-dealer selling under this prospectus for its own account or the account of an affiliate is an “underwriter” under Section 2(11) of the Securities Act.

To the extent required, the shares of our common stock to be sold, the name of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus-delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We are unable to predict with certainty the effect which sales of the shares of common stock offered by this prospectus might have upon our ability to raise additional capital. Nevertheless, it is possible that the resale of shares offered hereby could adversely affect the trading price of our common stock.

### ***Shares Eligible For Future Sale***

Upon completion of this offering and assuming the issuance of all of the shares covered by this prospectus that are issuable upon the exercise of outstanding warrants to purchase our common stock, there will be 7,723,618 shares of our common stock issued and outstanding. The shares purchased in this offering will be freely tradable without registration or other restriction under the Securities Act, except for any shares purchased by an "affiliate" of our Company (as defined under the Securities Act).

Our currently outstanding shares issued in connection with the Merger are deemed "restricted securities" within the meaning of Rule 144 under the Securities Act. Restricted securities may not be sold unless they are registered under the Securities Act or are sold pursuant to an applicable exemption from registration, including an exemption under Rule 144. Assuming that all of the other requirements of Rule 144 are then satisfied, then the 6,967,941 restricted shares of our common stock that were issued in connection with the Merger will first be eligible for resale without registration on September, 2006.

In general, under Rule 144, any person (or persons whose shares are aggregated) including persons deemed to be affiliates, whose restricted securities have been fully paid for and held for at least one year from the later of the date of issuance by us or acquisition from an affiliate, may sell such securities in broker's transactions or directly to market makers, provided that the number of shares sold in any three-month period may not exceed the greater of one percent of the then-outstanding shares of our common stock or the average weekly trading volume of our shares of common stock in the over-the-counter market during the four calendar weeks preceding the sale. Sales under Rule 144 are also subject to certain notice requirements and the availability of current public information about our Company. After two years have elapsed from the later of the issuance of restricted securities by us or their acquisition from an affiliate, persons who are not affiliates under the rule may sell such securities without any limitation.

### **DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 280,000,000 shares of common stock, \$.001 value per share. All shares of common stock have equal voting rights and are entitled to one vote per share on all matters to be voted upon by our stockholders. The shares of common stock have no preemptive, subscription, conversion or redemption rights and may be issued only as fully-paid and non-assessable shares. Cumulative voting in the election of directors is not permitted. In the event of our liquidation, each holder of our common stock is entitled to receive a proportionate share of our assets available for distribution to stockholders after the payment of liabilities. All shares of our common stock issued and outstanding are fully-paid and non-assessable.

Holders of our common stock are entitled to share pro rata in dividends and distributions with respect to the common stock when, as and if declared by our board of directors out of funds legally available therefor. We have not paid any dividends on our common stock and intend to retain earnings, if any, to finance the development and expansion of our business. Future dividend policy is subject to the discretion of our board of directors and will depend upon a number of factors, including future earnings, capital requirements and our financial condition.

The transfer agent and registrar for our common stock is American Stock Transfer and Trust, 6201 15th Avenue, Brooklyn, New York, 11219. As of the date of this prospectus, we had 7,241,211 shares of common stock outstanding held by approximately 306 holders of record. Our common stock is eligible for trading on the over-the-counter bulletin board under the symbol "ZIOP.OB."

### **DISCLOSURE OF COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES**

Pursuant to our certificate of incorporation and bylaws, we may indemnify an officer or director who is made a party to any proceeding, because of his position as such, to the fullest extent authorized by Delaware General Corporation Law, as the same exists or may hereafter be amended. In certain cases, we may advance expenses incurred in defending any such proceeding.

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

### **ABOUT THIS PROSPECTUS**

This prospectus is not an offer or solicitation in respect to these securities in any jurisdiction in which such offer or solicitation would be unlawful. This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission. The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about our company and the securities offered under this prospectus. That registration statement can be read at the SEC web site or at the SEC's offices mentioned under the heading "Where You Can Find More Information." We have not authorized anyone else to provide you with different information or additional information. You should not assume that the information in this prospectus, or any supplement or amendment to this prospectus, is accurate at any date other than the date indicated on the cover page of such documents.

### **WHERE YOU CAN FIND MORE INFORMATION**

Federal securities law requires us to file information with the SEC concerning our business and operations. Accordingly, we file annual, quarterly, and special reports, proxy statements and other information with the SEC. You can inspect and copy this information at the Public Reference Facility maintained by the SEC at Judiciary Plaza, 450 5th Street, N.W., Room 1024, Washington, D.C. 20549. You can receive additional information about the operation of the SEC's Public Reference Facilities by calling the SEC at 1-800-SEC-0330. The SEC also maintains a web site at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding companies that, like us, file information electronically with the SEC.



## VALIDITY OF COMMON STOCK

Legal matters in connection with the validity of the shares offered by this prospectus will be passed upon by Maslon Edelman Borman & Brand, LLP, Minneapolis, Minnesota.

### EXPERTS

The consolidated financial statements of ZIOPHARM Oncology, Inc. as of December 31, 2004 and 2003, and for the years then ended and for the period from August 6, 2001 (date of inception) to December 31, 2004, included in this prospectus, have been included herein in reliance on the report, dated March 18, 2005, of Cordovano and Honeck, P.C., independent registered public accounting firm, given on the authority of that firm as experts in accounting and auditing.

The financial statements of ZIOPHARM, Inc. for the years ended December 31, 2004 and the period from inception (September 9, 2003) through December 31, 2003 included in this prospectus have been audited by Vitale, Caturano & Company, Ltd., independent registered public accounting firm, as indicated in its report with respect to such Statements are included herein in reliance upon the authority of said firm as experts in auditing and accounting.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
ZIOPHARM, Inc.  
Charlestown, Massachusetts

We have audited the accompanying balance sheets of ZIOPHARM, Inc. (a development stage enterprise) as of December 31, 2004 and 2003, and the related statements of operations, changes in stockholders' equity (deficit), and cash flows for the year ended December 31, 2004 and the periods from inception (September 9, 2003) through December 31, 2003 and 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of ZIOPHARM, Inc. as of December 31, 2004, and the results of its operations and its cash flows for the year ended December 31, 2004 and for the periods from inception (September 9, 2003) through December 31, 2003 and 2004, in conformity with accounting principles generally accepted in the United States of America.

*Nicole, Caturano & Company, Ltd.*

Boston, Massachusetts

August 5, 2005

(except for Note 10, as to which the date is September 13, 2005)

**ZIOPHARM, Inc.**  
**(A Development Stage Enterprise)**

Balance Sheets  
December 31, 2004 and 2003

	2004	2003
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,026,656	\$ 402,363
Prepaid expenses and other current assets	117,571	—
Total current assets	1,144,227	402,363
Property and equipment, net	240,733	—
Deposits	60,046	—
	<u>\$ 1,445,006</u>	<u>\$ 402,363</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable	\$ 709,947	\$ 62,499
Accrued expenses	879,376	—
Total current liabilities	1,589,323	62,499
Commitments and contingencies		
Stockholders' equity (deficit):		
Series A convertible preferred stock, \$.001 par value; 20,000,000 shares authorized; no shares issued and outstanding at December 31, 2004 and December 31, 2003, respectively	—	—
Common stock, \$.001 par value; 30,000,000 shares authorized; 5,512,500 and 500,000 shares issued and outstanding at December 31, 2004 and December 31, 2003, respectively	5,513	500
Additional paid-in capital	5,697,603	499,500
Deficit accumulated during the development stage	(5,847,433)	(160,136)
Total stockholders' equity (deficit)	(144,317)	339,864
	<u>\$ 1,445,006</u>	<u>\$ 402,363</u>

*The accompanying notes are an integral part of these financial statements.*

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Statements of Operations

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

	<b>Year Ended December 31, 2004</b>	<b>For the Period from Inception (September 9, 2003) through December 31, 2003</b>	<b>For the Period from Inception (September 9, 2003) through December 31, 2004</b>
Research contract revenue	\$ —	\$ —	\$ —
<b>Operating expenses:</b>			
Research and development, including costs of research contracts	<b>2,126,607</b>	—	2,126,607
General and administrative	<b>3,581,959</b>	160,634	3,742,593
Total operating expenses	<b>5,708,566</b>	160,634	5,869,200
Loss from operations	<b>(5,708,566)</b>	(160,634)	(5,869,200)
Interest income	<b>21,269</b>	498	21,767
Net loss	<b>\$ (5,687,297)</b>	\$ (160,136)	\$ (5,847,433)
Basic and diluted net loss per share	<b>\$ (1.19)</b>	\$ (1.02)	
Weighted average common shares outstanding used to compute basic and diluted net loss per share	<b>4,794,692</b>	156,336	

*The accompanying notes are an integral part of these financial statements.*

**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Statements of Changes in Stockholders' Equity (Deficit)

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

	Series A		Common Stock		Additional Paid-in Capital	Deficit Accumulated during the Development Stage	Total Stockholders' Equity (Deficit)
	Convertible Preferred Stock						
	Shares	Amount	Shares	Amount			
Stockholders' contribution, September 9, 2003	—	\$ —	500,000	\$ 500	\$ 499,500	\$ —	\$ 500,000
Net loss	—	—	—	—	—	(160,136)	(160,136)
Balance at December 31, 2003	—	—	500,000	500	499,500	(160,136)	339,864
Issuance of common stock	—	—	4,500,000	4,500	4,495,500	—	4,500,000
Issuance of common stock for services	—	—	512,500	513	438,326	—	438,839
Fair value of options/warrants issued for nonemployee services	—	—	—	—	264,277	—	264,277
Net loss	—	—	—	—	—	(5,687,297)	(5,687,297)
Balance at December 31, 2004	—	\$ —	5,512,500	\$ 5,513	\$ 5,697,603	\$ (5,847,433)	\$ (144,317)

*The accompanying notes are an integral part of these financial statements.*

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Statements of Cash Flows

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

	<b>Year Ended December 31, 2004</b>	For the Period from Inception (September 9, 2003) through December 31, 2003	For the Period from Inception (September 9, 2003) through December 31, 2004
<b>Cash flows from operating activities:</b>			
Net loss	\$ (5,687,297)	\$ (160,136)	\$ (5,847,433)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	33,953	—	33,953
Stock-based compensation	703,116	—	703,116
Change in operating assets and liabilities:			
(Increase) in:			
Prepaid expenses and other current assets	(117,571)	—	(117,571)
Increase (decrease) in:			
Accounts payable	647,448	62,499	709,947
Accrued expenses	879,376	—	879,376
Deposits	(60,046)	—	(60,046)
Net cash used in operating activities	<b>(3,601,021)</b>	<b>(97,637)</b>	<b>(3,698,658)</b>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(274,686)	—	(274,686)
Net cash used in investing activities	<b>(274,686)</b>	<b>—</b>	<b>(274,686)</b>
<b>Cash flows from financing activities:</b>			
Stockholders' capital contribution	—	500,000	500,000
Proceeds from issuance of common stock	4,500,000	—	4,500,000
Net cash provided by financing activities	<b>4,500,000</b>	<b>500,000</b>	<b>5,000,000</b>
Net increase in cash and cash equivalents	<b>624,293</b>	<b>402,363</b>	<b>1,026,656</b>
Cash and cash equivalents, beginning of period	<b>402,363</b>	<b>—</b>	<b>—</b>
Cash and cash equivalents, end of period	<b>\$ 1,026,656</b>	<b>\$ 402,363</b>	<b>\$ 1,026,656</b>

*The accompanying notes are an integral part of these financial statements.*

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Statements of Cash Flows...continued

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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	<b>Year Ended December 31, 2004</b>	For the Period from Inception (September 9, 2003) through December 31, 2003	For the Period from Inception (September 9, 2003) through December 31, 2004
<b>Supplementary disclosure of cash flow information:</b>			
Cash paid for interest	\$ —	\$ —	\$ —
Cash paid for income taxes	\$ —	\$ —	\$ —

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*The accompanying notes are an integral part of these financial statements.*



**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**1. ORGANIZATION**

ZIOPHARM, Inc. (the "Company") is a development stage biopharmaceutical company that seeks to acquire, develop and commercialize, on its own or with other commercial partners, products for the treatment of important unmet medical needs in cancer.

The Company has operated at a loss since its inception in 2003 and has no revenues. The Company anticipates that losses may continue for the foreseeable future. At December 31, 2004, the Company's accumulated deficit was approximately \$5.8 million. The Company's ability to continue operations after its current cash resources are exhausted depends on its ability to obtain additional financing and achieve profitable operations, as to which no assurances can be given. Cash requirements may vary materially from those now planned because of changes in the focus and direction of our research and development programs, competitive and technical advances, patent developments or other developments. Additional financing will be required to continue operations after we exhaust our current cash resources and to continue our long-term plans for clinical trials and new product development.

On June 6, 2005, the Company completed an offering of Series A Convertible Preferred Stock (Series A Stock) offering. The Company issued 8,379,564 shares at \$2.16 per share for gross proceeds of approximately \$18.1 million. In connection with the Series A Preferred Stock Offering, the Company compensated Paramount, an affiliate for its services in connection with the Offering through the payment of (a) cash commissions equal to 7% of the gross proceeds from the sale of the shares of Series A Preferred Stock, and (b) placement warrants to acquire 837,956 shares of Series A Preferred Stock (the Series A Stock Warrants), exercisable for a period of 7 years from the Closing Date at a per Share exercise price equal to 110% of the price per Share sold in the Offering. These commissions are also payable on additional sales by the Company of securities (other than in a public offering) to investors introduced to the Company by Paramount during the twelve (12) month period subsequent to the final closing of the Offering. The Company also paid Paramount an expense allowance of \$50,000 to reimburse Paramount for its out-of-pocket expenses (the "Expense Allowance"). Also, for a period of 36 months from the final Closing, Paramount has the right of first refusal to act as the placement agent for any private sale of the Company's securities. Lastly, the Company has agreed to indemnify Paramount against certain liabilities, including liabilities under the Securities Act. The net proceeds were \$16.8 million have been allocated between the Series A Stock and the Series A Stock warrants, based on their relative fair value. The Company has valued the warrants using the Black-Scholes model recording a cost of \$1,682,683. The net proceeds from the Offering will be used for research and development, licensing fees and expenses, and for working capital and general corporate purposes.

None of the share or per share data included herein have been adjusted to effect for the conversions effected as part of the merger (see Note 10).

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash equivalents consist of short-term, highly liquid investments with a maturity of three months or less when purchased.

Concentrations of Credit Risk

Financial instruments which potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents. The Company maintains cash accounts in commercial banks, which may, at times, exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

Fair Value of Financial Instruments

The carrying amounts of cash equivalents, accounts payable and accrued expenses approximate their fair value because of their short-term nature. Short-term investments are carried at aggregate fair value. At December 31, 2004 and 2003, there were no short-term investments.

Income Taxes

The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the Company's financial statements or tax returns. Deferred tax assets and liabilities are determined based upon the difference between the financial reporting basis and the tax basis of existing assets and liabilities using enacted tax rates expected to be in effect in the year(s) in which the differences are expected to reverse. A valuation allowance is provided against deferred tax assets if it is more likely than not that such assets will not be realized.

Property and Equipment

Property and equipment are stated at cost. Depreciation and amortization are provided on the straight-line method over the estimated useful lives of the related assets, which is three years.

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES...continued**Research and Development Costs

Costs related to research and development are charged to expense when incurred. Such costs include proprietary research and development activities and expenses associated with research and development contracts, whether performed by the Company or contracted with independent third parties.

Accounting for Stock-Based Compensation

The Company accounts for stock-based awards to employees using the intrinsic value method as prescribed by Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations. The Company follows the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, for disclosure purposes (Note 9). All stock-based awards to nonemployees are accounted for at their fair value in accordance with SFAS No. 123 and Emerging Issues Task Force (EITF) 96-18, *Accounting for Equity Instruments that are Issued to Other than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The Company has adopted the disclosure provisions of SFAS No. 148, *Accounting for Stock-Based Compensation – Transition and Disclosure – an amendment of SFAS No. 123*, for all stock-based awards as of December 31, 2004.

The following illustrates the effect on net loss had the Company applied the fair value recognition provisions of SFAS No. 123:

	2004	2003
<b>Net loss:</b>		
As reported	\$ (5,687,297)	\$ (160,136)
Stock-based compensation expense included in reported net loss	703,116	—
Stock-based compensation expense under the fair value-based method	(813,095)	—
Pro forma net loss	<u>\$ (5,797,276)</u>	<u>\$ (160,136)</u>
<b>Basic and diluted net loss per share:</b>		
As reported	\$ (1.19)	\$ (1.02)
Pro forma	<u>\$ (1.21)</u>	<u>\$ (1.02)</u>

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES...continued**Accounting for Stock-Based Compensation...continued

The fair value of each stock option is estimated at the date of grant using the Black-Scholes option pricing model. The estimated weighted average fair value of stock options granted to employees in 2004 was approximately \$0.66 per share. The following table summarizes the assumptions used in the Black-Scholes option pricing model:

	2004	2003
Expected life	5 years	—
Expected volatility	134%	—
Dividend yield	3.6%	—
Weighted average risk-free interest rate	0 %	—

Recently Issued Pronouncements

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 123R, Share-Based Payment ("SFAS No. 123R"). This Statement is a revision of SFAS No. 123, Accounting for Stock-Based Compensation, and supersedes Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, and its related implementation guidance. SFAS No. 123R focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. The Statement requires entities to recognize stock compensation expense for awards of equity instruments to employees based on the grant-date fair value of those awards (with limited exceptions). SFAS No. 123R is effective for the first fiscal year beginning after December 15, 2005. Based on current options outstanding, the Company anticipates the adoption of this statement to result in approximately \$313,009 of additional compensation costs to be recognized in the year of adoption.

**3. PROPERTY AND EQUIPMENT**

Property and equipment at December 31, 2004 and 2003 consisted of the following:

	Estimated Useful Life (Years)	2004	2003
Computer equipment	3	\$ 78,914	\$ —
Office equipment	3	179,193	—
Software	3	16,579	—
		274,686	—
Less - accumulated depreciation and amortization		33,953	—
		<u>\$ 240,733</u>	<u>\$ —</u>

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**3. PROPERTY AND EQUIPMENT...continued**

Depreciation and amortization expense was \$33,953 and \$0 for the year ended December 31, 2004 and for the period from inception (September 9, 2003) to December 31, 2003, respectively.

**4. ACCRUED EXPENSES**

Accrued expenses at December 31, 2004 and December 31, 2003, consisted of the following:

	2004	2003
Employee compensation	\$ 506,391	\$ —
Professional services	42,767	—
Research and development consulting services	258,218	—
Founders Fee	60,000	—
Other	12,000	—
	<u>\$ 879,376</u>	<u>\$ —</u>

**5. RELATED PARTY TRANSACTIONS**

The Company has engaged Paramount BioCapital, Inc. ("Paramount") to assist in placing shares of Series A Preferred Stock on a "best efforts" basis (see Note 10). Lindsay A. Rosenwald, M.D. is Chairman and Chief Executive Officer of Paramount. Dr. Rosenwald is also managing member of Horizon BioMedical Ventures, LLC ("Horizon"). On December 30, 2004, Horizon authorized the distribution of 4,848,376 shares of Common Stock (such shares, the "Horizon Distributed Shares"), in equal installments of 2,424,188 shares of Common Stock to Mibars, LLC ("Mibars") and to Dr. Rosenwald and his designees (the "Designated Shares"). The disposition of the Designated Shares will be subject to certain restrictions as agreed to among Dr. Rosenwald and Dr. Rosenwald's designees. Among other things, under certain circumstances set forth in pledge agreements between Dr. Rosenwald and his designees, Dr. Rosenwald has the right to re-acquire the Designated Shares from his designees. As a result of those rights, Dr. Rosenwald may be deemed to be an affiliate of the Company.

In connection with the December 22, 2004 Option Agreement with Southern Research Institute ("SRI"), the Company entered into a Finders Agreement, dated December 23, 2004, with Paramount pursuant to which the Company has agreed to compensate Paramount, for services in connection with the Company's introduction to SRI through the payment of (a) a cash fee of \$60,000 and (b) warrants to purchase 125,000 shares of the Company's Common Stock at a price equal to \$2.38 per share. The Company has estimated the fair value of such warrants using the Black-Scholes model, using an assumed risk-free rate of 3.93%, and expected life of 7 years, volatility of 134% and dividend yield of 0%. In December 2004, the Company expensed the \$60,000 that was payable to Paramount and recognized compensation expense in the amount of \$251,037 for the issuance of the warrants.

**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**5. RELATED PARTY TRANSACTIONS...continued**

In connection with the Series A Preferred Stock Offering (see Note 10), the Company and Paramount entered into an Introduction Agreement in January 2005 (the "Introduction Agreement"), pursuant to which the Company has agreed to compensate Paramount for its services in connection with the Offering through the payment of (a) cash commissions equal to 7% of the gross proceeds from the sale of the shares of Series A Preferred Stock, and (b) placement warrants to acquire a number of shares of Series A Preferred Stock equal to 10% of the number of shares of Series A Preferred Stock issued in the Offering, exercisable for a period of 7 years from the Closing Date at a per Share exercise price equal to 110% of the price per Share sold in the Offering. These commissions are also payable on additional sales by the Company of securities (other than in a public offering) to investors introduced to the Company by Paramount during the twelve (12) month period subsequent to the final closing of the Offering. The Company also agreed to pay to Paramount a non-accountable expense allowance of \$50,000 to reimburse the Paramount for its out-of-pocket expenses (the "Expense Allowance"). Also, for a period of 36 months from the final Closing, Paramount has the right of first refusal to act as the placement agent for the private sale of the Company's securities. Lastly, the Company has agreed to indemnify Paramount against certain liabilities, including liabilities under the Securities Act.

Dr. Michael Weiser, who is a member of the Board of Directors of the Company, is also a full-time employee of Paramount. In addition, David M. Tanen, who is a member of the Board of Directors of the Company, was a full-time employee of Paramount from July 1996 through August 2004. Mr. John Knox, our treasurer, is a full time Paramount employee.

**6. COMMITMENTS AND CONTINGENCIES**Lease Commitment

The Company leases office space in two locations under agreements expiring in 2009. The leases includes payment increases over the term of the agreements. The total amount of the lease payments is being charged to expense using the straight-line method over the term of the agreement.

Future minimum lease payments under noncancelable operating and capital leases as of December 31, 2004, were as follows:

	Operating Leases
2005	\$ 93,318
2006	103,434
2007	114,103
2008	121,455
2009	87,699
	<u>\$ 520,009</u>

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**6. COMMITMENTS AND CONTINGENCIES...continued**

License Agreement

*Patent and Technology License Agreement- University of Texas M. D. Anderson Cancer Center and the Texas A&M University System.*

On August 24, 2004, the Company entered into a patent and technology license agreement with The Board of Regents of the University of Texas System, acting on behalf of the University of Texas M. D. Anderson Cancer Center and the Texas A&M University System (collectively, the "Licensors"). Under this agreement, the Company was granted an exclusive, worldwide license to rights (including rights to US and foreign patent and patent applications and related improvements and know-how) for the manufacture and commercialization of two classes of organic arsenicals (water - and lipid-based) for human and animal use. The class of water-based organic arsenicals includes ZIO-101.

In October 2004, the Company received a notice of allowance for US Patent Application No. 10/337969, entitled "S-dimethylarsino-thiosuccinic acid S-dimethylarsino-2-thiobenzoic acid S-(simethylarsino) glutathione as treatments for cancer." The patent application claims both therapeutic uses and pharmaceutical compositions containing a novel class of organic arsenicals, including ZIO-101, for the treatment of cancer.

As partial consideration for the license rights obtained, the Company made an upfront payment of \$125,000 and granted the Licensors 500,000 shares of our Common Stock, as well as options to purchase up to an additional 100,250 shares of our Common Stock for \$0.001 per share, following the successful completion of certain clinical milestones (the "Anderson Options"). The Company expensed the \$125,000 upfront payment and recognized research and development compensation expense of \$426,339 in connection with the issuance of the Common Stock in the year ended December 31, 2004. The Anderson Options will vest and become immediately exercisable with respect to 25,063 shares of our Common Stock upon the filing of an Investigational New Drug Application ("IND") for ZIO-101, will vest and become exercisable with respect to an additional 50,125 shares upon the completion of dosing of the last patient for both Phase I clinical trials, and will vest and become exercisable with respect to an additional 25,062 shares upon the commencement of a pivotal clinical trial. In addition, the Licensors are entitled to receive certain milestone payments (the "Anderson Milestones"), including \$100,000 to be paid upon the commencement of phase I clinical trial. The Company may be required to make additional payments upon achievement of certain other milestones, in varying amounts which on a cumulative basis may total \$4,850,000. In addition, the Licensors are entitled to receive royalty payments on sales from a licensed product should such a product be approved for commercial sale and sales of a licensed product be effected in the United States, Canada, the European Union or Japan. The Licensors also will be entitled to receive a portion of any fees that the Company may receive from a possible sublicensee. Finally, the Company agreed to remit to the Licensors \$100,000 for at least each of the next two years to be used by the Licensors to conduct scientific research funding. The Company will have the exclusive right to all intellectual property rights resulting from such research pursuant to the terms of the license agreement.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**6. COMMITMENTS AND CONTINGENCIES...continued**

License Agreement...continued

The license agreement also contains other provisions customary and common in similar agreements within the industry, such as the right to sublicense our rights under the agreement. However, if we sublicense our rights prior to the commencement of a pivotal study (*i.e.*, a human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable NDA), the Licensors will be entitled to receive a share of the payments we receive in exchange for the sublicense (subject to certain exceptions).

License Agreement with DEKK-TEC, Inc.

On October 15, 2004, the Company entered into a license agreement with DEKK-TEC, Inc., pursuant to which it was granted an exclusive, worldwide license to the second lead product candidate, ZIO-201. As part of the signing of license agreement with DEKK-TEC, the Company expensed a \$50,000 up-front payment in the year ended December 31, 2004.

In consideration for our license rights, DEKK-TEC is entitled to receive milestone payments upon the occurrence of certain events. In consideration for our license rights, DEKK-TEC is entitled to receive milestone payments upon the occurrence of certain events. The Company may be required to make payments upon achievements of certain milestones, in varying amounts which on a cumulative basis may total \$3,900,000. Of the aggregate milestone payments, most of the total amount will be creditable against future royalty payments, as referenced below. The Company also issued DEKK-TEC an option to purchase 55,125 shares of our Common Stock for \$0.01 per share, which option vested with respect to 13,781 shares upon the execution of the license agreement. The Company has estimated the fair value of such options using the Black-Scholes model, using an assumed risk-free rate of 3.35%, and expected life of 5 years, volatility of 134% and dividend yield of 0%. The Company recorded a charge of \$12,190 to research and development expense for the vested options. The option will vest with respect to the remaining shares upon certain milestone events, culminating with final FDA approval of the first NDA submitted by us (or by our sublicensee) for ZIO-201. Finally, DEKK-TEC also is entitled to receive royalty payments on the sales of ZIO-201 should it be approved for commercial sale.

The license agreement also contains other provisions customary and common in similar agreements within the industry.

Option Agreement with Southern Research Institute ("SRI")

On December 22, 2004, the Company entered into an Option Agreement with SRI (the "Option Agreement"), pursuant to which the Company was granted an exclusive option to obtain an exclusive license to SRI's interest in certain intellectual property, including exclusive rights related to certain isophosphoramidate mustard analogs (the "SRI Option").



**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**6. COMMITMENTS AND CONTINGENCIES...continued**Option Agreement with Southern Research Institute ("SRI")...continued

Also on December 22, 2004, the Company entered into a Research Agreement with SRI pursuant to which the Company agreed to spend a sum not to exceed \$200,000 between the execution of the agreement and December 21, 2006, including a \$25,000 payment that we made simultaneously with the execution of the agreement, to fund research and development work by SRI in the field of isophosphoramidate mustard analogs (the "SRI Research Program"). Under the terms of the Option Agreement, the Company's exclusive right to exercise the SRI Option will expire sixty days after the termination or expiration of the SRI Research Program and the delivery of the reports required thereunder.

Guarantees and indemnification Obligations

Certain officers and employees have agreements with the company that call for a guarantee bonus that is payable 30 days after employee's anniversary date. Certain officer and employees also have specific severance agreements.

**7. INCOME TAXES**

The components of the net deferred tax asset (liability) are as follows:

	December 31, 2004	December 31, 2003
Net operating loss carryforwards	\$ 494,881	\$ 26,118
Start-up and organizational costs	1,502,217	—
Research and development credit carryforwards	81,670	—
Accrued bonus	200,343	—
Depreciation	(4,102)	—
Other	8,816	—
Net deferred tax assets	2,283,825	26,118
Deferred tax asset valuation allowance	(2,283,825)	(26,118)
	<u>\$ —</u>	<u>\$ —</u>

**8. CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY**

We have authorized capital of 50,000,000 shares, of which 30,000,000 shares have been designated as common stock, par value \$.001 per share (the "Common Stock"), and 20,000,000 shares have been designated as preferred stock, par value \$.001 per share.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**8. CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY...continued**

Convertible Preferred Stock

Voting Rights

The holders of Series A Preferred Stock will be entitled to vote together with all other holders of the Company's voting stock on an "as-converted" basis on all matters submitted to a vote of holders generally. The holders of Series A Preferred Stock, voting as a separate class, will also have the right to approve by a 66% supermajority certain actions proposed to be taken by the Company.

Dividend Rights

The holders of Series A Preferred Stock will be entitled to receive dividends on an equal basis with the holders of Common Stock when, as and if declared by the Board of Directors.

Liquidation Preferences

The Series A Preferred Stock shall rank senior to the Common Stock and any future class of junior securities, and will be entitled to a liquidation preference equal to the Stated Value, subject to adjustment (as defined in the Certificate of Designations), upon any liquidation, dissolution or winding up of the Company or upon a voluntary or involuntary bankruptcy of the Company.

Conversion Rights

Each share of Series A Preferred Stock will be convertible into Common Stock at any time at the option of the holder thereof (the Series A Preferred Stock and the Common Stock issuable upon conversion of the Series A Preferred Stock are sometimes herein collectively referred to as the "Securities"). All of the outstanding shares of Series A Preferred Stock will automatically convert into Common Stock upon the first date (the "Trading Date") on which the Common Stock (or securities received in exchange for Common Stock) trades on a national securities exchange or on NASDAQ, including the Over the Counter Bulletin Board (a "Trading Event"). The rate at which shares of Series A Preferred Stock will convert into Common Stock will initially be one-for-one, subject to adjustment in connection with certain anti-dilution protections and other adjustments.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**8. CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY...continued**

Convertible Preferred Stock...continued

Conversion Rights...continued

In the event of a reclassification, capital reorganization or other similar change in the outstanding shares of Common Stock, a consolidation or merger of the Company with or into another entity (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in a reclassification, capital reorganization or other change of outstanding shares of Common Stock other than the number thereof), or a sale of the property of the Company as, or substantially as, an entirety (other than a sale/leaseback, mortgage or other financing transaction), the Series A Preferred Stock will become convertible into the kind and number of shares of stock or other securities or property (including cash) that the holders of Series A Preferred Stock would have received if the Series A Preferred Stock had been converted into Common Stock immediately prior to such reclassification, capital reorganization or other change, consolidation, merger or sale.

Common Stock

We currently have issued and outstanding 5,512,500 shares of Common Stock and no shares of preferred stock.

In September 2003, the Company issued 2,000,000 (before the split discussed below) shares of Common Stock at \$0.25 per share for gross proceeds of \$500,000.

In January 2004, the Company issued 18,000,000 (before the split discussed below) shares of Common Stock at \$0.25 per share for gross proceeds of \$4,500,000.

In February 2004, the Company amended its articles of incorporation to provide for the combination of the Company's common stock, par value \$0.001 per share on a 1-for-4 basis (all other share amounts presented reflect the reverse split).

**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**9. STOCK OPTION PLAN**

We have adopted the 2003 Stock Option Plan (the "Plan"), under which we have reserved for the issuance of 2,500,000 shares of our Common Stock. The Plan was approved by our stockholders on December 21, 2004. The Company has issued under its 2003 Stock Option Plan 1,170,826 shares that are issuable upon exercise of outstanding options to purchase Common Stock. To date, we have issued to our employees options to purchase up to 990,326 shares of the Company's Common Stock. In addition, we have issued to our directors options to purchase up to 180,000 shares of the Company's Common Stock, as well as options to a consultant in connection with services rendered to purchase up to 500 shares of the Company's Common Stock. The Company has estimated the fair value of such options using the Black-Scholes model, using an assumed risk-free rate of 4.23%, and expected life of 10 years, volatility of 134% and dividend yield of 0%. The options issued to the consultant were valued at \$1,050, and recorded as a charge to compensation expense. We have also reserved an aggregate of 155,375 additional shares for issuance under options granted outside of the 2003 Stock Option Plan and warrants to purchase 125,000 shares of the Company's Common Stock to the Paramount as compensation for services rendered in connection with our entering into an option agreement with Southern Research Institute. In connection with the warrants issued, the Company recorded a charge of \$251,037 to general and administrative expense. The Company has valued the options using the Black-Scholes model as of the issue date of the warrants. There are no other securities of the Company currently issued or outstanding.

Transactions under the Plan for the year December 31, 2004 were as follows:

	<u>Number of Shares</u>	<u>Weighted- Average Exercise Price</u>
Outstanding, January 1, 2004	—	\$ —
Granted	1,170,826	0.63
Exercised	—	—
Canceled	—	—
Outstanding, December 31, 2004	<u>1,170,826</u>	<u>\$ 0.63</u>
Options available for future grants	<u>1,329,174</u>	

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

**9. STOCK OPTION PLAN...continued**

The following table summarizes information about stock options outstanding at December 31, 2004:

Exercise Price	Options Outstanding			Options Exercisable	
	Number Outstanding	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
\$0.04	536,263	9.03	\$ 0.04	—	\$ —
\$0.22	100,250	9.08	\$ 0.22	—	\$ —
\$0.85	353,813	9.51	\$ 0.85	—	\$ —
\$2.16	180,500	9.98	\$ 2.16	500	\$ 2.16
	<u>1,170,826</u>	<u>9.33</u>	<u>\$ 0.63</u>	<u>500</u>	<u>\$ 2.16</u>

**10. SUBSEQUENT EVENTS**

On August 3, 2005 the Company entered into an Agreement and Plan of Merger dated as of August 3, 2005 (as may be amended from time to time, the "Merger Agreement") with EasyWeb, Inc., a Delaware corporation (OTC:ESYW.OB) ("EasyWeb"), and ZIO Acquisition Corp., a Delaware corporation and wholly owned subsidiary of EasyWeb ("ZIO Acquisition"). EasyWeb is a company that was incorporated in September 1998 and has been in the business of designing, marketing, selling and maintaining customized and template turnkey sites on the Internet that are hosted by third parties. Currently, however, EasyWeb has no operating business and has limited assets and liabilities. Pursuant to the Merger Agreement, ZIO Acquisition merged with and into ZIOPHARM, with ZIOPHARM remaining as the surviving company and a wholly-owned subsidiary of EasyWeb (the "Merger"). In connection with the Merger, which was effective as of September 13, 2005, ZIO Acquisition ceased to exist and the surviving company changed its corporate name to ZIOPHARM, Inc. In exchange for all of their shares of capital stock in ZIOPHARM, the Stockholders received a number of shares of Common Stock of EasyWeb such that, upon completion of the Merger, the then-current Stockholders held approximately 96.8% of the outstanding shares of Common Stock of EasyWeb on a fully-diluted basis. Upon completion of the Merger, EasyWeb ceased all of its remaining operations, and adopted and continued implementing the business plan of ZIOPHARM. Further, upon completion of the Merger, the current officers and directors of EasyWeb resigned, the current officers and directors of ZIOPHARM were appointed officers and directors of EasyWeb, and EasyWeb changed its name to ZIOPHARM Oncology, Inc. In conjunction with the Merger, ZIOPHARM made certain payments not to exceed \$425,000 to certain affiliates of EasyWeb.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

Year Ended December 31, 2004 and

For the Periods from Inception (September 9, 2003) through December 31, 2003 and 2004

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**10. SUBSEQUENT EVENTS...continued**

On June 6, 2005, the Company completed its Series A Convertible Preferred Stock offering. (see Note 1).

On May 26, 2005, the Company signed a lease for five years with USP 1180 Avenue of the Americas to lease approximately 2,580 square feet of office space.

On April 25, 2005, the company entered into a Surrender and Termination Agreement and an Escrow agreement with WE George Street, L.L.C and Cohm Birnbaum & Shea P.C. relating to the escrow of a termination fee for \$90,000, for an early termination to the New Haven, Connecticut office space.

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders:  
EasyWeb, Inc.

We have audited the accompanying balance sheet of EasyWeb, Inc. as of December 31, 2004, and the related statements of operations, shareholders' deficit and cash flows for the years ended December 31, 2004 and 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of EasyWeb, Inc. as of December 31, 2004, and the results of its operations and its cash flows for the years ended December 31, 2004 and 2003 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 1 to the financial statements, the Company has a net capital deficit at December 31, 2004 and has suffered significant operating losses since inception. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Cordovano and Honeck, LLP  
Denver, Colorado  
February 19, 2005

**EASYWEB, INC.**  
**Balance Sheet**

**December 31, 2004**

**Assets**

**Current Assets:**

Cash	\$	<u>21</u>
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**Liabilities and Shareholders' Deficit**

**Current Liabilities:**

Accounts payable	\$	63
Accrued liabilities		7,385
Due to officer (Note 2)		1,300
Due to affiliate (Note 2)		<u>12,298</u>
Total current liabilities		<u>21,046</u>

**Shareholders' deficit (Notes 4 and 6):**

Common stock, no par value; 30,000,000 shares authorized, 5,746,200 shares issued and outstanding	156,050
Stock options outstanding	20,600
Additional paid-in capital	87,808
Retained deficit	<u>(285,483)</u>
Total shareholders' deficit	<u>(21,025)</u>

\$	<u>21</u>
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See accompanying notes to financial statements



**EASYWEB, INC.**  
**Statements of Operations**

**For the Years Ended  
December 31,**

**2004**                      **2003**

	2004	2003
Operating expenses:		
Stock-based compensation (Note 2):		
Director fees	\$ 5,000	\$ —
Related party	5,000	—
Contributed rent (Note 2)	6,000	6,000
Administrative support	173	510
Contributed administrative support (Note 2)	11,827	11,490
Professional fees	8,535	12,812
Web site consulting and maintenance	150	120
Dues and subscriptions	1,200	2,975
Depreciation and amortization	—	486
Other	1,281	1,449
Total operating expenses	39,166	35,842
Loss before income taxes	(39,166)	(35,842)
Income tax provision (Note 3)	—	—
Net loss	\$ (39,166)	\$ (35,842)
Basic and diluted loss per share	\$ (0.01)	\$ (0.01)
Basic and diluted weighted average common shares outstanding	5,439,533	4,672,867

See accompanying notes to financial statements

**EASYWEB, INC.**  
**Statement of Changes in Shareholders' Deficit**

	<u>Common Stock</u>		<u>Outstanding Stock Options</u>	<u>Additional Paid-In Capital</u>	<u>Retained Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>				
Balance at January 1, 2003	4,506,200	\$ 120,050	\$ 20,600	\$ 52,491	\$ (210,475)	\$ (17,334)
March 2003, sale of common stock (\$0.05/share) (Note 4)	200,000	10,000	—	—	—	10,000
Office space and administrative support contributed by an affiliate (Note 2)	—	—	—	17,490	—	17,490
Net loss, year ended December 31, 2003	—	—	—	—	(35,842)	(35,842)
Balance at December 31, 2003	4,706,200	130,050	20,600	69,981	(246,317)	(25,686)
March 2004, sale of common stock (\$0.025/share) (Note 4)	240,000	6,000	—	—	—	6,000
May 2004, common stock issued to an affiliate to repay obligations (\$0.025/share) (Note 2)	400,000	10,000	—	—	—	10,000
May 2004, common stock issued to a related party in exchange for services (\$0.025/share) (Note 2)	200,000	5,000	—	—	—	5,000
May 2004, common stock issued to a director in exchange for director fees (\$0.025/share) (Note 2)	200,000	5,000	—	—	—	5,000
Office space and administrative support contributed by an affiliate (Note 2)	—	—	—	17,827	—	17,827
Net loss, year ended December 31, 2004	—	—	—	—	(39,166)	(39,166)
Balance at December 31, 2004	<u>5,746,200</u>	<u>\$ 156,050</u>	<u>\$ 20,600</u>	<u>\$ 87,808</u>	<u>\$ (285,483)</u>	<u>\$ (21,025)</u>

See accompanying notes to financial statements

**EASYWEB, INC.**  
**Statements of Cash Flows**

	For the Years Ended December 31,	
	2004	2003
<b>Cash flows from operating activities:</b>		
Net loss	\$ (39,166)	\$ (35,842)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	—	486
Stock-based compensation	10,000	—
Office space and administrative support contributed by an affiliate (Note 2)	17,827	17,490
Changes in operating assets and liabilities:		
Accounts payable, accrued expenses and due to affiliate	4,027	8,534
Net cash used in operating activities	(7,312)	(9,332)
<b>Cash flows from financing activities:</b>		
Proceeds on loans from related parties	1,300	—
Repayment of related party loans	—	(650)
Proceeds from the sale of common stock	6,000	10,000
Net cash provided by financing activities	7,300	9,350
Net change in cash	(12)	18
Cash, beginning of period	33	15
Cash, end of period	\$ 21	\$ 33
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the year for:		
Income taxes	\$ —	\$ —
Interest	\$ —	\$ —

See accompanying notes to financial statements

**(1) Organization and Summary of Significant Accounting Policies With Basis of Presentation**

***Organization***

EasyWeb, Inc. (referenced as “we”, “us”, “our” in the accompanying footnotes) was incorporated in Colorado on September 24, 1998 under the name NetEscapes, Inc. Our name was changed to EasyWeb, Inc. on February 2, 1999. We design, market, sell and maintain web sites on the Internet, which are built and hosted by third party consultants. Our operations were very limited during the year ended December 31, 2003. We did not perform any services or earn any revenue during 2004 due to the lack of working capital.

As of December 31, 2004, we have a net capital deficit and have suffered significant operating losses since inception, which raises substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of liabilities that might be necessary should we be unable to continue as a going concern. Inherent in our business are various risks and uncertainties, including our limited operating history, historical operating losses, and dependence upon our officers and strategic alliances. We are currently dependent upon an affiliate, Summit Financial Relations, Inc. (“Summit”), which has paid expenses on our behalf, in order to maintain our limited operations. Our president has also advanced us working capital to maintain our limited operations. There is no assurance that Summit or our president will continue to pay our expenses in the future.

Our future success will be dependent upon our ability (1) to locate and consummate a merger or acquisition with an operating company, (2) to finance Internet opportunities and, ultimately, (3) to attain profitability. There is no assurance that we will be successful in consummating a merger or acquisition with an operating company, financing Internet investments, or attaining profitability. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

***Cash equivalents and fair value of financial instruments***

For the purposes of the statement of cash flows, we consider all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. We had no cash equivalents at December 31, 2004.

The carrying amounts of cash, accounts payable and accrued liabilities approximate fair value due to the short-term maturity of the instruments.

***Use of estimates***

The preparation of the financial statements in conformity with generally accepted accounting principals requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities; disclosure of contingent assets and liabilities at the date of the financial statements; and the reported amounts of revenues and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

***Intangible assets and amortization***

Our intangible assets consist of computer software and web site development costs. We capitalize internal and external costs incurred to develop its web site during the application development stage in accordance with Statement of Position 98-1, “Accounting for the Costs of Computer Software Developed or Obtained for Internal Use”. Capitalized web site development costs are amortized over an estimated life of three years commencing on the date the software is ready for its intended use. We commenced amortization of our web site development costs on April 11, 2000. The web site development costs were fully amortized as of December 31, 2003. Amortization expense totaled \$-0- and \$486, respectively, for the years ended December 31, 2004 and 2003.

In addition, we have adopted the Emerging Issues Task Force Issue No. 00-2 (“EITF 00-2”), “Accounting for Web Site Development Costs”. EITF 00-2 requires the implementation of SOP 98-1 when software is used by a vendor in providing a service to a customer but the customer does not acquire the software or the right to use it.

***Impairments on long-lived assets***

We evaluate the carrying value of our long-lived assets under the provisions of SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets”. Statement No. 144 requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted future cash flows estimated to be generated by those assets are less than the assets’ carrying amount. If such assets are impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying value or fair value, less costs to sell.

***Loss per common share***

We account for loss per share under the provisions of SFAS No. 128, “Earnings Per Share”. Under SFAS No. 128, net loss per share-basic excludes dilution and is determined by dividing income available to common shareholders by the weighted average number of common shares outstanding during the period. Net loss per share-diluted reflects the potential dilution that could occur if securities and other contracts to issue common stock were exercised or converted into common stock. Common stock options outstanding at December 31, 2004 were not included in the diluted loss per share as all 100,000 options were anti-dilutive. Therefore, basic and diluted losses per share at December 31, 2004 were equal.

***Advertising barter transactions***

We report our advertising barter transactions in accordance with EITF 99-17, “Accounting for Advertising Barter Transactions”. Under EITF 99-17, revenue and expense should be recognized at fair value from an advertising barter transaction only if the fair value of the advertising surrendered in the transaction is determinable based on the entity’s own historical transactions involving cash. We did not recognize any revenues or expenses in connection with our advertising barter transactions for the periods presented.

***Stock-based Compensation***

We account for stock-based compensation arrangements in accordance with SFAS No. 123, “Accounting for Stock-Based Compensation,” which permits entities to recognize as expense, over the vesting period, the fair value of all stock-based awards on the date of grant. Alternatively, SFAS No. 123 allows entities to continue to apply the provisions of Accounting Principle Board (“APB”) Opinion No. 25 and provide pro forma net earnings (loss) disclosures for employee stock option grants as if the fair value-based method defined in SFAS No. 123 had been applied. We have elected to continue to apply the provisions of APB Opinion No. 25 and provide the pro forma disclosure provisions of SFAS No. 123. We did not report pro forma disclosures in the accompanying financial statements as the Company did not grant any employee stock options as of December 31, 2004.

***Income Taxes***

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes related primarily to differences between the recorded book basis and the tax basis of assets and liabilities for financial and income tax reporting. The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will either be taxable or deductible when the assets and liabilities are recovered or settled. Deferred taxes are also recognized for operating losses that are available to offset future taxable income and tax credits that are available to offset future federal income taxes.

***Recent accounting standards***

In December 2004, the Financial Accounting Standards Board ("FASB") issued SFAS No. 153, "Exchanges of Nonmonetary Assets - an amendment of APB Opinion No. 29." This Statement eliminates the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. A nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. This Statement is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. We do not expect the application of SFAS No. 153 to have a material affect on our financial statements.

In December 2004, the FASB issued a revision to SFAS No. 123, "Share-Based Payment." This Statement supercedes APB Opinion No. 25, "Accounting for Stock Issued to Employees" and its related implementation guidance. It establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. It also addresses transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. This Statement does not change the accounting guidance for share-based payment transactions with parties other than employees provided in Statement No. 123 as originally issued and EITF Issue No. 96-18. This Statement is effective for public entities that file as small business issuers as of the beginning of the first fiscal period that begins after December 15, 2005. We do not expect the application of SFAS No. 123 (revised) to have a material affect on our financial statements.

**(2) Related Party Transactions**

***Liabilities***

In August and December 2004, an officer loaned us a total of \$1,300 for working capital. The loans carry no interest rate and are due on demand. The \$1,300 is included in the accompanying financial statements as "Due to officer".

At December 31, 2003, the Company owed Summit \$18,111 for professional fees and other administrative expenses paid on behalf of the Company. During the year ended December 31, 2004, Summit paid expenses totaling \$4,187 on behalf of the Company. On May 13, 2004, the Company issued 400,000 restricted common shares to Summit valued at \$10,000, or \$.025 per share. The shares were valued based on contemporaneous sales to unrelated third party investors. As of December 31, 2004, the Company owed the affiliate \$12,298, which is included in the accompanying financial statements as "Due to affiliate".

***Common stock***

During May 2004, the Company issued 200,000 to the brother of the Company's principal executive officer in exchange for corporate governance services. The shares were valued based on contemporaneous sales to unrelated third party investors, or \$.025 per share. The Company recorded stock-based compensation of \$5,000 related to the transaction.

During May 2004, the Company issued 200,000 to a director in exchange for director fees. The shares were valued based on contemporaneous sales to unrelated third party investors, or \$.025 per share. The Company recorded stock-based compensation of \$5,000 related to the transaction.

**Rent and administrative support**

Rent

Summit contributed office space to us during the years ended December 31, 2004 and 2003. Our management has estimated the fair market value of the office space at \$500 per month, which is included in the accompanying financial statements as “Contributed rent” with an offsetting credit to “Additional paid-in capital”.

Administrative support

Summit contributed administrative services to the Company during the years ended December 31, 2004 and 2003. Our management has estimated the fair market value of the services at \$1,000 per month, which is included in the accompanying condensed financial statements as “Contributed administrative support” with an offsetting credit to “Additional paid-in capital”. We paid Summit \$173 and \$510, respectively, for services during the years ended December 31, 2004 and 2003; therefore, contributed administrative support totaled \$11,827 and \$11,490 for the years ended December 31, 2004 and 2003, respectively.

**Service Agreements**

The Company entered into three service agreements with an officer, director and an affiliate (see Note 5).

**(3) Income Taxes**

A reconciliation of U.S. statutory federal income tax rate to the effective rate is as follows:

	Years Ended December 31,	
	2004	2003
U.S. statutory federal rate	15.00%	15.00%
State income tax rate, net of federal benefit	3.94%	3.94%
Permanent differences	-8.62%	-9.24%
Net operating loss for which no tax benefit is currently available	-10.32%	-9.70%
	0.00%	0.00%

At December 31, 2004, deferred taxes consisted of a net tax asset of \$41,983 due to operating loss carryforwards of \$209,315, which was fully allowed for, in the valuation allowance of \$41,983. The valuation allowance offsets the net deferred tax asset for which there is no assurance of recovery. The changes in the valuation allowance for the years ended December 31, 2004 and 2003 were \$4,041 and \$3,475, respectively. Net operating loss carryforwards will expire through 2024.

The valuation allowance will be evaluated at the end of each year, considering positive and negative evidence about whether the asset will be realized. At that time, the allowance will either be increased or reduced; reduction could result in the complete elimination of the allowance if positive evidence indicates that the value of the deferred tax asset is no longer impaired and the allowance is no longer required.

Should we undergo an ownership change, as defined in Section 382 of the Internal Revenue Code, our net tax operating loss carryforwards generated prior to the ownership change will be subject to an annual limitation which could reduce or defer the utilization of those losses.

**(4) Shareholders' Deficit**

**Sale of common stock**

During March 2004, we sold 240,000 shares of our common stock to an unrelated investor for \$6,000, or \$.025 per share.

During March 2003, we sold 200,000 shares of our common stock to an unrelated investor for \$10,000, or \$.05 per share.

**Stock option plan**

We have adopted an incentive stock option plan for the benefit of key personnel and others providing significant services. An aggregate of 175,000 shares of common stock has been reserved under the plan. Options granted pursuant to the plan will be exercisable at a price no less than 100 percent of fair market value of a common share on the date of grant.

Following is a schedule of changes in our outstanding stock options for years ended December 31, 2004 and 2003:

Description	Options	Options Exercisable	Weighted Avg Exercise Price	Weighted Avg Remaining Life
Outstanding at January 1, 2003	100,000	100,000	\$0.25	9 years
Granted	—	—	—	—
Exercised	—	—	—	—
Expired/Cancelled	—	—	—	—
Outstanding at December 31, 2003	100,000	100,000	\$0.25	8 years
Granted	—	—	—	—
Exercised	—	—	—	—
Expired/Cancelled	—	—	—	—
Outstanding at December 31, 2004	<u>100,000</u>	100,000	\$0.25	7 years

**(5) Commitments**

On October 1, 2004, the Company entered into a management consulting services agreement whereby the consultant will provide services including, but not limited to:

- a. Mergers and acquisition;
- b. Due diligence studies, reorganizations, divestitures;
- c. Capital structures, banking methods and systems;
- d. Periodic reporting as to the developments concerning the general financial markets and public securities markets and industry which may be relevant or of interest or concern to the Company or the Company's business;
- e. Guidance and assistance in available alternatives for accounts receivable financing and/or other asset financing; and
- f. Structural recommendations to assist the Company's capability to finance.

Under the terms of the agreement, the Company has agreed to pay the consultant a one-time fee of \$120,000 on the date of closing of any of the above business transactions or any transaction giving the Company a valid financial direction.



**EASYWEB, INC.**  
**Notes to Financial Statements**

On December 9, 2004, the Company entered into an employment agreement with its president/CEO. Under the terms of the agreement, the Company has agreed to pay its president/CEO a one-time fee of \$100,000 if and when the Company completes a merger, acquisition, reverse merger, financing, or any other related transaction non-detrimental to the immediate future of the Company, that leaves the Company in a position and direction better than it was prior to the transaction.

On December 10, 2004, the Company entered into a management consulting services agreement with a director. Under the terms of the agreement, the Company has agreed to pay the director a one-time fee of \$10,000 plus expenses, upon the closing of any transaction leaving the Company with a positive business directive and available finances, non-detrimental to the survival of the Company.

On December 10, 2004, the Company entered into a consulting services agreement whereby Summit will provide services including, but not limited to:

- a. Mergers and acquisition;
- b. Due diligence studies, reorganizations, divestitures;
- c. Capital structures, banking methods and systems;
- d. Periodic reporting as to the developments concerning the general financial markets and public securities markets and industry which may be relevant or of interest or concern to the Company or the Company's business;
- e. Guidance and assistance in available alternatives for accounts receivable financing and/or other asset financing; and
- f. Conclude business and transactions necessary to keep the Company current in all public filings, a-float and in business until an aforementioned business transaction is closed, to include lending funds to the Company when absolutely necessary as has been done over the prior three years at no charge, allowing the Company to survive.

Under the terms of the agreement, the Company has agreed to pay Summit a one-time fee of \$120,000 on the date of closing of any transaction leaving the Company with a positive business directive and available finances, non-detrimental to the survival of the Company.

**(6) Subsequent Events**

On February 28, 2005, the Company's shareholders approved the following proposals:

- a. Reincorporate the Company in the State of Delaware;
- b. Authorize the Board of Directors to implement a reverse stock split at a ratio no greater than 40:1;
- c. Increase the Company's authorized capital by 250,000,000 shares (from 30,000,000 to 280,000,000);

As of the date of this report, the Company's re-incorporation in the State of Delaware had not yet been finalized and no reverse stock split had yet been implemented.

During January 2005, the Company sold 430,000 shares of its common stock to unrelated investors for \$13,200, or \$.03 per share.

On January 18, 2005, the Company sold a common stock option to an unrelated third party for \$1,800. Under terms of the option agreement, the holder may purchase, for an additional \$1,000, 1% of the Company's outstanding common stock as of the exercise date. The option expires on June 7, 2005.





**EASYWEB, INC.**  
**Condensed Balance Sheet**  
**(Unaudited)**  
**June 30, 2005**

<b>Assets</b>	
Current Assets:	
Cash	\$ <u>1,118</u>
<b>Liabilities and Shareholders' Deficit</b>	
Current Liabilities:	
Accounts payable and accrued liabilities	\$ 9,914
Total current liabilities	<u>9,914</u>
Shareholders' deficit (Note 4):	
Common stock, no par value; 280,000,000 shares authorized, 6,654,980 shares issued and outstanding	183,613
Additional paid-in capital	118,353
Retained deficit	<u>(310,762)</u>
Total shareholders' deficit	<u>(8,796)</u>
	<u>\$ 1,118</u>

See accompanying notes to condensed financial statements

**EASYWEB, INC.**  
**Condensed Statements of Operations**  
**(Unaudited)**

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2005	2004	2005	2004
<b>Operating expenses:</b>				
Contributed rent (Note 2)	\$ 1,500	\$ 1,500	\$ 3,000	\$ 3,000
Contributed administrative support (Note 2)	2,805	2,925	5,145	5,925
Administrative support (Note 2)	195	75	855	75
Stock-based compensation	—	10,000	—	10,000
Professional fees	4,122	1,299	12,730	3,127
Web site consulting and maintenance	140	—	170	60
Dues and subscriptions	—	—	1,250	—
Other	1,192	429	2,129	682
Total operating expenses	<u>9,954</u>	<u>16,228</u>	<u>25,279</u>	<u>22,869</u>
Loss before income taxes	(9,954)	(16,228)	(25,279)	(22,869)
Income tax provision (Note 3)	—	—	—	—
Net loss	<u>\$ (9,954)</u>	<u>\$ (16,228)</u>	<u>\$ (25,279)</u>	<u>\$ (22,869)</u>
Basic and diluted loss per share	<u>\$ (0.00)</u>	<u>\$ (0.00)</u>	<u>\$ (0.00)</u>	<u>\$ (0.00)</u>
Basic and diluted weighted average common shares outstanding	<u>6,255,997</u>	<u>5,479,533</u>	<u>6,198,999</u>	<u>5,132,867</u>

See accompanying notes to condensed financial statements

**EASYWEB, INC.**  
**Condensed Statement of Changes in Shareholders' Equity**  
**(Unaudited)**

	<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-In</u>	<u>Deficit</u>	
Balance at January 1, 2005	5,746,200	\$ 156,050	\$ 108,408	\$ (285,483)	\$ (21,025)
January 2005, sale of common stock (\$.03/share) (Note 4)	430,000	13,200	—	—	13,200
January 2005, common stock option granted for cash (Note 4)	—	—	1,800	—	1,800
June 2005, sale of common stock (\$.03/share) (Note 4)	200,000	6,000	—	—	6,000
June 2005, common stock issued to officer as repayment for working capital advances (\$.03/share) (Note 2)	69,600	2,088	—	—	2,088
June 2005, common stock issued to affiliate as repayment for working capital advances (\$.03/share) (Note 2)	209,180	6,275	—	—	6,275
Office space and administrative support contributed by an affiliate (Note 2)	—	—	8,145	—	8,145
Net loss, six months ended June 30, 2005	—	—	—	(25,279)	(25,279)
Balance at June 30, 2005	<u>6,654,980</u>	<u>\$ 183,613</u>	<u>\$ 118,353</u>	<u>\$ (310,762)</u>	<u>\$ (8,796)</u>

See accompanying notes to condensed financial statements

**EASYWEB, INC.**  
**Condensed Statements of Cash Flows**  
**(Unaudited)**

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<b>2005</b>	<b>2004</b>
Net cash used in operating activities	\$ (19,903)	\$ (6,006)
Cash flows from financing activities:		
Proceeds from granting of stock option (Note 4)	1,800	—
Proceeds from the sale of common stock (Note 4)	19,200	6,000
Net cash provided by financing activities	21,000	6,000
Net change in cash	1,097	(6)
Cash, beginning of period	21	33
Cash, end of period	\$ 1,118	\$ 27
Supplemental disclosure of cash flow information:		
Cash paid during the period for:		
Income taxes	\$ —	\$ —
Interest	\$ —	\$ —
Non-cash financing transactions:		
Common stock issued to officer to repay working capital advances	\$ 2,088	\$ —
Common stock issued to affiliate to repay working capital advances	\$ 6,275	\$ —

See accompanying notes to condensed financial statements

**EASYWEB, INC.**  
**Notes to Unaudited Condensed Financial Statements**

**Note 1: Basis of presentation**

The financial statements presented herein have been prepared by the Company in accordance with the accounting policies in its Form 10-KSB dated December 31, 2004, and should be read in conjunction with the notes thereto.

In the opinion of management, all adjustments (consisting only of normal recurring adjustments) which are necessary to provide a fair presentation of operating results for the interim period presented have been made. The results of operations for the periods presented are not necessarily indicative of the results to be expected for the year.

Financial data presented herein are unaudited.

**Note 2: Related party transactions**

Rent

Summit Financial Relations, Inc. ("Summit"), an affiliate under common control, contributed office space to the Company during the six months ended June 30, 2005. The Company's management has estimated the fair market value of the office space at \$500 per month, which is included in the accompanying condensed financial statements as Contributed Rent with an offsetting credit to Additional Paid-in Capital.

Administrative support

Summit contributed administrative services to the Company during the six months ended June 30, 2005. The Company's management has estimated the fair market value of the services at \$1,000 per month, which is included in the accompanying condensed financial statements as Contributed Administrative Support with an offsetting credit to Additional Paid-in Capital. During the six months ended June 30, 2005, the Company paid \$855 for services, which reduced the amount of contributed services for the period from \$6,000 to \$5,145.

Indebtedness to related parties

At December 31, 2004, the Company owed Summit \$12,268 for professional fees and other administrative expenses paid on behalf of the Company. During the six months ended June 30, 2005, Summit paid an additional \$1,007 in expenses on the Company's behalf. On February 4, 2005, the Company repaid Summit \$7,000 and on June 28, 2005 the Company issued Summit 209,180 shares of common stock for full payment of all amounts owed to Summit. The shares issued to Summit were valued at \$.03 per share, or \$6,275, based on contemporaneous common stock sales to unrelated third parties. As of June 30, 2005, the balance owed to Summit was \$-0-.

In August and December 2004, an officer loaned us a total of \$1,300 for working capital. During May 2005, the officer advanced the Company an additional \$788. The loans carried no interest rate and were due on demand. On June 28, 2005, the Company issued the officer 69,600 shares of common stock for full payment of all amounts owed to the officer. The shares issued to the officer were valued at \$.03 per share, or \$2,088, based on contemporaneous common stock sales to unrelated third parties. As of June 30, 2005, the balance owed to the officer was \$-0-.

Common stock

During June 2005, the Company sold 200,000 shares of its common stock to a director for \$6,000, or \$.03 per share.



### Service agreements

On December 9, 2004, the Company entered into an employment agreement with its president/CEO. Under the terms of the agreement, the Company has agreed to pay its president/CEO a one-time fee of \$100,000 if and when the Company completes a merger, acquisition, reverse merger, financing, or any other related transaction non-detrimental to the immediate future of the Company, that leaves the Company in a position and direction better than it was prior to the transaction (see Note 7).

On December 10, 2004, the Company entered into a management consulting services agreement with a director. Under the terms of the agreement, the Company has agreed to pay the director a one-time fee of \$10,000 plus expenses, upon the closing of any transaction leaving the Company with a positive business directive and available finances, non-detrimental to the survival of the Company (see Note 7).

On December 10, 2004, the Company entered into a consulting services agreement whereby Summit will provide services including, but not limited to:

- a. Mergers and acquisition;
- b. Due diligence studies, reorganizations, divestitures;
- c. Capital structures, banking methods and systems;
- d. Periodic reporting as to the developments concerning the general financial markets and public securities markets and industry which may be relevant or of interest or concern to the Company or the Company's business;
- e. Guidance and assistance in available alternatives for accounts receivable financing and/or other asset financing; and
- f. Conclude business and transactions necessary to keep the Company current in all public filings, a-float and in business until an aforementioned business transaction is closed, to include lending funds to the Company when absolutely necessary as has been done over the prior three years at no charge, allowing the Company to survive.

Under the terms of the agreement, the Company has agreed to pay Summit a one-time fee of \$120,000 on the date of closing of any transaction leaving the Company with a positive business directive and available finances, non-detrimental to the survival of the Company (see Note 7).

### **Note 3: Income taxes**

The Company records its income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes". The Company incurred net operating losses during all periods presented resulting in a deferred tax asset, which was fully allowed for; therefore, the net benefit and expense resulted in \$-0- income taxes.

### **Note 4: Shareholder's deficit**

#### Common stock

During January 2005, the Company sold 430,000 shares of its common stock to unrelated investors for \$13,200, or \$.03 per share.

#### Common stock options

On January 18, 2005, the Company sold a common stock option to an unrelated third party for \$1,800. Under terms of the option agreement, the holder could purchase, for an additional \$1,000, 1% of the Company's outstanding common stock as of the exercise date. On July 30, 2005, the parties amended the agreement whereby the option holder is now entitled to purchase that number of shares of our common stock equal to the number of such shares the option holder would have received in the merger with ZIOPHARM, Inc. (see Note 7) had the option holder owned 1% of the ZIOPHARM's capital stock immediately prior to such merger (calculated on a fully-diluted basis). The aggregate exercise price for such option is \$1,000.

### Corporate governance

On February 28, 2005, the Company's shareholders approved the following proposals:

- a. Reincorporate the Company in the State of Delaware;
- b. Authorize the Board of Directors to implement a reverse stock split at a ratio no greater than 40:1; and
- c. Increase the Company's authorized capital by 250,000,000 shares (from 30,000,000 to 280,000,000).

The Company's re-incorporation in the State of Delaware was completed on May 16, 2005. As of the date of this report, no reverse stock split had yet been implemented.

### **Note 5: Commitment**

On October 1, 2004, the Company entered into a management consulting services agreement whereby the consultant will provide services including, but not limited to:

- a. Mergers and acquisition;
- b. Due diligence studies, reorganizations, divestitures;
- c. Capital structures, banking methods and systems;
- d. Periodic reporting as to the developments concerning the general financial markets and public securities markets and industry which may be relevant or of interest or concern to the Company or the Company's business;
- e. Guidance and assistance in available alternatives for accounts receivable financing and/or other asset financing; and
- f. Structural recommendations to assist the Company's capability to finance.

Under the terms of the agreement, the Company has agreed to pay the consultant a one-time fee of \$120,000 on the date of closing of any of the above business transactions or any transaction giving the Company a valid financial direction (see Note 7).

### **Note 6: Termination of Proposed Merger**

On May 6, 2005, the Company signed a term sheet with Zephyr Sciences, Inc. ("Zephyr"), which outlined the conditions of a proposed merger between the two parties.

Under the structure of the term sheet, the Company would form a wholly-owned Delaware subsidiary, which would merge into Zephyr and Zephyr would be the surviving entity. Zephyr's shareholders would then exchange their shares of common stock for common stock in the Company, which would result in Zephyr becoming the Company's wholly-owned subsidiary. The transaction would result in a change in control, whereby the Company's directors would resign and the directors of Zephyr would become the directors of the Company.

The parties terminated the proposed transaction in June 2005.

## Note 7: Subsequent Events

### Common stock

During July 2005, the Company sold 333,333 shares of its common stock to an unrelated investor for \$10,000, or \$.03 per share.

During July 2005, the Company sold 333,333 shares of its common stock to a director for \$10,000, or \$.03 per share.

On August 3, 2005, the Company sold 275,000 shares of its common stock to an unrelated third party for \$24,000, or \$.087 per share.

### Agreement and Plan of Merger

On August 3, 2005, the Company signed an Agreement and Plan of Merger with ZIOPHARM, Inc. ("ZIOPHARM"), which outlines the conditions of a proposed merger between the two parties.

In connection with the Agreement and Plan of Merger, the Company has formed a wholly-owned Delaware subsidiary, Zio Acquisition Corp., which will merge into ZIOPHARM with ZIOPHARM remaining as the surviving entity and as a wholly-owned subsidiary of the Company following the merger. Holders of ZIOPHARM's capital stock or securities convertible into such capital stock will be exchanged for shares of the Company's common stock or securities convertible into such shares. The transaction will result in a change in control, whereby the Company's directors will resign and the directors of ZIOPHARM will become the directors of the Company. On the closing date of the merger transaction, the consolidated EasyWeb entity will pay all unconsolidated liabilities of the Company then due, a portion of which will be payable to David C. Olson and an entity affiliated with Mr. Olson. However, Mr. Olson and this affiliated entity have agreed to reduce the amount of the payments to which they are otherwise entitled to the extent that the unconsolidated liabilities of the Company immediately following the Merger exceed \$425,000.

In addition to a range of standard closing conditions set forth in the Agreement and Plan of Merger, the closing of the transaction is subject to the following closing conditions:

1. The merger transaction shall have been approved by the requisite vote of ZIOPHARM's stockholders, with ZIOPHARM stockholders holding no more than 4% of the issued and outstanding shares of Ziopharm capital stock having exercised their right to dissent from the transaction and obtain the fair value of their shares;
2. As of the closing date, the Company's common stock shall have traded and shall continue to be eligible for trading on the OTCBB;
3. ZIOPHARM shall have received an opinion from its counsel stating that the transaction qualifies as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended;
4. ZIOPHARM shall have received an opinion from the Company's counsel stating that the issuance of the Company's common stock in the merger is exempt from the registration requirements of the Securities Act of 1933, as amended; and
5. The Company's shall have completed a 1-for-40 reverse stock split.

Should the Company close the above transaction, the Company will incur the following approximate charges subject to update at closing:

a.	Employment agreement fee with president/CEO (Note 2)	\$	100,000
b.	Management consulting services agreement with director (Note 2)		10,000
c.	Consulting agreement with affiliate (Note 2)		120,000
d.	Management consulting services agreement with consultant (Note 5)		120,000
e.	Transaction introduction fees		100,000
f.	Other consulting fees		10,000
f.	Ongoing business expenses		17,000
	TOTAL	\$	477,000

On July 14, 2005, the Board of Directors approved a \$50,000 fee for the Company's president in the event the above transaction does not close. The fee is to be paid for services provided in connection with the due diligence and negotiations related to the proposed merger as well as previous uncompleted transactions. If the proposed merger does close, the \$50,000 fee will be inclusive within and covered by payment of the \$100,000 employment agreement fee (see Note 2).

**ZIOPHARM, Inc.**  
(A Development Stage Enterprise)  
Balance Sheets

	June 30, 2005	December 31, 2004
	Unaudited	Audited
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 13,167,747	\$ 1,026,656
Prepaid expenses and other current assets	257,217	117,571
Total current assets	13,424,964	1,144,227
Property and equipment, net	193,996	240,733
Deposits	56,032	60,046
Other non current assets	92,237	-
Total assets	\$ 13,767,229	\$ 1,445,006
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 448,593	\$ 709,947
Accrued expenses	993,047	879,376
Total current liabilities	1,441,640	1,589,323
Commitments and contingencies		
Convertible preferred stock:		
Series A convertible preferred stock, \$.001 par value; 20,000,000 shares authorized; 8,379,564 and 0 shares issued and outstanding at June 30, 2005 and December 31, 2004, respectively	15,076,733	-
Warrants to purchase Series A convertible preferred stock	1,682,863	-
Total convertible preferred stock	16,759,596	-
Stockholders' deficit:		
Common stock, \$.001 par value; 30,000,000 shares authorized; and 5,512,500 shares issued and outstanding at both June 30, 2005 and December 31, 2004	5,513	5,513
Additional paid-in capital	5,697,603	5,697,603
Deficit accumulated during the development stage	(10,137,123)	(5,847,433)
Total stockholders' deficit	(4,434,007)	(144,318)
Total liabilities, convertible preferred stock and stockholders' deficit	\$ 13,767,229	\$ 1,445,006

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Statements of Operations

For the three and six months ended June 30, 2005 and 2004 (unaudited)

	For the three months ended June 30, 2005	For the three months ended June 30, 2004	For the six months ended June 30, 2005	For the six months ended June 30, 2004	For the Period from Inception (September 9, 2003) through June 30, 2005
Research contract revenue	\$ -	\$ -	\$ -	\$ -	\$ -
Operating expenses and other income:					
Research and development, including					
costs of research contracts	1,362,508	-	2,961,079	-	5,087,686
General and administrative	746,229	915,584	1,412,090	1,717,910	5,154,683
Total operating expenses	2,108,737	915,584	4,373,169	1,717,910	10,242,369
Loss from operations	(2,108,737)	(915,584)	(4,373,169)	(1,717,910)	(10,242,369)
Interest income	79,607	6,141	83,479	10,242	105,246
Net loss	\$ (2,029,130)	\$ (909,443)	\$ (4,289,690)	\$ (1,707,668)	\$ (10,137,123)
Basic and diluted net loss per share	\$ (0.40)	\$ (0.18)	\$ (0.86)	\$ (0.40)	
Weighted average common shares outstanding used to compute basic and diluted net loss per share	5,012,500	5,012,500	5,012,500	4,216,920	

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Statements of Cash Flows

For the six months ended June 30, 2005 and 2004 (unaudited)

	For the Six months ended June 30, 2005	For the Six months ended June 30, 2004	For the Period from Inception (September 9, 2003) through June 30, 2005
<b>Cash flows from operating activities:</b>			
Net loss	\$ (4,289,690)	\$ (1,707,668)	\$ (10,137,123)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	45,789	-	79,742
Stock-based compensation	-	-	703,116
Change in operating assets and liabilities:			
Increase in:			
Prepaid expenses and other current assets	(139,646)	-	(257,217)
Other noncurrent assets	(92,237)	-	(92,237)
Increase (decrease) in:			
Deposits	4,014	(83,687)	(56,032)
Accounts payable	(261,354)	42,728	448,593
Accrued expenses	113,671	-	993,047
Net cash used in operating activities	<u>(4,619,453)</u>	<u>(1,748,627)</u>	<u>(8,318,111)</u>
<b>Cash flows from investing activities:</b>			
(Purchases) returns of property and equipment	948	(39,834)	(273,738)
Net cash provided by (used) in investing activities	<u>948</u>	<u>(39,834)</u>	<u>(273,738)</u>
<b>Cash flows from financing activities:</b>			
Stockholder's capital contribution	-	-	500,000
Proceeds from issuance of common stock, net	-	4,500,000	4,500,000
Proceeds from issuance of preferred stock, net	16,759,596	-	16,759,596
Net cash provided by financing activities	<u>16,759,596</u>	<u>4,500,000</u>	<u>21,759,596</u>
Net increase in cash and cash equivalents	12,141,091	2,711,539	13,167,747
Cash and cash equivalents, beginning of period	1,026,656	402,363	-
Cash and cash equivalents, end of period	<u>\$ 13,167,747</u>	<u>\$ 3,113,902</u>	<u>13,167,747</u>
<b>Supplementary disclosure of cash flow information:</b>			
Cash paid for interest	<u>\$ -</u>	<u>\$ -</u>	<u>-</u>
Cash paid for income taxes	<u>\$ -</u>	<u>\$ -</u>	<u>-</u>
<b>Supplementary disclosure of noncash investing and financing activities:</b>			
Warrants issued to placement agent, in connection with preferred stock issuance	<u>\$ 1,682,863</u>	<u>\$ -</u>	<u>\$ 1,682,863</u>

**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Statement of Changes in Convertible Preferred Stock and Stockholders' Equity (Deficit)

For the six months ended June 30, 2005, For the Year ended December 31, 2004 and

For the Period from Inception (September 9, 2003) to December 31, 2003

	Series A Convertible Preferred Stock		Warrants to Purchase Series A Convertible Preferred Stock	Common Stock		Additional Paid-in Capital	Deficit Accumulated during the Development Stage	Total Stockholders' Equity/ (Deficit)
	Shares	Amount	Warrants	Shares	Amount			
	Stockholders' contribution, September 9, 2003	-	\$ -	\$ -	500,000			
Net loss	-	-	-	-	-	-	(160,136)	(160,136)
Balance at December 31, 2003 (audited)	-	-	-	500,000	500	499,500	(160,136)	339,864
Issuance of common stock	-	-	-	4,500,000	4,500	4,495,500	-	4,500,000
Issuance of common stock for services	-	-	-	512,500	513	438,326	-	438,839
Fair value of options/warrants issued for nonemployee services	-	-	-	-	-	264,277	-	264,277
Net loss	-	-	-	-	-	-	(5,687,297)	(5,687,297)
Balance at December 31, 2004 (audited)	-	-	-	5,512,500	\$ 5,513	5,697,603	(5,847,433)	(144,317)
Issuance of Series A convertible preferred stock	8,379,564	15,076,733	-	-	-	-	-	-
Fair value of warrants to purchase Series A convertible preferred stock	-	-	1,682,863	-	-	-	-	-
Net loss	-	-	-	-	-	-	(4,289,690)	(4,289,690)
Balance at June 30, 2005 (unaudited)	8,379,564	\$ 15,076,733	\$ 1,682,863	5,512,500	\$ 5,513	\$ 5,697,603	\$ (10,137,123)	\$ (4,434,007)



**ZIOPHARM, Inc.****(A Development Stage Enterprise)**

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

**1. BASIS OF PRESENTATION AND OPERATIONS**

The financial statements included herein have been prepared by ZIOPHARM, Inc. ("ZIOPHARM" or the "Company") without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the accompanying unaudited financial statements include all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position, results of operations and cash flows of the Company at the dates and for the periods indicated. The unaudited financial statements included herein should be read in conjunction with the audited financial statements and the notes thereto included in ZIOPHARM Oncology Inc.'s Form 8-K filed on September 19, 2005 for the fiscal year ended December 31, 2004.

ZIOPHARM is a development stage biopharmaceutical company that seeks to acquire, develop and commercialize, on its own or with other commercial partners, products for the treatment of important unmet medical needs in cancer.

The Company has operated at a loss since its inception in 2003 and has no revenues. The Company anticipates that losses may continue for the foreseeable future. At June 30, 2005, the Company's accumulated deficit was approximately \$10.1 million. The Company's ability to continue operations after its current cash resources are exhausted depends on its ability to obtain additional financing and achieve profitable operations, as to which no assurances can be given. Cash requirements may vary materially from those now planned because of changes in the focus and direction of our research and development programs, competitive and technical advances, patent developments or other developments. Additional financing will be required to continue operations after we exhaust our current cash resources and to continue our long-term plans for clinical trials and new product development.

On June 6, 2005, the Company completed an offering of Series A Convertible Preferred Stock ("Series A Stock"). The Company issued 8,379,564 shares at \$2.16 per share for gross proceeds of approximately \$18.1 million. In connection with the Series A Preferred Stock Offering, the Company compensated Paramount or its affiliates for its services through the payment of (a) cash commissions equal to 7% of the gross proceeds from the sale of the shares of Series A Preferred Stock, and (b) placement warrants to acquire 837,956 shares of Series A Preferred Stock (the Series A Stock Warrants), exercisable for a period of 7 years from the Closing Date at a per Share exercise price equal to 110% of the price per Share sold in the Offering. These commissions are also payable on additional sales by the Company of securities (other than in a public offering) to investors introduced to the Company by Paramount during the twelve (12) month period subsequent to the final closing of the Offering. The Company also paid Paramount an expense allowance of \$50,000 to reimburse Paramount for its out-of-pocket expenses (the "Expense Allowance"). Also, for a period of 36 months from the final Closing, Paramount has the right of first refusal to act as the placement agent for any private sale of the Company's securities. Lastly, the Company has agreed to indemnify Paramount against certain liabilities, including liabilities under the Securities Act.

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

**1. BASIS OF PRESENTATION AND OPERATIONS....continued**

The Company has valued the warrants using the Black-Scholes model recording a non-cash issuance cost of \$1,682,683. The net proceeds from the Offering will be used for research and development, licensing fees and expenses, and for working capital and general corporate purposes.

On August 3, 2005 the Company entered into an Agreement and Plan of Merger dated as of August 3, 2005 (as may be amended from time to time, the "Merger Agreement") with EasyWeb, Inc., a Delaware corporation (OTC:ESYW.OB) ("EasyWeb"), and ZIO Acquisition Corp., a Delaware corporation and wholly owned subsidiary of EasyWeb ("ZIO Acquisition"). EasyWeb is a company that was incorporated in September 1998 and has been in the business of designing, marketing, selling and maintaining customized and template turnkey sites on the Internet that are hosted by third parties. Currently, however, EasyWeb has no operating business and has limited assets and liabilities. Pursuant to the Merger Agreement, ZIO Acquisition merged with and into ZIOPHARM, with ZIOPHARM remaining as the surviving company and a wholly-owned subsidiary of EasyWeb (the "Merger"). In connection with the Merger, which was effective as of September 13, 2005, ZIO Acquisition ceased to exist and the surviving company changed its corporate name to ZIOPHARM, Inc. In exchange for all of their shares of capital stock in ZIOPHARM, the Stockholders received a number of shares of Common Stock of EasyWeb such that, upon completion of the Merger, the then-current Stockholders held approximately 96.8% of the outstanding shares of Common Stock of EasyWeb on a fully-diluted basis. Upon completion of the Merger, EasyWeb ceased all of its remaining operations and adopted and continued implementing the business plan of ZIOPHARM. Further, effective with the Merger, the current officers and directors of EasyWeb resigned, the current officers and directors of ZIOPHARM were appointed officers and directors of EasyWeb and EasyWeb changed its name to ZIOPHARM Oncology, Inc. In conjunction with the Merger, ZIOPHARM made certain payments not to exceed \$425,000 to certain affiliates of EasyWeb.

The results disclosed in the Statement of Operations for the six months ended June 30, 2005 are not necessarily indicative of the results to be expected for the full year.

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

**2. STOCK BASED COMPENSATION**Accounting for Stock-Based Compensation

The Company accounts for stock-based awards to employees using the intrinsic value method as prescribed by Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations. The Company follows the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, for disclosure purposes. All stock-based awards to nonemployees are accounted for at their fair value in accordance with SFAS No. 123 and Emerging Issues Task Force (EITF) 96-18, *Accounting for Equity Instruments that are Issued to Other than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The Company has adopted the disclosure provisions of SFAS No. 148, *Accounting for Stock-Based Compensation - Transition and Disclosure - an amendment of SFAS No. 123*, for all stock-based awards as of December 31, 2004.

The following illustrates the effect on net loss had the Company applied the fair value recognition provisions of SFAS No. 123:

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Net loss:	\$ (2,029,130)	\$ (909,443)	\$ (4,289,690)	\$ (1,707,668)
As reported				
Stock-based compensation expense included in reported net loss	—	—	—	—
Stock-based compensation expense under the fair value-based method	(73,780)	(14,180)	(163,270)	(26,726)
Pro forma net loss	\$ (2,102,910)	\$ (923,623)	\$ (4,452,960)	\$ (1,734,394)
Basic and diluted net loss per share:				
As reported	\$ (0.40)	\$ (0.18)	\$ (0.86)	\$ (0.40)
Pro forma	\$ (0.42)	\$ (0.18)	\$ (0.89)	\$ (0.41)

**ZIOPHARM, Inc.***(A Development Stage Enterprise)*

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

**2. STOCK BASED COMPENSATION.....continued**Accounting for Stock-Based Compensation...continued

The fair value of each stock option is estimated at the date of grant using the Black-Scholes option pricing model. The following table summarizes the assumptions used in the Black-Scholes option pricing model:

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Expected life	5 years	5 years	5 years	5 years
Expected volatility	114%	134%	114%	114%
Dividend yield	3.77%	3.60%	3.77%	3.60%
Weighted average risk-free interest rat	0%	0%	0%	0%

Recently Issued Pronouncements

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 123R, Share-Based Payment ("SFAS No. 123R"). This Statement is a revision of SFAS No. 123, Accounting for Stock-Based Compensation, and supersedes Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, and its related implementation guidance. SFAS No. 123R focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. The Statement requires entities to recognize stock compensation expense for awards of equity instruments to employees based on the grant-date fair value of those awards (with limited exceptions). SFAS No. 123R is effective for the first fiscal year beginning after December 15, 2005. Based on current options outstanding, the Company anticipates the adoption of this statement to result in approximately \$723,918 of additional compensation cost to be recognized in the year of adoption.

**ZIOPHARM, Inc.**

**(A Development Stage Enterprise)**

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

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**3. CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY**

On June 6, 2005, the Company completed its Series A Convertible Preferred Stock offering (see Note 1).

We have authorized capital of 50,000,000 shares, of which 30,000,000 shares have been designated as common stock, par value \$.001 per share (the "Common Stock"), and 20,000,000 shares have been designated as preferred stock, par value \$.001 per share.

Convertible Preferred Stock

Voting Rights

The holders of Series A Preferred Stock will be entitled to vote together with all other holders of the Company's voting stock on an "as-converted" basis on all matters submitted to a vote of holders generally. The holders of Series A Preferred Stock, voting as a separate class, will also have the right to approve by a 66% supermajority certain actions proposed to be taken by the Company.

Dividend Rights

The holders of Series A Preferred Stock will be entitled to receive dividends on an equal basis with the holders of Common Stock when, as and if declared by the Board of Directors.

Liquidation Preferences

The Series A Preferred Stock shall rank senior to the Common Stock and any future class of junior securities, and will be entitled to a liquidation preference equal to the Stated Value, subject to adjustment (as defined in the Certificate of Designations), upon any liquidation, dissolution or winding up of the Company or upon a voluntary or involuntary bankruptcy of the Company.

Conversion Rights

Each share of Series A Preferred Stock will be convertible into Common Stock at any time at the option of the holder thereof (the Series A Preferred Stock and the Common Stock issuable upon conversion of the Series A Preferred Stock are sometimes herein collectively referred to as the "Securities"). All of the outstanding shares of Series A Preferred Stock will automatically convert into Common Stock upon the first date (the "Trading Date") on which the Common Stock (or securities received in exchange for Common Stock) trades on a national securities exchange or on NASDAQ, including the Over the Counter Bulletin Board (a "Trading Event"). The rate at which shares of Series A Preferred Stock will convert into Common Stock will initially be one-for-one, subject to adjustment in connection with certain anti-dilution protections and other adjustments.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

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**3. CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY...continued**

Convertible Preferred Stock...continued

Conversion Rights...continued

In the event of a reclassification, capital reorganization or other similar change in the outstanding shares of Common Stock, a consolidation or merger of the Company with or into another entity (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in a reclassification, capital reorganization or other change of outstanding shares of Common Stock other than the number thereof), or a sale of the property of the Company as, or substantially as, an entirety (other than a sale/leaseback, mortgage or other financing transaction), the Series A Preferred Stock will become convertible into the kind and number of shares of stock or other securities or property (including cash) that the holders of Series A Preferred Stock would have received if the Series A Preferred Stock had been converted into Common Stock immediately prior to such reclassification, capital reorganization or other change, consolidation, merger or sale.

Common Stock

We currently have issued and outstanding 5,512,500 shares of Common Stock.

In September 2003, the Company issued 2,000,000 (before the split discussed below) shares of Common Stock at \$0.25 per share for gross proceeds of \$500,000.

In January 2004, the Company issued 18,000,000 (before the split discussed below) shares of Common Stock at \$0.25 per share for gross proceeds of \$4,500,000.

In February 2004, the Company amended its articles of incorporation to provide for the combination of the Company's common stock, par value \$0.001 per share on a 1-for-4 basis (all other share amounts presented reflect the reverse split).

**4. RELATED PARTY TRANSACTIONS**

The Company had engaged Paramount BioCapital, Inc. ("Paramount") to assist in placing shares of Series A Preferred Stock on a "best efforts" basis (see Note 1). Lindsay A. Rosenwald, M.D. is Chairman and Chief Executive Officer of Paramount. Dr. Rosenwald is also managing member of Horizon BioMedical Ventures, LLC ("Horizon"). On December 30, 2004, Horizon authorized the distribution of 4,848,376 shares of Common Stock (such shares, the "Horizon Distributed Shares"), in equal installments of 2,424,188 shares of Common Stock to Mibars, LLC ("Mibars") and to Dr. Rosenwald and his designees (the "Designated Shares"). The disposition of the Designated Shares will be subject to certain restrictions as agreed to among Dr. Rosenwald and Dr. Rosenwald's designees. Among other things, under certain circumstances set forth in pledge agreements between Dr. Rosenwald and his designees, Dr. Rosenwald has the right to re-acquire the Designated Shares from his designees. As a result of those rights, Dr. Rosenwald may be deemed to be an affiliate of the Company.

**ZIOPHARM, Inc.**

**(A Development Stage Enterprise)**

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

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**4. RELATED PARTY TRANSACTIONS...continued**

In connection with the December 22, 2004 Option Agreement with Southern Research Institute ("SRI"), the Company entered into a Finders Agreement, dated December 23, 2004, with Paramount pursuant to which the Company had agreed to compensate Paramount, for services in connection with the Company's introduction to SRI through the payment of (a) a cash fee of \$60,000 and (b) warrants to purchase 125,000 shares of the Company's Common Stock at a price equal to \$2.38 per share. The Company has estimated the fair value of such warrants using the Black-Scholes model, using an assumed risk-free rate of 3.93%, and expected life of 7 years, volatility of 134% and dividend yield of 0%. In December 2004, the Company expensed the \$60,000 that was payable to Paramount and recognized compensation expense in the amount of \$251,037 for the issuance of the warrants.

In connection with the Series A Preferred Stock Offering (see Note 1), the Company and Paramount entered into an Introduction Agreement in January 2005 (the "Introduction Agreement"), pursuant to which the Company has agreed to compensate Paramount for its services in connection with the Offering through the payment of (a) cash commissions equal to 7% of the gross proceeds from the sale of the shares of Series A Preferred Stock, and (b) placement warrants to acquire a number of shares of Series A Preferred Stock equal to 10% of the number of shares of Series A Preferred Stock issued in the Offering, exercisable for a period of 7 years from the Closing Date at a per Share exercise price equal to 110% of the price per Share sold in the Offering. These commissions are also payable on additional sales by the Company of securities (other than in a public offering) to investors introduced to the Company by Paramount during the twelve (12) month period subsequent to the final closing of the Offering. The Company also agreed to pay to Paramount a non-accountable expense allowance of \$50,000 to reimburse the Paramount for its out-of-pocket expenses (the "Expense Allowance"). Also, for a period of 36 months from the final Closing, Paramount has the right of first refusal to act as the placement agent for the private sale of the Company's securities. Lastly, the Company has agreed to indemnify Paramount against certain liabilities, including liabilities under the Securities Act.

Dr. Michael Weiser, who is a member of the Board of Directors of the Company, is also a full-time employee of Paramount. In addition, David M. Tanen, who is a member of the Board of Directors of the Company, was a full-time employee of Paramount from July 1996 through August 2004.

**ZIOPHARM, Inc.**

*(A Development Stage Enterprise)*

Notes to Financial Statements

For the three and six months ended June 30, 2005 and June 30, 2004

(Unaudited)

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**5. STOCK OPTION PLAN**

The Company has adopted the 2003 Stock Option Plan (the "Plan"), under which we have reserved for the issuance of 2,500,000 shares of our Common Stock. The Plan was approved by our stockholders on December 21, 2004.

As of December 31, 2004, the Company has issued under its 2003 Stock Option Plan 1,170,826 shares that are issuable upon exercise of outstanding options to purchase Common Stock. As of December 31, 2004, we had issued to our employees options to purchase up to 990,326 shares of the Company's Common Stock. In addition, we had issued to our directors options to purchase up to 180,000 shares of the Company's Common Stock, as well as options to a consultant in connection with services rendered to purchase up to 500 shares of the Company's Common Stock. The Company had estimated the fair value of such options using the Black-Scholes model, using an assumed risk-free rate of 4.23%, and expected life of 10 years, volatility of 134% and dividend yield of 0%. The options issued to the consultant were valued at \$1,050, and recorded as a charge to compensation expense in December 2004. We have also reserved an aggregate of 155,375 additional shares for issuance under options granted outside of the 2003 Stock Option Plan and warrants to purchase 125,000 shares of the Company's Common Stock to Paramount as compensation for services rendered in connection with our entering into an option agreement with Southern Research Institute. In connection with the warrants issued, the Company recorded a charge of \$251,037 to general and administrative expense in December 2004. The Company had valued the options using the Black-Scholes model as of the issue date of the warrants.

During the three and six months ended June 30, 2005, 451,388 options were granted and no options were exercised and 34,416 options were cancelled under the 2003 Stock Option plan.

**6. COMMITMENTS AND CONTIGENCIES**

On May 26, 2005, the Company signed five-year lease agreement for its corporate office located in New York that expires in June 2010. Under the terms of the lease, the Company leases approximately 2,580 square feet of office space and is required to make monthly rental payments of approximately \$10,100 until December 31, 2007, with such payments increasing to approximately \$11,000 thereafter through the remainder of the term of the lease.

On April 25, 2005, the company entered into a Surrender and Termination Agreement and an Escrow agreement with WE George Street, L.L.C and Cohm Birnbaum & Shea P.C. relating to the escrow of a termination fee for \$90,000, for an early termination to the New Haven, Connecticut office space.





**ZIOPHARM Oncology, Inc.**  
**(A Development Stage Enterprise)**  
Pro Forma Consolidated Balance Sheet  
June 30, 2005  
(Unaudited)

	EasyWeb, Inc.	ZIOPHARM, Inc.	Proforma Adjustments	ZIOPHARM Oncology, Inc. (C)
<b>ASSETS</b>				
Current assets:				
Cash and cash equivalents	\$ 1,118	\$ 13,259,983	\$ (425,000) (E)	\$ 12,836,101
Prepaid expenses and other current assets	—	257,217	—	257,217
Total current assets	1,118	13,517,200	(425,000)	13,093,318
Property and equipment, net	—	193,996	—	193,996
Deposits	—	56,032	—	56,032
	\$ 1,118	\$ 13,767,228	\$ (425,000)	\$ 13,343,346
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>				
Current liabilities:				
Accounts payable	\$ 9,914	\$ 448,593	\$ —	\$ 458,507
Accrued expenses	—	993,047	—	993,047
Total current liabilities	9,914	1,441,640	—	1,451,554
Commitments and contingencies				
Stockholders' equity:				
Convertible preferred stock	—	15,076,733	(15,076,733) (A)	(0)
Convertible preferred stock warrants	—	1,682,863	(1,682,863) (A)	—
Common stock	183,613	5,513	(181,968) (A)	7,158
Additional paid-in capital	118,353	5,697,603	16,630,802 (A)	22,446,758
Deficit accumulated during the development stage	(310,762)	(10,137,124)	(114,238) (A)(D)	(10,562,124)
Total stockholders' equity (deficit)	(8,796)	12,325,588	(425,000)	11,891,792
	\$ 1,118	\$ 13,767,228	\$ (425,000)	\$ 13,343,346

*The accompanying notes are an integral part of these financial statements.*

**ZIOPHARM Oncology, Inc.**  
**(A Development Stage Enterprise)**  
Pro Forma Combined Statement of Operations  
Six Months ended June 30, 2005  
(Unaudited)

	<u>EasyWeb, Inc.</u>	<u>ZIOPHARM, Inc.</u>	<u>Pro Forma Adjustments</u>	<u>ZIOPHARM Oncology, Inc. Pro Forma</u>
Research contract revenue	\$ —	\$ —	\$ —	\$ —
<b>Operating expenses and other income:</b>				
Research and development, including costs of research contracts	—	2,867,919	—	2,867,919
General and administrative	9,954	1,505,250	514,575	(E)(F) 2,029,779
Total operating expenses	9,954	4,373,169	514,575	4,897,698
Operating loss	(9,954)	(4,373,169)	(514,575)	(4,897,698)
Interest income	—	(83,479)	—	(83,479)
Net loss	\$ (9,954)	\$ (4,289,690)	\$ (514,575)	\$ (4,814,219)

*The accompanying notes are an integral part of these financial statements.*

1. Basis of Presentation

The unaudited Pro Forma consolidated financial statements present the Pro Forma consolidated financial position and results of operations of the companies based upon historical and projected financial information after giving effect to the merger of ZIOPHARM, Inc. (ZIOPHARM) with and into ZIO Acquisition Corp. (ZIO Acquisition) a wholly owned subsidiary of EasyWeb, Inc. (EasyWeb). The unaudited pro forma financial statements have been prepared to reflect certain adjustments to our historical financial information, which are described in the Notes to Unaudited Pro Forma Financial Statements, to give effect to the merger, as if it had been completed on June 30, 2005 for balance sheet purposes and for January 1, 2005 for the statement of operations.

The unaudited Pro Forma consolidated financial statements are based on the balance sheets of the following:

- a) EasyWeb at June 30, 2005 (unaudited).
- b) ZIOPHARM, Inc. at June 30, 2005 (unaudited)

The unaudited Pro Forma combined financial statements included the statements of operations for the following:

- a) EasyWeb for the six months ended at June 30, 2005 (unaudited).
- b) ZIOPHARM, Inc. for the six months ended June 30, 2005 (unaudited)

The unaudited Pro Forma combined financial statements are not necessarily indicative of the actual results that would have occurred had the merger occurred on the dates indicated and not necessarily indicative of future earnings or financial position.

This unaudited combined Pro Forma information should be read in conjunction with the annual audited financial statements of EasyWeb as of and for the year ended December 31, 2004 included in EasyWeb's Annual Report on Form 10-KSB and the quarterly report of EasyWeb on Form 10-QSB for the quarter ended June 30, 2005. In addition, this unaudited combined Pro Forma information should be read in conjunction with the audited financial statements of ZIOPHARM, Inc. as of December 31, 2004 and for the year then ended, included as an Exhibit 99.2 in this Current Report on Form 8-K.

2. Pro Forma Adjustments

The unaudited combined financial statements include the following Pro Forma adjustments:

- A) In connection with the merger, ZIO Acquisition will merge with and into ZIOPHARM with ZIOPHARM remaining as the surviving corporation and a wholly owned subsidiary of EasyWeb, Inc. following the merger. In exchange for the shares of ZIOPHARM, Inc. capital stock, the holders of ZIOPHARM Common Stock and ZIOPHARM Preferred Stock received a number of shares of common stock, \$.001 par value per share of EasyWeb, Inc. such that upon completion of the Merger, ZIOPHARM's current stockholders will hold approximately 97.4% of the outstanding EasyWeb Common Stock on a fully-diluted basis. In order that ZIOPHARM, Inc. stockholders obtain such percentage of the EasyWeb Common stock following the merger, each holder of the ZIOPHARM Common Stock will receive approximately .50097 (the "Exchange Ratio") shares of EasyWeb's Common stock (subject to appropriate adjustment as provided for in the merger agreement) for each share of ZIOPHARM Common Stock held by such holder immediately prior to the Merger, and each holder of ZIOPHARM Preferred Stock will receive the number of shares of EasyWeb's Common Stock equal to the product of the Exchange Ratio multiplied by the number of shares of ZIOPHARM Common Stock into which shares of the holder's ZIOPHARM Preferred Stock are convertible immediately prior to the Merger.
- B) In connection with the merger, EasyWeb will cease all of its remaining operations, if any, and will adopt and continue implementing the business plan of ZIOPHARM.
- C) In connection with the merger, the current officers and directors of EasyWeb, Inc. will resign, and the current officers and directors of ZIOPHARM, Inc. will be appointed officers and directors of EasyWeb. In connection with the merger, EasyWeb changed its name to ZIOPHARM Oncology, Inc.
- D) The acquisition has been accounted for as a reverse merger of ZIOPHARM with and into a shell company, with ZIOPHARM being the surviving company.
- E) In connection with the merger, ZIOPHARM, Inc. was to make certain payments not to exceed for \$425,000.
- F) As a public company, ZIOPHARM Oncology expects to incur, on a Pro Forma basis, professional fees (legal, accounting and transfer agent fees) and premium expense for directors and officers insurance of \$179,150 per year, or \$44,787.50 per quarter.



**ZIOPHARM ONCOLOGY, INC.**

**4,870,281 shares of common stock**

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PROSPECTUS

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, 2005

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 24. Indemnification of Directors and Officers.**

Under provisions of the certificate of incorporation and bylaws of the registrant, directors and officers will be indemnified for any and all judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys fees, in connection with threatened, pending or completed actions, suits or proceedings, whether civil, or criminal, administrative or investigative (other than an action arising by or in the right of the registrant), if such director or officer has been wholly successful on the merits or otherwise, or is found to have acted in good faith and in a manner he or she reasonably believes to be in or not opposed to the best interests of the registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. In addition, directors and officers will be indemnified for reasonable expenses in connection with threatened, pending or completed actions or suits by or in the right of registrant if such director or officer has been wholly successful on the merits or otherwise, or is found to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the registrant, except in the case of certain findings by a court that such person is liable for negligence or misconduct in his or her duty to the registrant unless such court or the Delaware Court of Chancery also finds that such person is nevertheless fairly and reasonably entitled to indemnity. The registrant's Certificate of Incorporation also eliminates the liability of directors of the registrant for monetary damages to the fullest extent permissible under Delaware law.

Section 145 of the Delaware General Corporation Law states:

(a) A corporation shall have the power to 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, whether civil, criminal, administrative or investigative (other than an action arising by or in the right of the corporation) by reason of the fact that he 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 expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he 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 expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense which the Court of Chancery or such other court shall deem proper.

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**Item 25. Other Expenses Of Issuance And Distribution.**

The registrant estimates that expenses payable by the registrant in connection with the offering described in this registration statement will be as follows:

SEC registration fee	\$	9,171.71
Legal fees and expenses		15,000.00
Accounting fees and expenses		5,000.00
Printing and engraving expenses		3,000.00
Miscellaneous		2,000.00
Total	\$	<u>34,171.71</u>

**Item 26. Recent Sales of Unregistered Securities.**

The following summarizes all sales of unregistered securities by ZIOPHARM since inception in September 2003 on a premerger basis:

On September 25, 2003, in connection with ZIOPHARM's incorporation, ZIOPHARM issued 500,000 shares of common stock for aggregate consideration of \$500,000. On October 7, 2003, ZIOPHARM issued 12,500 shares of common stock to a consultant in exchange for certain consulting services. On March 14, 2004, ZIOPHARM issued an additional 4,500,000 shares of common stock in exchange for aggregate consideration of \$4,500,000. On August 31, 2004, ZIOPHARM issued 500,000 shares of common stock to the University of Texas M.D. Anderson Cancer Center pursuant to the terms of the license agreement dated August 24, 2004.

In connection with ZIOPHARM's license agreements with the University of Texas M. D. Anderson Cancer Center and DEKK-Tec, Inc. ZIOPHARM issued warrants to such parties to acquire an aggregate of 155,375 shares of common stock.

In connection with ZIOPHARM's December 22, 2004 Option Agreement with SRI, ZIOPHARM issued a warrant to purchase 125,000 shares of common stock Paramount.

In connection with an offering of Series A Convertible Preferred Stock of ZIOPHARM that was completed on May 30, 2005, ZIOPHARM issued an aggregate of 8,379,564 shares of such Series A Convertible Preferred Stock in exchange for a purchase price per share equal to \$2.16. ZIOPHARM issued to placement agents in connection with the offering warrants to purchase up to an aggregate of 837,956 shares of ZIOPHARM's Series A Convertible Preferred Stock.

Since ZIOPHARM's inception through the date of the Merger, ZIOPHARM granted to directors, officers, employees and consultants options to purchase an aggregate of 1,706,214 shares of common stock at exercise prices ranging from \$0.04 to \$2.16 per share with a weighted average exercise price of \$0.79 per share. The issuances of these options were deemed to be exempt from registration under the Securities Act by virtue of Rule 701 promulgated under Section 3(b) of the Securities Act as transactions pursuant to compensation benefits plans and contracts relating to compensation.

Except as noted above, the sales of the securities identified above were made pursuant to privately negotiated transactions that did not involve a public offering of securities and, accordingly, ZIOPHARM believes that these transactions were exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof and rules promulgated thereunder. Each of the above-referenced investors in ZIOPHARM's stock represented to ZIOPHARM in connection with their investment that they were "accredited investors" (as defined by Rule 501 under the Securities Act) and were acquiring the shares for investment and not distribution, that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The investors received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration or an available exemption from such registration. All of the foregoing securities are deemed restricted securities for purposes of the Securities Act.

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The following summarizes the sales of unregistered securities by the Company (f/k/a EasyWeb, Inc.) during the three years prior to and including the closing of the Merger:

During January 2002, the Company sold 13,750 shares of its common stock (adjusted for the 1-for-40 share combination effected on August 24, 2005) for \$16,500, or \$1.20 per share (as adjusted). Of the 13,750 shares sold, 1,250 shares were sold to officers of the Company and 12,500 shares were sold to unrelated third parties. The shares were sold to seven persons pursuant Section 4(2) of the Securities Act.

During March 2003, the Company sold 5,000 shares of its common stock (adjusted for the 1-for-40 share combination effected on August 24, 2005) for \$10,000, or \$2.00 per share (as adjusted). The shares were sold to an individual pursuant to Section 4(2) of the Securities Act.

During March 2004, the Company sold 6,000 shares of our common stock for \$6,000, or \$1.00 per share. The shares were sold to an individual pursuant to Section 4(2) of the Securities Act.

On May 13, 2004, the Company issued 10,000 common shares (adjusted for the 1-for-40 share combination effected on August 24, 2005) to Summit Financial valued at \$10,000, or \$1.00 per share (as adjusted). On May 13, 2004, we issued 5,000 common shares (adjusted for the 1-for-40 share combination effected on August 24, 2005) in exchange for corporate governance services. On May 13, 2004, we issued 5,000 common shares (adjusted for the 1-for-40 share combination effected on August 24, 2005) to a director in exchange for director fees. All shares were valued based on contemporaneous sales to unrelated third party investors. These issuances were made pursuant to Section 4(2) of the Securities Act.

During January 2005, the Company sold 10,750 common shares (adjusted for the 1-for-40 share combination effected on August 24, 2005) for \$13,200, or \$1.20 per share (as adjusted). The shares were issued pursuant to Section 4(2) of the Securities Act.

During June 2005, the Company sold 5,000 shares of its common stock (adjusted for the 1-for-40 share combination effected on August 24, 2005) to a director for \$6,000, or \$1.20 per share (as adjusted). During July 2005, the Company sold 8,333 shares of its common stock (adjusted for the 1-for-40 share combination effected on August 24, 2005) for \$10,000, or \$1.20 per share (as adjusted). During August 2005, the Company sold 6,875 shares of its common stock (adjusted for the 1-for-40 share combination effected on August 24, 2005) to a director for \$24,000, or \$3.48 per share. These sales were made pursuant to Section 4(2) of the Securities Act.

On September 13, 2005 and in connection with the Merger, EasyWeb, Inc. issued an aggregate of 6,967,941 shares of its common stock to the former holders of ZIOPHARM capital stock, and other securities having the right to purchase approximately an additional 1,366,846 shares of EasyWeb's common stock, all of which were unregistered. For these issuances, EasyWeb relied on the exemption from federal registration under Section 4(2) of the Securities Act of 1933. EasyWeb relied on this exemption based on the fact that there were approximately only 230 (excludes options and warrants) stockholders of ZIOPHARM who were recipients of such unregistered shares in connection with the Merger, all of whom, either alone or through a purchaser representative, had knowledge and experience in financial and business matters such that each was capable of evaluating the risks of the investment, and had access to information regarding ZIOPHARM, EasyWeb and the Merger transaction.

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**Item 27. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger among the Registrant (formerly EasyWeb, Inc.), ZIO Acquisition Corp. and ZIOPHARM, Inc., dated August 3, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed August 9, 2005).
3.1	Certificate of Incorporation of the Registrant (formerly EasyWeb, Inc.), as filed with the Delaware Secretary of State on May 16, 2005.
3.2	Certificate of Merger dated September 13, 2005, relating to the merger of ZIO Acquisition Corp. with and into ZIOPHARM, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed September 19, 2005).
3.3	Certificate of Ownership of the Registrant (formerly EasyWeb, Inc.) dated as of September 14, 2005, relating the merger of ZIOPHARM, Inc. with and into the Registrant and changing the Registrant's corporate name from EasyWeb, Inc. to ZIOPHARM Oncology, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K filed September 19, 2005).
3.4	Bylaws, as amended to date (incorporated by reference to Exhibit 3.3 to the Registrant's Form 8-K filed September 19, 2005).
4.1	Specimen common stock certificate.
4.2	Form of Warrant issued to placement agents in connection with ZIOPHARM, Inc. 2005 private placement.
4.3	Schedule identifying holders of Warrants in the form filed as Exhibit 4.2 to this report.
4.4	Warrant for the Purchase of Shares of Common Stock dated December 23, 2004.
5.1	Opinion of Maslon Edelman Borman & Brand, LLP.
10.1	2003 Stock Incentive Plan.
10.2	Employment Agreement dated January 8, 2004, between the Registrant and Dr. Jonathan Lewis.
10.3	Employment Agreement dated January 15, 2004, between the Registrant and Dr. Robert Peter Gale.
10.4	Employment Agreement dated July 21, 2004, between the Registrant and Richard Bagley.
10.5	Patent and Technology License Agreement dated August 24, 2004, among ZIOPHARM, Inc. (predecessor to the Registrant), the Board of Regents of the University of Texas System on behalf of the University of Texas M.D. Anderson Cancer Center and the Texas A&M University System.++
10.6	License Agreement dated October 15, 2004, between ZIOPHARM, Inc. (predecessor to the Registrant) and DEKK-Tec, Inc.++
10.7	Form of subscription agreement between the ZIOPHARM, Inc. and the investors in ZIOPHARM, Inc.'s private placement.
23.1	Consent of Independent Registered Public Accounting Firm - Vitale, Caturano & Company, Ltd.
23.2	Consent of Independent Registered Public Accounting Firm - Cordovano and Honeck, LLP.
23.3	Consent of Maslon, Edelman Borman & Brand, LLP (included as part of Exhibit 5.1)
24.1	Power of Attorney (included on signature page hereof)

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 406 of the Securities Act of 1933, as amended.

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**Item 28. Undertakings.**

(a) Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by 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.

(b) 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; and (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 such 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 which remain unsold at the termination of the offering; and

(4) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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## EXHIBIT INDEX

3.1	Certificate of Incorporation of the Registrant (formerly EasyWeb, Inc.), as filed with the Delaware Secretary of State on May 16, 2005.
4.1	Specimen common stock certificate.
4.2	Form of Warrant issued to placement agents in connection with ZIOPHARM, Inc. 2005 private placement.
4.3	Schedule identifying holders of Warrants in the form filed as Exhibit 4.2 to this report.
4.4	Warrant for the Purchase of Shares of Common Stock dated December 23, 2004.
5.1	Opinion of Maslon Edelman Borman & Brand, LLP.
10.1	2003 Stock Incentive Plan.
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10.3	Employment Agreement dated January 15, 2004, between the Registrant and Dr. Robert Peter Gale.
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23.2	Consent of Independent Registered Public Accounting Firm - Cordovano and Honeck, LLP

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++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 406 of the Securities Act of 1933, as amended.

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**STATE of DELAWARE  
CERTIFICATE of INCORPORATION  
A STOCK CORPORATION**

- **First:** The name of this Corporation is EasyWeb, Inc.
- **Second:** Its registered office in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Zip Code 19808. The registered agent in charge thereof is Corporation Service Company.
- **Third:** The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- **Fourth:** The amount of the total stock of this corporation is authorized to issue 280,000,000 shares (number of authorized shares) with a par value of \$0.001 per share.
- **Fifth:** The name and mailing address of the incorporator are as follows:

Name: David Olson  
Mailing Address: 6025 South Quebec Street, Suite 135  
Englewood, Colorado 80111

· **I, The Undersigned**, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 6<sup>th</sup> day of May, A.D. 2005.

By: \_\_\_\_\_ /s/ David Olson  
(Incorporator)

NAME: \_\_\_\_\_ David Olson  
(type or print)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:00 AM 05/16/2005  
FILED 10:00AM 051602005  
SRV 050397760 - 3970466 FILE



<b>AMERICAN BANK NOTE COMPANY</b> 711 ARMSTRONG LANE COLUMBIA, TENNESSEE 38401 (831) 388-3063	PRODUCTION COORDINATOR: TODD DEROSSETT 831-490-1720 PROOF OF SEPTEMBER 28, 2009 <b>ZIOPHARM ONCOLOGY, INC.</b> <b>TSB 21329 FC</b>
SALES: P. SHEERIN 773-523-8171 J. ETHER T. / LIVE JOBS / Z. / ZIOPHARM 21329 FC	Operator: Ron Rev 1

PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF:  OK AS IS  OK WITH CHANGES  MAKE CHANGES AND SEND ANOTHER PROOF  
 Colors Selected for Printing: Log prints in PMS 032 and Black. Spotcolor prints in 5C-15 Maroon.  
 COLOR: This proof was printed from a digital file or artwork on a graphics quality, color laser printer. It is a good representation of the color as it will appear on the final product. However, it is not an exact color rendition, and the final printed product may appear slightly different from the proof due to the difference between the dyes and printing ink.

**ZIOPHARM ONCOLOGY, INC.**

The Corporation will furnish upon request and without charge to each stockholder the powers, designations, preferences and relative participating, optional and other special rights of each class of stock and series within a class of stock of the Corporation, as well as the qualifications, limitations and restrictions relating to those preferences and/or rights. A stockholder may make the request to the Corporation or to the Transfer Agent and Registrar.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common  
 TEN ENT – as tenants by the entireties  
 JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT— \_\_\_\_\_ Custodian \_\_\_\_\_  
(Gift) (Minor)  
 under Uniform Gifts to Minors Act \_\_\_\_\_  
(State)

UNIF TRF MIN ACT— \_\_\_\_\_ Custodian (with age \_\_\_\_\_)  
(Gift) (Minor)  
 under Uniform Transfers to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE PRINT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

\_\_\_\_\_ Shares  
 of the Class A Common Stock represented by the within Certificate and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney  
 to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

DATED \_\_\_\_\_ X \_\_\_\_\_

X \_\_\_\_\_  
WHICH THE SIGNATURE(S) TO THIS ASSIGNMENT MUST EXACTLY CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR AND WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

SIGNATURE(S) GUARANTEED:

BY \_\_\_\_\_  
THE SIGNATURE(S) MUST BE GUARANTEED BY AN APPROVED GUARANTOR INSTITUTION, BANK, STOCKBROKER, SAVINGS AND LOAN ASSOCIATION AND CREDIT UNION WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO N.E.C. RULE 17a-10.

<p align="center"><b>AMERICAN BANK NOTE COMPANY</b>                  711 ARMSTRONG LANE                  COLUMBIA, TENNESSEE 38401                  (331) 368-0003</p>	<p>PRODUCTION COORDINATOR: TODD DEROSSETT 931-490-1720                  PROOF OF SEPTEMBER 27, 2005  <b>ZIOPHARM ONCOLOGY, INC.</b>  <b>TSB 21329 BK</b></p>
<p>SALES: P. SHEERIN 773-523-9171</p>	<p>Operator: Ron                  New</p>

PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF:  OK AS IS  OK WITH CHANGES  MAKE CHANGES AND SEND ANOTHER PROOF





The Aggregate Warrant Price is not subject to adjustment. The Per Share Warrant Price is subject to adjustment as hereinafter provided; in the event of any such adjustment, the number of Warrant Shares or Conversion Shares, as the case may be, deliverable upon exercise of this Warrant shall be adjusted by dividing the Aggregate Warrant Price by the Per Share Warrant Price in effect immediately after such adjustment.

**1. Exercise of Warrant.**

(a) This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the date hereof and prior to 5:00 P.M., New York City time, on the Expiration Date by the Holder:

(i) by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part, with payment for Warrant Shares or Conversion Shares, as the case may be, made by certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds; or

(ii) by the surrender of this Warrant (with the cashless exercise form at the end hereof duly executed) (a "**Cashless Exercise**") at the address set forth in Section 9(a) hereof. Such presentation and surrender shall be deemed a waiver of the Holder's obligation to pay the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. In the event of a Cashless Exercise, the Holder shall exchange its Warrant for that number of Warrant Shares or Conversion Shares, as the case may be, subject to such Cashless Exercise multiplied by a fraction, the numerator of which shall be the difference between the then Current Market Price Per Share of Preferred Stock (or the Common Stock into which the Preferred Stock is convertible) and the Per Share Warrant Price, and the denominator of which shall be the then Current Market Price Per Share of Preferred Stock (or the Common Stock into which the Preferred Stock is convertible). For purposes of any computation under this Section 1(a), the then Current Market Price shall be based on the trading day prior to the Cashless Exercise.

(b) If this Warrant is exercised in part, this Warrant must be exercised for a number of whole shares of the Preferred Stock (or the Common Stock following conversion of all the Preferred Stock), and the Holder shall be entitled to receive a new Warrant covering the Warrant Shares or Conversion Shares, as the case may be, which have not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares or Conversion Shares, as the case may be. Upon surrender of this Warrant, the Company will (i) issue a certificate or certificates in the name of the Holder for the largest number of whole shares of the Preferred Stock (or the Common Stock following conversion of all the Preferred Stock) to which the Holder shall be entitled and, if this Warrant is exercised in whole, in lieu of any fractional share of the Preferred Stock (or the Common Stock following conversion of all the Preferred Stock) to which the Holder shall be entitled, pay to the Holder cash in an amount equal to the fair value of such fractional share (determined in such reasonable manner as the Board of Directors of the Company shall determine), and (ii) deliver the other securities and properties receivable upon the exercise of this Warrant, or the proportionate part thereof if this Warrant is exercised in part, pursuant to the provisions of this Warrant.

(c) If this Warrant is exercised on or after the date on which all shares of Preferred Stock have been converted into shares of Common Stock (the "**Conversion Date**"), then this Warrant shall be exercisable only for Conversion Shares at the then applicable Per Share Warrant Price (including any adjustment pursuant to Section 3 below).

(d) The Company shall mail notice to Holders not less than thirty (30) days prior to the occurrence of the Expiration Date, unless such a notice has previously been given to the holders pursuant to any other provisions hereof.

**2. Reservation of Warrant Shares and Conversion Shares; Listing.** The Company agrees that from the date hereof until the expiration of this Warrant, the Company shall at all times (a) have authorized and in reserve, and shall keep available, solely for issuance and delivery upon the exercise of this Warrant, the shares of the Preferred Stock and other securities and properties as from time to time shall be receivable upon the exercise of this Warrant, free and clear of all restrictions on sale or transfer, other than under Federal or state securities laws, and free and clear of all preemptive rights and rights of first refusal; (b) have authorized and in reserve, and shall keep available, solely for issuance or delivery upon conversion of the Warrant Shares or the exercise of this Warrant for Conversion Shares, the shares of Common Stock and other securities and properties as from time to time shall be receivable upon such conversion, free and clear of all restrictions on sale or transfer, other than under Federal or state securities laws, and free and clear of all preemptive rights and rights of first refusal; and (c) if the Company hereafter lists its Common Stock on any national securities exchange, use its best efforts to keep the Conversion Shares authorized for listing on such exchange upon notice of issuance.

### 3. Protection Against Dilution.

(a) In case the Company shall distribute (other than a distribution in liquidation of the Company) to all or substantially all holders of its Preferred Stock, without any charge to such holders, evidences of its indebtedness or assets (excluding cash dividends or distributions out of earnings) or rights, options, warrants or convertible securities containing the right to subscribe for or purchase Preferred Stock (excluding those referred to in Section 3(c)), then in each case the Company shall simultaneously distribute such evidences of its indebtedness or assets or such rights, options, warrants or convertible securities pro rata to the Holders of Warrants on the record date or date of effectiveness, as the case may be, fixed for determining the holders of Preferred Stock entitled to participate in such distribution in an amount equal to the amount that such Holders would have been entitled to receive had their Warrants been exercised for Warrant Shares immediately prior to the time for determination of the holders of Preferred Stock entitled to participate in such distribution.

(b) In case the Company shall hereafter (i) pay a dividend or make a distribution on its capital stock in shares of Preferred Stock, (ii) subdivide its outstanding shares of Preferred Stock into a greater number of shares, (iii) combine its outstanding shares of Preferred Stock into a smaller number of shares or (iv) issue by reclassification of its Preferred Stock any shares of capital stock of the Company (other than the Conversion Shares), the Per Share Warrant Price shall be adjusted to be equal to a fraction, the numerator of which shall be the Aggregate Warrant Price and the denominator of which shall be the number of shares of Preferred Stock or other capital stock of the Company which the Holder would have owned immediately following such action had such Warrants been exercised for Warrant Shares immediately prior thereto. An adjustment made pursuant to this Section 3(b) shall become effective immediately after the record date in the case of a dividend, or distribution, and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(c) In the event that following the conversion of all shares of Preferred Stock (other than shares of Preferred Stock issuable upon the exercise of Warrants) into shares of Common Stock, the Company shall sell or grant any Common Stock, any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, any rights, options or warrants to purchase or otherwise acquire Common Stock or any other securities directly or indirectly convertible into or exchangeable for Common Stock, in each case for a price per share or entitling the holders thereof to purchase Preferred Stock at a price per share (determined by dividing (i) the total amount, if any, received or receivable by the Company in consideration of the issuance or sale of such securities plus the total consideration, if any, payable to the Company upon exercise or conversion thereof (the "**Total Consideration**") by (ii) the number of additional shares of Common Stock issuable upon exercise or conversion of such securities) which is less than the Per Share Warrant Price in effect on the date of such issuance or sale, then the Per Share Warrant Price shall be adjusted as of the date of such issuance or sale by multiplying the Per Share Warrant Price then in effect by a fraction, the numerator of which shall be (x) the sum of (A) the number of shares of Common Stock outstanding, on a fully diluted basis, on the record date of such issuance or sale plus (B) the Total Consideration divided by the current Per Share Warrant Price, and the denominator of which shall be (y) the number of shares of Common Stock outstanding, on a fully diluted basis, on the record date of such issuance or sale plus the maximum number of additional shares of Common Stock issued, sold or issuable upon exercise or conversion of such securities. Notwithstanding the foregoing, no adjustment in the Per Share Warrant Price shall be required under this Section 3(c) in the case of the issuance by the Company of Common Stock pursuant to (i) the exercise of any Warrant; (ii) the exercise of any stock options or warrants currently outstanding; (iii) the exercise of options and other stock rights granted pursuant to an employee stock option plan approved by the Company's Board of Directors; and (iv) a stock split, reverse stock split or other recapitalization of the Company for which anti-dilution protection is provided elsewhere in this Section 3.

(d) In case of any capital reorganization or reclassification, or any consolidation or merger to which the Company is a party other than a merger or consolidation in which the Company is the continuing corporation, or in case of any sale or conveyance to another entity of the property of the Company as an entirety or substantially as an entirety, or in the case of any statutory exchange of securities with another corporation (including any exchange effected in connection with a merger of another corporation or other entity into the Company), the Holder of this Warrant shall have the right thereafter to receive on the exercise of this Warrant the kind and amount of securities, cash or other property which the Holder would have owned or have been entitled to receive immediately after such reorganization, reclassification, consolidation, merger, statutory exchange, sale or conveyance had this Warrant been exercised immediately prior to the effective date of such reorganization, reclassification, consolidation, merger, statutory exchange, sale or conveyance and in any such case, if necessary, appropriate adjustment shall be made in the application of the provisions set forth in this Section 3 with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth in this Section 3 shall thereafter correspondingly be made applicable, as nearly as may reasonably be, in relation to any shares of stock or other securities or property thereafter deliverable on the exercise of this Warrant. The above provisions of this Section 3(d) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, statutory exchanges, sales or conveyances. The Company shall require the issuer of any shares of stock or other securities or property thereafter deliverable on the exercise of this Warrant to be responsible for all of the agreements and obligations of the Company hereunder. Notice of any such reorganization, reclassification, consolidation, merger, statutory exchange, sale or conveyance and of said provisions so proposed to be made, shall be mailed to the Holders of the Warrants not less than thirty (30) days prior to such event. A sale of all or substantially all of the assets of the Company for a consideration consisting primarily of securities shall be deemed a consolidation or merger for the foregoing purposes.

(e) The Company will not, by amendment of its certificate of incorporation or through reorganization, consolidation, merger, dissolution, sale of assets 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 action as may be necessary or appropriate in order to protect the rights of the Holders against dilution or other impairment. In case there is a dispute between the Majority of the Holders and the Company as to application of this Section 3, or as to protection of the rights of the Holders against dilution, then, in such case, the Majority of the Holders may appoint a firm of independent public accountants of recognized national standing reasonably acceptable to the Company, which shall give their opinion as to the adjustment, if any, on a basis consistent with the essential intent and principles established herein, necessary to preserve the purchase rights represented by the Warrants. Upon receipt of such opinion, the Company will promptly mail a copy thereof to the Holder of this Warrant and shall make the adjustments described therein. The fees and expenses of such independent public accountants shall be borne by the Company.

(f) No adjustment in the Per Share Warrant Price shall be required unless such adjustment would require an increase or decrease of at least \$0.01 per Warrant Share; provided, however, that any adjustments which by reason of this Section 3(f) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; provided, further, however, that adjustments shall be required and made in accordance with the provisions of this Section 3 (other than this Section 3(f)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the Holder of this Warrant or the Warrant Shares or Conversion Shares issuable upon the exercise hereof. All calculations under this Section 3 shall be made to the nearest cent or to the nearest 1/100th of a share, as the case may be. Anything in this Section 3 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Per Share Warrant Price, in addition to those required by this Section 3, as it in its discretion shall deem to be advisable in order that any stock dividend, subdivision of shares or distribution of rights to purchase stock or securities convertible or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable.

(g) Whenever the Per Share Warrant Price is adjusted as provided in this Section 3 and upon any modification of the rights of a Holder of Warrants in accordance with this Section 3, the Company shall promptly prepare a brief statement of the facts requiring such adjustment or modification and the manner of computing the same and cause copies of such certificate to be mailed to the Holders of the Warrants. The Company may, but shall not be obligated to unless requested by a Majority of the Holders, obtain, at its expense, a certificate of a firm of independent public accountants of recognized standing selected by the Company's Board of Directors (who may be the regular auditors of the Company) setting forth the Per Share Warrant Price and the number of Warrant Shares or Conversion Shares, as the case may be, after such adjustment or the effect of such modification, a brief statement of the facts requiring such adjustment or modification and the manner of computing the same and cause copies of such certificate to be mailed to the Holders of the Warrants.

(h) If the Board of Directors of the Company shall declare any dividend or other distribution with respect to the Preferred Stock or Common Stock other than a cash distribution out of earned surplus, the Company shall mail notice thereof to the Holders of the Warrants not less than ten days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution.

(i) If, as a result of an adjustment made pursuant to this Section 3, the Holder of any Warrant thereafter surrendered for exercise shall become entitled to receive shares of two or more classes of capital stock or shares of Preferred Stock and other capital stock of the Company, the Company's Board of Directors (whose determination shall be conclusive and shall be described in a written notice to the Holder of any Warrant promptly after such adjustment) shall determine **in good faith** the allocation of the adjusted Per Share Warrant Price between or among shares or such classes of capital stock or shares of Preferred Stock and other capital stock.

(j) Notwithstanding the foregoing or anything to the contrary in this Warrant, upon issuance of the Warrant Shares pursuant to the terms of this Warrant, each such share of Preferred Stock shall have the same Conversion Price (as defined in the Certificate of Designations of the Preferred Stock) and be convertible into the same number of shares of Common Stock which would have been applicable if the Warrant Shares had been issued on the original issue date of this Warrant and had been subject since such date to the adjustment provisions of Section 4(e) of the Certificate of Designations of the Preferred Stock. This provision is intended to protect the rights of the Holders against dilution or other impairment and shall not be construed, by itself or in combination with any other provision of this Section 3, so as to result in "double dipping" by the Holder or any other inequitable adjustment.

(k) Notwithstanding the foregoing or anything to the contrary in this Warrant, for purposes of the anti-dilution protection contained in this Section 3, at all times following the conversion of all shares of Preferred Stock (other than shares of Preferred Stock issuable upon the exercise of Warrants) into shares of Common Stock, the term Preferred Stock shall be read to be Common Stock, context permitting, so that the anti-dilution provisions of this Section 3 will continue to protect the purchase rights represented by this Warrant after the conversion of all the Preferred Stock into the Common Stock (other than Preferred Stock issuable upon the exercise of Warrants) in accordance with the essential intent and principles of this Section 3 (it being understood that prior to such conversion, the anti-dilution provisions of the Certificate of Designations of the Preferred Stock shall protect the Holder from dilution, as contemplated by Section 3(j) hereof). This provision is intended to protect the rights of the Holders against dilution or other impairment and shall not be construed, by itself or in combination with any other provision of this Section 3, so as to result in "double dipping" by the Holder or any other inequitable adjustment.

(l) Upon the expiration of any rights, options, warrants or conversion privileges, if such shall not have been exercised, the Per Share Warrant Price, to the extent this Warrant has not then been exercised, shall, upon such expiration, be readjusted to such amount as would have obtained had the adjustment made upon the granting or issuance of such rights, options, warrants or conversion privileges been made based upon the issuance of only the number of shares of Preferred Stock actually issued on exercise of such rights, options, warrants or conversion privileges; provided, however, that no such readjustment shall have the effect of increasing the Per Share Warrant Price by an amount in excess of the amount of the adjustment initially made in respect of the issuance, sale or grant of such rights, options, warrants or conversion privileges.

**4. Fully Paid Stock; Taxes.** The Company agrees that the shares of the Preferred Stock represented by each and every certificate for Warrant Shares delivered on the exercise of this Warrant and the shares of Common Stock delivered upon the conversion of the Warrant Shares or the exercise of this Warrant following the conversion of all shares of Preferred Stock into Common Stock, shall at the time of such delivery, be duly and validly issued and outstanding, fully paid and nonassessable, and not subject to preemptive rights or rights of first refusal, and the Company will take all such actions as may be necessary to assure that the par value, if any, per share of the Preferred Stock and the Common Stock is at all times equal to or less than the then Per Share Warrant Price. The Company further covenants and agrees that it will pay, when due and payable, any and all Federal and state stamp, original issue or similar taxes which may be payable in respect of the issue of any Warrant Share, Conversion Share or any certificate thereof to the extent required because of the issuance by the Company of such security; provided, however, that if Warrant Shares or Conversion Shares are to be delivered in a name other than the Holder, no such delivery shall be made unless the person requesting the same has paid to the Company the amount of transfer taxes or charges incident thereto, if any.

5. **Registration Under Securities Act of 1933.** The Holder shall have the right to participate in the registration rights granted to purchasers of Preferred Stock pursuant to Article V of the Subscription Agreement (the “**Subscription Agreement**”) entered into between each such purchaser and the Company in connection with the issuance and sale of the Preferred Stock on or about the date hereof, to the same extent as if the Holder were a party thereto. The Company shall have the same obligations to the Holder as it has under Article V of the Subscription Agreement to the “Subscribers” and the “Holders” thereunder, and the Holder shall be entitled to enforce such obligations against the Company as if the Holder were a party thereto. By acceptance of this Warrant, the Holder agrees to comply with the provisions in Article V of the Subscription Agreement to the same extent as if it were a party thereto.

6. **Investment Intent; Limited Transferability.**

(a) The Holder represents, by accepting this Warrant, that it is an “accredited investor” as that term is defined in Rule 501 promulgated under the Act and understands that this Warrant and any securities issuable upon exercise of this Warrant have not been registered for sale under Federal or state securities laws or “Blue Sky” laws and are being offered and sold to the Holder pursuant to one or more exemptions from the registration requirements of such securities laws. The Holder further represents to the Company that it is acquiring this Warrant and will acquire any securities issuable upon exercise of this Warrant for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Act, and agrees that this Warrant and any such securities will not be sold or otherwise transferred unless (i) a registration statement with respect to such transfer is effective under the Act and any applicable state securities laws or “Blue Sky” laws or (ii) such sale or transfer is made pursuant to one or more exemptions from the Act and under any state securities laws or “Blue Sky” laws.

(b) This Warrant and all rights hereunder are transferable, in whole or in part, upon (i) notice to the Company, (ii) surrender of the Warrant to the Company with a properly executed assignment (in the form attached at the end hereof) at the address set forth in Section 9(a) hereof, and (iii) upon delivery to the Company at such address of an executed agreement by which the transferee of the Warrant agrees to be bound by all of the terms and conditions of this Warrant. The Company will maintain a register containing the names and addresses of the registered Holder of this Warrant. Any registered Holder may change such registered holder's address as shown on the warrant register by written notice to the Company requesting such change. The Company may treat the registered Holder of this Warrant as he or it appears on the warrant register at any time as the Holder for all purposes. The Company shall permit any Holder of a Warrant or his duly authorized attorney, upon written request during ordinary business hours, to inspect and copy or make extracts from its books showing the registered holders of Warrants. All Warrants issued upon the transfer or assignment of this Warrant will be dated the same date as this Warrant, and all rights of the holder thereof shall be identical to those of the Holder.

7. **Loss, etc., of Warrant.** Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. **Warrant Holder Not Stockholder.** This Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a stockholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a stockholder, prior to the exercise hereof; this Warrant does, however, require certain notices to Holders as set forth herein.

9. **Communication.** All notices under this Warrant shall be in writing and shall be deemed to have been given if one day after deposit with a nationally recognized overnight delivery carrier or three days after mailing by U.S. certified or registered mail, return receipt requested, postage prepaid, addressed to:

(a) the Company at 197 Eighth Street, Suite 300, Charlestown, MA 02129, or such other address as the Company has designated in writing to the Holder, or

(b) the Holder at c/o Paramount BioCapital, Inc., 787 Seventh Avenue, 48<sup>th</sup> Floor, New York, NY 10019 or other such address as the Holder has designated in writing to the Company.

10. **Headings.** The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. **Applicable Law.** This Warrant shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to the principles of conflicts of law thereof.

12. **Recovery of Litigation Costs.** If any legal action or other proceeding is brought for the enforcement of this Warrant, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Warrant, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

13. **Amendment, Waiver, etc.** Except as expressly provided herein, neither this Warrant nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought; provided, however, that notwithstanding the foregoing any provisions hereof may be amended, waived, discharged or terminated upon the written consent of the Company and the then current Majority of the Holders of the Warrants.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its President and attested to by its Secretary this [ ] day of [\_\_\_\_\_], 2005.

ZIOPHARM, INC.

By: /s/

\_\_\_\_\_  
Name: Dr. Jonathan Lewis  
Title: Chief Executive Officer

ATTEST:

By: \_\_\_\_\_  
Name: Richard Bagley  
Title: President



**SUBSCRIPTION**

The undersigned, \_\_\_\_\_, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for and purchase \_\_\_\_\_ shares of the Preferred Stock, par value \$0.001 per share, stated value \$ per share, of Ziopharm, Inc., covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**CASHLESS EXERCISE**

The undersigned \_\_\_\_\_, pursuant to the provisions of the foregoing Warrant, hereby elects to exchange its Warrant for \_\_\_\_\_ shares of Preferred Stock, par value \$0.001 per share, stated value \$ per share, of Ziopharm, Inc., pursuant to the Cashless Exercise provisions of the Warrant.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**ASSIGNMENT**

FOR VALUE RECEIVED \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Warrant on the books of Ziopharm, Inc.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED \_\_\_\_\_ hereby assigns and transfers unto \_\_\_\_\_ the right to purchase \_\_\_\_\_ shares of the Preferred Stock, par value \$0.001 per share, stated value \$ per share, of Ziopharm, Inc., covered by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced thereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer that part of said Warrant on the books of Ziopharm, Inc.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Schedule of Warrants issued to Placement Agents in  
connection with ZIOPHARM, Inc. 2005 Private Placement

No.	Name	Shares of ZIOPHARM Oncology, Inc. Common Stock Issuable upon exercise of Warrant
PA-1	Steven Markowitz	6,480
PA-2	Fabio Migliaccio	2,504
PA-3	Denise Mormile-Liglino	1,252
PA-4	Michael Mullen	13,534
PA-5	Robert Petrozzo	11,083
PA-6	Joseph Sorbara	6,480
PA-7	Robert D. Millstone	3,479
PA-8	Steven A. Sherman	1,739
PA-9	Sandgrain Securities, Inc.	579
PA-10	Lindsay Rosenwald	221,011
PA-11	Michael Weiser	35,566
PA-12	Harris Lydon	22,349
PA-13	Timothy McInerney	20,767
PA-14	Michael Rosenman	19,709
PA-15	Scott Katzman	19,709
PA-16	Jill Meleski	16,638
PA-17	Bernard Gross	8,767
PA-18	Karl Rugeberg	7,850
PA-19	Jeana Somers	290

All Warrants were issued on May 31, 2005 and are exercisable at \$4.75 per share.

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAW. THIS WARRANT AND SUCH SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE PLEDGED, TRANSFERRED OR HYPOTHECATED IN THE ABSENCE OF SUCH REGISTRATION OR DELIVERY OF AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE WITH THE ACT OR UNLESS SOLD IN FULL COMPLIANCE WITH RULE 144 UNDER THE ACT.

**ZIOPHARM, INC.**

***Warrant for the Purchase of Shares of  
Common Stock***

No. SRI - 1

125,000 Shares

FOR VALUE RECEIVED, ZIOPHARM, INC., a Delaware corporation (the "**Company**"), hereby certifies that **Paramount Biocapital Investments, LLC**, its designee or its permitted assigns is entitled to purchase from the Company, at any time or from time to time commencing on December 23, 2004 and prior to 5:00 P.M., New York City time, on December 23, 2011 (the "**Exercise Period**"), fully paid and non-assessable shares of common stock, \$0.001 par value per share, of the Company for a purchase price per share of \$2.38. Hereinafter, (i) said common stock, \$0.001 par value per share, of the Company, is referred to as the "**Common Stock**"; (ii) the shares of the Common Stock (subject to adjustment as set forth herein) purchasable hereunder or under any other Warrant (as hereinafter defined) are referred to as the "**Warrant Shares**"; (iii) the aggregate purchase price payable for the Warrant Shares purchasable hereunder is referred to as the "**Aggregate Warrant Price**"; (iv) the price payable (initially \$2.38 per share subject to adjustment as set forth herein) for each of the Warrant Shares hereunder is referred to as the "**Per Share Warrant Price**"; (v) this Warrant, any similar Warrants issued on the date hereof and any warrants hereafter issued in exchange or substitution for this Warrant or such similar Warrants are referred to as the "**Warrants**"; (vi) the holder of this Warrant is referred to as the "**Holder**" and the holder of this Warrant and all other Warrants and Warrant Shares are referred to as the "**Holders**" and Holders of more than fifty percent (50%) of the Warrant Shares then issuable upon exercise of then outstanding Warrants are referred to as the "**Majority of the Holders**"; and (vii) the then "**Current Market Price**" per share of the Common Stock shall be deemed to be the last reported sale price of the Common Stock on the Trading Day (as defined below) immediately prior to such date or, in case no such reported sales take place on such day, the average of the last reported bid and asked prices of the Common Stock on such day, in either case on the principal national securities exchange on which the Common Stock is admitted to trading or listed, or if not listed or admitted to trading on any such exchange, the representative closing sale price of the Common Stock as reported by the National Association of Securities Dealers, Inc. Automated Quotations System ("**NASDAQ**"), or other similar organization if NASDAQ is no longer reporting such information, or, if the Common Stock is not reported on NASDAQ, the per share sale price for the Common Stock in the over-the-counter market as reported by the National Quotation Bureau or similar organization, or if not so available, the fair market value of the Common Stock as determined in good faith by the Company's Board of Directors. A "**Trading Day**" shall mean any day on which shares of the Company's Common Stock are sold, or eligible for sale, on the respective exchange, quotation system or over-the-counter market. The Aggregate Warrant Price is not subject to adjustment.

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This Warrant, together with any warrants of like tenor, constituting in the aggregate Warrants to purchase 125,000 Warrant Shares, was originally issued pursuant to a Finders Agreement dated as of December 23, 2004 (the "**Finders Agreement**") between the Company and the Holder.

1. **Exercise of Warrant.**

(a) This Warrant may be exercised in whole at any time, or in part from time to time, by the Holder during the Exercise Period:

(i) by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in subsection 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part, with payment for the Warrant Shares made by certified or official bank check payable to the order of, or wire transfer of immediately available funds to, the Company; or

(ii) by the surrender of this Warrant (with the cashless exercise form at the end hereof duly executed) (a "**Cashless Exercise**") at the address set forth in subsection 9(a) hereof. Such presentation and surrender shall be deemed a waiver of the Holder's obligation to pay the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. In the event of a Cashless Exercise, the Holder shall exchange its Warrant for that number of Warrant Shares subject to such Cashless Exercise multiplied by a fraction, the numerator of which shall be the difference between the then Current Market Price and the Per Share Warrant Price, and the denominator of which shall be the then Current Market Price. For purposes of any computation under this subsection 1(a), the then Current Market Price shall be based on the Trading Day immediately preceding such Cashless Exercise.

(b) If this Warrant is exercised in part, this Warrant must be exercised for a number of whole shares of the Common Stock and the Holder is entitled to receive a new Warrant covering the Warrant Shares that have not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon surrender of this Warrant in connection with the exercise of this Warrant pursuant to the terms hereof, the Company will (i) issue a certificate or certificates in the name of the Holder for the largest number of whole shares of the Common Stock to which the Holder shall be entitled upon such exercise and, if this Warrant is exercised in whole, in lieu of any fractional share of the Common Stock to which the Holder shall be entitled, pay to the Holder cash in an amount equal to the fair value of such fractional share (determined in such reasonable manner as the Board of Directors of the Company shall determine), and (ii) deliver the other securities and properties receivable upon the exercise of this Warrant, or the proportionate part thereof, if this Warrant is exercised in part, pursuant to the provisions of this Warrant.

2. **Reservation of Warrant Shares; Listing.** The Company agrees that, prior to the expiration of this Warrant, the Company shall at all times (a) have authorized and in reserve, and shall keep available, solely for issuance and delivery upon the exercise of this Warrant, the shares of the Common Stock and other securities and properties as from time to time shall be receivable upon the exercise of this Warrant, free and clear of all restrictions on sale or transfer, other than under Federal or state securities laws, and free and clear of all preemptive rights and rights of first refusal and (b) if the Company hereafter lists its Common Stock on any national securities exchange, the NASDAQ National Market or the NASDAQ Smallcap Market, use its commercially reasonable efforts to keep the Warrant Shares authorized for listing on such exchange upon notice of issuance.

3. **Certain Adjustments.**

(a) In case the Company shall hereafter (i) pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares, (iii) combine or reverse-split its outstanding shares of Common Stock into a smaller number of shares or (iv) issue by reclassification of its Common Stock any shares of capital stock of the Company, then the Per Share Warrant Price and the number of Warrant Shares shall forthwith be proportionately decreased and increased, respectively, in the case of a subdivision, distribution or stock dividend, or proportionately increased and decreased, respectively, in the case of a combination or reverse stock split. The Aggregate Warrant Price payable for the then total number Warrant Shares available for exercise under this Warrant shall remain the same. Adjustments made pursuant to this subsection 3(a) shall become effective on the record date in the case of a dividend or distribution, and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification. If such dividend, distribution, subdivision or combination is not consummated in full, the Per Share Warrant Price and Warrant Shares shall be readjusted accordingly.

(b) In case of any capital reorganization or reclassification, or any consolidation or merger to which the Company is a party other than a merger or consolidation in which the Company is the continuing corporation, or in case of any sale or conveyance to another entity of all or substantially all of the assets of the Company, or in the case of any statutory exchange of securities with another corporation (including any exchange effected in connection with a merger of a third corporation into the Company but excluding any exchange of securities or merger with another corporation in which the Company is a continuing corporation and that does not result in any reclassification of or similar change in the Common Stock), the Holder of this Warrant shall have the right thereafter to receive on the exercise of this Warrant the kind and amount of securities, cash or other property which the Holder would have owned or have been entitled to receive immediately after such reorganization, reclassification, consolidation, merger, statutory exchange, sale or conveyance had this Warrant been exercised immediately prior to the effective date of such reorganization, reclassification, consolidation, merger, statutory exchange, sale or conveyance and in any such case, if necessary, appropriate adjustment shall be made in the application of the provisions set forth in this Section 3 with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth in this Section 3 shall thereafter correspondingly be made applicable, as nearly as may reasonably be, in relation to any shares of stock or other securities or property thereafter deliverable on the exercise of this Warrant. The above provisions of this subsection 3(b) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, statutory exchanges, sales or conveyances. The Company shall require the issuer of any shares of stock or other securities or property thereafter deliverable on the exercise of this Warrant to be responsible for all of the agreements and obligations of the Company hereunder. A sale of all or substantially all of the assets of the Company for a consideration consisting primarily of securities shall be deemed a consolidation or merger for the foregoing purposes.

(c) No adjustment in the Per Share Warrant Price shall be required unless such adjustment would require an increase or decrease of at least \$0.01 per share of Common Stock; provided, however, that any adjustments which by reason of this subsection 3(c) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; provided, further, however, that adjustments shall be required and made in accordance with the provisions of this Section 3 (other than this subsection 3(c)) not later than such time as may be required in order to preserve the tax-free nature of a distribution, if any, to the Holder of this Warrant or Common Stock issuable upon the exercise hereof. All calculations under this Section 3 shall be made to the nearest cent or to the nearest 1/100th of a share, as the case may be. Anything in this Section 3 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Per Share Warrant Price, in addition to those required by this Section 3, as it in its discretion shall deem to be advisable in order that any stock dividend, subdivision of shares or distribution of rights to purchase stock or securities convertible or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable.

(d) Whenever the Per Share Warrant Price is adjusted as provided in this Section 3 and upon any modification of the rights of a Holder of Warrants in accordance with this Section 3, the Company shall promptly prepare a brief statement of the facts requiring such adjustment or modification and the manner of computing the same and cause copies of such certificate to be mailed to the Holders of the Warrants. The Company may, but shall not be obligated to unless requested by a Majority of the Holders, obtain, at its expense, a certificate of a firm of independent public accountants of recognized standing selected by the Board of Directors (who may be the regular auditors of the Company) setting forth the Per Share Warrant Price and the number of Warrant Shares in effect after such adjustment or the effect of such modification, a brief statement of the facts requiring such adjustment or modification and the manner of computing the same and cause copies of such certificate to be mailed to the Holders of the Warrants.

(e) If the Board of Directors of the Company shall declare any dividend or other distribution with respect to the Common Stock other than a cash distribution out of earned surplus, the Company shall mail notice thereof to the Holders of the Warrants not less than ten (10) days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution.

(f) If, as a result of an adjustment made pursuant to this Section 3, the Holder of any Warrant thereafter surrendered for exercise shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Company, the Board of Directors (whose determination shall be conclusive and shall be described in a written notice to the Holder of any Warrant promptly after such adjustment) shall determine, in good faith, the allocation of the adjusted Per Share Warrant Price between or among shares or such classes of capital stock or shares of Common Stock and other capital stock.

(g) Upon the expiration of any rights, options, warrants or conversion privileges with respect to the issuance of which an adjustment to the Per Share Warrant Price had been made, if such option, right warrant or conversion shall not have been exercised, the number of Warrant Shares purchasable upon exercise of this Warrant, to the extent this Warrant has not then been exercised, shall, upon such expiration, be readjusted and shall thereafter be such as they would have been had they been originally adjusted (or had the original adjustment not been required, as the case may be) on the basis of (A) the fact that Common Stock, if any, actually issued or sold upon the exercise of such rights, options, warrants or conversion privileges, and (B) the fact that such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise plus the consideration, if any, actually received by the Company for the issuance, sale or grant of all such rights, options, warrants or conversion privileges whether or not exercised; provided, however, that no such readjustment shall have the effect of decreasing the number of Warrant Shares purchasable upon exercise of this Warrant by an amount in excess of the amount of the adjustment initially made in respect of the issuance, sale or grant of such rights, options, warrants or conversion privileges.

(h) In case any event shall occur as to which the other provisions of this Section 3 are not strictly applicable but as to which the failure to make any adjustment would not fairly protect the purchase rights represented by this Warrant in accordance with the essential intent and principles of the adjustments set forth in this Section 3 then, in each such case, the Board of Directors of the Company shall in good faith determine the adjustment, if any, on a basis consistent with the essential intent and principles established herein, necessary to preserve the purchase rights represented by the Warrants. Upon such determination, the Company will promptly mail a copy thereof to the Holder of this Warrant and shall make the adjustments described therein.

4. **Fully Paid Stock; Taxes.** The shares of the Common Stock represented by each and every certificate for Warrant Shares delivered on the exercise of this Warrant shall, subject to compliance by the Holder with the terms hereof, at the time of such delivery, be duly authorized, validly issued and outstanding, fully paid and nonassessable, and not subject to preemptive rights or rights of first refusal imposed by any agreement to which the Company is a party, and the Company will take all such actions as may be necessary to assure that the par value, if any, per share of the Common Stock is at all times equal to or less than the then Per Share Warrant Price. The Company shall pay, when due and payable, any and all Federal and state stamp, original issue or similar taxes which may be payable in respect of the issue of any Warrant Share or any certificate thereof to the extent required because of the issuance by the Company of such security.

5. **Piggy-Back Registration.**

(a) The Company agrees that if, at any time, and from time to time, after the earlier to occur of (i) the date of the initial offering of the Common Stock to the public pursuant to a registration statement under the Securities Act (the “**IPO**”); and (ii) the first date (the “**Trading Date**”) on which the Common Stock (or securities received in exchange for Common Stock) trades on a national securities exchange or on the NASDAQ, including the Over the Counter Bulletin Board (a “**Trading Event**”), the Board of Directors of the Company shall authorize the filing of a registration statement under the Securities Act (other than the IPO or a registration statement on Form S-8, Form S-4 or any other form that does not include substantially the same information as would be required in a form for the general registration of securities) in connection with the proposed offer of any of Common Stock by it or any of its stockholders, the Company shall: (A) promptly notify each Holder that such registration statement will be filed and that the Warrant Shares then held by such Holder will be included in such registration statement at such Holder’s request; (B) cause such registration statement to cover all of such Warrant Shares issued to such Holder for which such Holder requests inclusion, provided that the number of Warrant Shares to be included in such registration statement, when added to all the other shares to be included therein, does not exceed the number of shares which the Company and its underwriters, if any, reasonably fix for inclusion; (C) use best efforts to cause such registration statement to become effective as soon as practicable; and (D) take all other reasonable action necessary under any Federal or state law or regulation of any governmental authority to permit all such Warrant Shares that have been issued to such Holder to be sold or otherwise disposed of, and will maintain such compliance with each such Federal and state law and regulation of any governmental authority for the period necessary for such Holder to promptly effect the proposed sale or other disposition.

(b) It shall be a condition precedent to the obligation of the Company to take any action pursuant to this Section 5 with respect to the Warrant Shares of Holder that such Holder shall furnish to the Company such information regarding the Holder, the Warrant Shares held by such Holder, and the intended method of disposition of such securities as shall be reasonably required by the Company to effect the registration of such Holder’s Warrant Shares.

(c) If the shares to which such registration relates are to be sold in an underwritten offering, Holder, as a condition to the inclusion of the Shares in the registration statement, shall agree that the Shares will be sold only as a part of such underwritten offering and at the price and upon the terms fixed by the Company and its underwriters, subject to the right of Holder to withdraw the Shares therefrom. Nothing herein shall prevent the Company from, at any time, abandoning or delaying any such registration initiated by it. Notwithstanding anything to the contrary in this Section 5, the Company shall not be obligated to include any Shares in a registration statement or keep a registration statement effective with respect to such Warrant Shares if such Warrant Shares are already covered by a registration statement, or if such securities are available for resale under Rule 144 of the Securities Act. For clarity, this Section 5 creates no obligation on the part of the Company to register any or all Shares upon the demand of Holder.



**6. Investment Intent; Limited Transferability.**

(a) By accepting this Warrant, the Holder represents to the Company that it understands that this Warrant and any securities obtainable upon exercise of this Warrant have not been registered for sale under Federal or state securities laws and are being offered and sold to the Holder pursuant to one or more exemptions from the registration requirements of such securities laws. In the absence of an effective registration of such securities or an exemption therefrom, any certificates for such securities shall bear the legend set forth on the first page hereof. The Holder understands that it must bear the economic risk of its investment in this Warrant and any securities obtainable upon exercise of this Warrant for an indefinite period of time, as this Warrant and such securities have not been registered under Federal or state securities laws and therefore cannot be sold unless subsequently registered under such laws, unless an exemption from such registration is available. The Holder further represents to the Company, by accepting this Warrant, that it has full power and authority to accept this Warrant and make the representations set forth herein.

(b) The Holder, by its acceptance of this Warrant, represents to the Company that it is acquiring this Warrant and will acquire any securities obtainable upon exercise of this Warrant for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Act. The Holder agrees, by acceptance of this Warrant, that this Warrant and any such securities issuable under this Warrant will not be sold or otherwise transferred unless (i) a registration statement with respect to such transfer is effective under the Act and any applicable state securities laws or (ii) such sale or transfer is made pursuant to one or more exemptions from the Act.

(c) In addition to the limitations set forth in Section 1 and in accordance with the legend on the first page hereof, this Warrant may not be sold, transferred, assigned or hypothecated by the Holder except in compliance with the provisions of the Act and the applicable state securities "blue sky" laws, and is so transferable only upon the books of the Company which it shall cause to be maintained for such purpose. The Company may treat the registered Holder of this Warrant as it appears on the Company's books at any time as the Holder for all purposes. The Company shall permit any Holder of a Warrant or its duly authorized attorney, upon written request during ordinary business hours, to inspect and copy or make extracts from its books showing the registered Holders of Warrant. All Warrants issued upon the transfer or assignment of this Warrant will be dated the same date as this Warrant, and all rights of the holder thereof shall be identical to those of the Holder unless, in each case, otherwise prohibited by applicable law.

(d) The Holder has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the Warrants or the exercise of the Warrants; and (ii) the opportunity to request such additional information which the Company possesses or can acquire without unreasonable effort or expense.

(e) The Holder did not (i) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio, whether closed circuit, or generally available; or (ii) attend any seminar, meeting or investor or other conference whose attendees were, to such Holder's knowledge, invited by any general solicitation or general advertising.

(f) The Holder is an "accredited investor" within the meaning of Regulation D under the Act. Such Holder is acquiring the Warrants for its own account and not with a present view to, or for sale in connection with, any distribution thereof in violation of the registration requirements of the Act, without prejudice, however, to such Holder's right, subject to the provisions of the Placement Agency Agreement and this Warrant, at all times to sell or otherwise dispose of all or any part of such Warrants and Warrant Shares.

(g) Either by reason of such Holder's business or financial experience or the business or financial experience of its professional advisors (who are unaffiliated with and who are not compensated by the Company or any affiliate, finder or selling agent of the Company, directly or indirectly), such Holder has the capacity to protect such Holder's interests in connection with the transactions contemplated by this Warrant and the Placement Agency Agreement. The Holder, by its acceptance of this Warrant, represents to the Company that it is able to fend for itself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in this Warrant. Holder also represents it has not been organized for the purpose of acquiring this Warrant.

7. **Loss, etc., of Warrant.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. **Warrant Holder Not Stockholder.** This Warrant does not confer upon the Holder any right to vote on or consent to or receive notice as a stockholder of the Company, as such, in respect of any matters whatsoever, nor any other rights or liabilities as a stockholder, prior to the exercise hereof; this Warrant does, however, require certain notices to Holders as set forth herein.

9. **Communication.** No notice or other communication under this Warrant shall be effective or deemed to have been given unless, the same is in writing and is mailed by first-class mail, postage prepaid, or via recognized overnight courier with confirmed receipt, addressed to:

(a) the Company at ZIOPHARM, Inc., 197 Eighth Street, Suite 300, Charlestown, MA 02129, Attn: President, or other such address as the Company has designated in writing to the Holder; or

(b) the Holder, c/o Paramount BioCapital, Inc., at 787 Seventh Avenue, 48<sup>th</sup> Floor, New York, New York 10019, or other such address as the Holder has designated in writing to the Company.

10. **Headings.** The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. **Applicable Law.** This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflicts of law thereof.

12. **Amendment, Waiver, etc.** Except as expressly provided herein, neither this Warrant nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought; provided, however, that any provisions hereof may be amended, waived, discharged or terminated upon the written consent of the Company and the Majority of the Holders.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the Company has caused this Warrant to be signed by the undersigned duly authorized officer as of this 23<sup>rd</sup> day of December, 2004.

**ZIOPHARM, INC.**

By: /s/ Jonathan Lewis

Name: Jonathan Lewis

Title: Chief Executive Officer

**SUBSCRIPTION (cash)**

The undersigned, \_\_\_\_\_, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for and purchase \_\_\_\_\_ shares of the Common Stock, par value \$0.001 per share, of ZIOPHARM, Inc. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**CASHLESS EXERCISE**

The undersigned \_\_\_\_\_, pursuant to the provisions of the foregoing Warrant, hereby elects to exchange its Warrant for \_\_\_\_\_ shares of Common Stock, par value \$0.001 per share, of ZIOPHARM, Inc. pursuant to the Cashless Exercise provisions of the Warrant.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**ASSIGNMENT**

FOR VALUE RECEIVED \_\_\_\_\_ (“Assignor”) hereby sells, assigns and transfers unto \_\_\_\_\_ (“Transferee”) the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Warrant on the books of ZIOPHARM, Inc. By acceptance of the foregoing Warrant, Transferee shall become a Holder under said Warrant and subject to the rights, obligations and representations of Holder set forth in said Warrant.

ASSIGNOR:

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

TRANSFEEE:

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED \_\_\_\_\_ (“Assignor”) hereby assigns and transfers unto \_\_\_\_\_ (“Transferee”) the right to purchase \_\_\_\_\_ shares of Common Stock, par value \$0.001 per share, of ZIOPHARM, Inc. covered by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced thereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer such part of said Warrant on the books of ZIOPHARM, Inc. By acceptance of the proportionate part of foregoing Warrant, Transferee shall become a Holder under said proportionate part of said Warrant and subject to the rights, obligations and representations of Holder set forth in said Warrant.

ASSIGNOR:

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

TRANSFEEE:

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

October 14, 2005

ZIOPHARM Oncology, Inc.  
1180 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, NY 10036

RE: Registration Statement on Form SB-2

Gentlemen:

We have acted as counsel to ZIOPHARM Oncology, Inc., a Delaware corporation (the "Company") in connection with the preparation of a registration statement on Form SB-2 (the "Registration Statement") to be filed by the Company with the Securities and Exchange Commission on or about October 14, 2005 relating to the registration under the Securities Act of 1933, as amended (the "1933 Act"), of 4,870,281 shares (the "Shares") of the Company's common stock, \$.001 par value (the "Common Shares"), including 482,407 shares (the "Warrant Shares") issuable upon the exercise of outstanding certain warrants (the "Warrants").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-B under the 1933 Act.

In connection with the rendering of this opinion, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement; (ii) the Certificate of Incorporation and the Bylaws of the Company, as amended, each as currently in effect; (iii) certain resolutions adopted by the Board of Directors of the Company relating to the issuance of the Shares and Warrants, the preparation and filing of the Registration Statement and certain related matters; (iv) certain agreements, certificates of public officials, certificates of other officers or representatives of the Company or others; and (v) such other documents, certificates and records as we deemed necessary or appropriate as a basis for the opinions expressed herein.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such copies. As to any facts material to the opinions expressed herein which we have not independently established or verified, we have relied upon statements and representations of officers and other representatives of the Company and others.

We are attorneys licensed to practice in the State of Minnesota and the opinions expressed herein are limited to the laws of the State of Minnesota and the federal securities laws of the United States.

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Based upon and subject to the limitations, qualifications, exceptions and assumptions set forth herein, it is our opinion that:

1. The Common Shares have been duly authorized and are validly issued, fully paid and nonassessable; and
2. The Warrant Shares have been duly authorized and, when issued against payment of the requisite exercise price under the respective Warrants, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. We also consent to the reference to our name under the caption "Validity of Common Stock " in the prospectus filed as part of the Registration Statement.

This opinion is furnished to you in connection with the filing of the Registration Statement and, except as provided in the immediately preceding paragraph, is not to be used, circulated, quoted for any other purpose or otherwise referred to or relied upon by any other person without the express written permission of this firm.

Very truly yours,

/s/ MASLON EDELMAN BORMAN & BRAND, LLP

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**ZIOPHARM Oncology, INC.****2003 STOCK OPTION PLAN**

1. Purpose. The purpose of the 2003 Stock Option Plan (the “Plan”) of ZIOPHARM Oncology, Inc. (the “Company”) is to increase stockholder value and to advance the interests of the Company by furnishing a variety of economic incentives (“Incentives”) designed to attract, retain and motivate employees, certain key consultants and directors of the Company. Incentives may consist of opportunities to purchase or receive shares of Common Stock, \$0.001 par value per share, of the Company (“Common Stock”) on terms determined under this Plan.

2. Administration. The Plan shall be administered by the board of directors of the Company (the “Board of Directors”) or by a stock option or compensation committee (the “Committee”) of the Board of Directors. The Committee shall consist of not less than two directors of the Company and shall be appointed from time to time by the Board of Directors. During any time period during which the Company has a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (including the regulations promulgated thereunder, the “1934 Act”), each member of the Committee shall be (i) a “non-employee director” within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934 (including the regulations promulgated thereunder, the “1934 Act”) (a “Non-Employee Director”), and (ii) shall be an “outside director” within the meaning of Section 162(m) under the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations promulgated thereunder. The Committee shall have complete authority to award Incentives under the Plan, to interpret the Plan, and to make any other determination which it believes necessary and advisable for the proper administration of the Plan. The Committee’s decisions and matters relating to the Plan shall be final and conclusive on the Company and its participants. If at any time there is no stock option or compensation committee, the term “Committee”, as used in the Plan, shall refer to the Board of Directors.

3. Eligible Participants. Officers of the Company, employees of the Company or its subsidiaries, members of the Board of Directors, and consultants or other independent contractors who provide services to the Company or its subsidiaries shall be eligible to receive Incentives under the Plan when designated by the Committee. Participants may be designated individually or by groups or categories (for example, by pay grade) as the Committee deems appropriate. Participation by officers of the Company or its subsidiaries and any performance objectives relating to such officers must be approved by the Committee. Participation by others and any performance objectives relating to others may be approved by groups or categories (for example, by pay grade) and authority to designate participants who are not officers and to set or modify such targets may be delegated.

4. Types of Incentives. Incentives under the Plan may be granted in any one or a combination of the following forms: (a) incentive stock options and non-statutory stock options (section 6); (b) stock appreciation rights (“SARs”) (section 7); (c) stock awards (section 8); (d) restricted stock (section 8); and (e) performance shares (section 9).

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5. Shares Subject to the Plan.

5.1. Number of Shares. Subject to adjustment as provided in Section 10.6, the number of shares of Common Stock which may be issued under the Plan shall not exceed 2,500,000 shares of Common Stock. Shares of Common Stock that are issued under the Plan or are subject to outstanding Incentives will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan.

5.2. Cancellation. To the extent that cash in lieu of shares of Common Stock is delivered upon the exercise of an SAR pursuant to Section 7.4, the Company shall be deemed, for purposes of applying the limitation on the number of shares, to have issued the greater of the number of shares of Common Stock which it was entitled to issue upon such exercise or on the exercise of any related option. In the event that a stock option or SAR granted hereunder expires or is terminated or canceled unexercised as to any shares of Common Stock, such shares may again be issued under the Plan either pursuant to stock options, SARs or otherwise. In the event that shares of Common Stock are issued as restricted stock or pursuant to a stock award and thereafter are forfeited or reacquired by the Company pursuant to rights reserved upon issuance thereof, such forfeited and reacquired shares may again be issued under the Plan, either as restricted stock, pursuant to stock awards or otherwise. The Committee may also determine to cancel, and agree to the cancellation of, stock options in order to make a participant eligible for the grant of a stock option at a lower price than the option to be canceled.

5.3. Type of Common Stock. Common Stock issued under the Plan in connection with stock options, SARs, performance shares, restricted stock or stock awards, may be authorized and unissued shares or treasury stock, as designated by the Committee.

6. Stock Options. A stock option is a right to purchase shares of Common Stock from the Company. Each stock option granted by the Committee under this Plan shall be subject to the following terms and conditions:

6.1. Price. The option price per share shall be determined by the Committee, subject to adjustment under Section 10.6.

6.2. Number. The number of shares of Common Stock subject to the option shall be determined by the Committee, subject to adjustment as provided in Section 10.6. The number of shares of Common Stock subject to a stock option shall be reduced in the same proportion that the holder thereof exercises a SAR if any SAR is granted in conjunction with or related to the stock option.

6.3. Duration and Time for Exercise. Subject to earlier termination as provided in Section 10.4, the term of each stock option shall be determined by the Committee but shall not exceed ten years and one day from the date of grant. Each stock option shall become exercisable at such time or times during its term as shall be determined by the Committee at the time of grant. The Committee may accelerate the exercisability of any stock option. Subject to the foregoing and with the approval of the Committee, all or any part of the shares of Common Stock with respect to which the right to purchase has accrued may be purchased by the Company at the time of such accrual or at any time or times thereafter during the term of the option.

6.4. Manner of Exercise. A stock option may be exercised, in whole or in part, by giving written notice to the Company, specifying the number of shares of Common Stock to be purchased and accompanied by the full purchase price for such shares. The option price shall be payable (a) in United States dollars upon exercise of the option and may be paid by cash, uncertified or certified check or bank draft; (b) at the discretion of the Committee, by delivery of shares of Common Stock in payment of all or any part of the option price, which shares shall be valued for this purpose at the Fair Market Value on the date such option is exercised; or (c) at the discretion of the Committee, by instructing the Company to withhold from the shares of Common Stock issuable upon exercise of the stock option shares of Common Stock in payment of all or any part of the exercise price and/or any related withholding tax obligations, which shares shall be valued for this purpose at the Fair Market Value or in such other manner as may be authorized from time to time by the Committee. The shares of Common Stock delivered by the participant pursuant to Section 6.4(b) must have been held by the participant for a period of not less than six months prior to the exercise of the option, unless otherwise determined by the Committee. Prior to the issuance of shares of Common Stock upon the exercise of a stock option, a participant shall have no rights as a stockholder.

6.5. Incentive Stock Options. Notwithstanding anything in the Plan to the contrary, the following additional provisions shall apply to the grant of stock options which are intended to qualify as Incentive Stock Options (as such term is defined in Section 422 of the Code):

(a) The aggregate Fair Market Value (determined as of the time the option is granted) of the shares of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any participant during any calendar year (under all of the Company's plans) shall not exceed \$100,000. The determination will be made by taking incentive stock options into account in the order in which they were granted. If such excess only applies to a portion of an Incentive Stock Option, the Committee, in its discretion, will designate which shares will be treated as shares to be acquired upon exercise of an Incentive Stock Option.

(b) Any Incentive Stock Option certificate authorized under the Plan shall contain such other provisions as the Committee shall deem advisable, but shall in all events be consistent with and contain all provisions required in order to qualify the options as Incentive Stock Options.

(c) All Incentive Stock Options must be granted within ten years from the earlier of the date on which this Plan was adopted by Board of Directors or the date this Plan was approved by the stockholders.

(d) Unless sooner exercised, all Incentive Stock Options shall expire no later than 10 years after the date of grant.

(e) The option price for Incentive Stock Options shall be not less than the Fair Market Value of the Common Stock subject to the option on the date of grant.

(f) If Incentive Stock Options are granted to any participant who, at the time such option is granted, would own (within the meaning of Section 422 of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation, (i) the option price for such Incentive Stock Options shall be not less than 110% of the Fair Market Value of the Common Stock subject to the option on the date of grant and (ii) such Incentive Stock Options shall expire no later than five years after the date of grant.

6.6 Right of Redemption. The agreement with the recipient evidencing a stock option grant may include a provision whereby the Company may elect, prior to the date of the first registration of an equity security of the Company pursuant to the Exchange Act of 1934, as amended, to repurchase from a former Company employee, director, consultant, advisor or other independent contractor, and their respective successors and assigns, all or any part of the shares of Common Stock received by a participant pursuant to the exercise of a stock option. Any such repurchase must be made no earlier than six months following the termination of the holder's relationship with the Company giving rise to the stock option grant and at fair market value, as determined by the Committee, on such date of redemption.

7. Stock Appreciation Rights. An SAR is a right to receive, without payment to the Company, a number of shares of Common Stock, cash or any combination thereof, the amount of which is determined pursuant to the formula set forth in Section 7.4. An SAR may be granted (a) with respect to any stock option granted under this Plan, either concurrently with the grant of such stock option or at such later time as determined by the Committee (as to all or any portion of the shares of Common Stock subject to the stock option), or (b) alone, without reference to any related stock option. Each SAR granted by the Committee under this Plan shall be subject to the following terms and conditions:

7.1. Number. Each SAR granted to any participant shall relate to such number of shares of Common Stock as shall be determined by the Committee, subject to adjustment as provided in Section 10.6. In the case of an SAR granted with respect to a stock option, the number of shares of Common Stock to which the SAR pertains shall be reduced in the same proportion that the holder of the option exercises the related stock option.

7.2. Duration. Subject to earlier termination as provided in Section 10.4, the term of each SAR shall be determined by the Committee but shall not exceed ten years and one day from the date of grant. Unless otherwise provided by the Committee, each SAR shall become exercisable at such time or times, to such extent and upon such conditions as the stock option, if any, to which it relates is exercisable. The Committee may in its discretion accelerate the exercisability of any SAR.

7.3. Exercise. An SAR may be exercised, in whole or in part, by giving written notice to the Company, specifying the number of SARs which the holder wishes to exercise. Upon receipt of such written notice, the Company shall, within 90 days thereafter, deliver to the exercising holder certificates for the shares of Common Stock or cash or both, as determined by the Committee, to which the holder is entitled pursuant to Section 7.4.

7.4. Payment. Subject to the right of the Committee to deliver cash in lieu of shares of Common Stock (which, as it pertains to officers and directors of the Company, shall comply with all requirements of the 1934 Act), the number of shares of Common Stock which shall be issuable upon the exercise of an SAR shall be determined by dividing:

(a) the number of shares of Common Stock as to which the SAR is exercised multiplied by the amount of the appreciation in such shares (for this purpose, the “appreciation” shall be the amount by which the Fair Market Value of the shares of Common Stock subject to the SAR on the exercise date exceeds (1) in the case of an SAR related to a stock option, the purchase price of the shares of Common Stock under the stock option or (2) in the case of an SAR granted alone, without reference to a related stock option, an amount which shall be determined by the Committee at the time of grant, subject to adjustment under Section 10.6); by

(b) the Fair Market Value of a share of Common Stock on the exercise date.

In lieu of issuing shares of Common Stock upon the exercise of a SAR, the Committee may elect to pay the holder of the SAR cash equal to the Fair Market Value on the exercise date of any or all of the shares which would otherwise be issuable. No fractional shares of Common Stock shall be issued upon the exercise of an SAR; instead, the holder of the SAR shall be entitled to receive a cash adjustment equal to the same fraction of the Fair Market Value of a share of Common Stock on the exercise date or to purchase the portion necessary to make a whole share at its Fair Market Value on the date of exercise.

8. Stock Awards and Restricted Stock. A stock award consists of the transfer by the Company to a participant of shares of Common Stock, without other payment therefor, as additional compensation for services to the Company. A share of restricted stock consists of shares of Common Stock which are sold or transferred by the Company to a participant at a price determined by the Committee (which price shall be at least equal to the minimum price required by applicable law for the issuance of a share of Common Stock) and subject to restrictions on their sale or other transfer by the participant. The transfer of Common Stock pursuant to stock awards and the transfer and sale of restricted stock shall be subject to the following terms and conditions:

8.1. Number of Shares. The number of shares to be transferred or sold by the Company to a participant pursuant to a stock award or as restricted stock shall be determined by the Committee.

8.2. Sale Price. The Committee shall determine the price, if any, at which shares of restricted stock shall be sold to a participant, which may vary from time to time and among participants and which may be below the Fair Market Value of such shares of Common Stock at the date of sale.

8.3. Restrictions. All shares of restricted stock transferred or sold hereunder shall be subject to such restrictions as the Committee may determine, including, without limitation any or all of the following:

(a) a prohibition against the sale, transfer, pledge or other encumbrance of the shares of restricted stock, such prohibition to lapse at such time or times as the Committee shall determine (whether in annual or more frequent installments, at the time of the death, disability or retirement of the holder of such shares, or otherwise);

(b) a requirement that the holder of shares of restricted stock forfeit, or (in the case of shares sold to a participant) resell back to the Company at his or her cost, all or a part of such shares in the event of termination of his or her employment or consulting engagement during any period in which such shares are subject to restrictions;

(c) such other conditions or restrictions as the Committee may deem advisable.

8.4. Escrow. In order to enforce the restrictions imposed by the Committee pursuant to Section 8.3, the participant receiving restricted stock shall enter into an agreement with the Company setting forth the conditions of the grant. Shares of restricted stock shall be registered in the name of the participant and deposited, together with a stock power endorsed in blank, with the Company. Each such certificate shall bear a legend in substantially the following form:

The transferability of this certificate and the shares of Common Stock represented by it are subject to the terms and conditions (including conditions of forfeiture) contained in the 2003 Stock Option Plan of Ziopharm, Inc. (the "Company"), and an agreement entered into between the registered owner and the Company. A copy of the Plan and the agreement is on file in the office of the secretary of the Company.

8.5. End of Restrictions. Subject to Section 10.5, at the end of any time period during which the shares of restricted stock are subject to forfeiture and restrictions on transfer, such shares will be delivered free of all restrictions to the participant or to the participant's legal representative, beneficiary or heir.

8.6. Stockholder. Subject to the terms and conditions of the Plan, each participant receiving restricted stock shall have all the rights of a stockholder with respect to shares of stock during any period in which such shares are subject to forfeiture and restrictions on transfer, including without limitation, the right to vote such shares. Dividends paid in cash or property other than Common Stock with respect to shares of restricted stock shall be paid to the participant currently.

9. Performance Shares. A performance share consists of an award which shall be paid in shares of Common Stock, as described below. The grant of performance share shall be subject to such terms and conditions as the Committee deems appropriate, including the following:

9.1. Performance Objectives. Each performance share will be subject to performance objectives for the Company or one of its operating units to be achieved by the end of a specified period. The number of performance shares granted shall be determined by the Committee and may be subject to such terms and conditions, as the Committee shall determine. If the performance objectives are achieved, each participant will be paid in shares of Common Stock or cash. If such objectives are not met, each grant of performance shares may provide for lesser payments in accordance with formulas established in the award.

9.2. Not Stockholder. The grant of performance shares to a participant shall not create any rights in such participant as a stockholder of the Company, until the payment of shares of Common Stock with respect to an award.

9.3. No Adjustments. No adjustment shall be made in performance shares granted on account of cash dividends which may be paid or other rights which may be issued to the holders of Common Stock prior to the end of any period for which performance objectives were established.

9.4. Expiration of Performance Share. If any participant's employment or consulting engagement with the Company is terminated for any reason other than normal retirement, death or disability prior to the achievement of the participant's stated performance objectives, all the participant's rights on the performance shares shall expire and terminate unless otherwise determined by the Committee. In the event of termination of employment or consulting by reason of death, disability, or normal retirement, the Committee, in its own discretion may determine what portions, if any, of the performance shares should be paid to the participant.

## 10. General.

10.1. Effective Date. The Plan will become effective upon its approval by the Company's stockholders. Unless approved by the stockholders within one year after the date of the Plan's adoption by the Board of Directors, the Plan shall not be effective for any purpose.

10.2. Duration. The Plan shall remain in effect until all Incentives granted under the Plan have either been satisfied by the issuance of shares of Common Stock or the payment of cash or been terminated under the terms of the Plan and all restrictions imposed on shares of Common Stock in connection with their issuance under the Plan have lapsed. No Incentives may be granted under the Plan after the tenth anniversary of the date the Plan is approved by the stockholders of the Company.

10.3. Non-transferability of Incentives. No stock option, SAR, restricted stock or performance award may be transferred, pledged or assigned by the holder thereof (except, in the event of the holder's death, by will or the laws of descent and distribution to the limited extent provided in the Plan or the Incentive), or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder, and the Company shall not be required to recognize any attempted assignment of such rights by any participant. Notwithstanding the preceding sentence, stock options may be transferred by the holder thereof to Employee's spouse, children, grandchildren or parents (collectively, the "Family Members"), to trusts for the benefit of Family Members, to partnerships or limited liability companies in which Family Members are the only partners or shareholders, or to entities exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. During a participant's lifetime, a stock option may be exercised only by him or her, by his or her guardian or legal representative or by the transferees permitted by the preceding sentence.

10.4. Effect of Termination or Death. In the event that a participant ceases to be an employee of or consultant to the Company for any reason, including death or disability, any Incentives may be exercised or shall expire at such times as may be determined by the Committee.

10.5. Additional Condition. Notwithstanding anything in this Plan to the contrary: (a) the Company may, if it shall determine it necessary or desirable for any reason, at the time of award of any Incentive or the issuance of any shares of Common Stock pursuant to any Incentive, require the recipient of the Incentive, as a condition to the receipt thereof or to the receipt of shares of Common Stock issued pursuant thereto, to deliver to the Company a written representation of present intention to acquire the Incentive or the shares of Common Stock issued pursuant thereto for his or her own account for investment and not for distribution; and (b) if at any time the Company further determines, in its sole discretion, that the listing, registration or qualification (or any updating of any such document) of any Incentive or the shares of Common Stock issuable pursuant thereto is necessary on any securities exchange or under any federal or state securities or blue sky law, or that the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with the award of any Incentive, the issuance of shares of Common Stock pursuant thereto, or the removal of any restrictions imposed on such shares, such Incentive shall not be awarded or such shares of Common Stock shall not be issued or such restrictions shall not be removed, as the case may be, in whole or in part, unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company.

10.6. Adjustment. In the event of any recapitalization, stock dividend, stock split, combination of shares or other change in the Common Stock, the number of shares of Common Stock then subject to the Plan, including shares subject to restrictions, options or achievements of performance shares, shall be adjusted in proportion to the change in outstanding shares of Common Stock. In the event of any such adjustments, the purchase price of any option, the performance objectives of any Incentive, and the shares of Common Stock issuable pursuant to any Incentive shall be adjusted as and to the extent appropriate, in the discretion of the Committee, to provide participants with the same relative rights before and after such adjustment.

10.7. Incentive Plans and Agreements. Except in the case of stock awards, the terms of each Incentive shall be stated in a plan or agreement approved by the Committee. The Committee may also determine to enter into agreements with holders of options to reclassify or convert certain outstanding options, within the terms of the Plan, as Incentive Stock Options or as non-statutory stock options and in order to eliminate SARs with respect to all or part of such options and any other previously issued options.



10.8. Withholding.

(a) The Company shall have the right to withhold from any payments made under the Plan or to collect as a condition of payment, any taxes required by law to be withheld. At any time when a participant is required to pay to the Company an amount required to be withheld under applicable income tax laws in connection with a distribution of Common Stock or upon exercise of an option or SAR, the participant may satisfy this obligation in whole or in part by electing (the "Election") to have the Company withhold from the distribution shares of Common Stock having a value up to the minimum amount of withholding taxes required to be collected on the transaction. The value of the shares to be withheld shall be based on the Fair Market Value of the Common Stock on the date that the amount of tax to be withheld shall be determined ("Tax Date").

(b) Each Election must be made prior to the Tax Date. The Committee may disapprove of any Election, may suspend or terminate the right to make Elections, or may provide with respect to any Incentive that the right to make Elections shall not apply to such Incentive. An Election is irrevocable.

10.9. No Continued Employment, Engagement or Right to Corporate Assets. No participant under the Plan shall have any right, because of his or her participation, to continue in the employ of the Company for any period of time or to any right to continue his or her present or any other rate of compensation. Nothing contained in the Plan shall be construed as giving an employee, a consultant, such persons' beneficiaries or any other person any equity or interests of any kind in the assets of the Company or creating a trust of any kind or a fiduciary relationship of any kind between the Company and any such person.

10.10. Deferral Permitted. Payment of cash or distribution of any shares of Common Stock to which a participant is entitled under any Incentive shall be made as provided in the Incentive. Payment may be deferred at the option of the participant if provided in the Incentive.

10.11. Amendment of the Plan. The Board may amend or discontinue the Plan at any time. However, no such amendment or discontinuance shall adversely change or impair, without the consent of the recipient, an Incentive previously granted. Further, no such amendment shall, without approval of the shareholders of the Company, (a) increase the maximum number of shares of Common Stock which may be issued to all participants under the Plan, (b) change or expand the types of Incentives that may be granted under the Plan, (c) change the class of persons eligible to receive Incentives under the Plan, or (d) materially increase the benefits accruing to participants under the Plan.

10.12 Sale, Merger, Exchange or Liquidation. Unless otherwise provided in the agreement for an Incentive, in the event of an acquisition of the Company through the sale of substantially all of the Company's assets or through a merger, exchange, reorganization or liquidation of the Company or a similar event as determined by the Committee (collectively a "transaction"), the Committee shall be authorized, in its sole discretion, to take any and all action it deems equitable under the circumstances, including but not limited to any one or more of the following:

(1) providing that the Plan and all Incentives shall terminate and the holders of (i) all outstanding vested options shall receive, in lieu of any shares of Common Stock they would be entitled to receive under such options, such stock, securities or assets, including cash, as would have been paid to such participants if their options had been exercised and such participant had received Common Stock immediately prior to such transaction (with appropriate adjustment for the exercise price, if any), (ii) performance shares and/or SARs that entitle the participant to receive Common Stock shall receive, in lieu of any shares of Common Stock each participant was entitled to receive as of the date of the transaction pursuant to the terms of such Incentive, if any, such stock, securities or assets, including cash, as would have been paid to such participant if such Common Stock had been issued to and held by the participant immediately prior to such transaction, and (iii) any Incentive under this Agreement which does not entitle the participant to receive Common Stock shall be equitably treated as determined by the Committee.

(2) providing that participants holding outstanding vested Common Stock based Incentives shall receive, with respect to each share of Common Stock issuable pursuant to such Incentives as of the effective date of any such transaction, at the determination of the Committee, cash, securities or other property, or any combination thereof, in an amount equal to the excess, if any, of the Fair Market Value of such Common Stock on a date within ten days prior to the effective date of such transaction over the option price or other amount owed by a participant, if any, and that such Incentives shall be cancelled, including the cancellation without consideration of all options that have an exercise price below the per share value of the consideration received by the Company in the transaction.

(3) providing that the Plan (or replacement plan) shall continue with respect to Incentives not cancelled or terminated as of the effective date of such transaction and provide to participants holding such Incentives the right to earn their respective Incentives on a substantially equivalent basis (taking into account the transaction and the number of shares or other equity issued by such successor entity) with respect to the equity of the entity succeeding the Company by reason of such transaction.

(4) providing that all unvested, unearned or restricted Incentives, including but not limited to restricted stock for which restrictions have not lapsed as of the effective date of such transaction, shall be void and deemed terminated, or, in the alternative, for the acceleration or waiver of any vesting, earning or restrictions on any Incentive.

The Board may restrict the rights of participants or the applicability of this Section 10.12 to the extent necessary to comply with Section 16(b) of the Securities Exchange Act of 1934, the Internal Revenue Code or any other applicable law or regulation. The grant of an Incentive award pursuant to the Plan shall not limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge, exchange or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

10.13. Definition of Fair Market Value. For purposes of this Plan, the “Fair Market Value” of a share of Common Stock at a specified date shall, unless otherwise expressly provided in this Plan, be the amount which the Committee or the Board of Directors determines in good faith to be 100% of the fair market value of such a share as of the date in question; provided, however, that notwithstanding the foregoing, if such shares are listed on a U.S. securities exchange or are quoted on the Nasdaq National Market or Nasdaq Small-Cap Market (“Nasdaq”), then Fair Market Value shall be determined by reference to the last sale price of a share of Common Stock on such U.S. securities exchange or Nasdaq on the applicable date. If such U.S. securities exchange or Nasdaq is closed for trading on such date, or if the Common Stock does not trade on such date, then the last sale price used shall be the one on the date the Common Stock last traded on such U.S. securities exchange or Nasdaq.

Approved by the Board of Directors of ZIOPHARM, Inc. on December 30, 2003.

Approved by the stockholders of ZIOPHARM, Inc. on December 21, 2004.

Assumed by ZIOPHARM Oncology, Inc. pursuant to merger effective September 13, 2005.

**EMPLOYMENT AGREEMENT**

AGREEMENT (the "**Agreement**"), dated as of January 8, 2004, by and between ZYLOGEN, INC., a Delaware corporation with principal executive offices at 787 Seventh Avenue, 48<sup>th</sup> Floor, New York, NY 10019 (the "**Company**"), and DR. JONATHAN LEWIS, residing at 1522 Fairfield Beach Road, Fairfield, CT 06824 (the "**Executive**").

**WITNESSETH:**

WHEREAS, the Company desires to employ the Executive as President and Chief Executive Officer of the Company, and the Executive desires to serve the Company in those capacities, upon the terms and subject to the conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Employment.

(a) Services. The Executive will be employed by the Company as its President and Chief Executive Officer. The Executive will report directly to the Board of Directors of the Company (the "Board") and shall perform such duties assigned by the Board as are consistent with his position as President and Chief Executive Officer (the "Services"). The Executive agrees to perform such duties faithfully, to devote substantially all of his business time, attention and energies to the business of the Company, and while he remains employed, not to engage in any other business activity that is in conflict with your duties and obligations to the Company; provided, however, that the Executive may engage in the following activities to the extent that such activities, individually or collectively, do not interfere with the performance of the Executive's duties and responsibilities hereunder, devoting such reasonable time as may be necessary, but in no event more than five (5) business days per annum (A) to fulfill civic responsibilities, (B) for personal financial matters, (C) to respond to inquiries from former patients and their current physicians, (D) to serve as an expert witness in cases involving Sarcoma, (E) to give and attend academic lectures in connection with the Executive's affiliation with the Yale Medical School and the National Academy of Sciences, (F) to write and edit medical, scientific and business textbooks and (G) to perform certain other activities with the prior consent of the Company's Board of Directors.

(b) Acceptance. Executive hereby accepts such employment and agrees to render the Services.

2. Term.

The Executive's employment under this Agreement (the "Term") shall commence as of the Effective Date (as hereinafter defined) and shall continue for a term of three (3) years, unless sooner terminated pursuant to Section 9 of this Agreement. Notwithstanding anything to the contrary contained herein, the provisions of this Agreement governing protection of Confidential Information shall continue in effect as specified in Section 6 hereof and survive the expiration or termination hereof. The Term may be extended for additional one (1) year periods upon mutual written consent of the Executive and the Board.

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3. Best Efforts; Place of Performance.

(a) The Executive shall devote substantially all of his business time, attention and energies to the business and affairs of the Company and shall use his best efforts to advance the best interests of the Company and shall not during the Term be actively engaged in any other business activity, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, that will interfere with the performance by the Executive of his duties hereunder or the Executive's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company.

(b) The duties to be performed by the Executive hereunder shall be performed primarily at the office of the Company in New York, New York, subject to reasonable travel requirements on behalf of the Company, or such other place as the Board may reasonably designate, subject to the provisions of Section 9(d) below.

4. Directorship. The Company shall use its best efforts to cause the Executive to be elected as a member of its Board of Directors throughout the Term and shall include him in the management slate for election as a director at every stockholders meeting during the Term at which his term as a director would otherwise expire. The Executive agrees to accept election, and to serve during the Term, as director of the Company, without any compensation therefor other than as specified in this Agreement.

5. Compensation. As full compensation for the performance by the Executive of his duties under this Agreement, the Company shall pay the Executive as follows:

(a) Base Salary. The Company shall pay Executive a salary (the "Base Salary") equal to Three Hundred Fifty Three Thousand Dollars (\$350,000) per year. Payment shall be made semi-monthly, on the fifteenth and the last day of each calendar month.

(b) Signing Bonus. The Company shall pay the Executive a one time bonus equal to Two Hundred Fifty Thousand Dollars (\$250,000) within ten (10) business days of the Effective Date of this Agreement.

(c) Guaranteed Bonus. The Company shall pay the Executive a bonus (the "**Guaranteed Bonus**") of Two Hundred Fifty Thousand Dollars (\$250,000) within 30 days following each anniversary of the date of this Agreement during the Term, provided that the Executive is employed hereunder on such anniversary date. The Board of Directors of the Company shall annually review the Guaranteed Bonus to determine whether an increase in the amount thereof is warranted.

(d) Discretionary Bonus. At the sole discretion of the Board of Directors of the Company, the Executive shall receive an additional annual bonus (the "**Discretionary Bonus**") in an amount equal to up to 100% of his Base Salary, based upon his performance on behalf of the Company during the prior year. The Discretionary Bonus shall be payable either as a lump-sum payment or in installments as determined by the Board of Directors of the Company in its sole discretion. In addition, the Board of Directors of the Company shall annually review the Bonus to determine whether an increase in the amount thereof is warranted.

(e) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to the Executive under this Section 5.

(f) Stock Options.

(i) As additional compensation for the services to be rendered by the Executive pursuant to this Agreement, the Company shall grant the Executive non-qualified stock options (“**Stock Options**”) to purchase 205,000 shares of Common Stock of the Company at a price equal to \$0.01 per share representing ten percent (10%) of the outstanding Common Stock of the Company, on a fully diluted basis, as of the Effective Date. The Stock Options shall be governed by the Company’s 2003 Stock Option Plan and shall vest, if at all, in three equal installments on January 8, 2005, January 8, 2006 and January 8, 2007 of this Agreement, subject in each case to the provisions of Section 10 below. In connection with such grant, the Executive shall enter into the Company’s standard stock option agreement, which will incorporate the foregoing vesting schedule, exercise price and the Stock Option related provisions contained in Section 10 below. The Board of Directors of the Company shall annually review the number of Stock Options granted to the Executive to determine whether an increase in the number thereof is warranted.

(ii) Anti-dilution Protection. Until such time as the Company has raised gross proceeds equal to \$25,000,000 from the issuance and sale of Equity Securities (as defined below), the Company shall issue to the Executive a number of additional Stock Options sufficient to maintain Executive’s ownership percentage at least equal to percent (5%) of the outstanding Common Stock of the Company on a fully diluted basis. Once the Company has raised \$25,000,000 through the sale of its Equity Securities, Executive shall be diluted pro rata along with all other holders of securities of the Company. As used herein “Equity Securities” shall mean shares of Common Stock, options, warrants or other rights to purchase Common Stock or securities or evidences of indebtedness convertible into or exchangeable for shares of Common Stock.

(iii) Notwithstanding the foregoing, Section 3(f)(iii) shall not apply to, and the Executive shall not be entitled to anti-dilution protection with respect to, the issuance of Excluded Equity Securities and Excluded Equity Securities shall not be included in calculating the fully diluted issued and outstanding shares of Common Stock of the Company for any purpose under this Agreement. “Excluded Equity Securities” shall mean Equity Securities that are issued by the Company pursuant to any transactions approved by the Board of Directors primarily for the purpose of: (1) incentivizing employees, directors or consultants to the Company following the issuance of up to five percent (5%) of the outstanding shares of Common Stock of the Company for such purposes; (2) joint ventures, strategic alliances or research and development activities, (3) purchase or licensing of technology, or (4) any other transactions involving current or potential partners that are primarily for purposes other than raising capital. As long as the anti-dilution protection contained in this paragraph Section 3(f)(iii) remains in effect, the Executive shall be diluted pari passu with all other holders of Common Stock by the issuance by the Company of Excluded Equity Securities. Upon termination of such anti-dilution protection, the Executive shall be diluted pari passu with all other holders of Common Stock by the issuance of any Equity Securities.

(g) Expenses. The Company shall reimburse the Executive for all reasonable out of pocket expenses incurred by the Executive in furtherance of the business and affairs of the Company, including reasonable travel and entertainment (which shall include business-class travel, unless unavailable and then first-class travel, for trips requiring air time longer than two (2) hours and the use of car service for business-related activities), upon timely receipt by the Company of appropriate vouchers or other proof of the Executive's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(h) Life and Disability Insurance. The Company shall reimburse the Executive all premiums paid by the Executive on life insurance policies covering the Executive in amounts up to \$800,000 and disability insurance policies covering the Executive in amounts up to \$20,000 per month.

(i) Vacation. The Executive shall, during the Term, be entitled to a vacation of four (4) weeks per annum, in addition to holidays observed by the Company. The Executive shall not be entitled to carry any vacation forward to the next year of employment and shall not receive any compensation for unused vacation days.

(j) Piggyback Registration Rights. The Company agrees that if, at any time, and from time to time, after an initial public offering of its Common Stock, the Board shall authorize the filing of a registration statement under the Securities Act in connection with the proposed offer of any of its securities by it or any of its stockholders, the Company shall, subject to an underwriter lockup agreement, if any, and such underwriter's discretion, (A) cause such registration statement to cover all of Common Stock underlying the vested Options of the Executive; (B) use its commercially reasonable efforts to cause such registration statement to become effective as soon as practicable; and (C) maintain such compliance with applicable laws and regulations of any governmental authority for the period of two years or until the Executive has disposed all of his securities under the Registration Statement. Notwithstanding any other provision of this Section 3(j), the Company may at any time, abandon or delay any registration commenced by the Company.

(k) Other Benefits.

(i) The Executive shall be entitled to all rights and benefits for which he shall be eligible under any benefit or other plans (including, without limitation, dental, medical, medical reimbursement and hospital plans, pension plans, employee stock purchase plans, profit sharing plans, bonus plans and other so-called "fringe" benefits) as the Company shall make available to any of its senior executives from time to time.

(ii) The Company shall reimburse the Executives for his reasonable medical licensing fees and other professional dues and memberships and journal subscriptions. In addition, the Company shall reimburse the Executive up to \$10,000 per annum for costs associated with a consulting group retained by the Executive for the purpose of assisting the Executive corporate decision making.

6. Confidential Information and Inventions.

(a) The Executive recognizes and acknowledges that in the course of his duties he is likely to receive confidential or proprietary information owned by the Company, its affiliates or third parties with whom the Company or any of such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, the Executive agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its affiliates. "Confidential and Proprietary Information" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any affiliate or client of the Company. The Executive expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. The Executive agrees: (i) not to use any such Confidential and Proprietary Information for himself or others; and (ii) not to take any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of the Executive's duties to the Company. The Executive agrees to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in his possession to the Company upon request and in any event immediately upon termination of employment.

(b) Except in furtherance of the business of the Company, or otherwise with prior written authorization by the Company, the Executive agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its affiliates owes an obligation of confidence, at any time during or after his employment with the Company. Nothing in the foregoing shall be construed to prevent the Executive from disclosing or using any Confidential or Proprietary Information that:

- (i) Executive can evidence through written documentation was in the Executive's possession or control prior to the date of disclosure;
- (ii) Executive can evidence through written documentation was in the public domain or enters into the public domain through no improper act by Executive
- (iii) is approved for public release by written authorization of the Company' Board of Directors;
- (iv) is required to be disclosed by legal, administrative or judicial process; or
- (v) is rightfully granted to Executive by sources independent of the Company, its officers, employees, agents, affiliates and consultants.



(c) The Executive agrees that all inventions, discoveries, improvements and patentable or copyrightable works (“**Inventions**”) initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be “works made for hire” as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. The Executive hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; provided, however, that the Board of Directors of the Company may in its sole discretion agree to waive the Company’s rights pursuant to this Section 6(c) with respect to any Invention that is not directly or indirectly related to the Company’s business. The Executive further agrees to assist the Company in every proper way (but at the Company’s expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end the Executive will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(d) The Executive acknowledges that while performing the services under this Agreement the Executive may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to the Company or one of its affiliates (the “**Third Party Inventions**”). The Executive understands, acknowledges and agrees that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by the Company, any of its affiliates or either of the foregoing persons’ officers, directors, employees (including the Executive), agents or consultants during the Employment Term shall be and remain the sole and exclusive property of the Company or such affiliate and the Executive shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of the Company.

(e) The provisions of this Section 6 shall survive any termination of this Agreement.

7. Non-Competition, Non-Solicitation and Non-Disparagement.

(a) The Executive understands and recognizes that his services to the Company are special and unique and that in the course of performing such services the Executive will have access to and knowledge of Confidential and Proprietary Information (as defined in Section 6) and the Executive agrees that, during the Term and for a period of 12 months thereafter, he shall not without the consent of the Company in any manner, directly or indirectly, on behalf of himself or any person, firm, partnership, joint venture, corporation or other business entity (“**Person**”), enter into or engage in any business which is engaged in any business directly or indirectly competitive with the Company’s Business (as defined below), either as an individual for his own account, or as a partner, joint venturer, owner, executive, employee, independent contractor, principal, agent, consultant, salesperson, officer, director or shareholder of a Person in a business competitive with the Company within the geographic area of the Company’s Business, which is deemed by the parties hereto to be worldwide. The Executive acknowledges that, due to the nature of the Company’s Business, and the importance to the Company’s Business of its Confidential and Proprietary Information, a violation of this Section 7(a) could cause substantial damage to the Company and its affiliates and, therefore, the Company has a strong legitimate business interest in protecting the continuity of its business interests and the restriction herein agreed to by the Executive narrowly and fairly serves such an important and critical business interest of the Company. For purposes of this Agreement, the “Company’s Business” shall mean the business or businesses set forth on the attached Schedule 7(a), which shall be amended from time to time upon the mutual written agreement of the parties, but which will automatically include the research, development and commercialization of any technologies that are licensed or otherwise acquired by the Company. Notwithstanding the foregoing, nothing contained in this Section 7(a) shall be deemed to prohibit the Executive from (i) acquiring or holding, solely for investment, publicly traded securities of any corporation, some or all of the activities of which are competitive with the business of the Company so long as such securities do not, in the aggregate, constitute more than three percent (3%) of any class or series of outstanding securities of such corporation.

(b) During the Term and for a period of 12 months thereafter, the Executive shall not, directly or indirectly, without the prior written consent of the Company:

(i) solicit or induce any employee of the Company or any of its affiliates to leave the employ of the Company or any such affiliate; or hire for any purpose any employee of the Company or any affiliate or any employee who has left the employment of the Company or any affiliate within six months of the termination of such employee’s employment with the Company or any such affiliate or at any time in violation of such employee’s non-competition agreement with the Company or any such affiliate; or

(ii) solicit or accept employment or be retained by any Person who, at any time during the term of this Agreement, was an agent, client or customer of the Company or any of its affiliates where his position will be related to the Company’s Business; or

(iii) solicit or accept the business of any agent, client or customer of the Company or any of its affiliates with respect to products, services or investments similar to those provided or supplied by the Company or any of its affiliates.

(c) The Company and the Executive each agree that both during the Term and at all times thereafter, neither party shall directly or indirectly disparage, whether or not true, the name or reputation of the other party or any of its affiliates, including but not limited to, any officer, director, employee or any stockholder owning greater than five percent (5%) of the Company’s outstanding Common Stock. This Section 7 shall not include (i) statements made by the Executive’s in performing his duties in the ordinary course as Chief Executive Officer (e.g., employee evaluations and remarks made in private meetings of the Board) and (ii) statements made by the Executive under oath in a legal proceeding.

(d) In the event that the Executive breaches any provisions of Section 6 or this Section 7 or there is a threatened breach, then, in addition to any other rights which the Company may have, the Company shall (i) be entitled, without the posting of a bond or other security, to injunctive relief to enforce the restrictions contained in such Sections and (ii) have the right to require the Executive to account for and pay over to the Company all compensation, profits, monies, accruals, increments and other benefits (collectively “**Benefits**”) derived or received by the Executive as a result of any transaction constituting a breach of any of the provisions of Sections 6 or 7 and the Executive hereby agrees to account for and pay over such Benefits to the Company.

(e) Each of the rights and remedies enumerated in Section 7(d) shall be independent of the others and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 7, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 7 is held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company’s right to the relief provided in this Section 7 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(f) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 6 or this Section 7, the Executive shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies which may be available.

(g) The provisions of this Section 7 shall survive any termination of this Agreement.

8. Representations and Warranties by the Executive.

The Executive hereby represents and warrants to the Company as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by the Executive of his duties and other obligations hereunder violate or will violate any statute, law, determination or award, or conflict with or constitute a default or breach of any covenant or obligation under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Executive is a party or by which he is bound.

(b) The Executive has the full right, power and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Executive enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for the Executive to execute and deliver this Agreement or perform his duties and other obligations hereunder.

9. Termination. The Executive's employment hereunder shall be terminated upon the Executive's death and may be terminated as follows:

(a) The Executive's employment hereunder may be terminated by the Board of Directors of the Company for Cause. Any of the following actions by the Executive shall constitute "**Cause**":

(i) The willful misconduct, failure, disregard or refusal by the Executive to perform any of the material duties of his employment hereunder including, without limitation, insubordination with respect to written directions received by the Executive from the Board of Directors of the Company, provided, however, that Executive shall have one (1) opportunity to cure any breach of this section 9(a)(i) within five (5) business days ("Cure Period") of written notice to the Executive;

(ii) Any willful, intentional or grossly negligent act by the Executive having the effect of injuring, in a material way (whether financial or otherwise and as determined in good-faith by a majority of the Board of Directors of the Company), the business or reputation of the Company or any of its affiliates, including but not limited to, any officer, director, executive of the Company or any stockholder owning greater than five percent (5%) of the Company's outstanding Common Stock; provided, however, that the Executive shall be granted an opportunity to appear personally before the Board during its deliberations to explain the reasons for such conduct;

(iii) The Executive's conviction of any felony or a misdemeanor involving moral turpitude (including entry of a nolo contendere plea);

(iv) The determination by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company, that the Executive engaged in some form of harassment prohibited by law (including, without limitation, harassment that constitutes age, sex or race discrimination), unless the Executive's actions were specifically directed by the Board of Directors of the Company;

(v) Any misappropriation or embezzlement of the property of the Company or its affiliates;

(vi) Breach by the Executive of any of the provisions of Sections 6, 7 or 8 of this Agreement; and

(vii) Breach by the Executive of any provision of this Agreement other than those contained in Sections 6, 7 or 8 which is not cured by the Executive within thirty (30) days after notice thereof is given to the Executive by the Company.

(b) The Executive's employment hereunder may be terminated by the Board of Directors of the Company due to the Executive's Disability. For purposes of this Agreement, a termination for "**Disability**" shall occur upon rendering of a written termination notice by the Board of Directors of the Company after the Executive has been unable to substantially perform his duties hereunder for 90 or more consecutive days, or more than 120 days in any consecutive 12 month period, by reason of any physical or mental illness or injury. For purposes of this Section 9(b), the Executive agrees to make himself available and to cooperate in any reasonable examination by a reputable independent physician retained by the Company.

(c) The Executive's employment hereunder may be terminated by the Board of Directors of the Company (or its successor) upon the occurrence of a Change of Control. For purposes of this Agreement, "**Change of Control**" means (i) the acquisition, directly or indirectly, following the date hereof by any person (as such term is defined in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended), in one transaction or a series of related transactions, of securities of the Company representing in excess of fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities if such person or his or its affiliate(s) do not own in excess of 50% of such voting power on the date of this Agreement, or (ii) the future disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than (i) a merger effected exclusively for the purpose of changing the domicile of the Company and (ii) financing activities in the ordinary course in which the Company sells its equity securities).

(d) The Executive's employment hereunder may be terminated by the Executive for Good Reason. For purposes of this Agreement, "**Good Reason**" shall mean any of the following: (i) the assignment to the Executive of duties inconsistent with the Executive's position, duties, responsibilities, titles or offices as described herein; (ii) any material reduction by the Corporation of the Executive's duties and responsibilities; (iii) any reduction by the Corporation of the Executive's compensation or benefits payable hereunder (it being understood that a reduction of benefits applicable to all employees of the Corporation, including the Executive, shall not be deemed a reduction of the Executive's compensation package for purposes of this definition); (iv) a material breach by the Company of this Agreement; (v) moving the regular place of business of the Company to a location that is more than 60 miles from Fairfield, Connecticut; or (vi) upon a Change of Control (1) that (x) results in the elimination of the Board of Directors or (y) representatives of the Board just prior to the event causing the Change of Control do not represent a majority of the Board immediately subsequent to the event causing the Change of Control and (2) in which the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is greater than \$50,000,000.

#### 10. Compensation upon Termination.

(a) If the Executive's employment is terminated as a result of his death or Disability, the Company shall pay to the Executive or to the Executive's estate, as applicable, his Base Salary for a period of one year following the date of termination and any accrued but unpaid Bonus and expense reimbursement amounts through the date of his Death or Disability. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Executive's termination shall remain exercisable for a period of 90 days. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date.

(b) If the Executive's employment is terminated by the Board of Directors of the Company for Cause, then the Company shall pay to the Executive his Base Salary through the date of his termination and any expense reimbursement amounts owed through the date of termination. The Executive shall have no further entitlement to any other compensation or benefits from the Company. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date. Any Stock Options that have vested as of the date of the Executive's termination for Cause shall remain exercisable for a period of 90 days.

(c) If the Executive's employment is terminated by the Company (or its successor) upon the occurrence of a Change of Control and on the date of termination pursuant to this Section 10(c) the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is less than \$50,000,000, then the Company (or its successor, as applicable) shall continue to pay to the Executive his Base Salary and benefits for a period of one year following such termination as well as any expense reimbursement amounts owed through the date of termination. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Executive's termination shall remain exercisable for a period of 90 days.

(d) If the Executive's employment is terminated by the Company other than as a result of the Executive's death or Disability and other than for reasons specified in Sections 10(b), or if the Executive's employment is terminated by the Executive for Good Reason, then the Company shall (i) continue to pay to the Executive his Base Salary and Guaranteed Bonus for a period of one year following such termination and (ii) pay the Executive any expense reimbursement amounts owed through the date of termination. All Stock Options scheduled to vest at the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date; provided, however, that if on the date of termination pursuant to this Section 10(d) the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such termination, is greater than \$50,000,000, then all of the Executive's unvested Stock Options shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to this Section 10(d)) as of the date of the Executive's termination shall remain exercisable for a period of 90 days.

(e) Following expiration and non-renewal of the Term, should the Company, in its sole discretion require that the Executive continue to comply with the terms of Section 7 hereof, the Company shall pay the Executive his Base Salary and Guaranteed Bonus for a period of one year following expiration of the Term.

(f) This Section 10 sets forth the only obligations of the Company with respect to the termination of the Executive's employment with the Company, and the Executive acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in Section 10.

(g) Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned as director of the Company, effective as of the date of such termination.

(h) The provisions of this Section 10 shall survive any termination of this Agreement.

11. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without giving effect to its principles of conflicts of laws.

(b) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 6 or 7 hereof), or regarding the interpretation thereof, shall be finally settled by arbitration conducted in New York City in accordance with the Employment Dispute Rules of the American Arbitration Association then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. For the purpose of any judicial proceeding to enforce such award or incidental to such arbitration or to compel arbitration and for purposes of Sections 6 and 7 hereof, the parties hereby submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York, and agree that service of process in such arbitration or court proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in paragraph (g) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(d) This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets and shall cause the acquirer to assume all of its obligations under this Agreement.

(e) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(f) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(g) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this paragraph (g).

(h) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(i) As used in this Agreement, "affiliate" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(j) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ZYLOGEN, INC.

By: /s/ David Tanen

\_\_\_\_\_  
Name: David Tanen  
Title: President

EXECUTIVE

By: /s/ Jonathan Lewis

\_\_\_\_\_  
Name: Jonathan Lewis, M.D.



**SCHEDULE 7(a)**

1. The research, development, manufacture, commercialization and sale of organic arsenicals for the treatment of cancer and human disease.

**EMPLOYMENT AGREEMENT**

AGREEMENT (the "**Agreement**"), dated as of January 15, 2004, by and between ZIOPHARM, INC., a Delaware corporation with principal executive offices at 787 Seventh Avenue, 48<sup>th</sup> Floor, New York, NY 10019 (the "**Company**"), and ROBERT PETER GALE, M.D., Ph.D., residing at 11693 San Vicente Blvd., Suite 335, Los Angeles, CA 90049 (the "**Employee**").

**W I T N E S S E T H:**

WHEREAS, the Company desires to employ the Employee as Senior Vice President of Research of the Company, and the Employee desires to serve the Company in that capacity, upon the terms and subject to the conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Employment.

(a) Services. The Employee will be employed by the Company as its Senior Vice President of Research on terms set forth herein. The Employee will report to the Chief Executive Officer of the Company and shall perform such duties as are consistent with your position with the Company (the "Services"). The Employee agrees to perform such duties faithfully, to devote substantially all of his working time, attention and energies to the business of the Company, and while he remains employed, not to engage in any other business activity that is in conflict with his duties and obligations to the Company. Notwithstanding the preceding sentence, the Company and Employee understand and agree that the Employee is not required to devote all of his working time, attention and energies to the business of the Company, as contemplated pursuant to Section 3(a) herein.

(b) Acceptance. Employee hereby accepts such employment and agrees to render the Services.

2. Term.

The Employee's employment under this Agreement (the "Term") shall commence as of the Effective Date (as hereinafter defined) and shall continue for a term of three (3) years, unless sooner terminated pursuant to Section 8 of this Agreement. Notwithstanding anything to the contrary contained herein, the provisions of this Agreement governing protection of Confidential Information shall continue in effect as specified in Section 5 hereof and survive the expiration or termination hereof. The Term may be extended for additional one (1) year periods upon mutual written consent of the Employee and the Board upon not less than 30 days prior written notice.

3. Best Efforts; Place of Performance.

(a) The Employee shall devote no less than 20 full calendar days per month (minimum eight hours per day) to the business and affairs of the Company and shall use his best efforts to advance the best interests of the Company.

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(b) The duties to be performed by the Employee hereunder shall be performed at such place or places as may be agreed to by the Company and the Employee.

4. Compensation. As full compensation for the performance by the Employee of his duties under this Agreement, the Company shall pay the Employee as follows:

(a) Base Salary. The Company shall pay Employee a salary (the "Base Salary") equal to Two Hundred Fifty Thousand Dollars (\$250,000) per year. Payment shall be made semi-monthly, on the last day of each calendar month.

(b) Guaranteed Bonus. The Company shall pay the Executive a bonus (the "**Guaranteed Bonus**") of One Hundred Fifty Thousand Dollars (\$150,000) within 30 days following each anniversary of the date of this Agreement during the Term, provided that the Executive is employed hereunder on such anniversary date.

(c) Discretionary Bonus. At the sole discretion of the Board of Directors of the Company, the Employee may receive an additional annual bonus based upon his performance on behalf of the Company during the prior year (the "**Discretionary Bonus**") in an amount to be determined by the Board. The Discretionary Bonus shall be payable either as a lump-sum payment or in installments as determined by the Board of Directors of the Company in its sole discretion. In addition, the Board of Directors of the Company shall annually review the Bonus to determine whether an increase in the amount thereof is warranted.

(d) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to the Employee under this Section 5.

(e) Stock Options. As additional compensation for the services to be rendered by the Employee pursuant to this Agreement, the Company shall grant the Employee stock options ("**Stock Options**") to purchase a number of shares of Common Stock of the Company representing one percent (1%) of the outstanding common stock of the Company as of the date of this Agreement. The Stock Options shall be governed by the Company's 2003 Stock Option Plan and shall vest, if at all, in three equal installments on each anniversary of this Agreement, subject in each case to the provisions of Section 9 below. In connection with such grant, the Employee shall enter into the Company's standard stock option agreement which will incorporate the foregoing vesting schedule and the Stock Option related provisions contained in Section 9 below. Due consideration will be by the Board annually to grant you additional options reflecting your contributions to the Company and so that you may maintain a significant ownership position in the Company.

(f) Expenses. The Company shall reimburse the Employee for all normal, usual and necessary expenses incurred by the Employee in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of the Employee's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(g) Other Benefits. The Employee shall be entitled to all rights and benefits for which he shall be eligible under any benefit or other plans (including, without limitation, dental, medical, medical reimbursement and hospital plans, pension plans, employee stock purchase plans, profit sharing plans, bonus plans and other so-called "fringe" benefits) as the Company shall make available to its senior executives from time to time. In addition, the Company shall reimburse the Employees for his reasonable medical licensing fees and other professional dues.

5. Confidential Information and Inventions.

(a) The Employee recognizes and acknowledges that in the course of his duties he is likely to receive confidential or proprietary information owned by the Company, its affiliates or third parties with whom the Company or any such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, the Employee agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its affiliates. "Confidential and Proprietary Information" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any affiliate or client of the Company. The Employee expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. The Employee agrees: (i) not to use any such Confidential and Proprietary Information for himself or others; and (ii) not to take any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of the Employee's duties to the Company. The Employee agrees to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in his possession to the Company upon request and in any event immediately upon termination of employment.

(b) Except with prior written authorization by the Company, the Employee agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its affiliates owes an obligation of confidence, at any time during or after his employment with the Company.

(c) The Employee agrees that all inventions, discoveries, improvements and patentable or copyrightable works ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. The Employee hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; provided, however, that the Board of Directors of the Company may in its sole discretion agree to waive the Company's rights pursuant to this Section 6(c) with respect to any Invention that is not directly or indirectly related to the Company's business. The Employee further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end the Employee will execute all documents necessary:

- (i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and
- (ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(d) The Employee acknowledges that while performing the services under this Agreement the Employee may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to the Company or one of its affiliates (the “**Third Party Inventions**”). The Employee understands, acknowledges and agrees that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by the Company, any of its affiliates or either of the foregoing persons’ officers, directors, employees (including the Employee), agents or consultants during the Employment Term shall be and remain the sole and exclusive property of the Company or such affiliate and the Employee shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of the Company.

- (e) The provisions of this Section 6 shall survive any termination of this Agreement.

#### 6. Non-Competition, Non-Solicitation and Non-Disparagement.

(a) The Employee understands and recognizes that his services to the Company are special and unique and that in the course of performing such services the Employee will have access to and knowledge of Confidential and Proprietary Information (as defined in Section 5) and the Employee agrees that, during the Term and for a period of 12 months thereafter, he shall not without the consent of the Company in any manner, directly or indirectly, on behalf of himself or any person, firm, partnership, joint venture, corporation or other business entity (“**Person**”), enter into or engage in any business which is engaged in any business directly or indirectly competitive with the Company’s Business (as defined below), either as an individual for his own account, or as a partner, joint venturer, owner, executive, employee, independent contractor, principal, agent, consultant, salesperson, officer, director or shareholder of a Person in a business competitive with the Company within the geographic area of the Company’s Business, which is deemed by the parties hereto to be worldwide. The Employee acknowledges that, due to the nature of the Company’s Business, and the importance to the Company’s Business of its Confidential and Proprietary Information, a violation of this Section 6(a) could cause substantial damage to the Company and its affiliates and, therefore, the Company has a strong legitimate business interest in protecting the continuity of its business interests and the restriction herein agreed to by the Employee narrowly and fairly serves such an important and critical business interest of the Company. For purposes of this Agreement, the “Company’s Business” shall mean the business or businesses set forth on the attached Schedule 6(a), which shall be amended from time to time upon the mutual written agreement of the parties, but which will automatically include the research, development and commercialization of any technologies that are licensed or otherwise acquired by the Company. Notwithstanding the foregoing, nothing contained in this Section 6(a) shall be deemed to prohibit the Employee from (i) acquiring or holding, solely for investment, publicly traded securities of any corporation, some or all of the activities of which are competitive with the business of the Company so long as such securities do not, in the aggregate, constitute more than five percent (5%) of any class or series of outstanding securities of such corporation.

(b) During the Term and for a period of 12 months thereafter, the Employee shall not, directly or indirectly, without the prior written consent of the Company:

(i) solicit or induce any employee of the Company or any of its affiliates to leave the employ of the Company or any such affiliate; or hire for any purpose any employee of the Company or any affiliate or any employee who has left the employment of the Company or any affiliate within six months of the termination of such employee's employment with the Company or any such affiliate or at any time in violation of such employee's non-competition agreement with the Company or any such affiliate; or

(ii) solicit or accept employment or be retained by any Person who, at any time during the term of this Agreement, was an agent, client or customer of the Company or any of its affiliates where his position will be related to the Company's Business; or

(iii) solicit or accept the business of any agent, client or customer of the Company or any of its affiliates with respect to products, services or investments similar to those provided or supplied by the Company or any of its affiliates.

(c) The Company and the Employee each agree that both during the Term and at all times thereafter, neither party shall directly or indirectly disparage, whether or not true, the name or reputation of the other party or any of its affiliates, including but not limited to, any officer, director, employee or any stockholder owning greater than five percent (5%) of the Company's outstanding Common Stock. This Section 6 shall not include (i) statements made by the Employee's in performing his duties in the ordinary course as Senior Vice President of Research (e.g., employee evaluations and remarks made in private meetings of the Board) and (ii) statements made by the Employee under oath in a legal proceeding.

(d) In the event that the Employee breaches any provisions of Section 5 or this Section 6 or there is a threatened breach, then, in addition to any other rights which the Company may have, the Company shall (i) be entitled, without the posting of a bond or other security, to injunctive relief to enforce the restrictions contained in such Sections and (ii) have the right to require the Employee to account for and pay over to the Company all compensation, profits, monies, accruals, increments and other benefits (collectively "**Benefits**") derived or received by the Employee as a result of any transaction constituting a breach of any of the provisions of Sections 5 or 6 and the Employee hereby agrees to account for and pay over such Benefits to the Company.

(e) Each of the rights and remedies enumerated in Section 6(d) shall be independent of the others and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 6, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 6 is held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company's right to the relief provided in this Section 6 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(f) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 5 or this Section 6, the Employee shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies which may be available.

(g) The Company shall have the option, in its sole discretion, upon the termination of this Agreement for any reason, to retain the Employee as a consultant ("Consultant") for a non-renewable period of 12 months from the date of separation from the Company ("Consultancy Period"). During the Consultancy Period, the Consultant shall have only such duties and responsibilities as Company and Consultant shall mutually agree. During the Consultancy Period, there is no minimum amount of time Consultant shall be required to devote to the business and affairs of the Company. During the Consultancy Period, Consultant shall have no obligation to travel for or on behalf of Company.

(h) During the Consultancy Period, the provisions of Section 6(a) of this Agreement shall apply, but those provisions shall not apply after the termination of the Consultancy Period. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Section 6(a) of this Agreement shall be deemed fully satisfied upon the later to occur of (i) the end of the Term of this Agreement and (ii) the end of the Consultancy Period if and only if the Company elects, in its sole discretion, to retain Employee as a Consultant as herein provided.

(i) During the Consultancy Period, Consultant shall continue to receive each and every component of compensation provided for pursuant to Section 4 of this Agreement.

## 7. Representations and Warranties.

(a) The Employee hereby represents and warrants to the Company as follows:

(i) Neither the execution or delivery of this Agreement nor the performance by the Employee of his duties and other obligations hereunder violate or will violate any statute, law, determination or award, or conflict with or constitute a default or breach of any covenant or obligation under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Employee is a party or by which he is bound.

(ii) The Employee has the full right, power and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Employee enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for the Employee to execute and deliver this Agreement or perform his duties and other obligations hereunder.

(b) The Company hereby represents and warrants to the Employee as follows:

(i) Neither the execution or delivery of this Agreement nor the performance by the Company of its duties and other obligations hereunder violate or will violate any statute, law, determination or award, or conflict with or constitute a default or breach of any covenant or obligation under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Company is a party or by which he is bound.

(ii) The Company has the full right, power and legal capacity to enter and deliver this Agreement and to perform its duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms. No approvals or consents of any persons or entities are required for the Company to execute and deliver this Agreement or perform its duties and other obligations hereunder and contemplated herein.

8. Termination. The Employee's employment hereunder shall be terminated upon the Employee's death and may be terminated as follows:

(a) The Employee's employment hereunder may be terminated by the Board of Directors of the Company for Cause. Any of the following actions by the Employee shall constitute "Cause":

(i) The willful failure, disregard or refusal by the Employee to perform his duties hereunder;

(ii) Any willful, intentional or grossly negligent act by the Employee having the effect of injuring, in a material way (whether financial or otherwise and as determined in good-faith by a majority of the Board of Directors of the Company), the business or reputation of the Company or any of its affiliates, including but not limited to, any officer, director, executive or shareholder of the Company or any of its affiliates;

(iii) Willful misconduct by the Employee in respect of the duties or obligations of the Employee under this Agreement, including, without limitation, insubordination with respect to lawful directions received by the Employee from the Executive or the Board of Directors of the Company within the scope of duties of the Employee;

(iv) The Employee's indictment of any felony or a misdemeanor involving moral turpitude (including entry of a nolo contendere plea);



(v) The determination by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company, that the Employee engaged in some form of harassment prohibited by law (including, without limitation, age, sex or race discrimination), unless the Employee's actions were specifically directed by the Board of Directors of the Company;

(vi) Any misappropriation or embezzlement of the property of the Company or its affiliates (whether or not a misdemeanor or felony);

(vii) Breach by the Employee of any of the provisions of Sections 5, 6 or 7 of this Agreement; and

(viii) Breach by the Employee of any provision of this Agreement other than those contained in Sections 5, 6 or 7 which is not cured by the Employee within thirty (30) days after notice thereof is given to the Employee by the Company.

(b) The Executive's employment hereunder may be terminated by the Board of Directors of the Company due to the Executive's Disability. For purposes of this Agreement, a termination for "**Disability**" shall occur upon rendering of a written termination notice by the Board of Directors of the Company after the Executive has been unable to substantially perform his duties hereunder for 90 or more consecutive days, or more than 120 days in any consecutive 12 month period, by reason of any physical or mental illness or injury. For purposes of this Section 9(b), the Executive agrees to make himself available and to cooperate in any reasonable examination by a reputable independent physician retained by the Company.

(c) The Employee's employment hereunder may be terminated by the Board of Directors of the Company (or its successor) upon the occurrence of a Change of Control. For purposes of this Agreement, "**Change of Control**" means (i) the acquisition, directly or indirectly, following the date hereof by any person (as such term is defined in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended), in one transaction or a series of related transactions, of securities of the Company representing in excess of fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities if such person or his or its affiliate(s) do not own in excess of 50% of such voting power on the date of this Agreement, or (ii) the future disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than a merger effected exclusively for the purpose of changing the domicile of the Company).

(d) The Employee's employment hereunder may be terminated by the Employee for Good Reason. For purposes of this Agreement, "**Good Reason**" shall mean any of the following: (i) the assignment to the Employee of duties inconsistent with the Employee's position, duties, responsibilities, titles or offices as described herein; (ii) any material reduction by the Corporation of the Employee's duties and responsibilities; or (iii) any reduction by the Corporation of the Employee's compensation or benefits payable hereunder (it being understood that a reduction of benefits applicable to all employees of the Corporation, including the Employee, shall not be deemed a reduction of the Employee's compensation package for purposes of this definition, but that a reduction in the compensation described in Section 5 above will) (iv) a material breach by the Company of this Agreement that is not cured within 30 days of receipt by the Company of written notice of such breach; or (v) upon a Change of Control (1) that (x) results in the elimination of the Board of Directors or (y) representatives of the Board just prior to the event causing the Change of Control do not represent a majority of the Board immediately subsequent to the event causing the Change of Control and (2) in which the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is greater than \$50,000,000.

(e) The Consultancy described in Section 6(g) may be terminated by the Company for any reason during the Consultancy Period, provided that following such termination, the Employee shall no longer be subject to the provisions of Section 6(a).

#### 9. Compensation upon Termination.

(a) If the Employee's employment is terminated as a result of his death or Disability, the Company shall pay to the Employee or to the Employee's estate, as applicable, his Base Salary for a period of one year following the date of termination and any accrued but unpaid Bonus and expense reimbursement amounts through the date of his Death or Disability. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Employee's termination shall remain exercisable for a period of 90 days. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date.

(b) If the Employee's employment is terminated by the Company for Cause, then the Company shall pay to the Employee his Base Salary through the date of his termination and any expense reimbursement amounts owed through the date of termination. The Employee shall have no further entitlement to any other compensation or benefits from the Company. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date. Any Stock Options that have vested as of the date of the Executive's termination for Cause shall remain exercisable for a period of 90 days.

(c) If the Employee's employment is terminated by the Company (or its successor) upon the occurrence of a Change of Control and on the date of termination pursuant to this Section 9(c) the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is less than \$50,000,000, then the Company (or its successor, as applicable) shall pay to the Employee his Base Salary and benefits for a period of one year or until the end of the Term, whichever is shorter, as well as any expense reimbursement amounts owed through the date of termination. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Employee's termination shall remain exercisable for a period of 90 days.

(d) If the Employee's employment is terminated by the Company other than as a result of the Employee's death or Disability and other than for reasons specified in Sections 9(b), or if the Employee's employment is terminated by the Employee for Good Reason, then the Company shall (i) continue to pay to the Employee his Base Salary and Guaranteed Bonus for a period of one year following such termination and (ii) pay the Employee any expense reimbursement amounts owed through the date of termination. All Stock Options scheduled to vest at the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to this Section 9(d)) as of the date of the Executive's termination shall remain exercisable for a period of 90 days.

(e) This Section 9 sets forth the only obligations of the Company with respect to the termination of the Employee's employment with the Company, and the Employee acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in Section 9.

(f) The provisions of this Section 9 shall survive any termination of this Agreement.

10. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without giving effect to its principles of conflicts of laws.

(b) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 5 or 6 hereof), or regarding the interpretation thereof, shall be finally settled by arbitration conducted in New York City in accordance with the rules of the American Arbitration Association then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. For the purpose of any judicial proceeding to enforce such award or incidental to such arbitration or to compel arbitration and for purposes of Sections 5 and 6 hereof, the parties hereby submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York, and agree that service of process in such arbitration or court proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in paragraph (g) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(d) This Agreement, and the Employee's rights and obligations hereunder, may not be assigned by the Employee. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets.

(e) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(f) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(g) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this paragraph (g).

(h) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(i) As used in this Agreement, "affiliate" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(j) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ZIOPHARM, INC.

By: /s/ Jonathan Lewis

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Name: Jonathan Lewis, M.D.  
Title: Chief Executive Officer

EMPLOYEE

By: /s/ Robert Peter Gale

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Name: Robert Peter Gale, M.D., Ph.D.

**SCHEDULE 6(a)**

**EMPLOYMENT AGREEMENT**

AGREEMENT (the "**Agreement**"), dated as of July 21, 2004, by and between ZIOPHARM, INC., a Delaware corporation with principal executive offices at 787 Seventh Avenue, 48<sup>th</sup> Floor, New York, NY 10019 (the "**Company**"), and RICHARD BAGLEY, presently residing at Two Beck Street, Newburyport, MA 01950 (the "**Employee**").

**WITNESSETH:**

WHEREAS, the Company desires to employ the Employee as President of the Company, and the Employee desires to serve the Company in that capacity, upon the terms and subject to the conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Employment.

(a) Services. The Employee will be employed by the Company as its President, starting July 1, 2004 on terms set forth herein. The Employee will report to the Chief Executive Officer of the Company and shall perform such duties as are consistent with your position with the Company (the "Services"). The Employee agrees to perform such duties faithfully, to devote all of his working time, attention and energies to the business of the Company, and while he remains employed, not to engage in any other business activity that is in conflict with your duties and obligations to the Company.

(b) Acceptance. Employee hereby accepts such employment and agrees to render the Services.

2. Term.

The Employee's employment under this Agreement (the "Term") shall commence as of the Effective Date (as hereinafter defined) and shall continue for a term of three (3) years, unless sooner terminated pursuant to Section 8 of this Agreement. Notwithstanding anything to the contrary contained herein, the provisions of this Agreement governing protection of Confidential Information shall continue in effect as specified in Section 5 hereof and survive the expiration or termination hereof. The Term may be extended for additional one (1) year periods upon mutual written consent of the Employee and the Board.

3. Best Efforts; Place of Performance.

(a) The Employee shall devote substantially all of his business time, attention and energies to the business and affairs of the Company and shall use his best efforts to advance the best interests of the Company and shall not during the Term be actively engaged in any other business activity, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, that will interfere with the performance by the Employee of his duties hereunder or the Employee's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company.

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(b) The duties to be performed by the Employee hereunder shall be performed primarily at the offices of the Company in Boston and New Haven and as necessary in New York, New York, all as requested by the Chief Executive Officer, subject to reasonable travel requirements on behalf of the Company, or such other place as the Board may reasonably designate. The Company will reimburse the Executive for reasonable commuting expenses.

4. Compensation. As full compensation for the performance by the Employee of his duties under this Agreement, the Company shall pay the Employee as follows:

(a) Base Salary. The Company shall pay Employee a salary (the "Base Salary") equal to Two Hundred Fifty Thousand Dollars (\$250,000) per year. Payment shall be made semi-monthly, on the 15<sup>th</sup> and last day of each calendar month.

(b) Signing Bonus. The Company shall pay the Executive a one time bonus equal to Fifty Thousand Dollars (\$50,000) within ten (10) business days of the Effective Date of this Agreement.

(c) Guaranteed Bonus. The Company shall pay the Executive a bonus (the "**Guaranteed Bonus**") of Fifty Thousand Dollars (\$50,000) within 30 days following each anniversary of the date of this Agreement during the Term, provided that the Executive is employed hereunder on such anniversary date.

(d) Discretionary Bonus. At the sole discretion of the Board of Directors of the Company, the Employee may receive an additional annual bonus (the "**Discretionary Bonus**"), based upon his performance on behalf of the Company during the prior year. The Discretionary Bonus, if any, shall be payable either as a lump-sum payment or in installments as determined by the Board of Directors of the Company in its sole discretion. In addition, the Board of Directors of the Company shall annually review the Bonus to determine whether an increase in the amount thereof is warranted.

(e) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to the Employee under this Section 5.

(f) Stock Options. As additional compensation for the services to be rendered by the Employee pursuant to this Agreement, the Company shall grant the Employee stock options ("**Stock Options**") to purchase a number of shares of Common Stock of the Company representing six percent (6%) of the outstanding Common Stock of the Company as of the Effective Date. The Stock Options shall be governed by the Company's 2003 Stock Option Plan and shall vest, if at all, in three equal installments on each anniversary of the start date of employment, subject in each case to the provisions of Section 9 below. In connection with such grant, the Employee shall enter into the Company's standard stock option agreement which will incorporate the foregoing vesting schedule and the Stock Option related provisions contained in Section 9 below.



(g) Anti-dilution Protection. Until such time as the Company has raised gross proceeds equal to \$25,000,000 from the issuance and sale of Equity Securities (as defined below), the Company shall issue to the Executive a number of additional Stock Options sufficient to maintain Executive's ownership percentage at least equal to three percent (3%) of the outstanding Common Stock of the Company on a fully diluted basis. Once the Company has raised \$25,000,000 through the sale of its Equity Securities, Executive shall be diluted pro rata along with all other holders of securities of the Company. As used herein "Equity Securities" shall mean shares of Common Stock, options, warrants or other rights to purchase Common Stock or securities or evidences of indebtedness convertible into or exchangeable for shares of Common Stock.

(h) Notwithstanding the foregoing, Section 3(g) shall not apply to, and the Executive shall not be entitled to anti-dilution protection with respect to, the issuance of Excluded Equity Securities and Excluded Equity Securities shall not be included in calculating the fully diluted issued and outstanding shares of Common Stock of the Company for any purpose under this Agreement. "Excluded Equity Securities" shall mean Equity Securities that are issued by the Company pursuant to any transactions approved by the Board of Directors primarily for the purpose of: (1) incentivizing employees, directors or consultants to the Company; (2) joint ventures, strategic alliances or research and development activities, (3) purchase or licensing of technology, or (4) any other transactions involving current or potential partners that are primarily for purposes other than raising capital. As long as the anti-dilution protection contained in this paragraph Section 3(g) remains in effect, the Executive shall be diluted pari passu with all other holders of Common Stock by the issuance by the Company of Excluded Equity Securities. Upon termination of such anti-dilution protection, the Executive shall be diluted pari passu with all other holders of Common Stock by the issuance of any Equity Securities.

(i) Expenses. The Company shall reimburse the Employee for all normal, usual and necessary expenses incurred by the Employee in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of the Employee's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(j) Other Benefits. The Employee shall be entitled to all rights and benefits for which he shall be eligible under any benefit or other plans (including, without limitation, dental, medical, medical reimbursement and hospital plans, pension plans, employee stock purchase plans, profit sharing plans, bonus plans and other so-called "fringe" benefits) as the Company shall make available to its senior executives from time to time. In addition, the Company shall reimburse the Employees for his reasonable professional dues.

(k) Vacation. The Employee shall, during the Term, be entitled to a vacation of four (4) weeks per annum, in addition to holidays observed by the Company. The Employee shall not be entitled to carry any vacation forward to the next year of employment and shall not receive any compensation for unused vacation days.

5. Confidential Information and Inventions.

(a) The Employee recognizes and acknowledges that in the course of his duties he is likely to receive confidential or proprietary information owned by the Company, its affiliates or third parties with whom the Company or any such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, the Employee agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its affiliates. "Confidential and Proprietary Information" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any affiliate or client of the Company. The Employee expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. The Employee agrees: (i) not to use any such Confidential and Proprietary Information for himself or others; and (ii) not to take any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of the Employee's duties to the Company. The Employee agrees to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in his possession to the Company upon request and in any event immediately upon termination of employment.

(b) Except with prior written authorization by the Company, the Employee agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its affiliates owes an obligation of confidence, at any time during or after his employment with the Company.

(c) The Employee agrees that all inventions, discoveries, improvements and patentable or copyrightable works ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. The Employee hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; provided, however, that the Board of Directors of the Company may in its sole discretion agree to waive the Company's rights pursuant to this Section 6(c) with respect to any Invention that is not directly or indirectly related to the Company's business. The Employee further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end the Employee will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(d) The Employee acknowledges that while performing the services under this Agreement the Employee may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to the Company or one of its affiliates (the “**Third Party Inventions**”). The Employee understands, acknowledges and agrees that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by the Company, any of its affiliates or either of the foregoing persons’ officers, directors, employees (including the Employee), agents or consultants during the Employment Term shall be and remain the sole and exclusive property of the Company or such affiliate and the Employee shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of the Company.

(e) The provisions of this Section 6 shall survive any termination of this Agreement.

6. Non-Competition, Non-Solicitation and Non-Disparagement.

(a) The Employee understands and recognizes that his services to the Company are special and unique and that in the course of performing such services the Employee will have access to and knowledge of Confidential and Proprietary Information (as defined in Section 5) and the Employee agrees that, during the Term and for a period of 12 months thereafter, he shall not without the consent of the Company in any manner, directly or indirectly, on behalf of himself or any person, firm, partnership, joint venture, corporation or other business entity (“**Person**”), enter into or engage in any business which is engaged in any business directly or indirectly competitive with the Company’s Business (as defined below), either as an individual for his own account, or as a partner, joint venturer, owner, executive, employee, independent contractor, principal, agent, consultant, salesperson, officer, director or shareholder of a Person in a business competitive with the Company within the geographic area of the Company’s Business, which is deemed by the parties hereto to be worldwide. The Employee acknowledges that, due to the nature of the Company’s Business, and the importance to the Company’s Business of its Confidential and Proprietary Information, a violation of this Section 6(a) could cause substantial damage to the Company and its affiliates and, therefore, the Company has a strong legitimate business interest in protecting the continuity of its business interests and the restriction herein agreed to by the Employee narrowly and fairly serves such an important and critical business interest of the Company. For purposes of this Agreement, the “Company’s Business” shall mean the business or businesses set forth on the attached Schedule 6(a), which shall be amended from time to time upon the mutual written agreement of the parties, but which will automatically include the research, development and commercialization of any technologies that are licensed or otherwise acquired by the Company. Notwithstanding the foregoing, nothing contained in this Section 6(a) shall be deemed to prohibit the Employee from (i) acquiring or holding, solely for investment, publicly traded securities of any corporation, some or all of the activities of which are competitive with the business of the Company so long as such securities do not, in the aggregate, constitute more than three percent (3%) of any class or series of outstanding securities of such corporation.

(b) During the Term and for a period of 12 months thereafter, the Employee shall not, directly or indirectly, without the prior written consent of the Company:

(i) solicit or induce any employee of the Company or any of its affiliates to leave the employ of the Company or any such affiliate; or hire for any purpose any employee of the Company or any affiliate or any employee who has left the employment of the Company or any affiliate within six months of the termination of such employee's employment with the Company or any such affiliate or at any time in violation of such employee's non-competition agreement with the Company or any such affiliate; or

(ii) solicit or accept employment or be retained by any Person who, at any time during the term of this Agreement, was an agent, client or customer of the Company or any of its affiliates where his position will be related to the Company's Business; or

(iii) solicit or accept the business of any agent, client or customer of the Company or any of its affiliates with respect to products, services or investments similar to those provided or supplied by the Company or any of its affiliates.

(c) The Company and the Employee each agree that both during the Term and at all times thereafter, neither party shall directly or indirectly disparage, whether or not true, the name or reputation of the other party or any of its affiliates, including but not limited to, any officer, director, employee or any stockholder owning greater than five percent (5%) of the Company's outstanding Common Stock. This Section 6 shall not include (i) statements made by the Employee's in performing his duties in the ordinary course as President (e.g., employee evaluations and remarks made in private meetings of the Board) and (ii) statements made by the Employee under oath in a legal proceeding.

(d) In the event that the Employee breaches any provisions of Section 5 or this Section 6 or there is a threatened breach, then, in addition to any other rights which the Company may have, the Company shall (i) be entitled, without the posting of a bond or other security, to injunctive relief to enforce the restrictions contained in such Sections and (ii) have the right to require the Employee to account for and pay over to the Company all compensation, profits, monies, accruals, increments and other benefits (collectively "**Benefits**") derived or received by the Employee as a result of any transaction constituting a breach of any of the provisions of Sections 5 or 6 and the Employee hereby agrees to account for and pay over such Benefits to the Company.

(e) Each of the rights and remedies enumerated in Section 6(d) shall be independent of the others and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 6, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 6 is held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company's right to the relief provided in this Section 6 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(f) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 5 or this Section 6, the Employee shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies which may be available.

(g) The provisions of this Section 6 shall survive any termination of this Agreement.

7. Representations and Warranties by the Employee.

The Employee hereby represents and warrants to the Company as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by the Employee of his duties and other obligations hereunder violate or will violate any statute, law, determination or award, or conflict with or constitute a default or breach of any covenant or obligation under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Employee is a party or by which he is bound.

(b) The Employee has the full right, power and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Employee enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for the Employee to execute and deliver this Agreement or perform his duties and other obligations hereunder.

8. Termination. The Employee's employment hereunder shall be terminated upon the Employee's death and may be terminated as follows:

(a) The Employee's employment hereunder may be terminated by the Board of Directors of the Company for Cause. Any of the following actions by the Employee shall constitute "**Cause**":

(i) The willful failure, disregard or refusal by the Employee to perform his duties hereunder;

(ii) Any willful, intentional or grossly negligent act by the Employee having the effect of injuring, in a material way (whether financial or otherwise and as determined in good-faith by a majority of the Board of Directors of the Company), the business or reputation of the Company or any of its affiliates, including but not limited to, any officer, director, executive or shareholder of the Company or any of its affiliates;

(iii) Willful misconduct by the Employee in respect of the duties or obligations of the Employee under this Agreement, including, without limitation, insubordination with respect to lawful directions received by the Employee from the Executive or the Board of Directors of the Company;

(iv) The Employee's indictment of any felony or a misdemeanor involving moral turpitude (including entry of a nolo contendere plea);

(v) The determination by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company, that the Employee engaged in some form of harassment prohibited by law (including, without limitation, age, sex or race discrimination), unless the Employee's actions were specifically directed by the Board of Directors of the Company;

(vi) Any misappropriation or embezzlement of the property of the Company or its affiliates (whether or not a misdemeanor or felony);

(vii) Breach by the Employee of any of the provisions of Sections 5, 6 or 7 of this Agreement; and

(viii) Breach by the Employee of any provision of this Agreement other than those contained in Sections 5, 6 or 7 which is not cured by the Employee within thirty (30) days after notice thereof is given to the Employee by the Company.

(b) The Executive's employment hereunder may be terminated by the Board of Directors of the Company due to the Executive's Disability. For purposes of this Agreement, a termination for "**Disability**" shall occur upon rendering of a written termination notice by the Board of Directors of the Company after the Executive has been unable to substantially perform his duties hereunder for 90 or more consecutive days, or more than 120 days in any consecutive 12 month period, by reason of any physical or mental illness or injury. For purposes of this Section 9(b), the Executive agrees to make himself available and to cooperate in any reasonable examination by a reputable independent physician retained by the Company.

(c) The Employee's employment hereunder may be terminated by the Board of Directors of the Company (or its successor) upon the occurrence of a Change of Control. For purposes of this Agreement, "**Change of Control**" means (i) the acquisition, directly or indirectly, following the date hereof by any person (as such term is defined in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended), in one transaction or a series of related transactions, of securities of the Company representing in excess of fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities if such person or his or its affiliate(s) do not own in excess of 50% of such voting power on the date of this Agreement, or (ii) the future disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than a merger effected exclusively for the purpose of changing the domicile of the Company).

(d) The Employee's employment hereunder may be terminated by the Employee for Good Reason. For purposes of this Agreement, "**Good Reason**" shall mean any of the following: (i) the assignment to the Employee of duties inconsistent with the Employee's position, duties, responsibilities, titles or offices as described herein; (ii) any material reduction by the Corporation of the Employee's duties and responsibilities; or (iii) any reduction by the Corporation of the Employee's compensation or benefits payable hereunder (it being understood that a reduction of benefits applicable to all employees of the Corporation, including the Employee, shall not be deemed a reduction of the Employee's compensation package for purposes of this definition) (iv) a material breach by the Company of this Agreement that is not cured within 30 days of receipt by the Company of written notice of such breach; or (v) upon a Change of Control (1) that (x) results in the elimination of the Board of Directors or (y) representatives of the Board just prior to the event causing the Change of Control do not represent a majority of the Board immediately subsequent to the event causing the Change of Control and (2) in which the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is greater than \$50,000,000.

9. Compensation upon Termination.

(a) If the Employee's employment is terminated as a result of his death or Disability, the Company shall pay to the Employee or to the Employee's estate, as applicable, his Base Salary for a period of one year following the date of termination and any accrued but unpaid Bonus and expense reimbursement amounts through the date of his Death or Disability. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Employee's termination shall remain exercisable for a period of 90 days. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date.

(b) If the Employee's employment is terminated by the Company for Cause, then the Company shall pay to the Employee his Base Salary through the date of his termination and any expense reimbursement amounts owed through the date of termination. The Employee shall have no further entitlement to any other compensation or benefits from the Company. All Stock Options that have not vested as of the date of termination shall be deemed to have expired as of such date. Any Stock Options that have vested as of the date of the Executive's termination for Cause shall remain exercisable for a period of 90 days.

(c) If the Employee's employment is terminated by the Company (or its successor) upon the occurrence of a Change of Control and on the date of termination pursuant to this Section 9(c) the fair market value of the Company's Common Stock, in the aggregate, as determined in good faith by the Board on the date of such Change of Control, is less than \$50,000,000, then the Company (or its successor, as applicable) shall pay to the Employee his Base Salary and benefits for a period of one year or until the end of the Term, whichever is shorter, as well as any expense reimbursement amounts owed through the date of termination. All Stock Options that are scheduled to vest by the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to the immediately preceding sentence to have vested) as of the date of the Employee's termination shall remain exercisable for a period of 90 days.

(d) If the Employee's employment is terminated by the Company other than as a result of the Employee's death or Disability and other than for reasons specified in Sections 9(b), or if the Employee's employment is terminated by the Employee for Good Reason, then the Company shall (i) continue to pay to the Employee his Base Salary and Guaranteed Bonus for a period of one year following such termination and (ii) pay the Employee any expense reimbursement amounts owed through the date of termination. All Stock Options scheduled to vest at the end of the calendar year in which such termination occurs shall be accelerated and deemed to have vested as of the termination date. Any Stock Options that have vested (or been deemed pursuant to this Section 9(d)) as of the date of the Executive's termination shall remain exercisable for a period of 90 days.

(e) Following expiration and non-renewal of the Term, should the Company, in its sole discretion require that the Employee continue to comply with the terms of Section 6 hereof, the Company shall pay the Employee his Base Salary for a period of one year following expiration of the Term.

(f) This Section 9 sets forth the only obligations of the Company with respect to the termination of the Employee's employment with the Company, and the Employee acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in Section 9.

(g) The provisions of this Section 9 shall survive any termination of this Agreement.

10. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without giving effect to its principles of conflicts of laws.

(b) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 5 or 6 hereof), or regarding the interpretation thereof, shall be finally settled by arbitration conducted in New York City in accordance with the rules of the American Arbitration Association then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. For the purpose of any judicial proceeding to enforce such award or incidental to such arbitration or to compel arbitration and for purposes of Sections 5 and 6 hereof, the parties hereby submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York, and agree that service of process in such arbitration or court proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in paragraph (g) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(d) This Agreement, and the Employee's rights and obligations hereunder, may not be assigned by the Employee. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets.

(e) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.



(f) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(g) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this paragraph (g).

(h) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(i) As used in this Agreement, "affiliate" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(j) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ZIOPHARM, INC.

By: /s/ Jonathan Lewis

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Name: Jonathan Lewis, M.D.  
Title: Chief Executive Officer

EMPLOYEE

By: /s/ Richard Bagley

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Name: Richard Bagley

**SCHEDULE 6(a)**

1. The research, development, manufacture, commercialization and sale of organic arsenicals for the treatment of cancer and human disease.

Portions herein identified by [\*\*\*] have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act of 1933. A complete copy of this document has been filed separately with the Securities and Exchange Commission.

## PATENT AND TECHNOLOGY LICENSE AGREEMENT

This fifty-two (52) page AGREEMENT ("AGREEMENT") is made on this 24<sup>th</sup> day of August, 2004, by and between THE BOARD OF REGENTS ("BOARD") of THE UNIVERSITY OF TEXAS SYSTEM ("SYSTEM"), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, on behalf of THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER ("UTMDACC"), a component institution of SYSTEM, The Texas A&M University System ("A&M"), an agency of the State of Texas located at College Station, Texas 77843, and Ziopharm Inc., a Delaware corporation having a principal place of business located at 787 Seventh Avenue, 48th Floor, New York, NY 10019 ("LICENSEE").

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## RECITALS

- A. BOARD and A&M own certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER developed at UTMDACC and A&M.
  - B. BOARD, through UTMDACC, and A&M desire to have the LICENSED SUBJECT MATTER developed in the LICENSED FIELD and used for the benefit of LICENSEE, BOARD, SYSTEM, UTMDACC, A&M, the inventor(s), and the public.
  - C. UTMDACC, through an executed Commercialization Agreement (as amended) with A&M has the authority to negotiate the license contemplated hereby.
  - D. LICENSEE wishes to obtain a license from BOARD and A&M to practice LICENSED SUBJECT MATTER.
- NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

### I. EFFECTIVE DATE

- 1.1 This AGREEMENT is effective as of the date written above ("EFFECTIVE DATE").

### II. DEFINITIONS

As used in this AGREEMENT, the following terms have the meanings indicated:

- 2.1 **AFFILIATE** means any business entity more than fifty percent (50%) owned by LICENSEE, any business entity which owns more than fifty percent (50%) of LICENSEE, or any business entity that is more than fifty percent (50%) owned by a business entity that owns more than fifty percent (50%) of LICENSEE.
- 2.2 **FDA** means United States Food and Drug Administration.
- 2.3 **IMPROVEMENTS** means Board's and A&M's rights to any inventions (whether patentable or not), information and data, or subsequent reductions to practice of the PATENT RIGHTS listed in Exhibit I that (1) the manufacture, use or sale of which would infringe an issued or pending claim within PATENT RIGHTS listed on Exhibit I; (2) are conceived or reduced to practice as of the EFFECTIVE DATE, or after the EFFECTIVE DATE and before the fifth anniversary thereof, by any of the inventors listed in Exhibit I while such inventors are employed at UTMDACC or A&M, or those working under their direction while employed at UTMDACC or A&M; (3) are not obligated to a third party by a written agreement in effect prior to the EFFECTIVE DATE, and which are set forth on the attached Exhibit IV; and (4) are known to UTMDACC's or A&M's respective technology transfer offices, any of which shall be added to Exhibit II and made a part hereof.
- 2.4 **IND** means Investigational New Drug Application as defined by the rules and regulations of the FDA.
- 2.5 **LICENSED FIELD** means all human and animal uses.
- 2.6 **LICENSED PRODUCTS** means any product or service that is covered in whole or in part by a VALID CLAIM contained in the PATENT RIGHTS in the country in which the product is made, used, leased or sold.

- 2.7 **LICENSED SUBJECT MATTER** means PATENT RIGHTS, IMPROVEMENTS and TECHNOLOGY RIGHTS within LICENSED FIELD.
- 2.8 **LICENSED TERRITORY** means worldwide.
- 2.9 **LICENSOR** means collectively, the BOARD, UTMDACC, and A&M.
- 2.10 **MAJOR MARKET COUNTRY** means the United States of America, Japan, Canada and the European Union.
- 2.11 **NDA** means New Drug Application as defined by the rules and regulations of the FDA.
- 2.12 **NET SALES** means the gross revenues received by LICENSEE or a sublicensee, as appropriate, from a SALE less sales discounts actually granted, sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation actually prepaid or allowed, and amounts actually allowed or credited due to returns (not exceeding the original billing or invoice amount), all as recorded by LICENSEE or sublicensee, as appropriate, in their official books and records in accordance with generally accepted accounting practices and consistent with LICENSEE's or sublicensee's, as appropriate, published financial statements and/or regulatory filings with the United States Securities and Exchange Commission.
- 2.13 **PATENT RIGHTS** means BOARD's and A&M's rights in information or discoveries described in invention disclosures on Exhibit I or in the subsequent reductions to practice of such information or discoveries (so long as such subsequent reductions to practice are not obligated to a third party), or claimed in any patents, and/or patent applications, whether domestic or foreign, based on such invention disclosures and such reductions to practice (that are not obligated to a third party) and all domestic and foreign divisionals, continuations, continuations-in-part, reissues, reexaminations or extensions thereof, including any foreign counterparts thereto and any letters patent that issue thereon, including but not limited to: (a) Provisional Application entitled, "Compounds and Methods for the Treatment of Cancer" filed July 16, 2004; (b) U.S. Application Serial Number 60/346,492 filed January 7, 2002; (c) WO 2003/057012 filed January 7, 2003; (d) U.S. Application Serial Number 10/337,969 filed January 7, 2003; and (e) national stage filings for MDA01-063 in Europe, Japan, Canada and Australia.

- 2.14 **PHASE 1** means a human clinical trial, the principal purpose of which is to determine toxicity, absorption, metabolism and/or safe dosage range in patients with the disease target being studied as required in 21 C.F.R. §312 or a similar regulatory requirement in any MAJOR MARKET COUNTRY.
- 2.15 **PHASE 2** means a controlled clinical study conducted to obtain preliminary data on effectiveness of an investigational new drug for a particular indication, as required in 21 C.F.R. §312 or a similar regulatory requirement in any MAJOR MARKET COUNTRY.
- 2.16 **PHASE 3** means a human clinical trial, the principal purpose of which is to establish safety and efficacy in patients with the disease target being studied as required in 21 C.F.R. §312 or a similar regulatory requirement in any MAJOR MARKET COUNTRY. A PHASE 3 study shall also include a PIVOTAL STUDY.
- 2.17 **PIVOTAL STUDY** means human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable NDA whether or not such study is a traditional PHASE 3 study (e.g., a combined PHASE 2/PHASE 3 study, or any PHASE 2 study in lieu of a PHASE 3 study) or a similar trial conducted in any MAJOR MARKET COUNTRY leading to an approval in any such MAJOR MARKET COUNTRY.



- 2.18 **SALE or SOLD** means the transfer or disposition of a LICENSED PRODUCT or product for which royalties are due under Section 4.1(c) (“Section 4.1(c) Product”) , or sold for value to a party other than LICENSEE or AFFILIATE.
- 2.19 **TECHNOLOGY RIGHTS** means BOARD's and A&M's rights in any technical information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings or data created by the inventor(s) listed in Exhibit I while employed at UTMDACC or A&M, respectively, or by individuals working under the direction of such inventors at UTMDACC or A&M, which are not claimed in PATENT RIGHTS but that are necessary for practicing PATENT RIGHTS.
- 2.20 **VALID CLAIM** means, an issued claim of any unexpired patent or claim of any pending patent application included among the PATENT RIGHTS, which patent has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference proceeding or abandoned.

### III. LICENSE GRANT

- 3.1 BOARD, through UTMDACC, and A&M hereby grant to LICENSEE, and LICENSEE hereby accepts, a royalty-bearing, exclusive license under LICENSED SUBJECT MATTER to make, have made, manufacture, have manufactured, use, import, offer to sell, sell and/or have sold products within LICENSED TERRITORY for use within LICENSED FIELD. This grant is subject to Sections 15.2 and 15.3 herein below, the payment by LICENSEE to UTMDACC of all consideration as provided herein, and is further subject to the following rights retained by BOARD, UTMDACC and A&M to:

- (a) publish the general scientific findings from research related to LICENSED SUBJECT MATTER, subject to the terms of Article XI-Confidential Information and Publication; and
  - (b) use LICENSED SUBJECT MATTER solely for its own internal, non-commercial research, teaching, and other educationally-related purposes; and
  - (c) request that the LICENSEE transfer LICENSED SUBJECT MATTER to academic or research institutions for non-commercial research use or for purposes of collaboration upon terms reasonably acceptable to the LICENSEE and such third party; provided, however, that LICENSEE will not unreasonably withhold consent to UTMDACC and A&M's use of the LICENSED SUBJECT MATTER in collaborations between UTMDACC, A&M, and/or the National Cancer Institute (NCI).
- 3.2 LICENSEE may extend the license granted herein to any AFFILIATE provided that the AFFILIATE consents in writing to be bound by this AGREEMENT to the same extent as LICENSEE. LICENSEE agrees to deliver such contract to UTMDACC within 30 calendar days following execution thereof.
- 3.3 LICENSEE may grant sublicenses under LICENSED SUBJECT MATTER consistent with the terms of this AGREEMENT, provided that LICENSEE is responsible for its sublicensees relevant to this AGREEMENT, and for diligently collecting all amounts due LICENSEE from sublicensees. If a sublicensee pursuant hereto becomes bankrupt, insolvent or is placed in the hands of a receiver or trustee, LICENSEE, to the extent allowed under applicable law and in a timely manner, agrees to use all commercially reasonable efforts to collect all consideration owed to LICENSEE and to have the sublicense agreement confirmed or rejected by a court of proper jurisdiction.

- 3.4 LICENSEE shall deliver to UTMDACC a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within 30 calendar days after execution, modification, or termination.
- 3.5 If this AGREEMENT is terminated pursuant to Article XIII-Term and Termination, BOARD, UTMDACC and A&M agree to accept as successors to LICENSEE, existing sublicensees in good standing at the date of termination provided that each such sublicensee consents in writing to be bound by all of the terms and conditions of this AGREEMENT.
- 3.6 UTMDACC and A&M shall promptly disclose any IMPROVEMENTS to LICENSEE, which IMPROVEMENTS will be added to Exhibit II, considered as PATENT RIGHTS hereunder and made a part hereof.

#### **IV. CONSIDERATION, PAYMENTS AND REPORTS**

- 4.1 In consideration for the rights granted to the LICENSEE hereunder, the LICENSEE agrees to make the following payments or issue the following shares and options:
- (a) As partial consideration for the rights granted by the LICENSORS to LICENSEE under this AGREEMENT, LICENSEE will issue to the LICENSORS the following securities, which will be allocated among the LICENSORS as they shall direct LICENSEE in writing:

- (i) Five Hundred Thousand (500,000) shares (the “SHARES”) of LICENSEE’s common stock, par value of \$0.001 per share (the “COMMON STOCK”); LICENSEE represents and warrants to LICENSORS that the SHARES equal ten percent (10%) of the outstanding shares of COMMON STOCK of the LICENSEE as of the EFFECTIVE DATE; LICENSEE will issue the SHARES within 30 days of the EFFECTIVE DATE pursuant to the Stock Purchase Agreement attached hereto as Exhibit III; and
- (ii) Stock options (the “OPTIONS”) to purchase One Hundred Thousand (100,000) shares of COMMON STOCK at an exercise price (the “EXERCISE PRICE”) equal to \$0.001 per share; the OPTIONS will expire on the fifteenth anniversary hereof. LICENSEE represents and warrants to the LICENSORS that the shares subject to the OPTIONS equal two percent (2%) of outstanding COMMON STOCK of LICENSEE as of the EFFECTIVE DATE. The OPTIONS will vest and become exercisable according to the following schedule: (A) fifty percent (50%) upon completion of the dosing of the last patient for both the blood and solid tumor PHASE 1 trials for the first LICENSED PRODUCT; (B) twenty-five percent (25%) upon enrollment of the first patient in a multi-center PIVOTAL STUDY for a LICENSED PRODUCT; and (C) twenty-five percent (25%) upon the filing of an IND on any LICENSED PRODUCT that is covered by the PATENT RIGHTS entitled “Arsenic-Lipid Derivatives as a Treatment for Cancer” (MDA04-076). The OPTIONS shall be in the form attached hereto as Exhibit V; and

- (b) The LICENSEE agrees to pay UTMDACC non-refundable quarterly royalties in an amount equal to [\*\*\*] percent ([\*\*\*]%) of NET SALES by the LICENSEE of a LICENSED PRODUCT, and either (i) [\*\*\*] percent ([\*\*\*]%) of NET SALES by any sublicensee of a LICENSED PRODUCT, or (ii) in the event of a sublicense prior to a PIVOTAL TRIAL, [\*\*\*]% of any royalties received by LICENSEE from such sublicensee; and
- (c) In a country in which no patent application included in PATENT RIGHTS is filed (but there is a product or service manufactured, used or sold in such country that if manufactured, used or sold in any MAJOR MARKET COUNTRY would be covered by a VALID CLAIM within PATENT RIGHTS in such country) and/or in which no patent included in PATENT RIGHTS has issued that would provide the LICENSEE with protection from competition, LICENSEE agrees to pay UTMDACC non-refundable royalties equal to [\*\*\*] percent ([\*\*\*]%) of NET SALES by LICENSEE or any sublicensee in such country; and
- (d) LICENSEE shall reimburse UTMDACC for all documented out-of-pocket expenses incurred by UTMDACC and A&M in filing, prosecuting, enforcing and maintaining PATENT RIGHTS prior to the date on which LICENSEE assumes control of the prosecution of the PATENT RIGHTS, such amount not to exceed \$[\*\*\*] (the "PATENT EXPENSES"). UTMDACC will invoice LICENSEE within 30 calendar days of the EFFECTIVE DATE for the PATENT EXPENSES. The invoiced amounts will be due and payable by LICENSEE within 30 calendar days of invoice; and

- (e) LICENSEE shall pay UTMDACC a nonrefundable license fee in the amount of \$125,000. This fee will not reduce the amount of any other payment provided for in this ARTICLE IV, and is due and payable within 30 calendar days after the LICENSEE has received an invoice for the amount from UTMDACC; and
- (f) LICENSEE shall pay UTMDACC the following milestone fees, which shall be due and payable within 30 calendar days of such milestone event, whether such milestone event is achieved by the LICENSEE, its AFFILIATE or sublicensee:
- (i) \$100,000 upon the dosing of the first patient in the first company sponsored PHASE 1 clinical trial of the first LICENSED PRODUCT;
  - (ii) \$[\*\*\*] upon [\*\*\*] of the first LICENSED PRODUCT;
  - (iii) \$[\*\*\*] upon [\*\*\*] of the first LICENSED PRODUCT;
  - (iv) \$[\*\*\*] [\*\*\*] for a LICENSED PRODUCT; and
  - (v) \$[\*\*\*] [\*\*\*] of the first LICENSED PRODUCT in a MAJOR MARKET COUNTRY.
- (g) In the event that the LICENSEE sublicenses its rights in any jurisdiction prior to the commencement of a PIVOTAL STUDY, then the LICENSEE shall pay UTMDACC the [\*\*\*] percent ([\*\*\*]%) of all consideration received from such sublicense other than (i) payments received by LICENSEE from a sublicense as a result of the purchase or sale of debt or equity securities of LICENSEE by such sublicense, and (ii) payments for research and development of the LICENSED PRODUCTS; and (iii) royalties received from such sublicensee for the sale of LICENSED PRODUCTS (as this is addressed previously in this Section); provided, however, that any such sublicense payments shall be fully creditable against the milestone payments described in section 4.1(f). For purposes of clarity, UTMDACC shall be entitled to receive the greater of (1) the amounts owed to UTMDACC as a result of a sublicense prior to a PIVOTAL TRIAL pursuant to this Section 4.1(g) and (2) the milestone payments owed to UTMDACC pursuant to Section 4.1(f).

4.2 Notwithstanding the consideration due LICENSORS in Section 4.1:

- (a) No multiple royalties shall be payable because the use, lease or sale of any LICENSED PRODUCT or Section 4.1(c) Product is, or shall be, covered by more than one valid and unexpired claim contained in the PATENT RIGHTS; and
- (b) In the event that a LICENSED PRODUCT or Section 4.1(c) Product is sold in the form of a combination product containing one or more products or technologies which are themselves not a LICENSED PRODUCT, the NET SALES for such combination product shall be calculated by multiplying the sales price of such combination product by the fraction  $A/(A+B)$  where A is the invoice price of the LICENSED PRODUCT (or if sold to an AFFILIATE, A shall be the fair market value of the LICENSED PRODUCT), and B is the total invoice price of the other products or technologies (or if sold to an AFFILIATE, B shall be the fair market value of the LICENSED PRODUCT). In the case of a combination product which includes one or more LICENSED PRODUCTS, the NET SALES for such combination product upon which the royalty due to UTMDACC is based shall not be less than the normal aggregate NET SALES for such LICENSED PRODUCT; and

- (c) To the extent that the LICENSEE or any sublicensee is required, by order or judgment of any court to obtain in any jurisdiction any license from a third party in order to practice the rights granted to the LICENSEE by the LICENSORS hereunder under issued patents in such jurisdiction, then up to [\*\*\*] percent ([\*\*\*]%) of the royalties payable to such third party may be deducted from royalties otherwise payable to UTMDACC from the LICENSEE or sublicensee in that jurisdiction, provided that in no event shall the royalties payable to UTMDACC pursuant to Section 4.1 in any quarterly period in such jurisdiction be reduced by more than [\*\*\*] percent ([\*\*\*]%) as a result of any such deduction; and
- (d) LICENSEE's royalty obligations under Section 4.1(b) shall terminate, on a country-by-country basis, with respect to each LICENSED PRODUCT upon the expiration date in such country of the last to expire of any patent included in the PATENT RIGHTS covering the sale of such LICENSED PRODUCT in such country; and
- (e) LICENSEE's royalty obligations under Section 4.1(c) shall terminate, on a country-by-country basis ten years after commercialization of Section 4.1(c) Product in such country.

4.3 Unless otherwise provided, all payments pursuant to Section 4.1 shall be payable within 30 calendar days after March 31, June 30, September 30 and December 31 of each year during the term of this AGREEMENT, at which time LICENSEE will also deliver to UTMDACC a true and accurate report, giving such particulars of the business conducted by LICENSEE and its sublicensees, if any exist, during the preceding three calendar months under this AGREEMENT as necessary for UTMDACC to account for LICENSEE's payments hereunder. This report will include pertinent data, including, but not limited to:



- (a) accounting methodologies used to account for and calculate the items included in the report and any differences in such accounting methodologies used by LICENSEE since the previous report; and
- (b) a list of LICENSED PRODUCTS and Section 4.1(c) Products produced for the preceding six calendar months categorized by the technology it relates to under PATENT RIGHTS; and
- (c) total quantities of LICENSED PRODUCTS and Section 4.1(c) Products produced by the category listed in Section 4.2(b); and
- (d) total SALES by the category listed in Section 4.2(b); and
- (e) the calculation of NET SALES by the category listed in Section 4.2(b); and
- (f) the royalties so computed and due UTMDACC by the category listed in Section 4.2(b); and
- (g) all consideration received from each sublicensee or assignee related to this license and payments due UTMDACC; and
- (h) all other amounts due UTMDACC herein.

Simultaneously with the delivery of each such report, LICENSEE agrees to pay UTMDACC the amount due, if any, for the period of such report. This report shall be regardless of whether any payments are due.

- 4.4 During the term of this AGREEMENT and for one year thereafter, LICENSEE agrees to keep complete and accurate records of its and its sublicensees' SALES and NET SALES in sufficient detail to enable the royalties and other payments due hereunder to be determined. LICENSEE agrees to permit UTMDACC or its representatives, at UTMDACC's expense, to periodically examine LICENSEE's books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under this AGREEMENT. If any amounts due UTMDACC are determined to have been underpaid in an amount equal to or greater than [\*\*\*] percent ([\*\*\*]%) of the total amount due during the period so examined, then LICENSEE will pay the cost of the examination plus accrued interest at the highest allowable rate.

- 4.5 Within 30 calendar days following each anniversary of the EFFECTIVE DATE, LICENSEE will deliver to UTMDACC a written progress report as to LICENSEE's (and any sublicensee's) efforts and accomplishments during the preceding year in diligently commercializing LICENSED SUBJECT MATTER in the LICENSED TERRITORY and LICENSEE's (and sublicensees') commercialization plans for the upcoming year. Any such reports provided pursuant to this Section 4.5 shall be treated as Confidential Information pursuant to Article XI.
- 4.6 All amounts payable hereunder by LICENSEE will be paid in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks are to be made payable to The University of Texas M. D. Anderson Cancer Center, and sent by United States mail to Box 297402, Houston, Texas 77297, Attention: Manager, Sponsored Programs or by wire transfer to:  
BANK ONE TEXAS  
910 TRAVIS

HOUSTON, TEXAS 77002

SWIFT: [\*\*\*]

ABA ROUTING NO: [\*\*\*]

ACCOUNT NAME: UNIV. OF TEXAS M. D. ANDERSON CANCER CENTER

ACCOUNT NO: [\*\*\*]

REFERENCE: include title and EFFECTIVE DATE of AGREEMENT and type of payment (e.g., license documentation fee, milestone payment, royalty [including applicable patent/application identified by UTMDACC reference number and patent number or application serial number], or maintenance fee, etc.).

## V. SPONSORED RESEARCH

- 5.1 Within 60 days of the EFFECTIVE DATE, the parties shall enter into a sponsored research agreement related to the LICENSED SUBJECT MATTER for \$100,000 annually with UTMDACC to support work with Dr. Verstovsek and a separate sponsored research agreement for \$100,000 annually with A&M to support work with Dr. Zingaro. LICENSEE shall maintain such sponsored research agreements for at least a period of two years. For clarity, the total amount of each sponsored research agreement for the two year period will be \$200,000.
- 5.2 If LICENSEE desires to sponsor additional research for or related to the LICENSED SUBJECT MATTER, and particularly where LICENSEE receives payments for sponsored research pursuant to a sublicense under this AGREEMENT, LICENSEE (a) will notify UTMDACC and A&M in writing of all opportunities to conduct this sponsored research (including clinical trials, if applicable), (b) solicit research and/or clinical proposals from UTMDACC and A&M for this purpose, and (c) will give good faith consideration to funding the proposals at UTMDACC and/or A&M.

5.3 LICENSOR agrees that any and all intellectual property or know-how that arises out of the sponsored research as described in Section 5.1 shall be added to Exhibit II, considered as PATENT RIGHTS hereunder and be made a part of this AGREEMENT.

## **VI. PATENTS AND INVENTIONS**

6.1 Following the EFFECTIVE DATE, LICENSEE shall be responsible for preparing, filing, prosecuting and maintaining the patent applications and patents included within the PATENT RIGHTS and for paying all associated costs using patent counsel reasonably acceptable to UTMDACC, which shall initially be Ropes & Gray. LICENSEE will directly notify and provide copies to UTMDACC and their selected outside patent counsel, at no cost to LICENSEE, of any official communications from United States and foreign patent offices relating to said prosecution within 30 days of receipt as well as copies of communications to the various patent offices so that UTMDACC may be informed and apprised of the continuing prosecution of the patent applications and patents included within the PATENT RIGHTS. LICENSEE shall give UTMDACC at least 10 business days to review and comment on any communications to the various patent offices. Additionally, LICENSEE shall direct their counsel to consult with UTMDACC's outside patent counsel on patent strategy related to the PATENT RIGHTS.

6.2 LICENSEE shall keep UTMDACC informed as to their plans to file and UTMDACC will have reasonable opportunities to participate in decision making on decisions affecting filing, prosecution and maintenance of the patent applications and patents included within the PATENT RIGHTS, including, without limitation reasonable opportunity to review the abandonment of any patent applications and patents or change of inventors on patent applications and patents included within the PATENT RIGHTS, and LICENSEE will use reasonable efforts to incorporate UTMDACC's reasonable suggestions regarding said prosecution. Additionally, LICENSEE will use reasonable efforts to amend any patent application to include claims reasonably requested by UTMDACC to protect LICENSED SUBJECT MATTER. No case will be abandoned without giving UTMDACC at least 30 days notice and opportunity to pursue the application. If LICENSEE notifies UTMDACC that it does not intend to file in any national jurisdiction, pay the cost of any application or of LICENSEE's plans to abandon an application or patent within PATENT RIGHTS, then UTMDACC and/or A&M may file or pursue such application in that national jurisdiction, if applicable, at its own expense and LICENSEE will have no further rights to such application or patent.

- 6.3 If UTMDACC reasonably demonstrates that it is not being adequately informed or apprised of the continuing prosecution of patent applications and patents included within the PATENT RIGHTS or that it is not being provided with reasonable opportunities to participate in decision making as indicated in the above paragraph, UTMDACC shall be entitled to engage, at LICENSEE's reasonable expense, independent patent counsel to review and evaluate patent prosecution and filing of patents and patent applications included in PATENT RIGHTS. Henceforth UTMDACC and LICENSEE shall share responsibility for patent prosecution, with LICENSEE reimbursing UTMDACC in full for any reasonable patent expenses incurred by UTMDACC.
- 6.4 The Parties agree that they share a common legal interest to get valid enforceable patents and that UTMDACC, A&M and LICENSEE will keep all privileged information received pursuant to this Article VI confidential.

## VII. INFRINGEMENT BY THIRD PARTIES

- 7.1 If either LICENSEE or UTMDACC or A&M becomes aware of a product made, used or sold in the LICENSED TERRITORY, which it believes infringes an issued VALID CLAIM, the Party obtaining such knowledge shall promptly advise the other Parties of all relevant facts and circumstances pertaining to the potential infringement. LICENSEE shall have the first right to enforce any patent rights against such infringement, at its own expense. The LICENSORS shall cooperate with LICENSEE in such effort, at LICENSEE's expense, including being joined as a party to such action, if necessary. After reimbursement of LICENSEE's reasonable legal costs and expenses related to such recovery, LICENSEE agrees to pay UTMDACC [\*\*\*] percent ([\*\*\*]%) of any award for punitive damages and: (a) [\*\*\*] percent ([\*\*\*]%) of any monetary recovery that is for sales of LICENSED PRODUCTS lost due to the infringement; or (b) [\*\*\*] percent ([\*\*\*]%) of reasonable royalties awarded in any recovery in which the award is for reasonable royalties.
- 7.2 If LICENSEE fails, within six (6) months after receiving notice from UTMDACC and/or A&M of a potential infringement, or providing UTMDACC and A&M with notice of such infringement, to either (a) terminate such infringement or (b) institute an action to prevent continuation thereof and, thereafter to prosecute such action diligently, or if LICENSEE notifies UTMDACC and A&M that it does not plan to terminate the infringement or institute such action, then UTMDACC and A&M shall have the right to do so at its own expense; provided however, that UTMDACC and A&M first consult with LICENSEE and gives due consideration to LICENSEE's reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If UTMDACC and/or A&M decide to pursue such infringement, LICENSEE shall cooperate with UTMDACC and/or A&M in such effort including being joined as a party to such action if necessary. UTMDACC and/or A&M shall be entitled to retain all damages or costs awarded in such action.

**VIII. PATENT MARKING**

8.1 LICENSEE agrees that all packaging containing individual LICENSED PRODUCT(S), documentation therefor, and when possible for actual LICENSED PRODUCT(S) SOLD by LICENSEE, AFFILIATES, and/or sublicensees of LICENSEE will be permanently and legibly marked with the number of any applicable patent(s) licensed hereunder in accordance with each country's patent laws, including Title 35, United States Code.

**IX. INDEMNIFICATION AND INSURANCE**

9.1 LICENSEE agrees to hold harmless and indemnify BOARD, SYSTEM, UTMDACC, A&M, their Regents, officers, employees, students and agents from and against any third-party claims, demands, or causes of action whatsoever, costs of suit and reasonable attorney's fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property ("CLAIMS") caused by, or arising out of, or resulting from, the exercise or practice of the rights granted hereunder by LICENSEE, its officers, its AFFILIATES or their officers, employees, agents or representatives, other than with respect to CLAIMS arising out of or resulting from the willful misconduct or gross negligence of a LICENSOR.

- 9.2 In no event shall BOARD, SYSTEM, UTMDACC or A&M be liable for any indirect, special, consequential or punitive damages (including, without limitation, damages for loss of profits or expected savings or other economic losses, or for injury to persons or property) arising out of, or in connection with, this AGREEMENT or its subject matter, regardless of whether BOARD, SYSTEM, UTMDACC or A&M knows or should know of the possibility of such damages.
- 9.3 Beginning at the time when any LICENSED SUBJECT MATTER is being distributed or sold (including for the purpose of obtaining regulatory approvals) by LICENSEE or by a sublicensee, LICENSEE shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than \$2,000,000 per incident and \$2,000,000 annual aggregate, and LICENSEE shall use reasonable efforts to have the BOARD, SYSTEM, UTMDACC, A&M, their Regents, officers, and employees named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for LICENSEE's indemnification under this AGREEMENT; and (iii) coverage for litigation costs. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of LICENSEE's liability with respect to its indemnification under this AGREEMENT.
- 9.4 LICENSEE shall provide UTMDACC and A&M with written evidence of such insurance within 30 days of its procurement. Additionally, LICENSEE shall provide UTMDACC and A&M with written notice of at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance.



9.5 LICENSEE shall maintain such commercial general liability insurance beyond the expiration or termination of this AGREEMENT during: (i) the period that any LICENSED SUBJECT MATTER developed pursuant to this AGREEMENT is being commercially distributed or sold by LICENSEE or by a sublicensee or agent of LICENSEE; and (ii) the five (5) year period immediately after such period.

**X. USE OF BOARD AND UTMDACC'S NAME**

10.1 LICENSEE will not use the name of (or the name of any employee of) UTMDACC, SYSTEM, BOARD or A&M in any advertising, promotional or sales literature, on its Web site, without the advance express written consent of the following:

In the case of UTMDACC:

M. D. Anderson Services Corporation  
7505 S. Main, Suite 500, Unit 0525  
Houston, TX 77030  
ATTENTION: Natalie Wright  
Email: [nwright@mdanderson.org](mailto:nwright@mdanderson.org)

In the case of A&M:

Executive Director  
Technology License Office  
The Texas A&M University System  
3369 TAMU  
College Station, Texas 77843-3369

Notwithstanding the above, LICENSEE may use the name of (or name of employee of) UTMDACC, SYSTEM, BOARD or A&M in routine business correspondence, or as may be required by law, rule or regulation in connection with any financing without express written consent.

**XI. CONFIDENTIAL INFORMATION AND PUBLICATION**

11.1 UTMDACC, A&M and LICENSEE each agree that all information related to this AGREEMENT and contained in documents marked "confidential" and forwarded to one by the other (i) are to be received in strict confidence, (ii) are to be used only for the purposes of this AGREEMENT, which may include disclosure of certain confidential information to the FDA and foreign regulatory agencies and which disclosures shall be expressly permitted hereunder and (iii) are not to be disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the other party, except to the extent that the recipient party can establish competent written proof that such information:

- (a) was in the public domain at the time of disclosure; or
- (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns; or
- (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it and not under an obligation of confidence to the disclosing party; or
- (d) was already known by the recipient party at the time of disclosure; or
- (e) was independently developed by the recipient without use of the other party's confidential information; or
- (f) is required by law or regulation to be disclosed.

11.2 Each party's obligation of confidence hereunder will be fulfilled by using at least the same degree of care with the other party's confidential information as it uses to protect its own confidential information, but always at least a reasonable degree of care. This obligation will exist while this AGREEMENT is in force and for a period of three (3) years thereafter.

11.3 UTMDACC and A&M reserve the right to publish the general scientific findings from research related to LICENSED SUBJECT MATTER, with due regard to the protection of LICENSEE's confidential information. UTMDACC and A&M will submit the manuscript of any proposed publication to LICENSEE at least 30 calendar days before publication, and LICENSEE shall have the right to review and comment upon the publication in order to protect LICENSEE's confidential information and to protect any potential inventions set forth therein. Upon LICENSEE's request, publication may be delayed up to 60 additional calendar days to enable LICENSEE to secure adequate intellectual property protection on inventions of UTMDACC and/or A&M that may be set forth in the publication and to which LICENSEE has rights under this AGREEMENT.

## **XII. ASSIGNMENT**

12.1 Except in connection with a merger, acquisition, sale or transfer of all or substantially all of LICENSEE's assets to a third party or an AFFILIATE, this AGREEMENT may not be assigned by LICENSEE without the prior written consent of UTMDACC and A&M, which will not be unreasonably withheld.

## **XIII. TERM AND TERMINATION**

13.1 Subject to Sections 13.2 and 13.3 hereinbelow, the term of this AGREEMENT is from the EFFECTIVE DATE until the expiration of the last VALID CLAIM contained in the PATENT RIGHTS.

13.2 Subject to any rights herein which survive termination, this AGREEMENT will earlier terminate in its entirety:

- (a) automatically, if LICENSEE becomes bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of LICENSEE or otherwise; or
- (b) upon 30 calendar days written notice from UTMDACC, if LICENSEE breaches or defaults on the payment or report obligations of ARTICLE IV, or use of name obligations of ARTICLE X unless, before the end of the such 30-calendar day notice period, LICENSEE has cured the default or breach to UTMDACC's satisfaction, and so notifies UTMDACC, stating the manner of the cure; or
- (c) upon 90 calendar days written notice from UTMDACC if LICENSEE breaches or defaults on any other material obligation under this AGREEMENT, unless, before the end of the such 90 calendar-day notice period, LICENSEE has cured the default or breach to UTMDACC's satisfaction and so notifies UTMDACC, stating the manner of the cure; or
- (d) at any time by mutual written agreement between LICENSEE, UTMDACC and A&M, subject to any terms herein which survive termination; or
- (e) at any time upon 90 days written notice from the LICENSEE to UTMDACC and A&M; or
- (f) if LICENSEE has defaulted or been late on its payment obligations pursuant to the terms of this AGREEMENT on any three occasions in a 12 month period.

13.3 Upon termination of this AGREEMENT:

- (a) nothing herein will be construed to release either party of any obligation maturing prior to the effective date of the termination; and
- (b) LICENSEE covenants and agrees to be bound by the provisions of Articles IX (Indemnification and Insurance), X (Use of Board and UTMDACC's Name), and XI (Confidential Information and Publication); and
- (c) LICENSEE may, after the effective date of the termination, sell all LICENSED PRODUCTS and parts therefor that it has on hand at the date of termination, if, to the extent covered by an issued VALID CLAIM, LICENSEE pays the earned royalty thereon and any other amounts due pursuant to Article IV of this AGREEMENT as a result of such SALES; and
- (d) LICENSEE shall grant to BOARD and UTMDACC an option to negotiate a nonexclusive, royalty bearing license with the right to sublicense others with respect to improvements made by LICENSEE in the LICENSED SUBJECT MATTER; and
- (e) Subject to Section 13.4(c), LICENSEE agrees to cease and desist any use and all SALE of the LICENSED SUBJECT MATTER and LICENSED PRODUCTS to the extent covered by an issued VALID CLAIM.

#### **XIV. DUE DILIGENCE**

14.1 LICENSEE shall use all commercially reasonable efforts to bring LICENSED PRODUCTS to market in the MAJOR MARKET COUNTRIES through a thorough, vigorous and diligent program for exploitation of the LICENSED SUBJECT MATTER, including without limitation conducting pre-clinical and clinical, and shall continue active, diligent marketing efforts for LICENSED PRODUCTS throughout the life of this AGREEMENT.

**XV. WARRANTY: SUPERIOR-RIGHTS**

- 15.1 Except for the rights, if any, of the Government of the United States of America as set forth below, BOARD and A&M represent and warrant their belief that (a) they are the owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, (b) they have the sole right to grant licenses thereunder, and (c) they have not knowingly granted a license thereunder to any other entity that would restrict rights granted hereunder except as stated herein.
- 15.2 LICENSEE understands that the LICENSED SUBJECT MATTER may have been developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This AGREEMENT is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation, including P.L. 96-517 as amended by P.L. 98-620. To the extent that there is a conflict between any such agreement, applicable law or regulation and this AGREEMENT, the terms of such Government agreement, applicable law or regulation shall prevail.
- 15.3 As of the EFFECTIVE DATE, to the knowledge and belief of UTMDACC's and A&M's respective offices of technology transfer, there is no claim, pending or threatened, of infringement, interference or invalidity regarding, any part or all of the PATENT RIGHTS and their use as contemplated in the underlying patent applications as presently drafted.

15.4 LICENSEE UNDERSTANDS AND AGREES THAT BOARD, UTMDACC AND A&M, BY THIS AGREEMENT, MAKE NO REPRESENTATIONS AND MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO THE OPERABILITY OR FITNESS FOR ANY USE, SAFETY, EFFICACY, APPROVABILITY BY REGULATORY AUTHORITIES, TIME AND COST OF DEVELOPMENT, PATENTABILITY, AND/OR BREADTH OF THE LICENSED SUBJECT MATTER. BOARD, UTMDACC AND A&M, BY THIS AGREEMENT, ALSO MAKE NO REPRESENTATION AS TO WHETHER ANY PATENT COVERED BY PATENT RIGHTS IS VALID OR AS TO WHETHER THERE ARE ANY PATENTS NOW HELD, OR WHICH WILL BE HELD, BY OTHERS OR BY BOARD OR A&M DIRECTED TO LICENSED SUBJECT MATTER, NOR DOES BOARD, UTMDACC OR A&M MAKE ANY REPRESENTATION THAT THE INVENTIONS CONTAINED IN PATENT RIGHTS DO NOT INFRINGE ANY OTHER PATENTS NOW HELD OR THAT WILL BE HELD BY OTHERS OR BY BOARD OR A&M.

15.5 LICENSEE, by execution hereof, acknowledges, covenants and agrees that LICENSEE has not been induced in any way by BOARD, SYSTEM, UTMDACC, A&M or employees thereof to enter into this AGREEMENT, and further warrants and represents that (a) LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to this AGREEMENT; and (b) LICENSEE has adequate knowledge and expertise, or has used knowledgeable and expert consultants, to adequately conduct such due diligence, and agrees to accept all risks inherent herein.

**XVI. GENERAL**

16.1 This AGREEMENT constitutes the entire and only agreement between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof will be made except by a written document signed by both parties.

16.2 Any notice required by this AGREEMENT must be given by prepaid, first class, certified mail, return receipt requested, or other overnight delivery service and addressed in the case of UTMDACC to:

The University of Texas M. D. Anderson Cancer Center  
Office of Technology Commercialization  
7515 S. Main, Suite 490, Unit 0510  
Houston, Texas 77030  
ATTENTION: William J. Doty

or in the case of A&M to:

Executive Director  
Technology Licensing Office  
The Texas A&M University System  
3369 TAMU  
College Station, Texas 77843-3369

or in the case of LICENSEE to:

Ziopharm, Inc.  
787 Seventh Avenue, 48<sup>th</sup> floor  
New York, NY 10019  
ATTENTION: President

or other addresses as may be given from time to time under the terms of this notice provision.



- 16.3 LICENSEE must comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this AGREEMENT.
- 16.4 This AGREEMENT will be construed and enforced in accordance with the laws of the United States of America and of the State of Texas, without regard to its conflict of law provisions.
- 16.5 Any dispute or controversy arising out of or relating to this AGREEMENT, its construction or its actual or alleged breach will be decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, it will be finally decided by an appropriate method of alternate dispute resolution, including without limitation, arbitration, conducted in the city of Houston, Harris County, Texas, in accordance with the applicable, then current, procedures of the American Arbitration Association. The arbitration panel will include members knowledgeable in the evaluation of the LICENSED SUBJECT MATTER. Judgment upon the award rendered may be entered in the highest court or forum having jurisdiction, state or federal. The provisions of this Section 16.5 will not apply to decisions on the validity of patent claims or to any dispute or controversy as to which any treaty or law prohibits such arbitration. The decision of the arbitration must be sanctioned by a court of law having jurisdiction to be binding upon and enforceable by the parties.
- 16.6 Failure of BOARD, UTMDACC or A&M to enforce a right under this AGREEMENT will not act as a waiver of right or the ability to later assert that right relative to the particular situation involved.
- 16.7 LICENSEE represents and warrants to LICENSORS that it is authorized to issue 20,000,000 shares of COMMON STOCK, of which 5,000,000 are issued and outstanding as of the EFFECTIVE DATE, and 5,000,000 shares of PREFERRED STOCK, none of which are currently issued and outstanding. In addition, LICENSEE has issued options to purchase 863,875 shares of Common Stock, which options vest, if at all, upon the occurrence of milestone and other events.

- 16.8 Headings included herein are for convenience only and will not be used to construe this AGREEMENT.
- 16.9 If any part of this AGREEMENT is for any reason found to be unenforceable, all other parts nevertheless will remain enforceable.
- 16.10 This AGREEMENT will not be binding upon the parties until it has been signed below on behalf of each party, in which event, it shall be effective as of the date recited on page one.
- 16.11 Each party hereto shall be excused from any breach of this AGREEMENT which is proximately caused by governmental regulation, act of war, strike, act of God or other similar circumstance normally deemed outside the control of the parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

ZIOPHARM, INC.

By /s/ John Mendelsohn, M.D.

By /s/ Jonathan Lewis

\_\_\_\_\_  
John Mendelsohn, M.D.  
President  
The University of Texas  
M. D. Anderson Cancer Center

\_\_\_\_\_  
Name: Jonathan Lewis, M.D.  
Title: Chief Executive Officer

Date: 8/17/04

Date: 8/16/04

THE UNIVERSITY OF TEXAS  
M. D. ANDERSON CANCER CENTER

THE TEXAS A&M UNIVERSITY SYSTEM

By /s/ Leon Leach

By /s/

\_\_\_\_\_  
Leon Leach  
Executive Vice President  
The University of Texas  
M. D. Anderson Cancer Center

\_\_\_\_\_  
Name:  
Title: Vice Chancellor

Date: 8/17/04

Date: 8/16/04

Approved as to Content:

By /s/ William J. Doty

\_\_\_\_\_  
William J. Doty  
Managing Director, Technology  
Commercialization  
M. D. Anderson Cancer Center

Date: 8/24/04

## EXHIBIT I

MDA01-063 “New Organic Arsenic Derivatives as a Treatment for Cancer,” Srdan Verstovsek, M.D., Ph.D., Ralph A. Zingaro Ph.D., Emil J. Freireich, M.D., Hatice Duzkale, M.D., Hagop M. Kantarjian, M.D.

MDA04-076 “Arsenic-Lipid Derivatives as a Treatment for Cancer,” Srdan Verstovsek, M.D., Ph.D., Ralph A. Zingaro Ph.D., Hagop M. Kantarjian, M.D., M. Gao

**EXHIBIT II**

**IMPROVEMENTS AND NEW INVENTIONS FROM  
SPONSORED RESEARCH**

**EXHIBIT III**

**STOCK PURCHASE AGREEMENT**

THIS STOCK PURCHASE AGREEMENT ("Agreement") is entered into as of August 24, 2004, by and between the undersigned (the "Purchaser") Ziopharm, Inc., a Delaware Corporation having a business address at 787 Seventh Avenue, New York, NY 10019 (the "Corporation").

**R E C I T A L S**

WHEREAS, the Corporation and the Purchaser have entered into a License Agreement of even date herewith (the "License Agreement");

WHEREAS, as partial consideration for the License Agreement, the Corporation has agreed to issue to the Purchaser the number of shares of common stock, par value \$.001 per share, of the Corporation (which class of shares is referred to herein as "Common Stock") set forth on the signature page hereof;

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. Issuance and Acquisition of Stock.

(a) In consideration of the license granted by the Purchaser under the License Agreement and for no other remuneration, immediately after the execution of this Agreement by the parties, the Corporation shall transfer to the Purchaser, and the Purchaser shall acquire from the Corporation, the number of shares of Common Stock listed beside the Purchaser's name on the signature page hereto (the "Stock").

(b) Within 10 days of the execution of this Agreement, the Corporation shall deliver to the Purchaser a certificate or certificates evidencing the Stock, registered in the name of the Purchaser.

2. Violation Of Transfer Provisions. The Corporation shall not be required to transfer on its books any shares of Stock which shall have been sold, transferred, assigned or pledged in violation of any of the provisions of this Agreement or to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so sold, transferred, assigned or pledged.

3. Rights as Stockholder. During the term of this Agreement, except as otherwise provided herein, the Purchaser shall exercise all rights and privileges of a stockholder of the Corporation with respect to the Stock. Corporation will provide Purchaser with all reports and notices it is obligated in the future to provide generally to holders of its Common Stock or any of its preferred stock.

The Corporation represents, warrants and covenants with the Purchaser as follows:

(a) The Corporation has all necessary power and capacity to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transaction contemplated hereby. This Agreement has been validly executed and delivered by the Corporation and constitutes the legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms. The execution and delivery of this Agreement by the Corporation do not and the performance of its obligations under this Agreement will not conflict with or result in any breach or constitute a default under any contracts to which the Corporation is a party or by which the Corporation or any property or asset of the Corporation is bound or affected.

(b) The Corporation has good title to the Stock and owns the Stock free and clear of any security interests, liens, claims, pledges, options, rights of first refusal, agreements, limitations on voting rights, charges and other encumbrances of any nature whatsoever (collectively, "Liens") other than restrictions on transfer imposed under the Securities Act of 1933, as amended (the "Securities Act"). Upon delivery thereof to the Purchaser, the Purchaser shall acquire good title to the Stock, free and clear of any liens other than the restrictions set forth in this Agreement and under the Securities Act. The Stock is validly issued, fully paid and non-assessable. The Corporation is transferring the Stock to the Purchaser hereunder pursuant to a valid exemption from registration under the Securities Act.

(c) The Corporation is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. The Corporation has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as now conducted. The Corporation is duly qualified, is authorized to transact business, and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on the Corporation or its business and properties. Immediately prior to the issuance of the Stock as contemplated by this Agreement, the authorized capital stock of the Corporation will consist of: (i) 20,000,000 shares of Common Stock, par value \$0.001 per share, of which 5,000,000 shares are issued and outstanding, and (ii) 5,000,000 shares of Preferred Stock, par value \$0.001 per share, none of which are issued and outstanding. No other shares of capital stock are outstanding. Company has issued options to purchase 863,875 shares of Common Stock, which options vest, if at all, upon the occurrence of milestone and other events. All issued and outstanding shares of the Company's Common Stock have been duly and validly authorized and issued, and are fully paid and are nonassessable.

The Purchaser represents, warrants and covenants with the Corporation as follows:

(a) The Purchaser has all necessary power and capacity to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transaction contemplated hereby. This Agreement has been validly executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms. The execution and delivery of this Agreement by the Purchaser do not and the performance of its obligations under this Agreement will not conflict with or result in any breach or constitute a default under any contracts to which the Purchaser is a party or by which the Purchaser or any property or asset of the Purchaser is bound or affected.

(b) The Stock will be acquired by the Purchaser for his own account with the Purchaser's own funds for investment purposes and for the Purchaser's own account, not as a nominee or agent for any other person, firm or corporation, and not with a view to the sale or distribution of all or any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the Stock. The Purchaser does not have any contract, undertaking, agreement or arrangement with any person, firm or corporation to sell, transfer or grant any participation to any person, firm or corporation with respect to any or all of the Stock.

(c) The Purchaser understands that the Stock will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and that the Stock is being issued and sold to the Purchaser based upon an exemption from registration predicated in part on the accuracy and completeness of the Purchaser's representations and warranties appearing herein.

(d) The Purchaser agrees that in no event will the Purchaser sell, transfer, assign or pledge all or any part of the Stock or any interest therein, unless and until (i) the Purchaser shall have furnished the Corporation with an opinion of counsel satisfactory in form and content to the Corporation to the effect that (A) such disposition will not require registration of the Stock under the Securities Act or compliance with applicable state securities laws, or (B) appropriate action necessary for compliance with the Securities Act and applicable state securities laws has been taken; (ii) the Corporation shall have waived, expressly and in writing, its right under clause (i) of this subsection; and (iii) the proposed transferee of the Stock shall have provided the Corporation with a written agreement or undertaking by which such transferee agrees to be bound by all terms, conditions and limitations of this Agreement applicable to such transferee's transferor as if such transferee were a party hereto. The requirement of subparagraph (iii) shall not apply to any transfer (A) pursuant to an offering registered under the Securities Act, (B) pursuant to Rule 144 under the Securities Act or (C) effected in a market transaction otherwise exempt from registration under the Securities Act. Subject to applicable law, in the event of the Purchaser's death, the Corporation will cooperate with the executor of the Purchaser's estate to transfer the Stock to the appropriate parties. Subject to the terms of this Agreement and applicable laws, rules and regulations, the Corporation hereby acknowledges and agrees that Purchaser may transfer any of the stock to its employees and former employees pursuant to its current and future policies and practices regarding transfer of equity received in consideration of a license.



(e) The Purchaser is able to fend for himself in connection with the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters (including investments in development stage biotechnology companies) as to be capable of evaluating the merits and risks of its investment in the Corporation, has the ability to bear the economic risks of its investment for an indefinite period of time and can afford a complete loss of its investment and has had the opportunity prior to the Purchaser's purchase of the Stock to ask questions of and receive answers from representatives of the Corporation concerning the finances, operations and business of the Corporation. The Purchaser acknowledges and agrees that (i) except for the Corporation's representations and covenants herein and in the License Agreement, it is not relying upon any statement, promise or assurance of the Corporation or any investor in the Corporation (or any representative of the Corporation or any such investor) in arriving at the Purchaser's decision to purchase the Stock, and has not otherwise been induced to purchase the Stock by the Corporation or any such investor (or any representative of the Corporation or any such investor); and that (ii) it has decided to purchase the Stock based upon the Purchaser's own analysis of the merits and risks of investing in the Corporation without the intervention or assistance of any other person, firm or corporation.

(f) The Purchaser understands and acknowledges that the Purchaser will not be permitted to sell, transfer, assign or pledge the Stock until it is registered under the Securities Act or an exemption from the registration and prospectus delivery requirements of the Securities Act is available to the Purchaser, and that there is no assurance that such an exemption from registration will ever be available or that the Purchaser will ever be able to sell any of the Stock.

(g) All certificates representing the Stock and, until such time as the Stock is sold in an offering which is registered under the Securities Act or the Corporation shall have received an opinion of counsel satisfactory in form and content to the Corporation that such registration is not required in connection with a resale (or subsequent resale) of the Stock, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

(i) THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT OR AN OPINION OF COUNSEL SATISFACTORY TO ZIOPHARM, INC. THAT SUCH REGISTRATION IS NOT REQUIRED. ANY SUCH TRANSFER MAY ALSO BE SUBJECT TO APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

(ii) Any legend required to be placed thereon by any applicable state securities law.

(h) The Corporation shall not be obligated to transfer any of the Stock if counsel for the Corporation determines that any applicable registration requirement under the Securities Act or any other applicable requirement of federal or state law has not been met.

6. General Provisions.

(a) No Assignments. The Purchaser shall not transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the Corporation, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation:

Ziopharm, Inc.  
787 Seventh Avenue, 48<sup>th</sup> Floor  
New York, NY 10019  
Attn: President

(ii) If to the Purchaser, to the address set forth on the signature page of this Agreement.

The address of a party, for the purposes of this Section 7(b)(ii), may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Standoff Agreement. The Purchaser agrees that, in connection with each underwritten public offering registered under the Securities Act of shares of Common Stock or other equity securities of the Corporation by or on behalf of the Corporation, the Purchaser shall not sell or transfer, or offer to sell or transfer, any shares of Common Stock or other equity securities of the Corporation for such period of time as all of the officers, directors and significant stock holders are also similarly bound.

(d) Choice of Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of New York.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Successors. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation, whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

(g) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(h) Modification, Amendment and Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

(i) Further Assurances. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(j) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(k) Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(l) Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others whenever and wherever the context so requires. Additionally, unless the context requires otherwise, "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, or caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

**ZIOPHARM, INC.**

By: /s/

\_\_\_\_\_

Name: Jonathan Lewis, M.D.

Title: Chief Executive Officer

**PURCHASER:**

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EIN/SS#:

\_\_\_\_\_

NUMBER OF SHARES OF  
**COMMON STOCK PURCHASED:**

\_\_\_\_\_

**EXHIBIT IV**  
**PREVIOUS AGREEMENTS**

- SPORE Grant for work by Dr. Verstovsek: Leukemia SPORE Development Program:  
  
Development of Organic Arsenic Derivatives as New Therapy for Leukemia.
- Career Development Award to Dr. Verstovsek from UTMDACC for work with arsenicals

EXHIBIT V

THE SECURITIES REPRESENTED BY THIS OPTION ARE NOT TRANSFERABLE WITHOUT THE EXPRESS WRITTEN CONSENT OF ZIOPHARM, INC. (THE "COMPANY") AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT OR AN EXEMPTION FROM SUCH ACT. ANY SUCH TRANSFER MAY ALSO BE SUBJECT TO APPLICABLE STATE SECURITIES LAWS.

ZIOPHARM, INC.

Option for the Purchase of Shares of  
Common Stock

No. MDACC-1

50,000 Shares

FOR VALUE RECEIVED, ZIOPHARM, INC., a Delaware corporation (the "Company"), hereby certifies that [\_\_\_\_\_]  
or its registered assigns (the "Holder") is entitled to purchase from the Company, subject to the provisions of this Option, at any time following the Vesting Date (as defined below) and prior to 5:00 P.M. Eastern Standard Time on the date that is five years from the Vesting Date (the "Termination Date"), Fifty Thousand (50,000) fully paid and non-assessable shares of the Common Stock, \$.001 par value, of the Company ("Common Stock") at an initial per share exercise price equal to \$0.001(the "Per Share Exercise Price"), or an aggregate exercise price of \$500.00(the "Aggregate Exercise Price"). The shares of Common Stock deliverable upon such exercise are sometimes referred to in this Option as the "Option Shares."

1) Exercise of Option.

(a) Following the Vesting Date and prior to the Termination Date, this Option may be exercised in whole or in part, from time to time, by the Holder by presentation and surrender of this Option (with the subscription form attached to this Option duly executed) at the address set forth in Section 8 of this Option, together with payment, by certified or official bank check or wire transfer payable to the order of the Company, of the Aggregate Exercise Price or the proportionate part of such Aggregate Exercise Price if exercised in part.

(b) If this Option is exercised only in part, the Company shall, upon presentation of this Option upon such exercise, execute and deliver (with the certificate for the Option Shares purchased) a new Option evidencing the rights of the Holder of this Option to purchase the balance of the Option Shares purchasable under this Option upon the same terms and conditions as set forth in this Option. Upon proper exercise of this Option, the Company promptly shall deliver certificates for the Option Shares to the Holder duly legended as authorized by the subscription form. No fractional shares shall be issued upon exercise of this Option. Any fractional number of shares called for upon exercise of this Option shall be rounded down to the nearest whole share.

2) Vesting of Option. The Option shall vest and become exercisable for a percentage of the Option Shares as follows: (A) fifty percent (50%) upon completion of the dosing of the last patient for both the blood and solid tumor PHASE 1 trials for the first LICENSED PRODUCT; (B) [\*\*\*] percent ([\*\*\*]%) upon enrollment of the first patient in a multi-center PIVOTAL STUDY for a LICENSED PRODUCT; and (C) [\*\*\*] percent ([\*\*\*]%) upon the filing of an IND on any LICENSED PRODUCT that is covered by the PATENT RIGHTS entitled "Arsenic-Lipid Derivatives as a Treatment for Cancer" (MDA04-076). The date any percentage begins exercisable shall be deemed the "Vesting Date" with respect to such percentage. The Option shall remain exercisable for five years from the respective Vesting Dates for each given percentage of Option Shares and shall thereafter become void. Each fully capitalized term in this Section 2 shall have the meaning assigned to it in the Patent and Technology License Agreement of even date herewith among the Board of Regents of the University of Texas System, The University of Texas M. D. Anderson Cancer Center, The Texas A&M University System and the Company

3) Adjustment.

(a) In case the Company shall (i) pay a dividend or make a distribution on its capital stock in shares of Common Stock or any other capital stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares, (iii) combine its outstanding shares of Common Stock into a smaller number of shares or (iv) reclassify its Common Stock or effect a capital reorganization of the Company, or in case of the consolidation of the Company with or the merger of the Company with or into any other company or of the sale of the properties and assets of the Company as, or substantially as, an entirety to any other company, then the number and type of unexercised Option Shares subject to this Option shall be proportionately adjusted so that the Holder shall be entitled to receive the aggregate number and type of shares or other property that, if the unexercised Option Shares had been exercised in full immediately prior to such time, the Holder would have owned upon such exercise and been entitled to receive upon such dividend, subdivision, combination, reclassification or recapitalization. Whenever the number of shares issuable upon exercise of this Option is adjusted pursuant to this Section 3(a), the Per Share Exercise Price shall simultaneously be adjusted by multiplying the number of unexercised Option Shares issuable upon exercise of this Option by the Per Share Exercise Price in effect on the date thereof and dividing the product so obtained by the number of Option Shares issuable upon exercise of the Option immediately following the adjustments made in 3(a) above. Such adjustment shall be made successively whenever any event listed in this paragraph 3(a) shall occur. An adjustment made pursuant to this Subsection 3(a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) If, as a result of an adjustment made pursuant to this Section 3, the Holder shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Company upon surrender of this Option, the Board of Directors (whose determination shall be conclusive and shall be described in a written notice to the Holder promptly after such adjustment) shall determine the allocation of the adjusted Per Share Exercise Price between or among shares or such classes of capital stock or shares of Common Stock and other capital stock.

(c) When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Option, the Company shall promptly notify the Holder of such event and of the number of shares of securities or property thereafter purchasable upon exercise of the Option. Whenever the Company intends to declare a dividend or other distribution on its Common Stock, it shall provide Company notice at least thirty (30) days prior to the record date for such dividend or distribution.

4) Reservation of Option Shares; Fully Paid Shares; Taxes. The Company hereby undertakes until expiration of this Option to reserve for issuance or delivery upon exercise of this Option, such number of shares of the Common Stock as shall be required for issuance and/or delivery upon exercise of this Option in full, and agrees that all Option Shares so issued and/or delivered will be validly issued, fully-paid and non-assessable, and further agrees to pay all taxes and charges that may be imposed upon such issuance and/or delivery.

5) Limited Transferability. This Option may not be sold, transferred, assigned or hypothecated by the Holder except in compliance with the provisions of the Securities Act of 1933, as amended (the "Act"), and the applicable state securities or "blue sky" laws, and is so transferable only upon the books of the Company which the Company shall cause to be maintained for such purpose. The Company may treat the registered holder of this Option as such holder appears on the Company's books at any time as the holder for all purposes. All Options issued upon the transfer or assignment of this Option will be dated the same date as this Option, and all rights of the holder of such Option shall be identical to those of the Holder and upon such transfer or assignment, the Holder shall have no further rights under this Option.

6) Loss, etc., of Option. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Option, and of indemnity satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Option, if mutilated, the Company shall execute and deliver to the Holder a new Option of like date, tenor and denomination.

7) Status of Holder. This Option does not confer upon the Holder any right to vote or to consent to or receive notice as a stockholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a stockholder, prior to the exercise of this Option. If this Option is exercised only in part, the Holder shall have no such rights or liabilities with respect to any unexercised portion of this Option.



8) Notices. No notice or other communication under this Option shall be effective unless, but any notice or other communication shall be effective and shall be deemed to have been given if, the same is in writing and is mailed by first-class mail, postage prepaid, addressed to:

If to the Holder:

If to the Company:            Ziopharm, Inc.  
787 Seventh Avenue, 48<sup>th</sup> Floor  
New York, NY 10019  
Attn: Secretary

9) Investment Intent.

(a) The Holder represents by accepting this Option that it understands that this Option and any securities obtainable upon exercise of this Option have not been registered for sale under Federal or state securities laws and are being offered and sold to the Holder pursuant to one or more exemptions from the registration requirements of such securities laws. The Holder is an "accredited investor" within the meaning of Regulation D under the Act. In the absence of an effective registration of such securities or an exemption from such registration any certificates for such securities shall bear the legend set forth on the first page of this Option. The Holder understands that it must bear the economic risk of its investment in this Option and any securities obtainable upon exercise of this Option for an indefinite period of time, as this Option and such securities have not been registered under Federal or state securities laws and therefore cannot be sold unless subsequently registered under such laws, unless an exemption from such registration is available.

(b) The Holder, by its acceptance of this Option, represents to the Company that it is acquiring this Option and will acquire any securities obtainable upon exercise of this Option for its own account for investment and not with a view to, or for sale in connection with, any distribution of such securities in violation of the Act. The Holder agrees that this Option and any such securities will not be sold or otherwise transferred unless (i) a registration statement with respect to such transfer is effective under the Act and any applicable state securities laws or (ii) such sale or transfer is made pursuant to one or more exemptions from the Act.

10) Headings. The headings of this Option have been inserted as a matter of convenience and shall not affect the construction of this Option.

11) Applicable Law. This Option shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The parties agree to settle any disputes through binding arbitration in the city, county and State of New York.

The Company has caused this Option to be signed by its President and attested by its Secretary on \_\_\_\_\_, 2004.

ZIOPHARM INC.

Date:

By: /s/

\_\_\_\_\_

Name: Jonathan Lewis, M.D.

Title: Chief Executive Officer

ATTEST:

\_\_\_\_\_

David M. Tanen  
Secretary

**SUBSCRIPTION**

The undersigned, \_\_\_\_\_, pursuant to the provisions of the foregoing Option, hereby elects to exercise the foregoing Option to the extent of purchasing \_\_\_\_\_ shares of Common Stock under such Option and hereby makes payment of \$\_\_\_\_\_ by certified or official bank check in payment of the exercise price for such Option .

The undersigned hereby represents and warrants to the Company that the undersigned is acquiring the shares of the Company's Common Stock pursuant to exercise of the foregoing Option for investment purposes only. The undersigned hereby further acknowledges that the undersigned understands that such shares (a) have not been registered under the Securities Act of 1933, as amended (the "Act"), and are being issued to the undersigned by the Company in reliance upon the foregoing representation and warranty and (b) may not be resold except in accordance with the requirements of the Act, including Rule 144 under the Act, if applicable. The undersigned further consents to the placing of a legend on the certificates for the shares being purchased to the foregoing effect.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

**ASSIGNMENT**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the foregoing Option and all rights evidenced by such Option, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer such Option on the books of \_\_\_\_\_.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby assigns and transfers unto \_\_\_\_\_ the right to purchase \_\_\_\_\_ shares of the Common Stock of ZIOPHARM, INC. covered by the foregoing Option, and a proportionate part of such Option and the rights evidenced by such Option, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer that part of such Option on the books of ZIOPHARM, INC.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Portions herein identified by [\*\*\*] have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act of 1933. A complete copy of this document has been filed separately with the Securities and Exchange Commission.

### LICENSE AGREEMENT

This License Agreement (hereinafter referred to as this "Agreement"), effective as of October 15, 2004 2004, (the "Effective Date"), is entered into by and between DEKK-TEK, Inc., having an address at 4200 Canal Street, Suite A, New Orleans, LA, 70119 (the "Licensor") and ZIOPHARM, Inc., having an address at 300 George St., Suite 5, New Haven, CT 06511 (the "Company").

**WHEREAS**, the Licensor has certain proprietary rights and intellectual property with respect to Technology; and

**WHEREAS**, the Company desires to obtain from the Licensor, and the Licensor desires to grant to the Company, an exclusive, world-wide, royalty bearing license to develop and commercialize the Technology on the terms and conditions set forth herein; and

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual promises and covenants of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

### ARTICLE 1 - DEFINITIONS

For the purposes of this License Agreement, the following words and phrases shall have the following meanings:

**1.1** "Affiliate" shall mean, with respect to any Entity (as hereinafter defined), any Entity that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity.

**1.1.1** "Control" shall mean, for this purpose, direct or indirect control of more than fifty percent (50%) of the voting securities of an Entity or, if such Entity does not have outstanding voting securities, more than 50% of the directorships or similar positions with respect to such Entity.

**1.1.2** "Entity" shall mean any corporation, association, joint venture, partnership, trust, university, business, individual, government or political subdivision thereof, including an agency, or any other organization that can exercise independent legal standing.

**1.2** "FDA" shall mean the United States Food and Drug Administration

**1.3** "Improvements" shall mean any inventions (whether patentable or not), information and data that are developed by or on behalf of the Licensor during the term of this Agreement, the manufacture, use or sale of which would infringe an issued or pending claim within the existing Patent Rights.

**1.4** "IND" shall mean Investigational New Drug Application as defined by the rules and regulations of the FDA.

**1.5** "Know-how" shall mean all tangible information (other than those contained in the Patent Rights) whether patentable or not and all physical objects related to the Patent Rights or the Licensed Product, including but not limited to formulations, materials, data, drawings and sketches, designs, testing and test result, regulatory information of a like nature, owned or controlled by Licensor.

**1.6** "Licensed Product(s)" shall mean any product, the manufacture, use, lease or sale of which is covered in whole or in part by a Valid Claim contained in the Patent Rights in the country in which the product is made, used, leased or sold.

**1.7** "NDA" shall mean New Drug Application as defined by the rules and regulations of the FDA.

**1.8** "Net Sales" shall mean the total gross receipts for sales of Licensed Products by or on behalf of the Company of any of its Affiliates or any sublicensee, less the sum of the following: (a) usual trade discounts to customers; (b) sales, tariff duties and/or use taxes directly imposed and with reference to particular sales; (c) outbound transportation prepaid or allowed and transportation insurance; (d) amounts allowed or credited on returns; (e) bad debt deductions actually written off during the accounting period; (f) sales commissions; and (g) packaging and freight charges. For purposes of determining Net Sales, a Licensed Product shall not include transfers, uses or dispositions for charitable, promotional, pre-clinical, clinical, regulatory or governmental purposes. For purposes of calculating Net Sales, sales between or among the Company or its Affiliates shall be excluded from the computation of Net Sales, but sales by the Company or its Affiliates to third parties shall be included in the computation of Net Sales.

**1.9** "Patent Rights" shall mean all of Licensor's interest in:

**1.9.1** All United States and foreign patents and patent applications and invention disclosures set forth in Appendix A;

**1.9.2** All United States and foreign patents and patent applications which cover an invention included in the patents and/or patent applications or invention disclosures set forth in Appendix A;

**1.9.3** All United States and foreign patents and patent applications which cover an Improvement;

**1.9.4** Any continuations, divisionals, re-issue applications, continuation-in-part applications, re-examinations or extensions or any other later filed applications of any of the foregoing patent applications/patents set forth in **1.9.1-1.9.3**; and

**1.9.5** Any United States and/or foreign patents issuing from any of the foregoing patent applications/patents set forth in **1.9.1-1.9.4**.

**1.10** "Phase II" shall mean a controlled clinical study in the United States conducted to obtain preliminary data on effectiveness of an investigational new drug for a particular indication, as required in 21 C.F.R. Sec. 312.

**1.11** "Phase III" shall mean a controlled clinical study in the United States, the principal purpose of which is to establish pivotal safety and pivotal efficacy in patients with the disease target being studied, as required in 21 C.F.R. Sec.312.

**1.12** "Technology" means Patent Rights, Improvements and Know-how.

**1.13** "Valid Claim" means an issued claim of any unexpired patent included in Patent Rights, which patent has not been held unenforceable, unpatentable or invalid by a decision of a court of a governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference proceeding or abandoned.

## **ARTICLE 2 - GRANT**

**2.1** The Licensor hereby grants to the Company and the Company accepts, subject to the terms and conditions of this Agreement, an exclusive worldwide license in all fields of use to utilize the Technology, and to make, have made, use, have used, lease, import, offer to sell, sell, and/or have sold the Licensed Products, to the full end of the term for which the Patent Rights are granted, unless sooner terminated as hereinafter provided. Company may extend the license granted herein to any Affiliate, provided that the Affiliate consents in writing to be bound by this Agreement to the same extent as Company.

**2.2** To the best of Licensor's knowledge and belief and upon due inquiry, the Licensor has all right, title, and interest in and to the Patent Rights, including exclusive, absolute, irrevocable right, title and interest thereto, free and clear of all liens, charges, encumbrances or other restrictions or limitations of any kind whatsoever and to best of Licensor's knowledge and belief, and upon due inquiry, there are no licenses, options, restrictions, liens, rights of third parties, disputes, royalty obligations, proceedings or claims relating to, affecting, or limiting its rights or the rights of the Company under this Agreement with respect to any part or all of the Patent Rights and their use as contemplated in the underlying patent applications as presently drafted.



**2.3** To the best of Licensor's knowledge and belief and upon due inquiry, there is no claim, pending or threatened, of infringement, interference or invalidity regarding, any part or all of the Patent Rights and their use as contemplated in the underlying patent applications as presently drafted. The validity or enforceability of any of the Patent Rights or Technology has not been questioned in any litigation, governmental inquiry or proceeding to which the Licensor is a party and, to the knowledge of the Licensor, not such litigation, governmental inquiry or proceeding is threatened.

**2.4** The Licensor grants to the Company and its Affiliates the right to grant sublicenses to third- parties under the license granted hereunder.

**2.4.1** Within thirty (30) days after execution or receipt thereof, as applicable, the Company shall provide the Licensor with a confidential copy of each sublicense issued hereunder.

**2.4.2** Upon the termination of this Agreement, Licensor agrees to accept existing sublicensees under the terms of such sublicense provided that such sublicensee is in good standing, or restores its good standing within 90 days from the termination of this Agreement.

**2.5** Upon execution of this Agreement, Licensor shall promptly provide Know-how to Company. Additionally, Licensor will promptly disclose to Company any Improvements.

### **ARTICLE 3 - DUE DILIGENCE**

**3.1** The Company, by itself or through its affiliates or sublicensees shall use all reasonable commercial efforts to bring a product incorporating the Technology to market through a thorough, vigorous and diligent program. Such program shall include the preclinical and clinical development of the product, including research and development, manufacturing, laboratory and clinical testing and marketing. On or before each anniversary of this Agreement until the Company markets a product incorporating the Technology, Licensor may request in writing that the Company submit a report covering the preceding year, regarding the Technology development progress. Should Licensor believe the Company is not using all reasonable commercial efforts to bring a product incorporating the Technology to market, the Licensor will notify the Company of such concern and the Company and the Licensor will meet to discuss such concerns. If as a result of such meeting the Licensor is not satisfied the Company is using all reasonable commercial efforts to bring a product incorporating the Technology to market, the parties shall proceed to dispute resolution in accordance with Section 8.1 of this Agreement.

**ARTICLE 4 - ROYALTIES AND OTHER CONSIDERATION**

**4.1** As partial consideration for the rights granted by Licensor to Company, Company will issue to the Licensor stock options (“Options”) to purchase a total of 50,000 shares (the “Shares”) of the Company’s common stock (the “Common Stock”) at an exercise price per share equal to \$0.01 per share, equal to one percent (1%) of the outstanding shares of Common Stock of the Company on a fully diluted basis as of the Effective Date. The Options will vest and become exercisable in accordance with the following schedule:

- (i) 12,500 Shares upon the Effective Date;
- (ii) [\*\*\*] Shares [\*\*\*] of Licensed Product in the United States [\*\*\*]; and
- (iii) [\*\*\*] Shares upon the final approval by the FDA of the first NDA submitted by the Company or its sublicensee for a Licensed Product.

- (i) The Options shall be granted under a Stock Option Agreement containing such terms and conditions as are customary for the Company.
- (ii) Upon the occurrence of a Change of Control as defined below, all unvested Options shall be accelerated and deemed to have vested as of the date of such Change of Control. For purposes of this section, “Change of Control” shall mean (a) the acquisition, directly or indirectly, following the date hereof by any person (as such term is defined in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended), in one transaction or a series of related transactions, of securities of the Company representing in excess of fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities if such person or his or its affiliate(s) do not own in excess of 50% of such voting power on the date of this Agreement, or (b) the future disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than a merger effected exclusively for the purpose of changing the domicile of the Company).

**4.2** The Company agrees to pay to Licensor royalties in an amount equal to [\*\*\*] percent [\*\*\*] of Net Sales by the Company, or any Affiliate of the Company, or any sublicensee thereof, of Licensed Products. The royalty obligations under this Section 4.2 shall terminate, on a country-by-country basis, with respect to each Licensed Product upon the expiration date in such country of the last to expire of any patent included in the Patent Rights covering the sale of such Licensed Product in such country. Any payments pursuant to this section shall be payable on an annual basis within thirty (30) calendar days of the end of the prior year.

**4.3** On sales of Licensed Products by the Company to Affiliates or related parties that are end users of such Licensed Products, the value of Net Sales attributed under this Article 4 shall be that which would have been received in an arms-length transaction, based on sales of like quantity and quality products at or about the time of such transaction.

**4.4** No multiple royalties shall be payable because the use, lease or sale of any Licensed Product is, or shall be, covered by more than one valid and unexpired claim contained in the Patent Rights.

**4.5** In the event that a Licensed Product is sold in the form of a combination product containing one or more products or technologies which are themselves not a Licensed Product, the Net Sales for such combination product shall be calculated by multiplying the sales price of such combination product by the fraction  $A/(A+B)$  where A is the invoice price of the Licensed Product or the Fair Market Value of the Licensed Product if sold to an Affiliate and B is the total invoice price of the other products or technologies or the Fair Market Value of the other products or technologies if purchased from an Affiliate.

**4.6** All payments under this Agreement shall be paid in United States dollars. Royalty payments shall be paid in United States dollars in New York, New York or at such other place as Licensor may reasonably designate consistent with the laws and regulations controlling in any foreign country. Any withholding taxes which the Company, its Affiliate or any sublicensee shall be required by law to withhold on remittance of the royalty payments shall be deducted from such royalty payment to Licensor. The Company shall furnish Licensor with the original copies of all official receipts for such taxes. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at Citibank, N.A. in New York, New York on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

**4.7** The Company shall pay Licensor a nonrefundable licensee fee in the amount of \$50,000, which is due and payable within fifteen (15) calendar days after the Company has received an invoice of the amount from Licensor.

**4.8** The Company shall pay Licensor a fee in the amount of \$[\*\*\*] upon the issuance of a United States patent included in Patent Rights which covers the use of a lysine salt of isophosphoramid mustard to treat cancer.

**4.9** The Company shall pay to Licensor the following milestone payments for the particular milestone event achieved by the Company, its Affiliate or a sublicensee, which shall be due and payable within thirty (30) calendar days of such milestone event:

**4.9.1** [\*\*\*] Dollars (\$[\*\*\*]) upon [\*\*\*] of Licensed Product in the United States;

**4.9.2** [\*\*\*] Dollars (\$[\*\*\*]) upon [\*\*\*] of Licensed Product in the United States;

**4.9.3** [\*\*\*] Dollars (\$[\*\*\*) upon [\*\*\*] Licensed Product; and

**4.9.4** [\*\*\*] Dollars (\$[\*\*\*) upon the final approval by the FDA of the first NDA for a Licensed Product, which milestone payment shall be fully creditable against future royalties payments hereunder.

**4.10** To the extent that the Company or any Affiliate of the Company or any sublicensee thereof needs to obtain in any jurisdiction any license from a third party in order to practice the rights purported to be granted to the Company by Licensor hereunder under issued patents in such jurisdiction, then up to [\*\*\*] percent ([\*\*\*)% of the royalties payable under such license in such jurisdiction may be deducted from royalties otherwise payable to Licensor hereunder, provided that in no event shall the aggregate royalties payable to Licensor in any semi-annual period in such jurisdiction be reduced by more than [\*\*\*] percent ([\*\*\*)% as a result of any such deduction, provided further that any excess deduction remaining as a result of such limitation may be carried forward to subsequent periods.

**4.11** From and after the termination of royalty obligations in accordance with Section 4.2 of this Agreement, Company will have a paid up, royalty-free license under Technology to make, have made, use, have used, sell and have sold products.

**4.12** Upon approval by Company of invoices attributable to the pharmacokinetic analysis of samples from a phase I study of Technology, Company shall reimburse Licensor for moneys paid by Licensor to conduct such analysis, in an amount not to exceed [\*\*\*] Dollars (\$[\*\*\*)).

#### **ARTICLE 5 - REPORTS AND RECORDS**

**5.1** The Company shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to the Licensor by way of royalty and other payments as aforesaid. Said books of account shall be kept at the Company's principal place of business and the supporting data shall be open up to twice per year upon reasonable notice to the Company, for two (2) years following the end of the calendar year to which they pertain, for inspection by the Licensors' internal audit division and/or by another designated auditor selected by the Licensor, except one to whom the Company has reasonable objection, for the purpose of verifying the Company's royalty statement and any other payment reports required under this License Agreement. If an inspection shows an under reporting or underpayment in excess of the greater of \$[\*\*\*) or [\*\*\*] percent ([\*\*\*)% of royalties payable for any twelve (12) month period, then the Company shall reimburse the Licensor for the reasonable cost of the inspection at the time the Company pays the unreported royalties, including any late charges as required by section 5.4 of this Agreement. All payments required under this Article 5 shall be due within sixty (60) days of the date the Licensor provides the Company notice of the payment due.

5.2 Within sixty (60) days from the end of each quarter of each calendar year for which royalties are due hereunder, the Company shall deliver to the Licensor complete and accurate reports, giving such particulars of the business conducted by the Company during the preceding quarter under this License Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

5.2.1 All Licensed Products used, leased or sold, by or for the Company or its Affiliates or sublicensees.

5.2.2 Total amounts invoiced for Licensed Products used, leased or sold, by or for the Company or its Affiliates or sublicensees.

5.2.3 Deductions applicable in computed "Net Sales" as defined in Section 1.8.

5.2.4 Total royalties due based on Net Sales by or for the Company or its Affiliates or sublicensees.

5.2.5 All other amounts due Licensor hereunder.

5.3 With each such report submitted, the Company shall pay to the Licensor the royalties due and payable under this Agreement. If no royalties shall be due, the Company shall not be required to make a report pursuant to this Article 5.

5.4 Amounts which are not paid when due and which are not the subject of a bona fide dispute shall accrue interest from the due date until paid, at a rate equal to the then prevailing prime rate of Citibank, N.A., plus [\*\*\*] percent ([\*\*\*]%).

5.5 The Licensor agrees to hold in confidence each report delivered by the Company pursuant to this Article 5. Notwithstanding the foregoing, the Licensor may disclose any such information required to be disclosed pursuant to any judicial, administrative or governmental request, subpoena, requirement or order, provided that the Licensor takes reasonable steps to provide the Company with the opportunity to contest such request, subpoena, requirement or order.

#### **ARTICLE 6 - PATENT PROSECUTION AND MAINTENANCE**

6.1 The Company shall be responsible for prosecution and maintenance of the intellectual property included in the Patent Rights including, but not limited to, the filing of patent applications which may be required or desirable. The Company agrees to keep the Licensor reasonably well informed with respect to the status and progress of any such applications, prosecutions and maintenance activities and to consult in good faith with the Licensor and use reasonable efforts to incorporate Licensor's reasonable suggestions regarding such prosecution. Both parties agree to provide reasonable cooperation to each other to facilitate the application and prosecution of patents pursuant to this Agreement.

**6.2** The Company may, in its discretion, elect to abandon any patent applications or issued patent in the Patent Rights or not file a patent application in any national jurisdiction. Prior to any such abandonment or decisions not to file in certain countries, the Company shall give Licensor at least sixty (60) days notice and a reasonable opportunity to take over prosecution of such Patent Rights. In such event, Licensor shall have the right, but not the obligation, to commence or continue such prosecution and to maintain any such Patent Rights under its own control and at its expense and the Company shall then have no further rights to such Patent Rights and no further royalty or other obligation to Licensor in connection therewith.

#### **ARTICLE 7 - TERMINATION**

**7.1** Should the Company fail to make payment to the Licensor of royalties due in accordance with the terms of this Agreement which are not the subject of a bona fide dispute between the Licensor and the Company, the Licensor shall have the right to terminate this License Agreement within sixty (60) days after giving said notice of termination unless the Company shall pay to the Licensor, within the 60-day period, all such royalties due and payable. Upon the expiration of the 60-day period, if the Company shall not have paid all such royalties due and payable, the rights, privileges and license granted hereunder shall, at the option of the Licensor, immediately terminate. In the event of a bona fide dispute over royalties, the parties shall resolve such dispute in accordance with Article 8.

**7.2** Upon any material breach or default of this License Agreement by the Company, other than as set forth in Section 7.1 above, the Licensor shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder upon giving sixty (60) days notice to the Company. Such termination shall become effective immediately unless the Company shall have cured any such breach or default prior to the expiration of such sixty (60) day period.

**7.3** The Company shall have the right at any time to terminate this Agreement in whole or as to any country by giving thirty (30) days notice thereof in writing to the Licensor.

**7.4** Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination or obligations under Sections 2.4.2, 4.11 and Articles 5,8,9, 10 and 14. The Company, its Affiliates and/or any sublicensee thereof may, however, after the effective date of such termination and continuing for a period not to exceed six (6) months thereafter, sell all completed Licensed Products, and any Licensed Products in the process of manufacture at the time of such termination, provided that the Company shall pay or cause to be paid to the Licensor the royalties thereon as required by Article 4 of this License Agreement and shall submit the reports required by Article 5 hereof on the sales of Licensed Products.

## **ARTICLE 8 - DISPUTE RESOLUTION**

**8.1** Any dispute or controversy arising out of or relating to this Agreement, its construction or its actual or alleged breach will be decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, it will be finally decided by an appropriate method of alternate dispute resolution, including without limitation, arbitration, in accordance with the applicable, then current, procedures of the American Arbitration Association. The arbitration panel will include members knowledgeable in the evaluation of the Technology. Judgment upon the award rendered may be entered into the highest court or forum having jurisdiction, state or federal. The provisions of this Section 8.1 will not apply to decisions on the validity of patent claims or to any dispute or controversy as to which any treaty or law prohibits such arbitration. The decision of the arbitration must be sanctioned by a court of law having jurisdiction to be binding upon and enforceable by the parties.

## **ARTICLE 9 - INFRINGEMENT AND OTHER ACTIONS**

**9.1** During the term of this Agreement, the Company and the Licensor shall promptly provide written notice, to the other party, of any alleged infringement by a third party of the Patent Rights and provide such other party with any available evidence of such infringement. In the event that a claim or suit is asserted or brought against the Company alleging that the manufacture or sale of any Licensed Product by the Company, an Affiliate of the Company, or any sublicensee, or the use of such Licensed Product by any customer of any of the foregoing, infringes proprietary rights of a third party, the Company may, in its sole discretion, modify such Licensed Product to avoid such infringement and/or may settle on terms that it deems advisable in its sole discretion, subject to paragraph 9.2.

**9.2** The Company shall have the right, but not the obligation, to prosecute and/or defend, at its own expense and utilizing counsel of its choice, any infringement of, and/or challenge to, the Patent Rights occurring during the term of the Agreement. In furtherance of such right, the Licensor hereby agrees that the Company may join the Licensor as a party in any such suit, without expense to the Licensor.

**9.3** Any recovery of damages by the Company, in any such suit, shall be applied first in satisfaction of any unreimbursed expenses and legal fees of the Company relating to the suit and then to the Licensor for any royalties credited in accordance with Section 9.4. The balance remaining from any such recovery shall be treated as Net Sales and shared in accordance with Article 4 hereof.

**9.4** The Company may credit up to fifty percent (50%) of any litigation costs incurred by the Company in any country pursuant to this Article 9 and up to 50% of all amounts paid in judgment or settlement of litigation within this Article 9 scope against royalties thereafter payable to the Licensor hereunder for such country and apply the same toward one-half of its actual, reasonable out-of-pocket litigation costs. If one-half of such litigation costs in such country exceeds 50% of royalties payable to the Licensor in any year in which such costs are incurred than the amount of such costs, expenses and amounts paid in judgment or settlement, in excess of such 50% of the royalties payable shall be carried over and credited against royalty payments in future years for such country.

**9.5** If within six (6) months after receiving notice of any alleged infringement, the Company shall have been unsuccessful in persuading the alleged infringer to desist, or shall not have brought and shall not be diligently prosecuting an infringement action, or if the Company shall notify the Licensor, at any time prior thereto, of its intention not to bring suit against the alleged infringer, then, and in those events only, the Licensor shall have the right, but not the obligation, to prosecute, at its own expense and utilizing counsel of its choice, any infringement of the Patent Rights. The total cost of any such infringement action commenced solely by the Licensor shall be borne by the Licensor and the Licensor shall keep any recovery or damages for infringement or otherwise derived therefrom and such shall not be applicable to any royalty obligation of the Company.

**9.7** In any suit to enforce and/or defend the Patent Rights pursuant to this License Agreement, the party not in control of such suit shall, at the request and reasonable expense of the controlling party, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

#### **ARTICLE 10 - INDEMNITY**

**10.1** The Company agrees to defend, indemnify and hold the Licensor harmless from and against all third party claims, demands or causes of action arising on account of any injury or death of persons or damage to property ("Claims") caused by or arising out of or resulting from the exercise or practice of the rights granted hereunder by Company or its Affiliates to the extent not due to the Licensor's negligence or willful misconduct and provided that prompt written notice of such Claim is provided to Company. The Company agrees that any sublicense agreement it enters relative to the Licensed Products shall contain a covenant by such sub-licensee providing for the indemnification of the Licensor as provided in this Article.

#### **ARTICLE 11 - ASSIGNMENT**

This Agreement and the rights and duties appertaining hereto may not be assigned by either party without first obtaining the written consent of the other which consent shall not be unreasonably withheld. Any such purported assignment, without the written consent of the other party, shall be null and of no effect. Notwithstanding the foregoing, the Company may assign this Agreement without the consent of the Licensor (i) to a purchaser, merging or consolidating corporation, or acquiror of substantially all of the Company's assets or business to which this Agreement pertains and/or pursuant to any reorganization qualifying under section 368 of the Internal Revenue Code of 1986 as amended, as may be in effect at such time, or (ii) to an Affiliate of the Company, provided that such assignee consents in writing to be bound by this Agreement to the same extent as Company.



**ARTICLE 12 - USE OF NAMES**

**12.1** Except as required by law, the Company or its Affiliates shall not use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of the Licensor or any of its units (including contraction, abbreviation or simulation of any of the foregoing) without the prior, written consent of the Licensor which shall not be unreasonably withheld; provided, however, that the Licensor acknowledges and agrees that the Company may use the names of the Licensor in various documents used by the Company for capital raising and financing without such prior written consent. Except as required by law, neither party shall disclose to a third party the terms of this Agreement, except to the extent that such other party is under confidence and needs to know the terms of this Agreement for business reasons.

**ARTICLE 13 - PAYMENTS, NOTICES AND OTHER COMMUNICATIONS**

**13.1** Any payment, notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and sent by certified first class mail, postage prepaid, by hand delivery or by facsimile if confirmed in writing, or by overnight courier, in each case effective upon receipt, at the addresses below or as otherwise designated by written notice given to the other party:

In the case of Licensor:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Tel:  
Fax:

In the case of the Company:

Dr. Jonathan Lewis  
Chief Executive Officer  
ZioPharm, Inc.  
300 George St.  
New Haven, CT 06511  
Tel: (203) 848-6969  
Fax: (203) 848-6007

## **ARTICLE 14 - CONFIDENTIALITY AND PUBLICATION**

**14.1** Licensor and Company each agree that all information related to this Agreement and contained in documents marked “confidential” and forwarded to one by the other (i) are to be received in strict confidence, (ii) are to be used only for the purposes of this Agreement, which may include disclosure of certain confidential information to the FDA and foreign regulatory agencies and which disclosures shall be expressly permitted hereunder and (iii) except as set forth in **14.1** (ii) above, are not to be disclosed by the recipient party (except as required by law or court order and then only provided reasonable notice of the impending disclosure is provided to the disclosing party), its agents or employees without the prior written consent of the other party, except to the extent that the recipient party can establish that such information:

- (a) was in the public domain at the time of disclosure; or
- (b) later became part of the public domain through no fault of the recipient party, its employees, agents, successors or assigns; or
- (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it and not under an obligation of confidence to the disclosing party; or
- (d) was already known by the recipient party at the time of disclosure; or
- (e) was independently developed by the recipient without use of the other party’s confidential information.

**14.2** Each party’s obligation of confidence under this Article 14 will be fulfilled by using at least the same degree of care with the other party’s confidential information as it uses to protect its own confidential information, but always a reasonable degree of care. This obligation will exist while this Agreement is in force and for a period of three (3) years thereafter.

**14.3** Licensor reserves the right to publish the general scientific findings from research related to Technology, with due regard to the protection of Company’s confidential information. Licensor will submit the manuscript of any proposed publication to Company at least thirty (30) calendar days before publication in order that Company have the right to delete its confidential information review and protect any potential inventions set forth therein. Upon Company’s request, publication may be delayed up to sixty (60) additional days to enable Company to secure adequate intellectual property protection on inventions of Licensor that may be set forth in the publication and to which Company has rights under this Agreement.

## **ARTICLE 15 - REPRESENTATIONS AND WARRANTIES**

**15.1** The Licensor represents and warrants to the Company, (i) as of the date of this Agreement and (ii) as of the date of each payment to be made by the Company to the Licensor under Article 4 hereof solely with respect to items under the control of Licensor, that:

**15.2** The Licensor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, the Licensor has the requisite corporate power and authority to execute and deliver this Agreement and this Agreement is enforceable against the Licensor upon its terms.

**15.3** The execution and delivery of this Agreement and the other agreements contemplated hereby do not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of the Licensor, or (ii) result in (x) any violation or breach of, constitute (with or without notice or lapse of time or both) a default under or conflict with (or give rise to a right of termination, amendment, cancellation or acceleration of any material obligation or loss of any benefit under) the provisions of any lease, contract or other agreement to which the Licensor is a party or by which it or any of its properties or assets is otherwise bound or (y) the imposition of any lien, pledge, hypothecation, mortgage, security interest, claim, lease, charge, option, right of first refusal or first offer, easement, servitude, transfer restriction, voting requirement or any other encumbrance, restriction or limitation on any of the properties or assets of the Licensor.

**15.4** No consent, approval or authorization of, or declaration or filing with, any Governmental Authority or Person (a "Consent") is required on the part of the Licensor in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby or in connection with the Technology.

**15.5** No oral or written communication has been received by the Licensor, and no investigation, regulatory enforcement action (including seizure, injunction, civil penalty or criminal action) or any related Governmental Authority review is or, in respect of any Technology, was at any time pending or, to the knowledge of the Licensor is threatened by any Governmental Authority with respect to (i) any alleged or actual violation by the Licensor of any permit, Law or other requirement of any Governmental Authority relating to the operations conducted by the Licensor with respect to any Technology or (ii) any alleged or actual failure to have or maintain in effect all permits required in connection with the operations conducted by the Licensor with respect to any Technology. The Licensor has not received from the Federal Drug Administration ("FDA"), the U.S. Drug Enforcement Administration ("DEA" or any similar state, local or foreign Governmental Authority any written notice (i) regarding the approvability or approval of any of the Technology, or (ii) alleging any violation by the Licensor of any Law relating to any of the Technology. No product incorporating Technology has been withdrawn, suspended or discontinued by the Licensor as a result of any action by the FDA, the DEA or any similar state, local or foreign Governmental Authority, either within or outside the U.S. (whether voluntarily or otherwise).

**15.6** There are no suits or actions, administrative, arbitration or other proceedings, or governmental investigations pending or, to the knowledge of the Licensor, threatened against or affecting the Licensor with respect to the Technology. No Entity has notified the Licensor of any material claim against the Licensor alleging any personal property or economic injury, loss or damage incurred as a result of or relating to the use of the Technology. There is no judgment, order, injunction, decree, writ or award against the Licensor that is not satisfied and remains outstanding with respect to any Technology.

**15.7** The US and foreign patent applications and patents and invention disclosures itemized on Appendix A set forth all of the patents and patent applications and inventions relating to isophosphoramidate mustard compounds, owned by, or licensed to, the Licensor as of the date of this Agreement.

**15.8** The Licensor has taken all reasonable actions necessary or appropriate to preserve the confidentiality of all trade secrets, proprietary and other confidential information material to the business and operations of the Licensor.

**15.9** There are no licenses, options, restrictions, liens, rights of third parties, disputes, royalty obligations, proceedings or claims relating to, affecting, or limiting the Licensor's rights or the rights of the Company under this Agreement after giving effect to this Agreement, or which may lead to a claim of infringement or invalidity regarding, any part or all of the Technology or its use.

**15.9** The Technology was not supported in whole or part by funding or grants by any federal or state agency. The Licensor has provided the Company with copies of all documents reflecting support or funding for all or part of the research leading to the Technology, and has listed all funding agencies on Appendix B.

#### **ARTICLE 16 - MISCELLANEOUS PROVISIONS**

**16.1** This License Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Connecticut, without regard to principles of conflicts of laws.

**16.2** The parties hereto acknowledge that this Agreement, including the Appendices and documents incorporated by reference, sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, supersedes all previous communications, representations or understandings, either oral or written between the parties relating to the subject matter hereof, and shall not be subject to any change of modification except by the execution of a written instrument subscribed to by the parties hereto.

**16.3** The provisions of this License Agreement are severable, and in the event that any provision of this License Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

**16.4** The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this License Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

**16.5** The headings of the several articles are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**16.6** This Agreement will not be binding upon the parties until it has been signed below on behalf of each party, in which event, it shall be effective as of the date recited on page one.

**16.7** Each party hereto shall be excused from any breach of this Agreement which is proximately caused by governmental regulation, act of war, strike, act of God or other similar circumstance normally deemed outside the control of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement, in triplicate by proper persons thereunto duly authorized.

**ZIOPHARM, INC.**

**DEKK-TEK**

By: /s/ Jonathan Lewis  
\_\_\_\_\_  
Name: Jonathan Lewis  
\_\_\_\_\_  
Title: CEO  
\_\_\_\_\_  
Date: 11/9/04  
\_\_\_\_\_

By: /s/ Lee Roy Morgan  
\_\_\_\_\_  
Name: Lee Roy Morgan  
\_\_\_\_\_  
Title: CEO  
\_\_\_\_\_  
Date: 10/15/04  
\_\_\_\_\_

**APPENDIX A**

(All United States and foreign patents and patent applications and invention disclosures to be listed here)

**APPENDIX B**

None

## SUBSCRIPTION AGREEMENT

SUBSCRIPTION AGREEMENT (this "Agreement") made as of the last date set forth on the signature page hereof between Ziopharm, Inc. (the "Company"), and the undersigned (the "Subscriber").

## WITNESSETH:

WHEREAS, the Company has retained Paramount BioCapital, Inc. ("Paramount") to act as exclusive placement agent, on a "best efforts" basis, in a private offering (the "Offering") consisting of shares of Series A Convertible Preferred Stock, par value \$.001 per share, stated value \$2.16 per share (the "Preferred Stock" or the Shares) of the Company, and in connection therewith has authorized Paramount to engage one or more other firms to assist in finding qualified subscribers for the Preferred Stock (such other firms, if any, together with Paramount, the "Placement Agent");

WHEREAS, the Company desires to issue a minimum of 6,944,445 shares of Preferred Stock (the "Minimum Offering") and a maximum of 11,574,075 shares of Preferred Stock (the "Maximum Offering") with an option in favor of Paramount to offer up to an additional 2,314,815 shares of Preferred Stock to cover over-allotments (the "Increased Maximum Offering"). The minimum investment is \$100,001.52 (46,297 shares of Preferred Stock), although the Company and the Placement Agent, in their sole discretion, may allow sales of a fewer number of Shares. Each share of Preferred Stock is initially convertible at the option of the holder thereof into one (1) share of common stock, par value \$.001 per share, of the Company (the "Common Stock"), subject to adjustment as provided in the form of Certificate of Designations attached as Appendix B to the Confidential Private Placement Memorandum dated January 18, 2005 (such memorandum, together with all amendments thereof and supplements and appendices thereto, the "Memorandum");

WHEREAS, the Subscriber desires to purchase that number of shares of Preferred Stock set forth on the signature page hereof on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

I. SUBSCRIPTION FOR PREFERRED SHARES AND REPRESENTATIONS BY SUBSCRIBER

1.1 Subject to the terms and conditions hereinafter set forth and in the Memorandum, the Subscriber hereby irrevocably subscribes for and agrees to purchase from the Company such number of shares of Preferred Stock and the Company agrees to sell to the Subscriber such number of shares of Preferred Stock, as is set forth on the signature page hereof (the "Preferred Shares") at a per share price equal to \$2.16 (the "Per Share Price"). The purchase price is payable by personal or business check or money order made payable to "US Bank Trust National Association as Escrow Agent for Paramount/Ziopharm" contemporaneously with the execution and delivery of this Agreement by the Subscriber. Subscribers may also pay the subscription amount by wire transfer of immediately available funds to:

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**US BANK TRUST N.A.**  
**ST. PAUL MN**  
**ABA Routing #:**  
**Further Credit to Account Name:**  
**Account Number:**  
**Financial Beneficiary Recipient/Sub acct: of Paramount Cap/Ziopharm Inc.**  
**SEI/Sub acct #:**  
**Attention:**  
**Phone:**

The Subscriber understands, however, that the purchase and sale of the Preferred Shares is contingent upon the Company making sales of the Minimum Offering amount prior to the Offering Termination Date (as defined below).

1.2 The Subscriber recognizes that the purchase of the Preferred Shares involves a high degree of risk including, but not limited to, the following: (a) the Company remains a development stage business with limited operating history and requires substantial funds in addition to the proceeds of the Offering; (b) an investment in the Company is highly speculative, and only investors who can afford the loss of their entire investment should consider investing in the Company and the Preferred Shares; (c) the Subscriber may not be able to liquidate its investment; (d) transferability of the Preferred Shares and the shares of Common Stock issuable upon conversion of the Preferred Shares (sometimes hereinafter collectively referred to as the "Securities") is extremely limited; (e) in the event of a disposition, the Subscriber could sustain the loss of its entire investment; and (f) the Company has not paid any dividends since its inception and does not anticipate paying any dividends, even if declared by the Board of Directors pursuant to the terms of the Preferred Stock. Without limiting the generality of the representations set forth in Section 1.5 below, the Subscriber represents that the Subscriber has carefully reviewed the section of the Memorandum captioned "Risk Factors."

1.3 The Subscriber represents that the Subscriber is an "accredited investor" as such term is defined in Rule 501 of Regulation D ("Regulation D") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), as indicated by the Subscriber's responses to the questions contained in Article VII hereof, and that the Subscriber is able to bear the economic risk of an investment in the Preferred Shares.

1.4 The Subscriber hereby acknowledges and represents that (a) the Subscriber has knowledge and experience in business and financial matters, prior investment experience, including investment in securities that are non-listed, unregistered and/or not traded on a national securities exchange nor on the National Association of Securities Dealers, Inc. (the "NASD") automated quotation system ("NASDAQ"), or the Subscriber has employed the services of a "purchaser representative" (as defined in Rule 501 of Regulation D), attorney and/or accountant to read all of the documents furnished or made available by the Company both to the Subscriber and to all other prospective investors in the Preferred Stock to evaluate the merits and risks of such an investment on the Subscriber's behalf; (b) the Subscriber recognizes the highly speculative nature of this investment; and (c) the Subscriber is able to bear the economic risk that the Subscriber hereby assumes.

1.5 The Subscriber hereby acknowledges receipt and careful review of this Agreement, the form of Certificate of Designations attached to the Memorandum as Appendix B, the Memorandum (which includes the Risk Factors ), including all appendices thereto, and any documents which may have been made available upon request as reflected therein (collectively referred to as the "Offering Materials") and hereby represents that the Subscriber has been furnished by the Company during the course of the Offering with all information regarding the Company, the terms and conditions of the Offering and any additional information that the Subscriber has requested or desired to know, and has been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of the Company concerning the Company and the terms and conditions of the Offering.

1.6 (a) In making the decision to invest in the Preferred Shares the Subscriber has relied solely upon the information provided by the Company in the Offering Materials. To the extent necessary, the Subscriber has retained, at its own expense, and relied upon appropriate professional advice regarding the investment, tax and legal merits and consequences of this Agreement and the purchase of the Preferred Shares hereunder. The Subscriber disclaims reliance on any statements made or information provided by any person or entity in the course of Subscriber's consideration of an investment in the Preferred Shares other than the Offering Materials. The Subscriber acknowledges and agrees that (i) the Company has prepared the Offering Materials and that no other person, including without limitation, the Placement Agent, has supplied any information for inclusion in the Offering Materials other than information furnished in writing to the Company by the Placement Agent specifically for inclusion in those parts of the Offering Materials relating specifically to the Placement Agent, (ii) the Placement Agent has no responsibility for the accuracy or completeness of the Offering Materials and (iii) the Subscriber has not relied upon the independent investigation or verification, if any, that may have been undertaken by the Placement Agent.

(b) The Subscriber represents that (i) the Subscriber was contacted regarding the sale of the Preferred Shares by the Company or the Placement Agent (or an authorized agent or representative of the Company or the Placement Agent) with whom the Subscriber had a prior substantial pre-existing relationship and (ii) no shares of Preferred Stock were offered or sold to it by means of any form of general solicitation or general advertising, and in connection therewith, the Subscriber did not (A) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio, whether closed circuit, or generally available; or (B) attend any seminar meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising.

1.7 The Subscriber hereby represents that the Subscriber, either by reason of the Subscriber's business or financial experience or the business or financial experience of the Subscriber's professional advisors (who are unaffiliated with and not compensated by the Company or any affiliate or selling agent of the Company, including the Placement Agent, directly or indirectly), has the capacity to protect the Subscriber's own interests in connection with the transaction contemplated hereby.

1.8 The Subscriber hereby acknowledges that the Offering has not been reviewed by the United States Securities and Exchange Commission (the "SEC") nor any state regulatory authority since the Offering is intended to be exempt from the registration requirements of Section 5 of the Securities Act pursuant to Regulation D promulgated thereunder. The Subscriber understands that the Securities have not been registered under the Securities Act or under any state securities or "blue sky" laws and agrees not to sell, pledge, assign or otherwise transfer or dispose of the Securities unless they are registered under the Securities Act and under any applicable state securities or "blue sky" laws or unless an exemption from such registration is available.

1.9 The Subscriber understands that the Securities comprising the Preferred Shares have not been registered under the Securities Act by reason of a claimed exemption under the provisions of the Securities Act that depends, in part, upon the Subscriber's investment intention. In this connection, the Subscriber hereby represents that the Subscriber is purchasing the Securities for the Subscriber's own account for investment and not with a view toward the resale or distribution to others. The Subscriber, if an entity, further represents that it was not formed for the purpose of purchasing the Securities.

1.10 The Subscriber understands that there is no public market for the Preferred Shares nor the shares of Common Stock issuable upon conversion of the Preferred Shares and that no market may develop for any of such Securities. The Subscriber understands that even if a public market develops for such Securities, Rule 144 ("Rule 144") promulgated under the Securities Act requires for non-affiliates, among other conditions, a one-year holding period prior to the resale (in limited amounts) of securities acquired in a non-public offering without having to satisfy the registration requirements under the Securities Act. The Subscriber understands and hereby acknowledges that the Company is under no obligation to register any of the Preferred Shares or any of the shares of Common Stock issuable upon conversion of the Preferred Shares under the Securities Act or any state securities or "blue sky" laws other than as set forth in Article V.

1.11 The Subscriber consents to the placement of a legend on any certificate or other document evidencing the Securities that such Securities have not been registered under the Securities Act or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in this Agreement. The Subscriber is aware that the Company will make a notation in its appropriate records with respect to the restrictions on the transferability of such Securities. The legend to be placed on each certificate shall be in form substantially similar to the following:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR ANY STATE SECURITIES OR "BLUE SKY LAWS", AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR COMPLIANCE WITH RULE 144 PROMULGATED UNDER SUCH ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

1.12 The Subscriber understands that the Placement Agent and/or the Company will review this Agreement and are hereby given authority by the Subscriber to call Subscriber's bank or place of employment or otherwise review the financial standing of the Subscriber; and it is further agreed that the Placement Agent and the Company, each at their sole discretion, reserve the unrestricted right, without further documentation or agreement on the part of the Subscriber, to reject or limit any subscription and to close the Offering to the Subscriber at any time and that the Company will issue stop transfer instructions to its transfer agent with respect to such Securities. No subscriptions for fractional shares of Preferred Stock will be accepted.

1.13 The Subscriber hereby represents that the address of the Subscriber furnished by Subscriber on the signature page hereof is the Subscriber's principal residence if Subscriber is an individual or its principal business address if it is a corporation or other entity.

1.14 The Subscriber represents that the Subscriber has full power and authority (corporate, statutory and otherwise) to execute and deliver this Agreement and to purchase the Preferred Shares and the shares of Common Stock issuable upon conversion of the Preferred Shares. This Agreement constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.

1.15 If the Subscriber is a corporation, partnership, limited liability company, trust, employee benefit plan, individual retirement account, Keogh Plan, or other tax-exempt entity, it is authorized and qualified to invest in the Company and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so.

1.16 The Subscriber acknowledges that if he or she is a Registered Representative of an NASD member firm, he or she must give such firm the notice required by the NASD's Rules of Fair Practice, receipt of which must be acknowledged by such firm in Section 7.4 below.

1.17 The Subscriber acknowledges that at such time, if ever, as the Securities are registered (as such term is defined in Article V hereof), sales of the Securities will be subject to state securities laws.

1.18 (a) Subject to the provision below and Section 1.18(b), the Subscriber hereby agrees that from the earlier to occur of (i) the date of the initial offering of the Common Stock to the public pursuant to a registration statement under the Securities Act (the "IPO") or (ii) the first date (the "Trading Date") on which the Common Stock (or securities received in exchange for Common Stock) trades on a national securities exchange or on the NASDAQ, including the Over the Counter Bulletin Board (a "Trading Event") and continuing for a period of 180 days thereafter or such longer period as may be requested by the underwriter or underwriters, in the case of an IPO (the "Lock-Up Period"), the Subscriber will not, without the prior written consent of the Company, offer, pledge, sell, contract to sell, grant any option for the sale of, or otherwise dispose of, directly or indirectly, the Registrable Securities (as defined in Section 5.1) purchased or acquired by the Subscriber. In addition, the Subscriber agrees that during the period from the date that Subscriber was first contacted with respect to the potential purchase of the Preferred Shares through the last date upon which Subscriber holds any Securities or Registrable Securities, the Subscriber will not directly or indirectly, through related parties, affiliates or otherwise sell "short" or "short against the box" (as those terms are generally understood) any equity security of the Company.

(b) In connection with any subsequent public offering of the Company's securities, the Holder hereby agrees to be subject to a lock-up for a period of 60 days or such longer period following such public offering as and if required by the underwriter or underwriters of such public offering. The foregoing lock-ups shall be applicable regardless of whether the Securities are then registered for re-sale under the Securities Act. This Section 1.18 shall be binding upon any transferee of the Securities.

(c) In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities (as defined below) of each Holder (as defined below) (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

1.19 (a) The Subscriber agrees not to issue any public statement with respect to the Subscriber's investment or proposed investment in the Company or the terms of any agreement or covenant between them and the Company without the Company's prior written consent, except such disclosures as may be required under applicable law or under any applicable order, rule or regulation.

(b) The Company agrees not to disclose the names, addresses or any other information about the Subscribers, except as required by law; provided, that the Company may use the name (but not the address) of the Subscriber in any registration statement filed pursuant to Article V in which the Subscriber's shares are included.

1.20 The Subscriber represents and warrants that it has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Subscriber hereby agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Subscriber hereunder.

1.21 The Subscriber agrees to hold the Company and its directors, officers, employees, affiliates, controlling persons and agents (including the Placement Agent and their officers, directors, employees, counsel, controlling persons and agents) and their respective heirs, representatives, successors and assigns harmless and to indemnify them against all liabilities, costs and expenses incurred by them as a result of (a) any sale or distribution of the Securities by the Subscriber in violation of the Securities Act or any applicable state securities or "blue sky" laws; or (b) any false representation or warranty or any breach or failure by the Subscriber to comply with any covenant made by the Subscriber in this Agreement (including the Confidential Investor Questionnaire contained in Article VII herein) or any other document furnished by the Subscriber to any of the foregoing in connection with this transaction.

## II. REPRESENTATIONS BY AND COVENANTS OF THE COMPANY

The Company hereby represents and warrants to the Subscriber that:

2.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to conduct its business.

2.2 Capitalization and Voting Rights. The authorized, issued and outstanding capital stock of the Company is as set forth in the Memorandum and all issued and outstanding shares of the Company are validly issued, fully paid and nonassessable. Except as set forth in the Memorandum, there are no outstanding options, warrants, agreements, convertible securities, preemptive rights or other rights to subscribe for or to purchase any shares of capital stock of the Company. Except as set forth in the Memorandum and as otherwise required by law, there are no restrictions upon the voting or transfer of any of the shares of capital stock of the Company pursuant to the Company's Amended Certificate of Incorporation (the "Certificate of Incorporation"), By-Laws or other governing documents or any agreement or other instruments to which the Company is a party or by which the Company is bound.

2.3 Authorization; Enforceability. The Company has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary for the (i) authorization execution, delivery and performance of this Agreement by the Company; and (ii) authorization, sale, issuance and delivery of the Securities contemplated hereby and the performance of the Company's obligations hereunder has been taken. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. The Preferred Shares, when issued and fully paid for in accordance with the terms of this Agreement, will be validly issued, fully paid and nonassessable. The Company shall, at all times when any of the Preferred Shares remain outstanding, have authorized and reserved for issuance a sufficient number of shares of Common Stock to provide for conversion of the Preferred Stock. Upon the issuance and delivery of the shares of Common Stock issuable upon conversion of the Preferred Shares, such shares of Common Stock will be validly issued, fully paid and nonassessable. The issuance and sale of the Preferred Shares contemplated hereby and the issuance and sale of the Common Stock underlying the Preferred Stock, will not give rise to any preemptive rights or rights of first refusal on behalf of any person which have not been waived in connection with this offering.

2.4 Terms of Preferred Stock. The Preferred Stock has all of the rights, preferences and privileges as set forth in the form of the Certificate of Designations attached as Appendix B to the Memorandum.

2.5 No Conflict; Governmental Consents.

(a) The execution and delivery by the Company of this Agreement and the consummation of the transactions contemplated hereby will not result in the violation of any material law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company is bound, or of any provision of the Certificate of Incorporation or By-Laws of the Company, and will not conflict with, or result in a material breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Company is a party or by which it is bound or to which any of its properties or assets is subject, nor result in the creation or imposition of any lien upon any of the properties or assets of the Company.

(b) No consent, approval, authorization or other order of any governmental authority is required to be obtained by the Company in connection with the authorization, execution and delivery of this Agreement or with the authorization, issue and sale of the Preferred Shares or the Securities comprising the Preferred Shares, except such filings as may be required to be made with the SEC, NASD, NASDAQ and with any state or foreign blue sky or securities regulatory authority.

2.6 Licenses. Except as otherwise set forth in the Memorandum, the Company has sufficient licenses, permits and other governmental authorizations currently required for the conduct of its business or ownership of properties and is in all material respects complying therewith.

2.7 Litigation. Except as otherwise set forth in the Memorandum, the Company knows of no pending or threatened legal or governmental proceedings against the Company which could materially adversely affect the business, property, financial condition or operations of the Company or which materially and adversely questions the validity of this Agreement or any agreements related to the transactions contemplated hereby or the right of the Company to enter into any of such agreements, or to consummate the transactions contemplated hereby or thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which could materially adversely affect the business, property, financial condition or operations of the Company. Except as otherwise set forth in the Memorandum, there is no action, suit, proceeding or investigation by the Company currently pending in any court or before any arbitrator or that the Company intends to initiate.

2.8 Disclosure. The information set forth in the Offering Materials as of the date hereof contains no untrue statement of a material fact nor omits to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

2.9 Investment Company. The Company is not an “investment company” within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

2.10 Placement Agent. The Company has engaged, consented to and authorized the Placement Agent to act as agent of the Company solely in connection with the transactions contemplated by this Agreement. The Company will pay the Placement Agent a commission in the form of both cash and warrants (the “Introduction Warrants”) and a non-accountable expense allowance of \$50,000.00, and the Company agrees to indemnify and hold harmless the Subscribers from and against all fees, commissions or other payments owing by the Company to Paramount or any other person or firm acting on behalf of the Company hereunder.

2.11 Financial Statements. The financial statements of the Company included in the Memorandum (the “Financial Statements”) fairly present in all material respects the financial condition and position of the Company at the dates and for the periods indicated; and have been prepared in conformity with generally accepted accounting principles, consistently applied throughout the periods covered thereby. Since the date of the most recent balance sheet included as part of the Financial Statements, there has not been to the Company’s knowledge: (i) any change in the assets, liabilities, financial condition or operations of the Company from that reflected in the Financial Statements, other than changes in the ordinary course of business, none of which individually or in the aggregate has had or is reasonably expected to have a material adverse effect on such assets, liabilities, financial condition or operations; or (ii) any other event or condition of any character that, either individually or cumulatively, has materially and adversely affected the business, assets, liabilities, financial condition or operations of the Company (a “Material Adverse Effect”), except for the expenses incurred in connection with the transactions contemplated by this Agreement.

2.12 Intellectual Property. Except as would not reasonably be expected to have a Material Adverse Effect, (a) to its knowledge, the Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes necessary for its business as now conducted and as presently proposed to be conducted, without any known infringement of the rights of others; (b) except as disclosed in the Memorandum, there are no material outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any material options, licenses or agreements of any kind with respect to the patents, trade secrets, licenses, and other proprietary rights and processes of any other person or entity; (c) the Company has not received any written communications from a third party alleging that the Company has violated or, by conducting its business as presently proposed to be conducted, would violate any of the patents or other proprietary rights of any other person or entity.

2.13 Title to Properties and Assets; Liens, Etc. To its knowledge, the Company has good and marketable title to its properties and assets, including the properties and assets reflected in the most recent balance sheet included in the Financial Statements, and good title to its leasehold estates, in each case subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than (a) those resulting from taxes which have not yet become delinquent; (b) liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of the Company; and (c) those that have otherwise arisen in the ordinary course of business. The Company is in compliance with all material terms of each lease to which it is a party or is otherwise bound.

2.14 Obligations to Related Parties. Except as disclosed in the Memorandum or as would not reasonably be expected to have a Material Adverse Effect, there are no obligations of the Company to officers, directors, stockholders, or employees of the Company other than (a) for payment of salary or other compensation for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company and (c) for other standard employee benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company). Except as may be disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

### III. TERMS OF SUBSCRIPTION

3.1 The minimum investment that may be made by any prospective investor in the Preferred Stock is \$100,001.52 (46,297 shares of Preferred Stock). Subscriptions for investment below the minimum investment may be accepted at the discretion of the Placement Agent and the Company.

3.2 Pending the sale of the Preferred Shares, all funds paid hereunder shall be deposited by the Company in escrow with US Bank Trust, having a branch at 100 Wall Street, Suite 1600, New York, New York 10005. If the Company shall not have obtained subscriptions (including this subscription) for purchases of the Minimum Offering amount on or before February 15, 2005, (subject to extension without notice to subscribers by the Placement Agent) (such date, as it may be so extended, the "Offering Termination Date"), then this subscription shall be void and all funds paid hereunder by the Subscriber, without interest, shall be promptly returned to the Subscriber. The Subscriber hereby authorizes and directs the Company and the Placement Agent to direct the Escrow Agent to return any funds for unaccepted subscriptions to the same account from which the funds were drawn, without interest, including any customer account maintained with the Placement Agent.

3.3 Upon receipt of the Minimum Offering amount on or prior to the Offering Termination Date, the Company may conduct a closing of the purchase and sale of Preferred Stock (a "Closing") and may conduct subsequent Closings on an interim basis until the Maximum Offering amount (or Increased Maximum Offering amount, if applicable) has been obtained or until the Offering Termination Date, as extended, if at all.

3.4 Certificates representing the Preferred Shares purchased by the Subscriber pursuant to this Agreement will be prepared for delivery to the Subscriber within 15 business days following the Closing at which such purchase takes place. The Subscriber hereby authorizes and directs the Company to deliver the certificates representing the Preferred Shares purchased by the Subscriber pursuant to this Agreement directly to the Subscriber's account maintained by Paramount, if any, or, if no such account exists, to the residential or business address indicated on the signature page hereto.

3.5 Placement of the shares of Preferred Stock will be made by the Company who will remit certain compensation to the Placement Agent for introduction to investors and other services.

### IV. CONDITIONS TO OBLIGATIONS OF THE SUBSCRIBERS

4.1 The Subscriber's obligation to purchase the Preferred Shares at the Closing at which such purchase is to be consummated is subject to the fulfillment on or prior to such Closing of the following conditions, which conditions may be waived at the option of each Subscriber to the extent permitted by law:



(a) Representations and Warranties Correct. The representations and warranties made by the Company in Article II hereof shall be true and correct in all material respects.

(b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the date of such Closing shall have been performed or complied with in all material respects.

(c) No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or restraining the transactions contemplated by this Agreement.

(d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person, which shall not have been obtained, to issue the Securities (except as otherwise provided in this Agreement).

## V. REGISTRATION RIGHTS

5.1 Definitions. As used in this Agreement, the following terms shall have the following meanings.

(a) The term “Holder” shall mean any holder of Registrable Securities.

(b) The terms “register”, “registered” and “registration” refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or order of effectiveness of such registration statement or document.

(c) The term “Registrable Securities” shall mean (i) the shares of Common Stock issuable upon conversion of the shares of Preferred Stock sold in the Offering; (ii) the shares of Common Stock issuable upon conversion of the shares of Preferred Stock underlying the Placement Warrants; and (iii) any shares of Common Stock issuable (or issuable upon the conversion or exercise of any warrant, right or other security that is issued) pursuant to a dividend or other distribution with respect to or in replacement of any Securities; provided, however, that securities shall only be treated as Registrable Securities if and only for so long as they (A) have not been disposed of pursuant to a registration statement declared effective by the SEC; (B) have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale; (C) are held by a Holder or a permitted transferee of a Holder pursuant to Section 5.11; and (D) may not be disposed of under Rule 144(k) under the Securities Act without restriction.

5.2 Piggyback Registration.

(a) The Company agrees that if, at any time, and from time to time, after the earlier to occur of (i) an IPO and (ii) a Trading Event, the Board of Directors of the Company (the “Board”) shall authorize the filing of a registration statement under the Securities Act (other than the IPO or a registration statement on Form S-8, Form S-4 or any other form that does not include substantially the same information as would be required in a form for the general registration of securities) in connection with the proposed offer of any of its securities by it or any of its stockholders, the Company shall: (A) promptly notify each Holder that such registration statement will be filed and that the Registrable Securities then held by such Holder will be included in such registration statement at such Holder’s request; (B) cause such registration statement to cover all of such Registrable Securities issued to such Holder for which such Holder requests inclusion; (C) use best efforts to cause such registration statement to become effective as soon as practicable; and (D) take all other reasonable action necessary under any Federal or state law or regulation of any governmental authority to permit all such Registrable Securities that have been issued to such Holder to be sold or otherwise disposed of, and will maintain such compliance with each such Federal and state law and regulation of any governmental authority for the period necessary for such Holder to promptly effect the proposed sale or other disposition.

(b) Notwithstanding any other provision of this Section 5.2, the Company may at any time, abandon or delay any registration commenced by the Company. In the event of such an abandonment by the Company, the Company shall not be required to continue registration of shares requested by the Holder for inclusion, the Holder shall retain the right to request inclusion of shares as set forth above and the withdrawn registration shall not be deemed to be a registration request for the purposes of Section 5.2(c) below.

(c) Each Holder shall have the right to request inclusion of any of its Registrable Securities in a registration statement as described in this Section 5.2, up to three times.

### 5.3 Demand Registration.

#### (a) Registration on Request.

(i) The Company agrees that if, at any time, and from time to time, but at least 180 days after the earlier to occur of (i) an IPO and (ii) a Trading Event, and ending on the date that is five years from the final Closing, one or more of the Holders desire to effect the registration under the Securities Act of outstanding Registrable Securities, such Holders may make a written request that the Company effect such registration; provided that such registration covers at least 51% of the Registrable Securities owned by all the Holders at such time; and provided, further, that the Holders shall be entitled to no more than one such demand registration.

(ii) The Company further agrees that if, at any time, and from time to time, after the Company has qualified for the use of Form S-3 or any successor form, and ending on the date that is five years from the final Closing, one or more of the Holders desire to effect the registration under the Securities Act on Form S-3 or any successor form (“Short-Form Registration”) of outstanding Registrable Securities, such Holders may make a written request that the Company effect a Short-Form Registration; provided that the aggregate price to the public of the shares as to which such registration is requested (based on the then current market price and before deducting underwriting discounts and commissions) would equal or exceed \$5,000,000. It is understood and agreed that the Holders may make good faith requests for Short-Form Registrations on an unlimited number of occasions; provided that, the Company shall not be required to effect more than one Short Form Registration in any 12 month period.

(iii) Each request made by one or more of the Holders pursuant to subsections (i) or (ii) above (the “Initiating Holders”) will specify the number of shares of Registrable Securities proposed to be sold and will also specify the intended method of disposition thereof. Following receipt of any such request, the Company shall immediately notify all Holders other than the Initiating Holders of receipt of such request and the Company shall use best efforts to file, within 60 days of such request, the registration under the Securities Act of the Registrable Securities which the Company has been so requested to register in the request by the Initiating Holders (and in all notices received by the Company from such other Holders within 30 days after the giving of such notice by the Company), to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities to be registered. If such method of disposition shall be an underwritten public offering, the Holders of a majority of the shares of Registrable Securities to be sold in such offering may designate the managing underwriter of such offering, subject to the approval of the Company, which approval shall not be unreasonably withheld or delayed. The Holders will be permitted to withdraw Registrable Securities from a registration at any time prior to the effective date of such registration; provided the remaining number of shares of Registrable Securities subject to a requested registration is not less than the minimum amount required pursuant to this Section 5.3.

(b) Limitations on Demand Registration. Notwithstanding Section 5.3(a),

(i) the Company shall not be obligated to file a registration statement relating to a registration request pursuant to this Section 5.3 at any time during the 180-day period immediately following the effective date of a registration statement filed by the Company covering a firm commitment underwritten public offering of securities of the Company; and if the Board determines, in its good faith judgment, that the Company should not file any registration statement otherwise required to be filed pursuant to Section 5.3 or should withdraw any such previously filed registration statement because the Company is engaged in or in good faith plans to engage in any financing, acquisition or other material transaction which would be adversely affected by the filing or maintenance of a registration statement otherwise required to be filed or maintained pursuant to Section 5.3, or that the Company is in the possession of material nonpublic information required to be disclosed in such registration statement or an amendment or supplement thereto, the disclosure of which in such registration statement would be materially disadvantageous to the Company (a “Disadvantageous Condition”), the Company shall be entitled to postpone for the shortest reasonable period of time (but not exceeding 180 days from the date of the determination), the filing of such registration statement or, if such registration statement has already been filed, may withdraw such registration statement and shall promptly give the Holders written notice of such determination, containing a general statement of the reasons for such postponement and an approximation of the anticipated delay. If the Company shall so postpone the filing or effect the withdrawal of the registration statement, the Holders who made the request for registration shall have the right to withdraw the request for registration by giving written notice to the Company within 30 days after receipt of the notice of postponement. Upon the receipt of any such notice, such Holders shall forthwith discontinue use of the prospectus contained in such registration statement and, if so directed by the Company, shall deliver to the Company all copies of the prospectus then covering such Registrable Securities current at the time of receipt of such notice (or, if no registration statement has yet been filed, all drafts of the prospectus covering such Registrable Securities). If any Disadvantageous Condition shall cease to exist, the Company shall promptly notify the Holders to such effect. If any registration statement shall have been withdrawn, the Company shall, at such time as it is possible or, if earlier, at the end of the 180-day period following such withdrawal, file a new registration statement covering the Registrable Securities that were covered by such withdrawn registration statement, and the effectiveness of such registration statement shall be maintained for such time as may be necessary so that the period of effectiveness of such new registration statement, when aggregated with the period during which such withdrawn registration statement was effective, if any, shall be such time as may be otherwise required by this Agreement. The Company’s right to delay a request for registration or to withdraw a registration statement pursuant to this Section 5.3 may not be exercised more than once in any one-year period.

5.4 Registration Procedures. Whenever required under this Article V to include Registrable Securities in a Company registration statement, the Company shall, as expeditiously as reasonably possible:

(a) Use best efforts to (i) cause such registration statement to become effective, and (ii) cause such registration statement to remain effective until the earliest to occur of (A) such date as the sellers of Registrable Securities (the “Selling Holders”) have completed the distribution described in the registration statement and (B) such time that all of such Registrable Securities are no longer, by reason of Rule 144(k) under the Act, required to be registered for the sale thereof by such Holders. The Company will also use its best efforts to, during the period that such registration statement is required to be maintained hereunder, file such post-effective amendments and supplements thereto as may be required by the Securities Act and the rules and regulations thereunder or otherwise to ensure that the registration statement does not contain any untrue statement of material fact or omit to state a fact required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they are made, not misleading; provided, however, that if applicable rules under the Securities Act governing the obligation to file a post-effective amendment permits, in lieu of filing a post-effective amendment that (i) includes any prospectus required by Section 10(a)(3) of the Securities Act or (ii) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the Company may incorporate by reference information required to be included in (i) and (ii) above to the extent such information is contained in periodic reports filed pursuant to Section 13 or 15(d) of the Exchange Act in the registration statement. In the event that the Company becomes qualified for the use of Form S-3 or any successor form at a time when any registration statement on any other Form which includes Registrable Securities is required to be maintained hereunder, the Company shall, upon the request of any Selling Holder, subject to Section 5.5, (i) as expeditiously as reasonably possible, use best efforts to cause a Short-Form Registration covering such Registrable Securities to become effective and (ii) comply with each of the other requirements of this Section 5.4 which may be applicable thereto. Upon the effectiveness of such Short-Form Registration, the Company shall be relieved of its obligations hereunder to keep in effect the registration statement which initially covered the Registrable Securities included in such Short-Form Registration.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Make available for inspection upon reasonable notice during the Company’s regular business hours by each Selling Holder, any underwriter participating in any distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by such Selling Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company’s officers, directors and employees to supply all information reasonably requested by any such Selling Holder, underwriter, attorney, accountant or agent in connection with such registration statement.

(d) Furnish to the Selling Holders such numbers of copies of a prospectus, including a preliminary prospectus as amended or supplemented from time to time, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(e) Use best efforts to register and qualify the securities covered by such registration statement under such other federal or state securities laws of such jurisdictions as shall be reasonably requested by the Selling Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act.

(f) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Selling Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(g) Notify each Holder of Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, (i) when the registration statement or any post-effective amendment and supplement thereto has become effective; (ii) of the issuance by the SEC of any stop order or the initiation of proceedings for that purpose (in which event the Company shall make every effort to obtain the withdrawal of any order suspending effectiveness of the registration statement at the earliest possible time or prevent the entry thereof); (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose; and (iv) of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(h) Cause all such Registrable Securities registered hereunder to be listed on each securities exchange or quotation service on which similar securities issued by the Company are then listed or quoted or, if no such similar securities are listed or quoted on a securities exchange or quotation service, apply for qualification and use best efforts to qualify such Registrable Securities for inclusion on the New York Stock Exchange or listing on a quotation system of the National Association of Securities Dealers, Inc.

(i) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(j) Cooperate with the Selling Holders and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold, which certificates will not bear any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters, if any, shall request at least two business days prior to any sale of the Registrable Securities to the underwriters.

5.5 Furnish Information. It shall be a condition precedent to the obligation of the Company to take any action pursuant to this Article V with respect to the Registrable Securities of any Selling Holder that such Holder shall furnish to the Company such information regarding the Holder, the Registrable Securities held by the Holder, and the intended method of disposition of such securities as shall be reasonably required by the Company to effect the registration of such Holder's Registrable Securities.

5.6 Registration Expenses.

(a) Expenses of Demand Registration. The Company shall bear and pay all expenses incurred in connection with any registration, filing or qualification of Registrable Securities with respect to registrations pursuant to Section 5.3 for each Holder, including (without limitation) all registration, filing, and qualification fees, printers and accounting fees relating or apportionable thereto ("Registration Expenses"), but excluding underwriting discounts and commissions relating to Registrable Securities and excluding any professional fees or costs of accounting, financial or legal advisors to any of the Holders.

(b) Expenses of Company Registration. The Company shall bear and pay all Registration Expenses incurred in connection with any registration, filing or qualification of Registrable Securities with respect to registrations pursuant to Section 5.2 for each Holder, but excluding underwriting discounts and commissions relating to Registrable Securities and excluding any professional fees or costs of accounting, financial or legal advisors to any of the Holders.

5.7 Underwriting Requirements. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under Section 5.2 to include any of the Holders' Registrable Securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders). For purposes of the preceding parenthetical concerning apportionment, for any selling stockholder who is a holder of Registrable Securities and is a partnership or corporation, the partners, retired partners and stockholders of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder", and any pro-rata reduction with respect to such "selling stockholder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "selling stockholder", as defined in this sentence.

5.8 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Article.

5.9 Indemnification. In the event that any Registrable Securities are included in a registration statement under this Article V:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, or any rule or regulation promulgated under the Securities Act, or the Exchange Act, and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 5.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person.

(b) To the extent permitted by law, each Selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 5.9(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 5.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, further, that, in no event shall any indemnity under this Section 5.9(b) exceed such Holder's investment pursuant to this Agreement as set forth on the signature page attached hereto.

(c) Promptly after receipt by an indemnified party under this Section 5.9 of notice of the commencement of any action (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 5.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly notified, to assume the defense thereof with counsel selected by the indemnifying party and approved by the indemnified party (whose approval shall not be unreasonably withheld); provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 5.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 5.9.

(d) If the indemnification provided for in this Section 5.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 5.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Article V, and otherwise.

5.10 Reports Under Securities Exchange Act of 1934. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after 90 days after the effective date of the registration statement filed in connection with an IPO or Trading Event by the Company;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

5.11 Permitted Transferees. The rights to cause the Company to register Registrable Securities granted to the Holders by the Company under this Article V may be assigned in full by a Holder in connection with a transfer by such Holder of its Registrable Securities if: (a) such Holder gives prior written notice to the Company; (b) such transferee agrees to comply with the terms and provisions of this Agreement; (c) such transfer is otherwise in compliance with this Agreement; (d) such transfer is otherwise effected in accordance with applicable securities laws; and (e) such Holder transfers at least 10,000 shares of Registrable Securities to the transferee. Except as specifically permitted by this Section 5.11, the rights of a Holder with respect to Registrable Securities as set out herein shall not be transferable to any other Person, and any attempted transfer shall cause all rights of such Holder therein to be forfeited.

5.12 Termination of Registration Rights The right of any Holder to request or demand inclusion in any registration pursuant to Section 5.2 and Section 5.3 shall terminate if all shares of Registrable Securities held by such Holder may immediately be sold under Rule 144(k).



VI. MISCELLANEOUS

6.1 Any notice or other communication given hereunder shall be deemed sufficient if in writing and sent by registered or certified mail, return receipt requested, or delivered by hand against written receipt therefor, addressed as follows:

if to the Company, to it at:

Ziopharm, Inc.  
300 George Street,  
New Haven, Connecticut 06511

Attn: Jonathan Lewis, M.D., Ph.D.  
Chief Executive Officer

With a copy to:

Paramount BioCapital, Inc.  
787 Seventh Avenue, 48<sup>th</sup> Floor  
New York, New York 10019  
Attn: Basil Christakos

if to the Subscriber, to the Subscriber's address indicated on the signature page of this Agreement.

Notices shall be deemed to have been given or delivered on the date of mailing, except notices of change of address, which shall be deemed to have been given or delivered when received.

6.2 Except as otherwise provided herein, this Agreement shall not be changed, modified or amended except by a writing signed by the parties to be charged, and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be charged.

6.3 Subject to the provisions of Section 5.11, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, legal representatives, successors and assigns. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature among them.

6.4 Upon the execution and delivery of this Agreement by the Subscriber, this Agreement shall become a binding obligation of the Subscriber with respect to the purchase of Preferred Shares as herein provided, subject, however, to the right hereby reserved by the Company to enter into the same agreements with other subscribers and to add and/or delete other persons as subscribers.

6.5 NOTWITHSTANDING THE PLACE WHERE THIS AGREEMENT MAY BE EXECUTED BY ANY OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE THAT ALL THE TERMS AND PROVISIONS HEREOF SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAW. IN THE EVENT THAT A JUDICIAL PROCEEDING IS NECESSARY, THE SOLE FORUM FOR RESOLVING DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT IS THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF DELAWARE. THE PARTIES HEREBY IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS AND AGREE TO SAID VENUE.

6.6 In order to discourage frivolous claims the parties agree that unless a claimant in any proceeding arising out of this Agreement succeeds in establishing his claim and recovering a judgment against another party (regardless of whether such claimant succeeds against one of the other parties to the action), then the other party shall be entitled to recover from such claimant all of its/their reasonable legal costs and expenses relating to such proceeding and/or incurred in preparation therefor.

6.7 The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

6.8 It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

6.9 The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

6.10 This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

6.11 Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement, except (a) for the holders of Registrable Securities, (b) for the Placement Agent pursuant to Sections 1.6(a) and 2.10 hereof, (c) for the indemnified parties (including without limitation the Placement Agent and its sub agents, if any) pursuant to Section 1.21 hereof, and (d) that the Placement Agent may rely upon the representation and acknowledgements of the Subscriber in Articles I and VII hereof.

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VII. CONFIDENTIAL INVESTOR QUESTIONNAIRE

7.1 The Subscriber represents and warrants that he, she or it comes within one category marked below, and that for any category marked, he, she or it has truthfully set forth, where applicable, the factual basis or reason the Subscriber comes within that category. ALL INFORMATION IN RESPONSE TO THIS SECTION WILL BE KEPT STRICTLY CONFIDENTIAL. The undersigned agrees to furnish any additional information which the Company deems necessary in order to verify the answers set forth below.

Category A \_\_\_ The undersigned is an individual (not a partnership, corporation, etc.) whose individual net worth, or joint net worth with his or her spouse, presently exceeds \$1,000,000.

Explanation. In calculating net worth you may include equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. Equity in personal property and real estate should be based on the fair market value of such property less debt secured by such property.

Category B \_\_\_ The undersigned is an individual (not a partnership, corporation, etc.) who had an income in excess of \$200,000 in each of the two most recent years, or joint income with his or her spouse in excess of \$300,000 in each of those years (in each case including foreign income, tax exempt income and full amount of capital gains and losses but excluding any income of other family members and any unrealized capital appreciation) and has a reasonable expectation of reaching the same income level in the current year.

Category C \_\_\_ The undersigned is a director or executive officer of the Company which is issuing and selling the Preferred Shares.

Category D \_\_\_ The undersigned is a bank; a savings and loan association; insurance company; registered investment company; registered business development company; licensed small business investment company ("SBIC"); or employee benefit plan within the meaning of Title 1 of ERISA and (a) the investment decision is made by a plan fiduciary which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the plan has total assets in excess of \$5,000,000 or (c) is a self directed plan with investment decisions made solely by persons that are accredited investors. (describe entity)

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Category E \_\_\_ The undersigned is a private business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940. (describe entity)

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Category F \_\_\_ The undersigned is either a corporation, partnership, Massachusetts business trust, or non-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, in each case not formed for the specific purpose of acquiring the Preferred Shares and with total assets in excess of \$5,000,000. (describe entity)

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Category G \_\_\_ The undersigned is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Preferred Shares, where the purchase is directed by a "sophisticated investor" as defined in Regulation 506(b)(2)(ii) under the Act.

Category H \_\_\_ The undersigned is an entity (other than a trust) in which all of the equity owners are "accredited investors" within one or more of the above categories. If relying upon this Category alone, each equity owner must complete a separate copy of this Agreement. (describe entity)

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Category I \_\_\_ The undersigned is not within any of the categories above and is therefore not an accredited investor.

The undersigned agrees that the undersigned will notify the Company at any time on or prior to the Closing Date in the event that the representations and warranties in this Agreement shall cease to be true, accurate and complete.

7.2 SUITABILITY (please answer each question)

(a) For an individual Subscriber, please describe your current employment, including the company by which you are employed and its principal business:

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(b) For an individual Subscriber, please describe any college or graduate degrees held by you:

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(c) For all Subscribers, please list types of prior investments:

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(d) For all Subscribers, please state whether you have you participated in other private placements before:

YES \_\_\_\_\_

NO \_\_\_\_\_

(e) If your answer to question (d) above was "YES", please indicate frequency of such prior participation in private placements of:

	Public Companies	Private Companies	Public or Private Biotechnology Companies
Frequently			
Occasionally			
Never			

(f) For individual Subscribers, do you expect your current level of income to significantly decrease in the foreseeable future:

YES \_\_\_\_\_ NO \_\_\_\_\_

(g) For trust, corporate, partnership and other institutional Subscribers, do you expect your total assets to significantly decrease in the foreseeable future:

YES \_\_\_\_\_ NO \_\_\_\_\_

(h) For all Subscribers, do you have any other investments or contingent liabilities which you reasonably anticipate could cause you to need sudden cash requirements in excess of cash readily available to you:

YES \_\_\_\_\_ NO \_\_\_\_\_

(i) For all Subscribers, are you familiar with the risk aspects and the non-liquidity of investments such as the securities for which you seek to subscribe?

YES \_\_\_\_\_ NO \_\_\_\_\_

(j) For all Subscribers, do you understand that there is no guarantee of financial return on this investment and that you run the risk of losing your entire investment?

YES \_\_\_\_\_ NO \_\_\_\_\_

7.3 MANNER IN WHICH TITLE IS TO BE HELD. (circle one)

- (a) Individual Ownership
- (b) Community Property
- (c) Joint Tenant with Right of Survivorship (both parties must sign)
- (d) Partnership\*
- (e) Tenants in Common
- (f) Company\*
- (g) Trust\*
- (h) Other

\*If Preferred Shares are being subscribed for by an entity, the attached Certificate of Signatory must also be completed.

7.4 NASD AFFILIATION.

Are you affiliated or associated with an NASD member firm (please check one):

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please describe:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*If Subscriber is a Registered Representative with an NASD member firm, have the following acknowledgment signed by the appropriate party:

The undersigned NASD member firm acknowledges receipt of the notice required by Article 3, Sections 28(a) and (b) of the Rules of Fair Practice.

\_\_\_\_\_  
Name of NASD Member Firm

By: \_\_\_\_\_  
Authorized Officer

Date: \_\_\_\_\_

7.5 The undersigned is informed of the significance to the Company of the foregoing representations and answers contained in the Confidential Investor Questionnaire contained in this Article VII and such answers have been provided under the assumption that the Company will rely on them.

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NUMBER OF PREFERRED SHARES \_\_\_\_\_ X Per Share Price = \_\_\_\_\_ (the "Purchase Price")

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature (if purchasing jointly)

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Telephone-Business

\_\_\_\_\_  
Telephone-Business

\_\_\_\_\_  
Telephone-Residence

\_\_\_\_\_  
Telephone-Residence

\_\_\_\_\_  
Facsimile-Business

\_\_\_\_\_  
Facsimile-Business

\_\_\_\_\_  
Facsimile-Residence

\_\_\_\_\_  
Facsimile-Residence

\_\_\_\_\_  
Tax ID # or Social Security #

\_\_\_\_\_  
Tax ID # or Social Security #

Name in which securities should be issued:

\_\_\_\_\_

Dated: \_\_\_\_\_, 2005

This Subscription Agreement is agreed to and accepted as of \_\_\_\_\_, 2005.

ZIOPHARM, INC.

Date:

By:

\_\_\_\_\_

Name: Dr. Jonathan Lewis, MD, Ph.D.

Title: Chief Executive Officer

\_\_\_\_\_

**CERTIFICATE OF SIGNATORY**

(To be completed if Preferred Shares are  
being subscribed for by an entity)

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_ (the "Entity").

I certify that I am empowered and duly authorized by the Entity to execute and carry out the terms of the Subscription Agreement and to purchase and hold the Preferred Shares, and certify further that the Subscription Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
(Signature)

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Accounting  
and Tax

Business  
Solutions

Financial  
Services

Technology  
Services

**Consent of Independent Registered Public Accounting Firm**

As independent public accountants, we hereby consent to the inclusion of our report, dated August 5, 2005 (except for Note 10 as to which the date is September 13, 2005), relating to the financial statements of ZIOPHARM, Inc., included in this Registration Statement on Form SB-2 and to the use of our name as it appears under the caption "Experts".

/s/ VITALE, CATURANO & COMPANY, LTD.

VITALE, CATURANO & COMPANY, LTD.

October 14, 2005  
Boston, Massachusetts

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Securities and Exchange Commission  
Washington, DC

We consent to the use in this Registration Statement of ZIOPHARM Oncology, Inc. on Form SB-2, of our report dated February 19, 2005, appearing in the Prospectus.

We also consent to the reference to us under the heading "Experts" in such Prospectus.

*/s/ Cordovano and Honeck LLP*

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Cordovano and Honeck LLP  
Denver, Colorado  
October 14, 2005