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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

February 1, 2016
Date of Report (Date of earliest event reported)

Discovery Laboratories, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**000-26422**	**94-3171943**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

2600 Kelly Road, Suite 100
Warrington, Pennsylvania 18976
(Address of principal executive offices)

(215) 488-9300
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure in Item 5.02 of this Current Report on Form 8-K regarding the issuance of an inducement award in the form of an option to purchase shares of the Discovery Laboratories, Inc. (the "Company") common stock, par value $0.001 ("Common Stock") to Craig Fraser is incorporated by reference into this Item. The Company believes that the inducement grant is exempt from the registration requirements of the Securities Act of 1933 by virtue of Section 4(a)(2) thereof and/or Regulation D promulgated thereunder.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of President and Chief Executive Officer

On February 1, 2016, the Company issued a press release announcing the appointment of Craig Fraser, 51, to serve as the Company's President and Chief Executive Officer, effective February 1, 2016. Upon recommendation of the Nomination and Governance Committee of the Company's Board of Directors (the "Board"), the Board also appointed Mr. Fraser to serve as a member of the Board, effective immediately. A copy of the press release is attached to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein.

Prior to joining the Company, Mr. Fraser most recently served as Chief Operating Officer at Aegerion Pharmaceuticals, Inc. (2014 – 2015), having previously served as its President, U.S. International & Global Manufacturing & Supply (2011 – 2014). Prior to joining Aegerion, he served as Vice President, Global Disease Areas at Pfizer (2009 – 2011) and previously held leadership positions at Wyeth, Johnson & Johnson and Centocor. He received his Bachelor of Science in Public Administration from Slippery Rock University of Pennsylvania. Prior to his appointment to the Board, Mr. Fraser was not a related person to the Company and there was no transaction or other arrangement involving the Company in which Mr. Fraser or any related person to Mr. Fraser has or will have a direct or indirect material interest. He has no family relationship with any director or executive officer of the Company. Mr. Fraser does not serve on any other public company boards. Mr. Fraser was appointed to serve until the next Annual Meeting of Stockholders and until his successor is duly appointed and qualified.

Mr. Fraser entered into an employment agreement with the Company effective as of February 1, 2016 (the "Fraser Agreement"). The following are the key terms of the Fraser Agreement (the defined terms in the description below have the meaning ascribed in the agreement):

- *Compensation.* Mr. Fraser's initial base salary is $415,000. He also will be eligible for year-end bonuses, paid in either cash or equity, or both (each an "Annual Bonus"), with a target of 50% of base salary (the "Target Bonus"), as may be awarded, if at all, at the sole discretion of the compensation committee of the Board (the "Compensation Committee"). In addition, Mr. Fraser will be eligible for annual equity grants as may be awarded, if at all, at the sole discretion of the Compensation Committee. Other than the incentive grant discussed below, any equity grants will be governed by the Company's 2011 Long-Term Incentive Plan (together with any successor plan in effect at any time, "2011 Plan,") and the related award agreement(s). The Fraser Agreement is effective until terminated and includes a 12-month post-employment non-competition agreement, and a separate agreement (the "Employee Confidentiality Agreement") providing for non-competition and non-solicitation, as well as obligations of confidentiality and the assignment to the Company of all intellectual property. The Fraser Agreement and Employee Confidentiality Agreement are attached to this Form 8-K as Exhibits 10.1 and 10.2.

- *Termination of Employment.* Under the Fraser Agreement, Mr. Fraser will be entitled to specified benefits upon termination of his employment by the Company without Cause, by Mr. Fraser for Good Reason, or in the event of a Change in Control (in each case as defined in the Fraser Agreement), on the condition that he enters into a separation agreement containing a plenary release of claims in a form acceptable to the Company, and the release shall have become final. In addition to any benefits that may become due under any of the Company's vested plans or other policy, upon termination by the Company without Cause or by Mr. Fraser for Good Reason, Mr. Fraser will be entitled to: (i) a pro rata bonus equal to a percentage of his Target Bonus determined by dividing the aggregate bonuses paid to other contract executives for the year in which the termination occurs by the aggregate target bonuses of such other contract executives for that year, and further prorated for the number of days Mr. Fraser was employed in the year of termination, payable at the time that other contract executives are paid bonuses with respect to the year of termination; and (ii) a severance amount equal to the sum of Mr. Fraser's base salary then in effect (determined without regard to any reduction constituting Good Reason) and his Target Bonus amount, payable in equal installments from the date of termination to the date that is 12 months after the date of termination (the "Severance Period"). In addition, during the Severance Period, if Mr. Fraser elects to continue medical benefits through the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Company will continue to pay the Company's costs of such benefits as in effect on the date of termination and as such benefits are provided to active employees. If COBRA coverage is unavailable at any time, the Company will reimburse Mr. Fraser an amount which, after taxes, is sufficient to purchase medical and dental coverage substantially equivalent to that which Mr. Fraser and his dependents were receiving immediately prior to the date of termination and that is available to comparable active employees, reduced by the amount that would be paid by comparable active employees for such coverage under the Company's plans, and provided further, that the Company's obligation to provide benefits will cease or be reduced to the extent that a subsequent employer provides substantially similar coverages.

- Upon termination in connection with a Change of Control, in addition to the benefits that arise upon a Change of Control and any benefits that are due to Mr. Fraser under any vested plans or other policies, he will be entitled to: (i) a pro rata bonus equal to a percentage of his Target Bonus based upon the number of days Mr. Fraser was employed in the year of termination, payable in a lump sum within 10 days after the date of termination; (ii) a severance amount equal to 1.5 times the sum of Mr. Fraser's base salary then in effect (determined without regard to any reduction constituting Good Reason) and his Target Bonus amount, payable in a lump sum within 10 days after the date of termination except in certain circumstances; and (iii) all of his outstanding equity awards will accelerate and become fully vested, any restrictions under restricted stock agreements will be lifted and all stock options will continue to be exercisable for the remainder of their stated terms. In addition, Mr. Fraser will be entitled to continuation of benefits, as described above under termination without Cause or upon the executive for Good Reason, for a period of 18 months after termination of employment, provided that the Company's obligation to provide benefits shall cease or be reduced to the extent that a subsequent employer provides substantially similar coverages. If the foregoing payments are subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties with respect to such excise tax, they will be automatically be reduced to the extent and in the manner provided in the Executive Agreement.

- *Change of Control.* Upon a Change of Control (as defined in the Fraser Agreement) and assuming that Mr. Fraser remains employed as President and Chief Executive Officer, (i) the term of the Fraser Agreement (if shorter) will be automatically extended until the second anniversary of the date of the Change of Control; and (ii) during the remaining term of the Fraser Agreement (as extended), and provided that Mr. Fraser is employed on the last day of a fiscal year ending in that period, Mr. Fraser will be entitled to an Annual Bonus at least equal to his Target Bonus, payable no later than March 15 in the next succeeding fiscal year. Notwithstanding any provision to the contrary in any of the Company's long-term incentive plans or in any stock option or restricted stock agreement between the Company and Mr. Fraser, all vested and unvested options will be assumed by the successor entity; and, if the Company is not the successor entity, Mr. Fraser will be entitled to receive in exchange therefor the economic equivalent, as provided in the Fraser Agreement.

In accordance with Nasdaq Listing Rule 5635(c)(4), on February 1, 2016, the Compensation Committee granted to Mr. Fraser an option to purchase 204,863 shares of the Common Stock, representing 2.5% of the Company's outstanding shares of Common Stock, at an exercise price of $2.33 per share, which was the closing price on February 2, 2016 and the price next determined after approval of the grant. Subject to Mr. Fraser's continued employment with the Company, one-third of the options will vest and become exercisable on each of the next three anniversary dates of the grant, such that the options will be exercisable in full on the third anniversary of the date of grant. The option has a term of 10 years. The award was issued outside the 2011 Plan, but will be subject to terms and conditions generally consistent with those in the 2011 Plan and the form of option agreement in effect under the 2011 Plan. A copy of the inducement grant award agreement is attached to this Form 8-K as Exhibit 10.3.

The foregoing summary of the Fraser Agreement is qualified in its entirety by the full text of the agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Termination of Employment Agreement

In connection with the foregoing, the Employment Agreement dated April 1, 2013, as amended December 29, 2014, between the Company and John G. Cooper, President and Chief Executive Officer, was terminated effective February 1, 2016. Under the terms of his Employment Agreement, Mr. Cooper will be entitled, in addition to any benefits that are due under the Company's vested plans or other policy, and on the condition that he enter into a separation agreement with the Company containing a plenary release of claims in a form acceptable to the Company and that such plenary release has become final (the "Separation Agreement"), to the following payments and benefits in connection with a termination without Cause (as defined therein): (i) a pro rata bonus equal to a percentage of his Annual Bonus Amount determined by dividing the aggregate bonuses paid to other contract executives for the year 2016 by the aggregate target bonuses of such other contract executives for 2016, and further prorated for the number of days Mr. Cooper was employed during 2016, payable at the time that other contract executives are paid bonuses with respect to 2016; (ii) a severance amount equal to the sum of Mr. Cooper's base salary then in effect and his Annual Bonus Amount, payable in equal installments in accordance with the Company's regular payroll schedule, from the date of termination to the date that is 18 months from the date of termination (the "Severance Period"); (iii) during the Severance Period, if Mr. Cooper elects benefits through COBRA, the Company will continue to pay the Company's costs of such benefits as in effect on the date of termination and as such benefits are provided to active employees. If COBRA coverage is unavailable at any time, the Company will reimburse Mr. Cooper in an amount that, after taxes, is sufficient to purchase medical and dental coverage substantially equivalent to that which Mr. Cooper and his dependents were receiving immediately prior to the date of termination and that is available to comparable active employees, reduced by the amount that would be paid by comparable active employees for such coverage under the Company's plans, and provided further, that the Company's obligation to provide benefits will cease or be reduced to the extent that a subsequent employer provides substantially similar coverages; and (iv) all stock options held by Mr. Cooper shall continue to vest during the Severance Period, and all vested stock options held by Mr. Cooper will continue to be exercisable for up to 36 months after the date of termination. From and after the end of the Severance Period, Mr. Cooper will forfeit all of his unvested stock options in accordance with the terms of the 2011 Plan. Mr. Cooper also is subject to non-competition and non-solicitation restrictions for 12 months and 18 months, respectively, after the date of termination under a separate confidentiality agreement. All of the Company's obligations under the Employment Agreement will cease if at any time during the Severance Period Mr. Cooper engages in a material breach of the Employment Agreement and fails to cure such breach within five business days after receipt from the Company of notice of such breach. In addition, Mr. Cooper has agreed to cooperate in the transition of his duties and responsibilities as may be reasonably requested by the Company, and cooperate in other matters in which his cooperation may be reasonably requested for up to 10 hours per month during the Severance Period. The Company has agreed, with certain exceptions, to pay Mr. Cooper an hourly rate of $300 per hour for his time incurred in excess of 10 hours per month during the Severance Period.

The foregoing summary of Mr. Cooper's benefits is qualified in its entirety by the full text of the Employment Agreement, which was filed with the Securities and Exchange Commission on April 2, 2013 as Exhibit 10.1 to Discovery's Current Report on Form 8-K, and (for the Amendment dated December 29, 2014) on March 16, 2015 as Exhibit 10.16 to the Company's Annual Report on Form 10-K for the period ended December 31, 2014, and is incorporated herein by reference.

Named Executive Officer Compensation

On February 1, 2016, the Compensation Committee approved adjustments to base salary, cash bonus and equity awards for the Company's current named executive officers, including the Company's former President and Chief Executive Officer, John G. Cooper, its Senior Vice President and Chief Financial Officer, John Tattory, and its Senior Vice President and Chief Development Officer, Steven G. Simonson, M.D.

Mr. Cooper was awarded a cash bonus of $150,000; Mr. Tattory's base salary was increased to $290,000 from $267,800, he was awarded a cash bonus of $77,000 and was granted a stock option to purchase 23,214 shares of the Company's Common Stock; and Dr. Simonson's base salary was increased to $330,000 from $320,000, he was awarded a cash bonus of $100,000 and was granted a stock option to purchase 35,714 shares of the Company's Common Stock. The exercise price for the options is the closing price of the Company's Common Stock on February 2, 2016, which is the next determined closing price after approval of the grant, or $2.33 per share. The options will vest in equal installments over the next three anniversary dates of the grant and have a term of 10 years.

In granting the foregoing benefits, the Compensation Committee emphasized the importance of both retaining and providing incentives to management and key employees to advance the goals and objectives of the Company throughout 2016, in particular with respect to the AEROSURF® phase 2 clinical development program, and indicated that it expected to consider additional potentially comparable stock option grants during 2016 based on the Company's progress in meeting its key performance objectives.

Indemnification Agreements

The Company has recently updated its form of indemnification agreement between the Company and its directors and officers. Beginning on January 29, 2016, the Company has entered into such agreements with each of its directors and officers, including Mr. Fraser. A copy of the form of indemnification agreement is attached to this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein.

Item 8.01. Other Events.

The Company issued a press release on February 1, 2016 that included an update on the AEROSURF phase 2 clinical development program. The Company also announced that as of December 31, 2015, the Company had cash and cash equivalents of $38.7 million, an amount which the Company anticipates is sufficient to support the AEROSURF phase 2 clinical program and fund operations through the first quarter of 2017. The press release, which is attached to this Current Report on Form 8-K as Exhibit 99.1 is incorporated in this Item.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

10.1	Employment Agreement by and between the Company and Craig Fraser dated as of February 1, 2016.
10.2	Employee Confidentiality Agreement between the Company and Craig Fraser (the form of which is Exhibit B to Exhibit 10.1).
10.3	Option Award Agreement between the Company and Craig Fraser.
10.4	Form of Indemnification Agreement between the Company and its named executive officers, including Craig Fraser, and directors.
99.1	Press Release dated February 1, 2016.

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development, cash flows, future revenues, the timing of planned clinical trials or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto. Any forward-looking statement made by the Company in this Current Report on Form 8-K is based only on information currently available to the Company and speaks only as of the date on which it is made. The Company undertakes no obligation to publicly update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Discovery Laboratories, Inc.

By: /s/John Tattory
Name: John Tattory
Title: Senior Vice President and
Chief Financial Officer

Date: February 3, 2016

Exhibit 10.1

Execution Version

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made as of February 1, 2016, by and between Discovery Laboratories, Inc., a Delaware corporation (the "Company"), and Craig Fraser ("Executive"), subject to the terms and conditions defined in this Agreement.

WHEREAS, the Company and Executive desire that Executive be employed by the Company to act as the Company's President and Chief Executive Officer, subject to the terms and conditions set forth in this Agreement. Executive's employment shall also be subject to such policies and procedures as the Company may from time to time implement;

NOW, THEREFORE, in consideration of the covenants contained herein, and for other valuable consideration, the Company and Executive hereby agree as follows:

1. Certain Definitions. Certain definitions used herein shall have the meanings set forth on Exhibit A attached hereto.

2. Term of the Agreement. The term ("Term") of this Agreement shall commence on the date first above written (the "Start Date") and shall continue until terminated as provided in Section 7 hereof. Upon the occurrence of a Change of Control during the term of this Agreement, including any amendments hereto, this Agreement shall automatically be extended until the end of the Effective Period. On the Date of Termination, Executive acknowledges that he shall immediately be deemed to have resigned all employment and related job duties and responsibilities with the Company, including, without limitation any and all positions on any committees or boards of the Company or any affiliated company. Executive agrees to sign all reasonable documentation evidencing the foregoing as may be presented to Executive for signature by the Company.

3. Executive's Duties and Obligations.

(a) Duties. Executive shall serve as the Company's President and Chief Executive Officer. Executive shall (i) report solely to the Board of Directors of the Company (the "Board"), (ii) be the most senior executive officer of the Company; (iii) have all other executives and employees report to him (directly and indirectly); (iv) be responsible for the general management and affairs of the Company, including but not limited to decisions regarding the strategic direction of its products and services (with the approval of the Board) and the hiring, promotion, firing and compensation of its non-officer employees; and (v) have such other duties, responsibilities and authorities as are customarily associated with the position of chief executive officer of a company of the size and nature of the Company, and such additional duties and responsibilities consistent with his position as may, from time to time, be assigned to him by the Board.

(b) Location of Employment. Executive's principal place of business shall be at the Company's headquarters in Warrington, Pennsylvania. In addition, Executive acknowledges and agrees that the performance by Executive of Executive's duties shall require frequent travel including, without limitation, overseas travel from time to time.

(c) Confidential Information and Inventions Matters. In consideration of the covenants contained herein, Executive has executed and agrees to be bound by the Company's standard form of Employee Confidentiality, Assignment of Inventions, Non-Interference and Non-Competition Agreement (the "Confidentiality Agreement"), a form of which is attached to this Agreement as Exhibit B. Executive shall comply at all times with the terms and conditions of the Confidentiality Agreement and all other reasonable policies of the Company governing its confidential and proprietary information.

4. Devotion of Time to Company's Business.

(a) Full-Time Efforts. During Executive's employment with the Company, Executive shall devote substantially all of Executive's time, attention and efforts to the proper performance of Executive's implicit and explicit duties and obligations hereunder to the reasonable satisfaction of the Company.

(b) No Other Employment. During Executive's employment with the Company, Executive shall not, except as otherwise provided herein, directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Board; provided, however, that it shall not be a violation or breach of this Agreement for Executive to (i) accept speaking or presentation engagements in exchange for honoraria, (ii) serve on boards of charitable organizations or participate in charitable, educational, religious or civic activities, (iii) attend to his and his family's personal affairs or (iv) own no more than one percent (1%) of the outstanding equity securities of a corporation whose stock is listed on a national stock exchange, so long as such activities are not adverse to the Company's interests and do not materially interfere with the performance of Executive's duties hereunder.

(c) Non-Competition During and After Employment. During the Term and for 12 months from the Date of Termination, Executive shall not, directly or indirectly, without the prior written consent of the Company, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity compete with the Company in the business of developing or commercializing (i) surfactants for research purposes, (ii) any device or system (including related methods and processes) using, based on, or similar to (a) the Company's capillary generation technology or (b) any of the Company's drug delivery technologies, or (iii) any product or process developed and commercialized, or under development, in whole or in part, by the Company during Executive's employment. During the Term and for 12 months from the Date of Termination, Executive shall not solicit, encourage, induce or endeavor to entice away from the Company, or otherwise interfere with the relationship of the Company with, any person who is employed or engaged by the Company as an employee, consultant or independent contractor or who was so employed or engaged at any time during the six (6) months preceding the Date of Termination; provided, that nothing herein shall prevent Executive from engaging in discussions regarding employment, or employing, any such employee, consultant or independent contractor (i) if such person shall voluntarily initiate such discussions without any such solicitation, encouragement, enticement or inducement prior thereto on the part of Executive or (ii) if such discussions shall be held as a result of, or any employment shall be the result of, the response by any such person to a written employment advertisement placed in a publication of general circulation, general solicitation conducted by executive search firms, employment agencies or other general employment services, not directed specifically at any such employee, consultant or independent contractor.

(d) Injunctive Relief. In the event that Executive breaches any provisions of Section 4(c) or of the Confidentiality Agreement or there is a threatened breach thereof, then, in addition to any other rights which the Company may have, the Company shall be entitled, without the posting of a bond or other security, to injunctive relief to enforce the restrictions contained therein. In the event that an actual proceeding is brought in equity to enforce the provisions of Section 4(c) or the Confidentiality Agreement, 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.

(e) Reformation. To the extent that the restrictions imposed by Section 4(c) are interpreted by any court to be unreasonable in geographic and/or temporal scope, such restrictions shall be deemed automatically reduced to the extent necessary to coincide with the maximum geographic and/or temporal restrictions deemed by such court not to be unreasonable.

5. Compensation and Benefits.

(a) Base Compensation. During the Term, the Company shall pay to Executive base annual compensation ("Base Salary") of $415,000, payable in accordance with the Company's regular payroll practices and less all required withholdings benefits as hereinafter set forth in this Section 5. Executive's Base Salary shall be reviewed annually and may be increased based on an assessment of Executive's performance, the performance of the Company, inflation, the then prevailing salary scales for comparable positions and other relevant factors; provided, however, that any increase in Base Salary shall be solely within the discretion of the Board of Directors. Executive's Base Salary shall not be subject to reduction from the level in effect hereunder from time to time, other than pursuant to a salary reduction program of general application to contract executives of the Company.

(b) Bonuses. During the Term, Executive shall be eligible for year-end bonuses, which may be paid in either cash or equity, or both (any such bonus an "Annual Bonus"), with a target of 50% of Base Salary (the "Target Bonus"), as may be awarded solely at the discretion of the Compensation Committee of the Board, provided that the Board shall be under no obligation whatsoever to pay such Annual Bonus for any year. Any such Annual Bonus shall contain such rights and features as are typically afforded to other contract executives of the Company.

(c) Options. As soon as practicable, the Company will recommend to the Board of Directors that Executive be granted an option to acquire, at time of issuance, the number of shares of common stock of the Company (the "Common Stock") that is equal to two and a half percent (2½%) of the total number of outstanding shares of all classes of stock of the Company (the "Option"). One-third of the number of shares of Common Stock subject to the Option shall vest and become exercisable on the first anniversary of the Start Date, another one-third of the Option shall vest and become exercisable on the second anniversary of the Start Date, and the final one-third of the Option shall vest and become exercisable on the third Anniversary of the Start Date, all subject to Executive's continuing employment on the stated Start Date anniversaries. In addition the Executive shall be eligible for annual option grants as may be awarded solely at the discretion of the Compensation Committee of the Board, provided that the Board shall be under no obligation whatsoever to grant such discretionary options awards. Any options issued to Executive after the Option shall be governed by the Company's 2011 Long-Term Incentive Plan and the Employee Option Agreement(s) under the 2011 Long-Term Incentive Plan by which they are issued.

(d) Benefits. During the Term, Executive shall be entitled to participate in all employee benefit plans, programs and arrangements made available generally to the Company's senior executives or to its employees on substantially the same basis that such benefits are provided to such senior executives (including, without limitation, profit-sharing, savings and other retirement plans (e.g., a 401(k) plan) or programs, medical, dental, hospitalization, vision, short-term and long-term disability and life insurance plans or programs, accidental death and dismemberment protection, travel accident insurance, and any other employee welfare benefit plans or programs that may be sponsored by the Company from time to time, including any plans or programs that supplement the above-listed types of plans or programs, whether funded or unfunded); provided, however, that nothing in this Agreement shall be construed to require the Company to establish or maintain any such plans, programs or arrangements.

(e) Vacations. During the Term, Executive shall be entitled to 20 days paid vacation per year, or such greater amount as may be earned under the Company's standard vacation policy, to be earned ratably throughout the year. Vacation days may be carried from one year to the next in accordance with the Company vacation policy.

(f) Reimbursement of Business Expenses. Executive is authorized to incur reasonable expenses in carrying out Executive's duties and responsibilities under this Agreement and the Company shall reimburse Executive for all such expenses, in accordance with reasonable policies of the Company, including but not limited to business-related air travel, meals and lodging. In addition, the Company shall promptly reimburse the Executive for all reasonable legal fees incurred by the Executive in connection with the review, negotiation, drafting and execution of this Agreement, up to a cap of $5,000.

6. Change of Control Benefits.

(a) Bonus. Executive shall be awarded an Annual Bonus for each fiscal year of the Company ending during the Effective Period that is at least equal to the Target Bonus, so long as Executive is employed on the last day of such fiscal year. Such Annual Bonus(es) will be paid no later than the 15th day of the third month following the end of such fiscal year to which such bonus relates.

(b) Options. Notwithstanding any provision to the contrary in any of the Company's long-term incentive plans or in any stock option or restricted stock agreement between the Company and Executive, in the event of a Change of Control, all vested and unvested shares of stock and all vested and unvested options to acquire Company stock held by Executive shall be assumed by the successor entity or parent or subsidiary of the successor entity; and further, if the Company is not the surviving entity, Executive shall be entitled to receive in exchange for, or in respect of, all shares of stock and all options in the Company's common stock, shares and options to acquire shares of the successor entity or parent or subsidiary of the successor entity, or other similar rights that are substantially the economic equivalent of the Executive's shares and stock options in the Company's common stock immediately prior to the Change of Control.

7. Termination of Employment.

(a) Termination by the Company for Cause or Termination by Executive without Good Reason, Death or Disability.

(i) In the event of a termination of Executive's employment by the Company for Cause, a termination by Executive without Good Reason, or in the event this Agreement terminates by reason of the death or Disability of Executive, Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment, a lump sum payment in respect of all accrued but unused vacation days at Executive's Base Salary in effect on the date such vacation was earned, and payment of any other amounts owing to Executive but not yet paid, less any amounts owed by Executive to the Company. Executive shall not be entitled to receive any other compensation or benefits from the Company whatsoever (except as and to the extent the continuation of certain benefits is required by law).

(ii) In the case of a termination due to death or Disability, notwithstanding any provision to the contrary in any stock option or restricted stock agreement between the Company and Executive, all shares of stock and all options to acquire Company stock held by Executive shall accelerate and become fully vested upon the Date of Termination (and all options shall thereupon become fully exercisable), and all stock options shall continue to be exercisable for the remainder of their stated terms.

(b) Termination by the Company without Cause or by Executive for Good Reason. If (x) Executive's employment is terminated by the Company other than for Cause, death or Disability (i.e., without Cause) or (y) Executive terminates employment with Good Reason, then Executive will receive the amounts set forth in Section 7(a)(i) and, on the condition that the Executive signs a separation agreement containing a plenary release of claims in a form acceptable to the Company within fifty (50) days after the Date of Termination and such plenary release becomes final, binding and irrevocable, the Executive shall also be entitled to receive the following from the Company:

(i) An amount equal to the sum of (A) Executive's Base Salary then in effect (determined without regard to any reduction in such Base Salary constituting Good Reason) and (B) the Target Bonus, payable in equal installments in accordance with the Company's regular payroll schedule, from the Date of Termination to the date that is twelve (12) months after the Date of Termination (the "Severance Period") provided, however, that each installment payable before the plenary release becomes final, binding and irrevocable shall not be paid to the Executive until such plenary release becomes final, binding and irrevocable (at which time all such amounts that would have been paid but for the delay described in this clause (i) shall be paid);

(ii) A pro rata bonus equal to the Executive's Target Bonus (A) multiplied by the fraction obtained by dividing the aggregate amount of actual bonuses paid to the Company's other employment contract executives for the year in which termination occurs by such employment contract executives' aggregate target bonuses for the year in which termination occurs, multiplied by (B) the fraction obtained by dividing the number of days in the year through the Date of Termination by the total number of days in the year, which amount shall be paid when the Company's other employment contract executives are paid their bonuses;

(iii) During the Severance Period, if Executive elects to continue Company medical benefits through the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall continue to pay the Company's costs of such benefits as Executive elects to continue under the same plans and on the same terms and conditions as such benefits are provided to active employees of the Company for up to twelve (12) months. If for any reason COBRA coverage is unavailable at any time during the Severance Period, the Company shall reimburse Executive no less frequently than quarterly in advance an amount which, after taxes, is sufficient for Executive to purchase medical and dental coverage for Executive and Executive's dependents that is substantially equivalent to the medical and dental coverage that Executive and Executive's dependents were receiving immediately prior to the Date of Termination and that is available to comparable active employees, reduced by the amount that would be paid by comparable active employees for such coverage under the Company's plans. Company's obligation under this Section 7(b)(iii) shall terminate or be reduced to the extent that substantially similar coverage (determined on a benefit-by-benefit basis) are provided by a subsequent employer;

(iv) Upon the date that the plenary release becomes final, binding and irrevocable, notwithstanding any provision to the contrary in any stock option or restricted stock agreement between the Company and the Executive, all vested stock options to acquire Company stock and all other similar equity awards held by the Executive as of the Date of Termination shall continue to be exercisable during the Severance Period; and

(v) Notwithstanding the foregoing, if Executive engages in a material breach of any provision of this Agreement or the Executive's Confidentiality Agreement during the Severance Period, and such breach is not cured within five business days after receipt from the Company of notice thereof, then the Company's continuing obligations under this Section 7(b) shall cease as of the date of the breach and the Executive shall be entitled to no further payments hereunder.

(c) Termination in connection with a Change of Control. If Executive's employment is terminated by the Company other than for Cause or by Executive for Good Reason during the Effective Period, then Executive shall be entitled to receive the following from the Company:

(i) All amounts and benefits described in Section 7(a)(i) above;

(ii) Within 10 days after the Date of Termination, a lump sum cash payment equal to the Target Bonus multiplied by the fraction obtained by dividing the number of days Executive was employed during the calendar year in which the Date of Termination occurs by 365;

(iii) Within 10 days after the Date of Termination, a lump sum cash payment in an amount equal to 1.5 times the sum of (A) Executive's Base Salary then in effect (determined without regard to any reduction in such Base Salary constituting Good Reason) and (B) the Target Bonus; provided, however, that if Executive's employment is terminated prior to the consummation of a Change of Control but under circumstances that would cause the Change of Control Date to precede the date that the Change of Control is consummated, such amount will be paid in equal installments in accordance with the Company's regular payroll schedule over the Severance Period described in Section 7(b)(ii);

(iv) If Executive elects to continue Company medical benefits under COBRA, for a period of 12 months following the Date of Termination (the "Benefit Period"), the Company shall continue to pay the Company's costs of such benefits as Executive elects to continue under the same plans and on the same terms and conditions as such benefits are provided to active employees of the Company. If for any reason COBRA coverage is unavailable at any time during the Benefit Period, the Company shall reimburse Executive no less frequently than quarterly in advance an amount which, after taxes, is sufficient for Executive to purchase medical and dental coverage for Executive and Executive's dependents that is substantially equivalent to the medical and dental coverage that Executive and Executive's dependents were receiving immediately prior to the Date of Termination and that is available to comparable active employees, reduced by the amount that would be paid by comparable active employees for such coverage under the Company's plans. Company's obligation under this Section 7(b)(iii) shall terminate or be reduced to the extent that substantially similar coverage (determined on a benefit-by-benefit basis) are provided by a subsequent employer;

(v) Notwithstanding any provision to the contrary in any stock option or restricted stock agreement between the Company and Executive, all shares of stock and all options to acquire Company stock (or shares and options to acquire shares of a successor entity or parent or subsidiary of the successor entity issued or substituted for shares and options to acquire Company stock pursuant to Section 6(b) hereof) held by Executive shall accelerate and become fully vested upon the Date of Termination and all restrictions thereon shall be lifted, and all stock options shall continue to be exercisable for the remainder of their stated terms; and

(vi) Notwithstanding the foregoing, if Executive engages in a material breach of any provision of this Agreement or Executive's Confidentiality Agreement during the Severance Period, and such breach is not cured within five business days after receipt from the Company of notice thereof, then the Company's continuing obligations under this Section 7(c) shall cease as of the date of the breach and the Executive shall be entitled to no further payments or benefits hereunder.

8. Notice of Termination.

(a) Any termination of Executive's employment by the Company for Cause, or by Executive for Good Reason shall be communicated by a Notice of Termination to the other party hereto given in accordance with Section 12. For purposes of this Agreement, a "Notice of Termination" means a written notice which: (i) is given at least 10 days prior to the Date of Termination (at least 30 days in the case of Notice of Termination given by Executive for Good Reason), (ii) indicates the specific termination provision in this Agreement relied upon, (iii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, and (iv) specifies the employment termination date. The failure to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause will not waive any right of the party giving the Notice of Termination hereunder or preclude such party from asserting such fact or circumstance in enforcing its rights hereunder. If Executive elects to terminate this Agreement without Good Reason, Executive must provide advance written notice of at least 90 days and the Company, at its sole option, may elect to terminate Executive's employment and this Agreement at any point during the 90 day notice period.

(b) A Termination of Employment of Executive will not be deemed to be for Good Reason unless Executive gives the Notice of Termination provided for herein within 30 days after Executive has actual knowledge of the act or omission of the Company constituting such Good Reason and Executive gives the Company a 30 day cure period to rectify or correct the condition or event that constitutes Good Reason and Executive delivers final Notice of Termination within 30 days of the date that Company's failure to cure deadline has expired.

9. Mitigation of Damages. Executive will not be required to mitigate damages or the amount of any payment or benefit provided for under this Agreement by seeking other employment or otherwise. Except as otherwise provided in Sections 7(b)(iv) and 7(c)(iv), the amount of any payment or benefit provided for under this Agreement will not be reduced by any compensation or benefits earned by Executive as the result of self-employment or employment by another employer or otherwise.

10. Excess Parachute Excise Tax.

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment, award, benefit or distribution (including any acceleration) by the Company or any entity which effectuates a transaction described in Section 280G(b)(2)(A)(i) of the Code to or for the benefit of Executive (whether pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 10) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred with respect to such excise tax by Executive (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), the Company will automatically reduce such Payments to the extent, but only to the extent, necessary so that no portion of the remaining Payments will be subject to the Excise Tax, unless the amount of such Payments that the Executive would retain after payment of the Excise Tax and all applicable Federal, state and local income taxes without such reduction would exceed the amount of such Payments that the Executive would retain after payment of all applicable Federal, state and local taxes after applying such reduction. Unless otherwise elected by the Executive to the extent permitted under Code Section 409A, the Company shall reduce or eliminate the Payments by first reducing or eliminating any cash severance benefits (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of stock options or similar awards, then by reducing or eliminating any accelerated vesting of restricted stock or similar awards, then by reducing or eliminating any other remaining Payments; provided, that no such reduction or elimination shall apply to any non-qualified deferred compensation amounts (within the meaning of Section 409A of the Code) to the extent such reduction or elimination would accelerate or defer the timing of such payment in manner that does not comply with Section 409A of the Code.

(b) All determinations required to be made under this Section 10, including the assumptions to be utilized in arriving at such determination, shall be made by the Company's independent auditors or such other certified public accounting firm of national standing reasonably acceptable to Executive as may be designated by the Company (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the receipt of notice from Executive that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company. If the Accounting Firm determines that no Excise Tax is payable by Executive, it shall furnish Executive with a written opinion to such effect, and to the effect that failure to report the Excise Tax, if any, on Executive's applicable federal income tax return will not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive.

11. Legal Fees. All reasonable legal fees and related expenses (including costs of experts, evidence and counsel) paid or incurred by Executive pursuant to any claim, dispute or question of interpretation relating to this Agreement shall be paid or reimbursed by the Company if Executive is successful on the merits pursuant to a legal judgment or arbitration. Except as provided in this Section 11, each party shall be responsible for its own legal fees and expenses in connection with any claim or dispute relating to this Agreement.

12. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed within the continental United States by first class certified mail, return receipt requested, postage prepaid, addressed as follows:

if to the Board or the Company:

Discovery Laboratories, Inc.
2600 Kelly Road, Suite 100
Warrington, PA 18976
Attn: General Counsel

if to Executive:

Craig Fraser
The address on file with the records of the Company

Addresses may be changed by written notice sent to the other party at the last recorded address of that party.

13. Withholding. The Company shall be entitled to withhold from payments due hereunder any required federal, state or local withholding or other taxes.

14. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes the Employment Agreement and all other prior agreements, written or oral, with respect thereto.

15. Arbitration.

(a) If the parties are unable to resolve any dispute or claim relating directly or indirectly to this Agreement or any dispute or claim between Executive and the Company or its officers, directors, agents, or employees (a "Dispute"), then either party may require the matter to be settled by final and binding arbitration by sending written notice of such election to the other party clearly marked "Arbitration Demand." Such Dispute shall be arbitrated in accordance with the terms and conditions of this Section 15. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm.

(b) The Dispute shall be resolved by a single arbitrator in an arbitration administered by the American Arbitration Association in accordance with its Employment Arbitration Rules and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decision of the arbitrator shall be final and binding on the parties, and specific performance giving effect to the decision of the arbitrator may be ordered by any court of competent jurisdiction.

(c) Nothing contained herein shall operate to prevent either party from asserting counterclaim(s) in any arbitration commenced in accordance with this Agreement, and any such party need not comply with the procedural provisions of this Section 15 in order to assert such counterclaim(s).

(d) The arbitration shall be filed with the office of the American Arbitration Association ("AAA") located in Philadelphia, Pennsylvania or such other AAA office as the parties may agree upon (without any obligation to so agree). The arbitration shall be conducted pursuant to the Employment Arbitration Rules of AAA as in effect at the time of the arbitration hearing, such arbitration to be completed in a 60-day period. In addition, the following rules and procedures shall apply to the arbitration:

(i) The arbitrator shall have the sole authority to decide whether or not any Dispute between the parties is arbitrable and whether the party presenting the issues to be arbitrated has satisfied the conditions precedent to such party's right to commence arbitration as required by this Section 15.

(ii) The decision of the arbitrator, which shall be in writing and state the findings, the facts and conclusions of law upon which the decision is based, shall be final and binding upon the parties, who shall forthwith comply after receipt thereof. Judgment upon the award rendered by the arbitrator may be entered by any competent court. Each party submits itself to the jurisdiction of any such court, but only for the entry and enforcement to judgment with respect to the decision of the arbitrator hereunder.

(iii) The arbitrator shall have the power to grant all legal and equitable remedies (including, without limitation, specific performance) and award compensatory and punitive damages if authorized by applicable law.

(iv) Except as provided in Section 11, the parties shall bear their own costs in preparing for and participating in the resolution of any Dispute pursuant to this Section 15, and the costs of the arbitrator(s) shall be equally divided between the parties.

(v) Except as provided in the last sentence of Section 15(a), the provisions of this Section 15 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any Dispute arising in connection with this Agreement. Any party commencing a lawsuit in violation of this Section 15 shall pay the costs of the other party, including, without limitation, reasonable attorney's fees and defense costs.

16. Miscellaneous.

(a) Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the Commonwealth of Pennsylvania without regard to the application of choice of law rules.

(b) Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

(c) Severability. If one or more provisions of this Agreement are held to be invalid or unenforceable under applicable law, such provisions shall be construed, if possible, so as to be enforceable under applicable law, or such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the beneficiaries, heirs and representatives of Executive (including the Beneficiary) and the successors and assigns of the Company. The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) to all or substantially all of its assets, by agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform this Agreement if no such succession had taken place. Regardless whether such agreement is executed, this Agreement shall be binding upon any successor of the Company in accordance with the operation of law and such successor shall be deemed the Company for purposes of this Agreement.

(e) Successors and Assigns. Except as provided in Section16(d) in the case of the Company, or to the Beneficiary in the case of the death of Executive, this Agreement is not assignable by any party and no payment to be made hereunder shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or other charge.

(f) Remedies Cumulative; No Waiver. No remedy conferred upon either party by this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission by either party in exercising any right, remedy or power hereunder or existing at law or in equity shall be construed as a waiver thereof, and any such right, remedy or power may be exercised by such party from time to time and as often as may be deemed expedient or necessary by such party in such party's sole discretion.

(g) Survivorship. Notwithstanding anything in this Agreement to the contrary, all terms and provisions of this Agreement that by their nature extend beyond the termination of this Agreement shall survive such termination.

(h) Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, promises, covenants or arrangements, whether oral or written, with respect thereto.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one document.

17. No Contract of Employment. Nothing contained in this Agreement will be construed as a right of Executive to be continued in the employment of the Company, or as a limitation of the right of the Company to discharge Executive with or without Cause.

18. Section 409A of the Code. The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code and, accordingly, to the maximum extent permitted, this Agreement shall be construed and interpreted in accordance with such intent. Executive's termination of employment (or words to similar effect) shall not be deemed to have occurred for purposes of this Agreement unless such termination of employment constitutes a "separation from service" within the meaning of Code Section 409A and the regulations and other guidance promulgated thereunder.

(a) Notwithstanding any provision to the contrary in this Agreement, if Executive is deemed on the date of Executive's termination to be a "specified employee" within the meaning of that term under Code Section 409A(a)(2)(B) and using the identification methodology selected by the Company from time to time, or if none, the default methodology set forth in Code Section 409A, then with regard to any payment or the providing of any benefit that constitutes "non-qualified deferred compensation" pursuant to Code Section 409A and the regulations issued thereunder that is payable due to Executive's separation from service, to the extent required to be delayed in compliance with Code Section 409A(a)(2)(B), such payment or benefit shall not be made or provided to Executive prior to the earlier of (i) the expiration of the six (6) month period measured from the date of Executive's separation from service, and (ii) the date of Executive's death (the "Delay Period"). On the first day of the seventh month following the date of Executive's separation from service or, if earlier, on the date of Executive's death, all payments delayed pursuant to this Section 18(a) shall be paid or reimbursed to Executive in a lump sum, and any remaining payments and benefits due to Executive under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

(b) To the extent any reimbursement of costs and expenses provided for under this Agreement constitutes taxable income to Executive for Federal income tax purposes, such reimbursements shall be made no later than December 31 of the calendar year next following the calendar year in which the expenses to be reimbursed are incurred. With regard to any provision herein that provides for reimbursement of expenses or in-kind benefits, except as permitted by Code Section 409A, (i) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year. Any tax gross-ups provided for under this Agreement shall in no event be paid to Executive later than the December 31 of the calendar year following the calendar year in which the taxes subject to gross-up are incurred or paid by Executive.

(c) If any amount under this Agreement is to be paid in two or more installments, for purposes of Code Section 409A each installment shall be treated as a separate payment.

19. Executive Acknowledgement. Executive hereby acknowledges that Executive has read and understands the provisions of this Agreement, that Executive has been given the opportunity for Executive's legal counsel to review this Agreement, that the provisions of this Agreement are reasonable and that Executive has received a copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Employment Agreement to be executed as of the date first above written.

DISCOVERY LABORATORIES, INC.

By:	/s/ Kathryn A. Cole	/s/ Craig Fraser
Name:	Kathryn A. Cole	Craig Fraser
Title:	Senior Vice President, Human Resources	

EXHIBIT A

(a) **"Beneficiary"** means any individual, trust or other entity named by Executive to receive the payments and benefits payable hereunder in the event of the death of Executive. Executive may designate a Beneficiary to receive such payments and benefits by completing a form provided by the Company and delivering it to the General Counsel of the Company. Executive may change his designated Beneficiary at any time (without the consent of any prior Beneficiary) by completing and delivering to the Company a new beneficiary designation form. If a Beneficiary has not been designated by Executive, or if no designated Beneficiary survives Executive, then the payment and benefits provided under this Agreement, if any, will be paid to Executive's estate, which shall be deemed to be Executive's Beneficiary.

(b) **"Cause"** means: (i) Executive's willful and continued neglect of Executive's duties with the Company (other than as a result of Executive's incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to Executive by the Company which specifically identifies the manner in which the Company believes that Executive has neglected his duties; (ii) the final conviction of Executive of, or an entering of a guilty plea or a plea of no contest by Executive to, a felony; or (iii) Executive's willful engagement in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this definition, no act or failure to act on the part of Executive shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without a reasonable belief that the action or omission was in the best interests of the Company. Any act, or failure to act, based on authority given pursuant to a resolution duly adopted by the Board, or the advice of counsel to the Company, will be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company.

(c) **"Change of Control"** means the occurrence of any one of the following events:

(i) any "person" (as defined in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Exchange Act")), other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, an underwriter temporarily holding securities pursuant to an offering of such securities or any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, directly or indirectly (x) acquires "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of securities representing more than 50% of the combined voting power of the Company's then outstanding securities or; (y) acquires within a 12 consecutive month period "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of securities representing 35% of the combined voting power of the Company's then outstanding securities;

(ii) persons who comprise a majority of the Board are replaced during any 12 consecutive month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of such appointment or election;

(iii) the consummation of a reorganization, merger, statutory share exchange, consolidation or similar corporate transaction (each, a "Business Combination") other than a Business Combination in which all or substantially all of the individuals and entities who were the beneficial owners of the Company's voting securities immediately prior to such Business Combination beneficially own, directly or indirectly, 50% or more of the combined voting power of the voting securities of the entity resulting from such Business Combination (including, without limitation, an entity which as a result of the Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership of the Company's voting securities immediately prior to such Business Combination; or

(iv) any "person" (as defined in Sections 13(d) and 14(d) of the Exchange Act) acquires all or substantially all of the assets of the Company within any 12 consecutive month period.

Notwithstanding the foregoing, none of the foregoing events shall constitute a Change of Control of the Company unless such event also constitutes a change in ownership of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(v), a change in the effective control of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi) or a change in ownership of a substantial portion of the assets of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vii).

(d) **"Change of Control Date"** means any date after the date hereof on which a Change of Control occurs; provided, however, that if a Change of Control occurs and if Executive's employment with the Company is terminated or an event constituting Good Reason (as defined below) occurs prior to the Change of Control, and if it is reasonably demonstrated by Executive that such termination or event (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change of Control, or (ii) otherwise arose in connection with or in anticipation of the Change of Control then, for all purposes of this Agreement, the Change of Control Date shall mean the date immediately prior to the date of such termination or event.

(e) **"Code"** means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(f) **"Date of Termination"** means the date specified in a Notice of Termination pursuant to Section 8 hereof, or Executive's last date as an active employee of the Company before a termination of employment due to death, Disability or other reason, as the case may be.

(g) **"Disability"** means a mental or physical condition that renders Executive substantially incapable of performing his duties and obligations under this Agreement, after taking into account provisions for reasonable accommodation, as determined by a medical doctor (such doctor to be mutually determined in good faith by the parties) for three or more consecutive months or for a total of six months during any 12 consecutive months; provided, that during such period the Company shall give Executive at least 30 days' written notice that it considers the time period for disability to be running.

(h) **"Effective Period"** means the period beginning on the Change of Control Date and ending 24 months after the date of the related Change of Control.

(i) **"Good Reason"** means, unless Executive has consented in writing thereto, the occurrence of any of the following: (i) the assignment to Executive of any duties materially inconsistent with Executive's position, including any change in status, title, authority, duties or responsibilities or any other action which results in a material diminution in such status, title, authority, duties or responsibilities; (ii) a material reduction in Executive's Base Salary by the Company; (iii) the relocation of Executive's office to a location more than 30 miles from Warrington, Pennsylvania; (iv) the failure of the Company to comply with the provisions of Section 6(a); or (v) the failure of the Company to obtain the assumption in writing of the Company's obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company within 15 days after a Business Combination or a sale or other disposition of all or substantially all of the assets of the Company.

EXHIBIT B
EMPLOYEE CONFIDENTIALITY, ASSIGNMENT OF INVENTIONS,
NON-INTERFERENCE AND NON-COMPETITION AGREEMENT

The following is an agreement ("Agreement") between Discovery Laboratories, Inc., a Delaware corporation (the "Company"), and any successor in interest, and me, Craig Fraser, and this Agreement is a material part of the consideration for my employment by the Company:

1. Job Title and Responsibility. I understand that my job title with the Company will be President and Chief Executive Officer and that the Company may change this title at any time. My job duties and responsibilities will be those assigned to me by the Company from time to time.

2. Consideration. I understand that the consideration to me for entering into this Agreement is my employment with the Company, and I agree that this consideration is fully adequate to support this Agreement.

3. Proprietary Information. I acknowledge that the Company is engaged in a continuous program of research, development and production. I also acknowledge that the Company possesses or has rights to secret, private, confidential information and processes (including processes and information developed by me during my employment by the Company) which are valuable, special and unique assets of the Company and which have commercial value in the Company's business ("Proprietary Information"). Proprietary Information includes, but is not limited to, information and details regarding the Company's business, trade or business secrets, inventions, intellectual property, systems, policies, records, reports, manuals, documentation, models, data and data bases, products, processes, operating systems, manufacturing techniques, research and development techniques and processes, devices, methods, formulas, compositions, compounds, projects, developments, plans, research, financial data, personnel data, internal business information, strategic and staffing plans and practices, business, marketing, promotional or sales plans, practices or programs, training practices and programs, costs, rates and pricing structures and business methods, computer programs and software, customer and supplier identities, information and lists, confidential information regarding customers and suppliers, and contacts at or knowledge of Company suppliers and customers or of prospective or potential customers and suppliers of the Company.

4. Obligation of Confidentiality. I understand and agree that my employment creates a relationship of confidence and trust between the Company and me with respect to (i) all Proprietary Information, and (ii) the confidential information of others with which the Company has a business relationship. At all times, both during my employment by the Company and after the termination of my employment (whether voluntary or involuntary), I will keep in confidence and trust all such information, and I will not use, reveal, communicate, or disclose any such Proprietary Information or confidential information to anyone or any entity, without the written consent of the Company, unless I am ordered to make disclosure by a court of competent jurisdiction.

5. Ownership, Disclosure and Assignment of Proprietary Information and Inventions. In addition, I hereby agree as follows:

(a) Ownership and Assignment. All Proprietary Information is, and shall be, the sole and exclusive property of the Company and its successors and assigns, and the Company and its successors and assigns shall be the sole and exclusive owner of all Proprietary Information, including, but not limited to, trade secrets, inventions, patents, trademarks, copyrights, and all other rights in connection with such Proprietary Information. I agree that I have no rights in Proprietary Information. I hereby assign, and shall assign, to the Company and its successors and assigns any and all rights, title and interest I may have or acquire in Proprietary Information. Any copyrightable work prepared in whole or in part by me in the course of my employment shall be deemed "a work made for hire" under applicable copyright laws, and the Company and its successors and assigns shall own all of the rights in any copyright.

(b) Return of Materials and Property. All documents, records, apparatus, equipment, databases, data and information, whether stored in physical form or by electronic means, and all electronic, computer, intellectual, and physical property ("Materials and Property"), whether or not pertaining to Proprietary Information, furnished to me by the Company or produced by me or others in connection with employment, shall be and remain the sole and exclusive property of the Company. I shall return to the Company all Materials and Property as and when requested by the Company. Even if the Company does not so request, I shall return all Materials and Property upon termination of employment by me or by the Company for any reason, and I will not take with me any Materials and Property, or any reproduction thereof, upon such termination.

(c) Notification. During the term of my employment and for one (1) year thereafter, I will promptly disclose to the Company, or any persons designated by it, all improvements, inventions, intellectual property, works of authorship, formulas, ideas, processes, techniques, discoveries, developments, designs, devices, innovations, know-how and data, and creative works in which copyright and/or unregistered design rights will subsist in various media (collectively, "Inventions"), whether or not such Inventions are patentable, which I make or conceive, contribute to, reduce to practice, or learn, either alone or jointly with others.

(d) Ownership of Inventions. I agree and acknowledge that all Inventions which I make, conceive, develop, or reduce to practice (in whole or in part, either alone or jointly with others) at any time during my employment by the Company, and (i) which were created using the equipment, supplies, facilities or trade secret information of the Company, or (ii) which were developed during the hours for which I was compensated by the Company, or (iii) which relate, at the time of conception, creation, development or reduction to practice, to the business of the Company or to its actual or demonstrably anticipated research and development, or (iv) which result from any work performed by me for the Company, shall be the sole and exclusive property of the Company and its successors and assigns (and to the fullest extent permitted by law shall be deemed works made for hire), and the Company and its successors and assigns shall be the sole and exclusive owner of all Inventions, patents, copyrights and all other rights in connection therewith. I hereby assign to the Company any and all rights I may have or acquire in such Inventions. I agree that any Invention required to be disclosed under paragraph (c), above, within one (1) year after the termination of my employment shall be presumed to have been conceived or made during my employment with the Company and will be assigned to the Company unless and until I prove and establish to the contrary.

(e) Assistance and Cooperation. With respect to Inventions described in paragraph (d), above, I will 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 these Inventions in any and all countries, and will execute all documents reasonably necessary or appropriate for this purpose. This obligation shall survive the termination of my employment. In the event that the Company is unable for any reason whatsoever to secure my signature to any document reasonably necessary or appropriate for any of the foregoing purposes (including renewals, extensions, continuations, divisions or continuations in part), I hereby irrevocably designate and appoint the Company, and its duly authorized officers and agents, as my agents and attorneys-in- fact to act for and in my behalf and instead of me, but only for the purpose of executing and filing any such document and doing all other lawfully permitted acts to accomplish the foregoing purposes with the same legal force and effect as if executed by me.

(f) Exempt Inventions. I understand that this Agreement does not require assignment of an Invention for which no equipment, supplies, facilities, resources, or trade secret information of the Company was used and which was developed entirely by me on my own time, unless the invention relates (i) directly to the business of the Company or (ii) to the Company's actual or demonstrably anticipated research or development. However, I will disclose to the Company any Inventions I claim are exempt, as required by paragraph (c) above, in order to permit the Company to determine such issues as may arise. Such disclosure shall be received in confidence by the Company.

6. Prior Inventions. As a matter of record I attach hereto as Exhibit A a complete list of all inventions or improvements relevant to the subject matter of my employment by the Company which have been made or conceived or first reduced to practice by me, alone or jointly with others, prior to my employment with the Company, that I desire to remove from the operation of this Agreement, and I covenant that such list is complete. If no such list is attached to this Agreement, I represent that I have no such inventions and improvements at the time of my signing this Agreement.

7. Other Business Activities. So that the Company may be aware of the extent of any other demands upon my time and attention, I will disclose to the Company (such disclosure to be held in confidence by the Company) the nature and scope of any other business activity in which I am or become engaged during the term of my employment. During the term of my employment, I will not engage in any business activity or employment which is in competition with, or is related to, the Company's business or its actual or demonstrably anticipated research and development, or that will affect in any manner my ability to perform fully all of my duties and responsibilities for the Company.

8. Non-Interference and Non-Solicitation of Employees, Customers and Others.

(a) During my employment with the Company and for twelve (12) months after the termination of my employment (whether the termination is by me or the Company, the “Restricted Period”), I will not, and will not attempt to directly or indirectly do any one or more of the following: (i) induce, encourage or solicit any employee, consultant, or independent contractor of the Company to leave the Company for any reason, unless specifically requested to take such action in writing by the Company; or (ii) employ, retain, or engage any employee, consultant, or independent contractor of the Company. For purposes of this Section 8(a), the terms “employee”, “consultant” and “independent contractor” shall include those who served in such capacities during within twelve (12) months preceding the date of the termination of my employment.

(b) During the Restricted Period, I will not, and will not attempt to, directly or indirectly, solicit, divert, disrupt, interfere with or take away any Company customer, supplier, agent, vendor, distributor, representative, or other contracting party with the Company that had such a relationship with the Company during my employment with the Company to a business that is a Competitor of the Company. For purposes of this Agreement, the term "Competitor" shall include any company or other entity engaged in developing or commercializing any one or more of the following: (i) surfactants for medical or research purposes; (ii) any device or system (including related methods and processes) using, based on, or similar to (a) the Company's capillary generation technology or (b) any of the Company's drug delivery technologies; or (iii) any product or process developed and commercialized, or under development in whole or in part, by the Company during my employment.

(c) During the Restricted Period, I will not, and will not attempt to, directly or indirectly induce any customer, supplier, agent, vendor, distributor, representative, or other contracting party with the Company that had such a relationship with the Company during my employment with the Company, to reduce its patronage of the Company or to terminate any written or oral agreement or understanding, or any other business relationship with the Company.

9. Non-Competition During and After Employment. During the Restricted Period, I will not directly or indirectly, without the prior written consent of the Company, maintain a relationship with a Competitor including as an employee, employer, consultant, agent, lender, investor, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity. I understand and agree that the restrictions in this paragraph are necessary and reasonable to protect the legitimate business interests of the Company.

10. Obligations to Former Employers. I represent that my execution of this Agreement, my employment with the Company, and my performance of my duties and proposed duties to the Company will not violate any obligations or agreements I have, or may have, with any former employer or any other third party, including any obligations and agreements requiring me not to compete or to keep confidential any proprietary or confidential information. I have not entered into, and I will not enter into, any agreement which conflicts with this Agreement or that would, if performed by me, cause me to breach this Agreement. I further represent that I have no knowledge of any pending or threatened litigation to which the Company may become a party by virtue of my association with the Company. I further agree to immediately inform the Company of any such pending or threatened litigation should it come to my attention during the course of my employment. I also represent that I have provided to the Company for its inspection before I signed this Agreement all confidentiality, non-compete, non-solicitation, and all other employment-related agreements and obligations to which I am party to which I am bound.

11. Confidential Information of, and Agreements with, Former Employers. In the course of performing my duties to the Company, I will not utilize any trade secrets, proprietary or confidential information of or regarding any former employer or business affiliate, nor violate any written or oral, express or implied agreement with any former employer or other third party.

12. United States Government Obligations. I acknowledge that the Company from time to time may have agreements with other persons or with the United States Government, or agencies thereof, which impose obligations or restrictions on the Company regarding inventions made during the course of work under such agreements or regarding the confidential nature of such work. I agree to be bound by all such obligations and restrictions which are made known to me and to take all action necessary to discharge the obligations of the Company under such agreements.

13. Remedies. I acknowledge that my failure to comply with, or my breach of, any of the terms and conditions of this Agreement shall irreparably harm the Company, and that money damages would not adequately compensate the Company for this harm. Accordingly, I acknowledge that in the event of a threatened or actual breach by me of any provision of this Agreement, in addition to any other remedies the Company may have at law, the Company shall be entitled to equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy then available, without requiring the Company to post any bond. I agree that nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to it for such threatened or actual breach, including money damages, and I agree that the Company shall be entitled to recover from me any attorney's fees it incurs in enforcing the terms of this Agreement.

14. Not an Employment Agreement. I acknowledge and agree that this Agreement is not a contract of employment for any specific period of time and that I am employed by the Company at will and my employment may be terminated by either me or the Company for any lawful reason.

15. Miscellaneous.

(a)Reformation and Severability. If any provision of this Agreement is held to be invalid or unenforceable under applicable law, such provision shall be reformed and/or construed, if possible, to be enforceable under applicable law; otherwise, such provision shall be excluded from this Agreement and the balance of the Agreement shall remain fully enforceable and valid in accordance with its terms.

(b) No Waiver. No delay or omission by the Company in exercising any right hereunder will operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

(c) Reassignment. I expressly consent to be bound by the provisions of this Agreement for the benefit of the Company or any subsidiary or affiliate thereof to whose employment I may be transferred, without the necessity that this Agreement be reassigned at the time of such transfer.

(d) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (but not the law or principles of conflict of laws). The parties submit to the exclusive jurisdiction of the state or federal courts of Pennsylvania for all disputes arising out of or relating to this Agreement, and hereby waive, and agree not to assert, in any action, suit, or proceeding between the parties arising out of or relating to this Agreement that the action, suit, or proceeding may not be brought or is not maintainable in such courts, that this Agreement may not be enforced by such courts, that the action, suit, or proceeding is brought in an inconvenient forum, that the venue of the action, suit, or proceeding is improper, or that the action, suit, or proceeding, if brought in Pennsylvania state court, may be removed to federal courts.

(e) Effective Date. This Agreement shall be effective as of the first day of my employment by the Company, shall be binding upon me, my heirs, executors, assigns and administrators, and shall inure to the benefit of the Company and its successors and assigns.

(f) Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter herein, and may not be waived, changed, extended or discharged except by an agreement in writing signed by both parties.

(g) Acknowledgement. I acknowledge and agree that I have fully read and that I understand all of the terms and provisions of this Agreement, that I have had the opportunity to consult with an attorney and to discuss this Agreement with an attorney, that I have had any questions regarding the effect of this Agreement or the meaning of its terms answered to my satisfaction, and, intending to be legally bound hereby, I freely and voluntarily sign this Agreement.

Discovery Laboratories, Inc.

/s/ Craig Fraser
Name: Craig Fraser
Date:

By: /s/ Kathryn Cole
Name: Kathryn Cole
Title: Senior Vice President, Human Resources

EXHIBIT A

1. The following is a complete list of all inventions or improvements ("Intellectual Property") relevant to my employment by Discovery Laboratories, Inc. (the "Company") that have been made or conceived or first reduced to practice by me, alone or jointly with others, prior to my employment by the Company that I desire to remove from the operation of the Employee Confidentiality, Assignment of Inventions, Non-Interference and Non-Competition Agreement between me and the Company (the "Employee Agreement").

☐ No Intellectual Property.

☐ Any and all Intellectual Property regarding:

☐ Additional sheets attached.

2. I propose to bring to my employment the following materials and documents of a former employer or materials and documents created by me and/or others during any previous employment ("Materials"):

☐ No Materials.

☐ Materials:

☐ Additional sheets attached.

3. I acknowledge and agree that the Materials set forth above are being provided by me in accordance with the representations set forth in Section 10 of the Employee Agreement between me and the Company.

Name: _____

Exhibit 10.3

DISCOVERY LABORATORIES, INC.

STOCK OPTION AGREEMENT

RECITALS

A. The option to purchase common stock of Discovery Laboratories, Inc. (the "Company") reflected by this Stock Option Agreement ("Award Agreement") is being granted as an "inducement" award under the NASDAQ Marketplace Rules. Accordingly, such non-qualified option has been granted outside of the Company's existing equity compensation plans. However, the option will be governed in all respects as if issued under the Company's 2011 Long-Term Incentive Plan (the "Plan"), as currently in effect and as may be amended hereafter from time to time.

B. The Optionee is an newly hired Employee who will render valuable Services to the Company (or Subsidiary), and this Award Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Company's grant of an option to the Optionee. The Option shall hereinafter be referred to as the Participant, notwithstanding the fact that the such option is granted as an inducement grant outside of the Company's equity compensation plans.

C. All capitalized terms in this Award Agreement shall have the meaning assigned to them in the Plan. For convenience, relevant portions of certain of the Plan definitions and certain additional definitions relating to this Award Agreement are included in the Appendix. This Award Agreement, including the Notice of Grant, is subject to the terms of the Plan, which are incorporated in this Award Agreement by reference. If there is a conflict between the terms of the Plan and this Award Agreement or the Notice of Grant, the terms of the Plan shall prevail.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Award of Option**. The Company hereby grants to Participant, as of the Award Date, a non-qualified stock option to purchase up to the number of Option Shares specified in the Notice of Grant. The option granted pursuant to this Award Agreement is not intended to be an incentive stock option within the meaning of section 422 of the Code. The Option Shares shall be purchasable from time to time as specified in Paragraph 4 during the option term specified in Paragraph 2 at the Option Price set forth in the Notice of Grant.

2. **Option Term**. This option shall have a term commencing on the Award Date and ending on the Expiration Date set forth in the Notice of Grant. The option shall expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.

3. **Limited Transferability**. The option granted under this Award Agreement shall not be assignable, alienable, saleable, or transferable by Participant other than by will or by the laws of descent and distribution; provided, however, that, if a procedure shall be adopted by the Committee at any time, Participant may designate a beneficiary or beneficiaries to exercise the rights of Participant with respect to this option upon Participant's death. The option granted under this Award Agreement shall be exercisable during Participant's lifetime only by Participant or, if permissible under applicable law, by Participant's guardian or legal representative. This option may not be pledged, alienated, attached, or otherwise encumbered, and any purported pledge, alienation, attachment, or encumbrance thereof shall be void and unenforceable against the Company or any affiliate of the Company. Notwithstanding the foregoing, if this option is designated a Non-Qualified Stock Option in the Notice of Grant, then this option may, in connection with Participant's estate plan, be assigned, in whole or in part, during Participant's lifetime to one or more members of Participant's immediate family or to a trust established for the exclusive benefit of one or more such family members. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Committee may deem appropriate.

4. **Dates of Exercise**. This option shall vest and become exercisable for the Option Shares in one or more installments as specified in the Notice of Grant. As the option becomes exercisable for such installments, those installments shall accumulate, and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraph 5 or 6.

5. **Termination of Service**. The option term and this option shall expire and cease to be exercisable prior to the Expiration Date should any of the following provisions become applicable:

(a) If Participant's Service is terminated for any reason other than death, Disability or for Cause, then Participant shall have the right to exercise, in whole or in part, that portion of this option that was vested and exercisable on the date of termination of Service until the earlier of (i) three (3) months after termination of Service or (ii) the Expiration Date; and, to the extent that any portion of this option was not exercisable on the date of termination of Service, it will immediately terminate.

(b) If Participant's Service is terminated on account of death or Disability, then Participant or Participant's Beneficiary (as applicable) shall have the right to exercise, in whole or in part, that portion of this option that was vested and exercisable on the date of termination of Service until the earlier of (i) one (1) year after Participant's termination of Service or (ii) the Expiration Date; and, to the extent that any portion of this option was not exercisable on the date of termination of Service, it will immediately terminate.

(c) If Participant's Service is terminated for Cause or if Participant shall breach any post-Service duties to the Company or any post-Service covenants or agreements, including any confidentiality or non-competition and non-solicitation agreement, any unexercised portion of this option shall terminate immediately. Solely for the purposes of this Award Agreement, notwithstanding any notice period or cure period provided in any employment or other applicable agreement, if Participant is terminated for Cause, the date of termination shall be deemed to be the date on which the Company issues a notice of termination to Participant (subject to any right that the Participant may have to cure). The right to exercise any vested and unexercised portion of this option shall be suspended during any such notice or cure period. Should the Company revoke any notice of termination based on Participant's satisfactory cure under an employment or other applicable agreement, the Committee may reinstate the right to exercise this option under the original terms of this Award Agreement.

6. **Special Acceleration of Option**. Except as otherwise expressly provided in a Participant's employment or other applicable agreement, which shall supersede the provisions of this Paragraph 6 solely to the extent that the rights and privileges under such agreement, as determined by the Committee, in its discretion, are not reasonably likely to significantly diminish the rights and benefits that would otherwise be provided under this paragraph 6:

(a) In the event of a Change in Control, vesting under this option shall automatically accelerate so that, immediately prior to the effective date of the Change in Control, but subject to the occurrence of the Change in Control, this option shall become exercisable with respect to the total number of Option Shares at the time subject to this option and may be exercised for any or all of those Option Shares. However, vesting under this option shall not so accelerate if and to the extent: (i) this option is, in connection with the Change in Control, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on any unvested Option Shares at the time of the Change in Control (the excess of the Fair Market Value of those Option Shares over the aggregate Option Price payable for such Option Shares) and provides for subsequent pay-out in accordance with the same option vesting schedule set forth in the Notice of Grant. The determination of comparability under clause (i) above shall be made by the Committee, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, the Committee shall have the discretion, exercisable at any time during the option term, to provide for the automatic acceleration of all or a portion of this option upon the occurrence of a Change in Control, whether or not this option is to be assumed or replaced in the Change in Control.

(b) Upon the occurrence of the termination of Participant's Service by reason of an Involuntary Termination (as defined below) within eighteen (18) months following the effective date of a Change in Control, vesting under this option shall accelerate automatically and this option shall become exercisable with respect to the total number of Option Shares at the time subject to this option and shall remain exercisable until the earlier of (i) one year after the effective date of the Involuntary Termination, or (ii) the Expiration Date. Involuntary Termination shall mean the termination of the Service of any individual which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Company for reasons other than Cause, or

(ii) such individual's voluntary resignation following (A) a change in his or her position with the Company (or Subsidiary employing such individual) which materially reduces such individual's duties and responsibilities or the level of management to which such individual reports, (B) a reduction in such individual's level of compensation (including base salary, fringe benefits and target bonus under any corporate performance-based bonus or incentive programs) by more than fifteen percent (15%) or (C) a relocation of such individual's place of employment by more than fifty (50) miles, and farther from the Participant's residence than prior to the relocation; provided and only if such change, reduction or relocation is effected by the Company without such individual's consent; provided that such voluntary resignation shall not be an Involuntary Termination unless the Participant gives the Company written notice of the Participant's intent to resign as a result of the existence of a specified condition described in (A), (B) or (C) within 90 days of the initial existence of such condition, provides the Company 30 days to cure such condition, and actually resigns no more than 10 days after the lapse of such 30-day cure period if the condition is not cured.

(c) This Award Agreement shall not in any way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. **Repurchase Right.** If at any time Participant's Service is terminated for Cause or if Participant shall breach any covenants set forth in any written agreement between Participant and the Company, the Company may, in its discretion, for a period of one (1) year after the termination for Cause or upon the actual discovery by the Company of the breach, whether or not within such 1-year period, as the case may be, and upon 10 (ten) days' notice to Participant, (i) repurchase all or any portion of any Shares acquired by Participant upon Participant's exercise of this option, and/or (ii) require Participant to repay to the Company the amount of any profits realized by Participant upon the sale or other disposition during the preceding three (3) years of any Shares acquired by Participant upon Participant's exercise of this option. The purchase price for any Shares repurchased by the Company pursuant to clause (i) of this Paragraph 7 shall be the lesser of the price paid by Participant to acquire such Shares and the Fair Market Value thereof on the date of such repurchase by the Company. In addition, the Company shall have repurchase rights in accordance with the terms of any repurchase policy as may be in effect from time to time.

8. **Adjustment in Option Shares**. Should any change be made to the Shares of the Company by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Option Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

9. **Stockholder Rights**. The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Option Price and become a holder of record of the purchased Shares.

10. **Manner of Exercising Option**.

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Participant (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Company a Notice of Exercise for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Option Price for the purchased Shares in one or more of the following forms:

(A) cash or check made payable to the Company;

(B) Shares held by Participant (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(C) provided that no restrictions against trading in the Shares are then in effect, as contemplated by Paragraph 11, (I) through a "net exercise" arrangement to the extent permitted by applicable law, or (II) through a special sale and remittance procedure pursuant to which Participant (or any other person or persons exercising the option) shall concurrently provide irrevocable instructions (x) to a Company-approved brokerage firm to effect the immediate sale of the purchased Shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Option Price payable for the purchased Shares plus all applicable income and employment taxes required to be withheld by the Company by reason of such exercise and (y) to the Company to deliver the certificates for or other evidence of the purchased Shares directly to such brokerage firm in order to complete the sale.

Except to the extent the net exercise or the sale and remittance procedure is utilized in connection with the option exercise, payment of the Option Price must accompany the Notice of Exercise delivered to the Company in connection with the option exercise.

(iii) Furnish to the Company appropriate documentation that the person or persons exercising the option (if other than Participant) have the right to exercise this option.

(iv) Make appropriate arrangements with the Company (or Parent or Subsidiary employing or retaining Participant) for the satisfaction of all income and employment tax withholding requirements applicable to the option exercise.

(b) As soon as practical after the Exercise Date, the Company shall deliver to or on behalf of Participant (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto, shall effect book-entry registration in the Participant's (or such other person's) name.

(c) In no event may this option be exercised for any fractional shares.

11. **Compliance with Laws and Regulations**.

(a) The exercise of this option and the delivery of the Shares upon such exercise shall be subject to compliance by the Company and Participant with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Shares may be listed for trading at the time of such exercise and delivery.

(b) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance or delivery and sale of any Shares pursuant to this option shall relieve the Company of any liability with respect to the non-issuance, non-delivery or sale of the Shares as to which such approval shall not have been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

12. **Successors and Assigns**. Except to the extent otherwise provided in Paragraphs 3 and 6, the provisions of this Award Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and Participant and Participant's assigns and Beneficiaries.

13. **Notices**. Any notice required to be given or delivered to the Company under the terms of this Award Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to Participant shall be in writing and addressed to Participant at the address indicated below Participant's signature line on the Notice of Grant. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

14. **Construction**. All decisions of the Committee with respect to any question or issue arising under the Plan or this Award Agreement shall be conclusive and binding on all persons having an interest in this option.

15. **Governing Law**. The interpretation, performance and enforcement of this Award Agreement shall be governed by the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

16. **Excess Shares**. If the Option Shares covered by this Award Agreement exceed, as of the Award Date, the number of Shares which may without stockholder approval be delivered under the Plan, then this option shall be void with respect to those excess Shares, unless stockholder approval of an amendment sufficiently increasing the number of Shares issuable under the Plan is obtained in accordance with the provisions of the Plan.

17. **Leave of Absence**. The following provisions shall apply upon Participant's commencement of an authorized leave of absence:

(a) The exercise schedule in effect under the Notice of Grant shall be frozen as of the first day of the authorized leave, and this option shall not become exercisable for any additional installments of the Option Shares during the period Participant remains on such leave.

(b) Should Participant resume active Employee status within sixty (60) days after the start date of the authorized leave, Participant shall, for purposes of the exercise schedule set forth in the Notice of Grant, receive Service credit for the entire period of such leave. If Participant does not resume active Employee status within such sixty (60)-day period, then no Service credit shall be given for the period of such leave.

(c) If this option is designated as an Incentive Stock Option in the Notice of Grant, then the following additional provision shall apply:

(i) If the leave of absence continues for more than ninety (90) days, then this option shall automatically convert to a Non-Qualified Stock Option at the end of the three (3)-month period measured from the ninety-first (91st) day of such leave, unless Participant's reemployment rights are guaranteed by statute or by written agreement. Following any such conversion of this option, all subsequent exercises of this option, whether effected before or after Participant's return to active Employee status, shall result in an immediate taxable event, and the Company shall be required to collect from Participant the income and employment withholding taxes applicable to such exercise.

(ii) In no event shall this option become exercisable for any additional Option Shares or otherwise remain outstanding if Participant does not resume Employee status prior to the Expiration Date.

This page intentionally left blank.

EXHIBIT I
NOTICE OF EXERCISE

I hereby notify Discovery Laboratories, Inc. (the "Company") that I elect to purchase _____ Shares (the "Purchased Shares") at the Option Price of $ _____ per share pursuant to that certain non-qualified stock option (the "Option") granted to me under on _____, ____.

Concurrently with the delivery of this Exercise Notice to the Company, I shall hereby pay to the Company the Option Price for the Purchased Shares in accordance with the provisions of my Notice of Grant and Award Agreement with the Company (or other documents) evidencing the Option and shall deliver whatever additional documents may be required by such agreement as a condition for exercise. Alternatively, if I am eligible I may utilize the net exercise or the special broker-dealer sale and remittance procedure specified in my agreement to effect payment of the Option Price.

_____
Date

_____
Participant

Address: _____

_____

Print name in exact manner it is to appear on the stock certificate: _____

Address to which certificate is to be sent, if different from address above: _____

_____

Social Security Number: _____

Employee Number: _____

This page intentionally left blank.

APPENDIX

The following definitions shall be in effect under the Award Agreement:

Award Date shall mean the effective date of grant of the option as specified in the Notice of Grant.

Award Agreement shall mean this Stock Option Agreement and the associated Notice of Grant pursuant to which the Option is granted.

Beneficiary shall mean, in the event the Committee implements a beneficiary designation procedure, the person designated by Participant, pursuant to such procedure, to succeed to such person's rights under any outstanding awards held by Participant at the time of death. In the absence of such procedure or designation, the Beneficiary shall be Participant's personal representative or the person or persons to whom this Option is transferred by will or the laws of descent and distribution.

Board shall mean the Company's Board of Directors.

Cause, with respect to any Employee or Consultant of the Company or a Subsidiary, shall have the meaning set forth in such person's employment, consulting or other applicable agreement, or, in the absence of any such agreement or if such term is not defined in any such agreement, shall mean any one or more of the following, as determined by the Committee:

(i) willful misconduct or gross negligence in the performance of such person's duties;

(ii) willful and continued failure or refusal to perform satisfactorily any duties reasonably requested in the course of such person's employment by, or service to, the Company (other than a failure resulting from such person's disability); or

(iii) fraudulent, dishonest or other improper conduct engaged in by such person that causes, or has the potential to cause, harm to the Company or any of its Subsidiaries, or its or their business or reputation, including, without limitation, such person's violation of any policies of the Company applicable to the such person, such person's violation of laws, rules or regulations applicable to such person, criminal activity, habitual drunkenness or use of illegal drugs.

Change in Control shall have the meaning, if any, set forth in a Participant's employment, consulting or other applicable agreement, or, if such term is not defined in any such agreement, shall mean the first to occur of the following:

(i) any Person (other than (1) the Company, or (2) any trustee or other fiduciary under an employee benefit plan of the Company), is or becomes the beneficial owner (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Participant's Employer (as defined below) by reason of having acquired such securities during the 12-month period ending on the date of the most recent acquisition (not including any securities acquired directly from the Company or its Affiliates) representing thirty percent (30%) or more of the total voting power of the Participant's Employer's then outstanding voting securities;

(ii) the majority of members of the board of directors of the Participant's Employer is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the board of directors of the Participant's Employer before the date of the appointment;

(iii) there is consummated a merger or consolidation of the Participant's Employer or any subsidiary thereof with any other corporation or other entity, resulting in a change described in clauses (i), (ii), (iv) or (v) of this definition, other than (1) a merger or consolidation that would result in the voting securities of the Participant's Employer outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or parent entity) more than sixty percent (60%) of the total voting power of the voting securities of the Participant's Employer or such surviving or parent entity outstanding immediately after such merger or consolidation or (2) a merger or consolidation effected to implement a recapitalization of the Company or the Participant's Employer (or similar transaction) in which no Person, directly or indirectly, acquired forty percent (40%) or more of the total voting power of the then outstanding securities of the Participant's Employer (not including any securities acquired directly from the Company or its Affiliates);

(iv) a liquidation of the Participant's Employer involving the sale to any Person of at least forty percent (40%) of the total gross fair market value of all of the assets of the Participant's Employer immediately before the liquidation; or

(v) the sale or disposition by the Participant's Employer or any direct or indirect subsidiary of the Participant's Employer to any Person (other than any Subsidiary) of assets that have a total fair market value equal to forty percent (40%) or more of the total gross fair market value of all of the assets of the Participant's Employer and its subsidiaries (taken as a whole) immediately before such sale or disposition (or any transaction or related series of transactions having a similar effect), other than a sale or disposition by the Company or the Participant's Employer or any direct or indirect subsidiary of either to an entity at least sixty percent (60%) of the total voting power of the voting securities of which is beneficially owned by Stockholders of the Company or the Participant's Employer in substantially the same proportions as their beneficial ownership of the Company or the Participant's Employer immediately prior to such sale.

For purposes of this definition, "Participant's Employer" shall mean (1) the Company or a Subsidiary corporation for which the Participant directly provides services or (2) a corporation that is a majority stockholder of the Company or a Subsidiary, or any corporation in a chain of corporations each of which is a majority stockholder of another corporation in the chain, ending with the corporation described in (1).

Code shall mean the Internal Revenue Code of 1986, as a mended from time to time. A reference to a section of the Code shall be deemed to include any successor sections of the Code.

Committee shall mean a committee of the Board, acting in accordance with the provisions of Section 3 of the Plan, designated by the Board to administer the Plan. To the extent the Committee has delegated authority, the term "Committee" shall refer to such delegate.

Company shall mean Discovery Laboratories, Inc. and any Subsidiary to which Participant may render Services.

Disability for each respective Participant shall have the meaning set forth in the Participant's employment agreement; provided, that if such term is not defined in any such agreement then "Disability" shall mean (i) with respect to any Incentive Stock Option, a permanent and total disability, within the meaning of Section 22(e)(3) of the Code, and (ii) for any other purpose, "disability" as defined in the Company's long term disability program applicable to the Participant (or that would be applicable to the Participant if the Participant elected coverage).

Employee shall mean any person treated as an employee (including officers and directors) in the records of the Company or any Subsidiary and who is subject to the control and direction of the Company or any Subsidiary with regard to both the work to be performed and the manner and method of performance.

Exercise Date shall mean the date on which the option shall have been exercised in accordance with Paragraph 10 of this Award Agreement.

Expiration Date shall mean the date on which the option expires as specified in the Notice of Grant.

Fair Market Value of a Share on any date of reference shall be determined by the Committee, in its sole discretion, and may be different for different purposes. Unless the Committee determines otherwise,

(i) if the Shares are listed or admitted for trading on any United States national securities exchange, or if actual transactions are otherwise reported on a consolidated transaction reporting system, the last reported sale price of a Share on such exchange or reporting system, as reported in any newspaper of general circulation, or

(ii) if clause (i) is not applicable, the mean of the high bid and low asked quotations for a Share as reported by the National Quotation Bureau, Incorporated if at least two securities dealers have inserted both bid and asked quotations for the Shares on at least five of the 10 preceding trading days; or

(iii) if clauses (i) and (ii) above are not applicable to the Company (e.g., if the Shares are not then publicly traded or quoted), then the "Fair Market Value" of a Share shall be the fair market value (i.e., the price at which a willing seller would sell a Share to a willing buyer when neither is acting under compulsion and when both have reasonable knowledge of all relevant facts) of a Share on such date as the Committee in its sole and absolute discretion shall determine in a fair and uniform manner.

Incentive Stock Option shall mean an option that is intended to meet the requirements of Section 422 of the Code.

Non-Qualified Stock Option shall mean an option granted under this Award Agreement that is not intended to be an Incentive Stock Option.

Notice of Exercise shall mean the notice of exercise in the form attached hereto as Exhibit I.

Notice of Grant shall mean the Notice of Grant of Stock Options accompanying the Award Agreement, pursuant to which Participant has been informed of the basic terms of the option evidenced hereby.

Option Price shall mean the purchase price payable for Option Shares under this option, as specified in the Notice of Grant.

Option Shares shall mean the number of Shares subject to the option as specified in the Notice of Grant.

Participant shall mean the person to whom the option is granted as specified in the Notice of Grant.

Plan shall mean the Company's 2011 Long-Term Incentive Plan, as amended from time to time.

Service shall mean Participant's performance of services for the Company (or any Subsidiary) in the capacity of Employee, non-employee director or consultant.

Shares shall mean the common shares of the Company and such other securities as may become the subject of this Option pursuant to an adjustment made under Section 4(b) of the Plan.

Subsidiary shall mean a subsidiary company as defined in Section 424(f) of the Code (with the Company being treated as the employer corporation for purposes of this definition).

Exhibit 10.4

**Form of Indemnification Agreement between Discovery Laboratories, Inc.
and each of its directors and officers**

INDEMNIFICATION AGREEMENT ("Agreement") effective as of [Date], between DISCOVERY LABORATORIES, INC., a Delaware corporation (the "Company"), and [Indemnitee name] ("Indemnitee").

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company and to do so free from undue concerns for claims or damages arising out of or related to such service to the Company;

WHEREAS, the Company and Indemnitee recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, agents and fiduciaries to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited;

WHEREAS, in recognition of the need to provide Indemnitee with substantial protection against personal liability, in order to procure Indemnitee's continued service as a [director/officer] of the Company and to enhance Indemnitee's ability to serve the Company in an effective manner, and in order to provide such protection pursuant to express contract rights, the Company wishes to provide for indemnification of, and the advancement of related expenses to, Indemnitee to the maximum extent permitted by law and to track recent developments under Delaware corporate law;

WHEREAS, Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") empowers the Company to indemnify its directors, officers, employees and agents by agreement and to indemnify persons who serve, at the request of the Company, as the directors, officers, employees or agents of other corporations or enterprises, and expressly provides that the indemnification provided by Section 145 is not exclusive; and

WHEREAS, the Board of Directors of the Company has determined that not only is it reasonable and prudent but necessary to promote the best interests of the Company and its stockholders that Indemnitee be indemnified and advanced expenses as set forth herein.

NOW, THEREFORE, the Company and Indemnitee hereby agree as follows:

Section 1. Certain Definitions.

a. "Beneficial Owner" has the meaning given to the term "beneficial owner" in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

b. "Board" shall mean the Board of Directors of the Company.

c. "Change in Control" shall mean, and shall be deemed to have occurred if, on or after the date of this Agreement, (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company's then outstanding Voting Securities, (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company's Shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, (iii) a merger or consolidation of the Company is consummated with any other corporation other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 60% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (iv) the Shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company's assets.

d. "Claim" shall mean with respect to a Covered Event: any loss, damage or liability, or any threatened, pending or completed action, suit, proceeding, arbitration or alternative dispute resolution mechanism, or any hearing, inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, regulatory, investigative or other.

e. "Covered Event" shall mean any event or occurrence directly or indirectly related to the fact that Indemnitee is or was a director, officer, employee, agent or fiduciary of the Company, or any subsidiary of the Company, or is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, or by reason of any action or inaction on the part of Indemnitee while serving in such capacity.

f. "Expenses" shall mean any and all reasonable expenses (including attorneys' and experts' fees and all other costs, expenses and obligations actually incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or to participate in, any action, suit, proceeding, alternative dispute resolution mechanism, hearing, inquiry or investigation), judgments, fines, penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) of, or in connection with, any Claim in which Indemnitee is or is threatened to be a party, and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable shall be presumed conclusively to be reasonable.

g. "Expense Advance" shall mean a payment to Indemnitee, pursuant to Section 2(e), of Expenses in advance of the settlement of or final judgment of any Claim.

h. "Independent Legal Counsel" shall mean an attorney or firm of attorneys, selected in accordance with Section 3(a), who shall not have otherwise performed services for the Company or Indemnitee within the last three years of the applicable Covered Event (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other Indemnitees under similar indemnity agreements).

i. References to "other enterprises" shall include employee benefit plans; references to "fines" shall include, without limitation, any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include, without limitation, any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

j. "Reviewing Party" shall mean any person or body appointed by the Board pursuant to Section 3(a) and in accordance with applicable law, which shall include (i) a majority of the members of the Board that are not parties to the Claim, (ii) a committee of such members of the Board, (iii) Independent Legal Counsel by way of a written opinion or (iv) the stockholders of the Company.

k. "Section" refers to a Section of this Agreement unless otherwise indicated.

l. "Voting Securities" shall mean any securities of the Company of which, the holders of such securities vote generally in the election of directors.

Section 2. Indemnification.

a. Indemnity in Third Party Proceeding. Subject to Sections 3, 4(a) and 10, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, the Company shall indemnify Indemnitee, if Indemnitee is a party to, or threatened to be made a party to or otherwise involved in any Claim against any and all Expenses actually and reasonably incurred by Indemnitee in connection with such Claim, but only if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

b. Indemnity in Derivative Actions. The Company shall indemnify Indemnitee if Indemnitee is a party to, or threatened to be made a party to or otherwise involved in any Claim by or in the right of the Company to procure a judgment in its favor against any and all Expenses actually and reasonably incurred by Indemnitee in connection with such Claim, but only if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification under this Section 2(b) shall be made in respect of any Claim as to which Indemnitee shall have been finally adjudged to be liable to the Company by a court of competent jurisdiction for gross negligence or willful misconduct in the performance of its duty to the Company, unless and only to the extent that any court in which such claim 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 indemnification for such Expenses as such court shall deem proper.

c. Indemnification as Witness. Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is involved in any investigative proceeding in connection with Indemnitee's service to the Company, including but not limited to testifying as a witness or furnishing documents in response to a subpoena or otherwise, Indemnitee shall be indemnified for any and all Expenses actually and reasonably incurred by or for him in connection therewith.

d. Partial Idemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses actually and reasonably incurred by him in connection with a Claim but is not entitled, however, to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

e. Advancement of Expenses. Subject to Sections 3, 4(a) and 10, Indemnitee shall have the right to Expense Advances by the Company, prior to the final disposition of any Claim by final adjudication to which there are no further rights of appeal, of any and all Expenses. Without limiting the generality or effect of the foregoing, within the applicable time frame as set forth in Section 4(a), the Company shall, in accordance with Indemnitee's request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. With respect to each Covered Event, Indemnitee shall execute and deliver to the Company an undertaking (which shall be accepted without reference to Indemnitee's ability to repay the Expense Advances), in the form attached hereto as Exhibit A, to repay any amounts paid, advanced, or reimbursed by the Company for such Expenses to the extent that it is ultimately determined, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. Any request for Expense Advances shall be in writing and shall include documentation in reasonable detail, provided, however, that Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnitee's obligation to reimburse the Company for Expense Advances shall be unsecured and no interest shall be charged thereon.

f. Mandatory Payment of Expenses. Notwithstanding any other provision of this Agreement other than Sections 4(e) and 9, to the extent that Indemnitee has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Claim (as to which all rights of appeal therefrom have been exhausted or lapsed), Indemnitee shall be indemnified against all Expenses incurred by Indemnitee in connection therewith.

Section 3. Review

a. Selection of Reviewing Party. Within 30 days of receipt of written notice by the Company of Indemnitee's notice of the existence of a Claim pursuant to Section 4(b), the Board shall appoint a Reviewing Party, the function of which shall be to review the Company's obligations hereunder or under any other agreement or under the Company's Certificate of Incorporation or By-Laws as now or hereafter in effect, or under any other applicable law (the "Operative Materials"); provided, however, that if there has been a Change in Control (other than a Change in Control which has been approved by a majority of the directors of the Board who were directors immediately prior to such Change in Control), a majority of the directors of the Board that are not parties to the Claim may direct that the Reviewing Party shall be an Independent Legal Counsel selected by Indemnitee (subject to the last sentence of this Section 3(a)) and approved by the Company (which approval shall not be unreasonably withheld).

Such Independent Legal Counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee is entitled to be indemnified under the Operative Materials, and the Company hereby agrees to abide by such opinion. The Company agrees to pay the reasonable fees and expenses of the Independent Legal Counsel referred to above and to indemnify fully such Independent Legal Counsel against any and all reasonable expenses (including reasonable attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay the fees and expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee, and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless (i) the selection of separate counsel by one or more Indemnitees has been previously authorized by the Company in writing, or (ii) an Indemnitee shall have provided to the Company a written statement that such Indemnitee has reasonably concluded in good faith that there may be a conflict of interest between such Indemnitee and the other Indemnitees with respect to the matters arising under this Agreement.

b. Non-indemnifiable Determination; Repayment Obligation. Notwithstanding anything to the contrary in this Agreement, in the event that (i) any Reviewing Party shall determine that Indemnitee is not entitled to indemnification for Expenses under the Operative Materials or (ii) it shall ultimately be determined in a final, non-appealable judgment that Indemnitee is not entitled to be indemnified by the Company or that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was lawful or (iii) that the Company is prohibited from indemnifying Indemnitee pursuant to Sections 7 or 10, (x) the Company shall have no further obligation to make any payments to or on behalf of Indemnitee pursuant to this Agreement, and (y) the Company shall as promptly as practicable be reimbursed by Indemnitee for all Expenses and/or Expense Advances theretofore paid to or on behalf of Indemnitee. In furtherance of Indemnitee's obligation to reimburse the Company pursuant to the immediately preceding sentence, as a condition to the payment of any Expenses and/or Expense Advances, Indemnitee shall provide the Company with reasonable assurance of the repayment of such Expenses and/or Expense Advances including, but not limited to, an indemnity bond, letter-of-credit, secured promissory note, or deposit into an escrow account as shall be required by the Company in its good faith discretion. The cost of any such indemnity bond may be submitted to the Company for an Expense Advance.

c. Indemnitee's Right to Challenge Review; Binding Effect. If any Reviewing Party determines that Indemnitee is not entitled to be indemnified hereunder in whole or in part under the Operative Materials, Indemnitee shall have the right to challenge such determination within 90 days of the determination by the Reviewing Party in the Delaware Court (as defined below). In such case, any determination made by any Reviewing Party that Indemnitee is not entitled to indemnification and/or Expense Advances under the Operative Materials shall not be binding, and Indemnitee shall not be required to reimburse the Company for any Expenses and/or Expense Advances theretofore paid to or on behalf of Indemnitee until a final determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Absent such challenge, any determination by any Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

Section 4. Procedures for Indemnification and Expense Advances.

a. Demand for Payment; Timing of Payments. All payments of Expenses (including, without limitation, Expense Advances) by the Company to or on the behalf of Indemnitee pursuant to this Agreement shall be made to the fullest extent permitted by law as soon as practicable after written demand by Indemnitee therefor is presented to the Company, but in no event later than 30 calendar days after such written demand by Indemnitee is presented to the Company, except in the case of Expense Advances, which shall be made no later than 10 business days after such written demand by Indemnitee is presented to the Company.

b. Notice/Cooperation by Indemnitee. Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified or to receive Expense Advances under this Agreement, give the Company notice in writing as soon as practicable of any Claim made, or to Indemnitee's knowledge, threatened against Indemnitee for which indemnification will or could be sought under this Agreement; provided, however, that Indemnitee's failure to provide notice in connection with such a threatened Claim shall not affect Indemnitee's right to any such indemnification or Expense Advances unless the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. Notice to the Company shall be directed to the Chief Executive Officer of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee), with a copy directed to the General Counsel of the Company. In addition, Indemnitee shall promptly give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

c. Presumptions, Reliance as Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed 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 Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, officer, agent or employee of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

d. No Other Presumptions; Burden of Proof. For purposes of this Agreement, the termination of any Claim in a manner adverse to Indemnitee, either by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not, by itself, create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that indemnification is not permitted by this Agreement or the Operative Materials, unless there has been a specific finding of fact, conclusion of law or an admission by Indemnitee as part of the termination of such Claim with respect to such standard of conduct, belief or permissibility of indemnification. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of proceedings by Indemnitee pursuant to Section 3(a) to secure a determination that Indemnitee should be indemnified under this Agreement under the Operative Materials, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. In connection with any determination by any Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder under the Operative Materials, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

e. Notice to Insurers. If, at the time the Company receives notice of a Claim pursuant to Section 4(b), the Company has liability insurance which may cover such Claim, the Company shall give prompt notice of the commencement of such Claim to the insurers in accordance with the procedures set forth in the applicable policy or policies. The Company shall promptly inform the Indemnitee of material developments affecting the insurance claim, in each case substantially concurrently with the delivery or receipt thereof by the Company. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay on behalf of Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policy or policies.

f. Selection of Counsel. In the event the Company shall be obligated hereunder to provide indemnification for, or make any Expense Advances with respect to, any Claim, the Company, if appropriate, shall be entitled to assume the defense of such Claim with counsel approved by Indemnitee (which approval shall not be unreasonably withheld) upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently retained by or on behalf of Indemnitee with respect to the same Claim; provided, that (i) Indemnitee shall have the right to employ separate counsel for any such Claim at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded, and has provided the Company with the written opinion of counsel reasonably acceptable to the Company to the effect, that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (C) the Company shall not continue to retain counsel to defend such Claim, then the reasonable fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification and/or Expense Advances hereunder.

g. Expenses Incurred in Action Relating to Enforcement or Interpretation. In the event that any action is instituted by Indemnitee under this Agreement including, but not limited to, a proceeding described in Sections 3 or 8 or under any liability insurance policies maintained by the Company, to enforce or interpret any of the terms hereof or thereof, Indemnitee shall be entitled to be indemnified for all Expenses actually and reasonably incurred by Indemnitee with respect to such action only if Indemnitee is ultimately successful in any such action; provided, however, that until such final determination is made, Indemnitee shall be entitled to receive payment of Expense Advances hereunder (and may be obligated to repay such Expense Advances) with respect to such action as provided in, and subject to, Section 2(e). In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be indemnified for all Expenses incurred by Indemnitee in defense of such action (including, without limitation, reasonable costs and expenses incurred with respect to Indemnitee's counterclaims and cross-claims made in such action) only if Indemnitee is ultimately successful in any such action; provided, however, that until a final determination is made in such action, Indemnitee shall be entitled to receive payment of Expense Advances hereunder (and may be obligated to repay such Expense Advances) with respect to such action as provided in Section 2(e).

Section 5. Additional Indemnification Rights; Nonexclusivity.

a. Scope. The Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification may not be specifically authorized by the Operative Materials. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of a Delaware corporation to indemnify a director, officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a director, officer, employee, agent or fiduciary, Indemnitee's rights hereunder shall be narrowed accordingly, but only to the extent required by such law, statute or rule, and otherwise shall have no effect on this Agreement or the parties' rights and obligations hereunder.

b. Nonexclusivity. The indemnification and the payment of Expense Advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its Bylaws, any other agreement, any vote of shareholders or disinterested directors, the DGCL or otherwise (collectively, the "Other Indemnity Provisions"); provided, however, that (a) to the extent that Indemnitee otherwise would have any greater right to indemnification under any Other Indemnity Provision, Indemnitee will be deemed to have such greater right hereunder and (b) to the extent that any change is made to any Other Indemnity Provision which permits any greater right to indemnification than that provided under this Agreement as of the date hereof, Indemnitee will be deemed to have such greater right hereunder.

Section 6. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Restated Certificate of Incorporation, Bylaws or otherwise) of the amounts otherwise payable hereunder.

Section 7. Mutual Acknowledgment. Both the Company and Indemnitee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Company from indemnifying its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. Indemnitee acknowledges that the Company has undertaken, or, in the future, the Securities and Exchange Commission (the "Commission") may require the Company to undertake, to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee. Indemnitee acknowledges and agrees that if, and to the extent that, indemnification is so prohibited in the written opinion of counsel to the Company, then the Company shall be relieved from any obligation that would cause the Company to violate any such laws or policies.

Section 8. *[Reserved]*

Section 9. Liability Insurance. To the extent the Company maintains liability insurance applicable to directors, officers, employees, agents or fiduciaries, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

Section 10. Exceptions. Notwithstanding any other provision of this Agreement, the Company shall not be obligated pursuant to the terms of this Agreement:

a. Excluded Action or Omissions. To indemnify or make Expense Advances to Indemnitee with respect to Claims arising out of acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification under applicable law.

b. Claims Initiated by Indemnitee. To indemnify or make Expense Advances to Indemnitee with respect to Claims initiated or brought voluntarily by Indemnitee including any proceedings against the Company or its directors, officers, employees or other indemnitees and not by way of defense, counterclaim or cross-claim, except (i) with respect to actions or proceedings brought pursuant to Section 3(c) to establish or enforce a right to indemnification or Expense Advances under this Agreement or any other agreement or insurance policy or under the Company's Restated Certificate of Incorporation or Bylaws now or hereafter in effect relating to Claims for Covered Events, (ii) in specific cases if the Board has approved the initiation or bringing of such Claim or (iii) as otherwise required under Section 145 of the DGCL.

c. Claims under Section 16(b). To indemnify Indemnitee for Expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

d. Clawbacks. To indemnify or advance funds to Indemnitee for Indemnitee's reimbursement to the Company of any bonus or other incentive-based or equity-based compensation previously received by Indemnitee or payment of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act or under the rules of the stock exchange where the Company's common stock is listed (including any such reimbursements under Section 304 of the Sarbanes-Oxley Act of 2002 in connection with an accounting restatement of the Company or the payment to the Company of profits arising from the purchase or sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act).

Section 11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

Section 12. Binding Effect; Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect, and whether by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer, employee, agent or fiduciary (as applicable) of the Company or of any other enterprise at the Company's request, as provided in §23 hereof.

Section 13. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 14. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and signed for by the party addressed, on the date of such delivery, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

Section 15. Consent to Jurisdiction. The Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Court of Chancery of the State of Delaware (the "Delaware Court") and not in any other state or federal court in the United States, (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, and (c) waive, and agree not to plead or make, any claim that the Delaware Court lacks venue or that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum..

Section 16. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 17. Choice of Law. This Agreement, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware as applied to contracts between Delaware residents entered into and to be performed entirely in the State of Delaware without regard to principles of conflicts of laws of such State.

Section 18. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

Section 19. Amendment and Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

Section 20. Integration and Entire Agreement. This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto.

Section 21. No Construction as Employment Agreement. This Agreement shall not be deemed an employment agreement between the Company (or any of its subsidiaries or other enterprises) and Indemnitee. Indemnitee specifically acknowledges that [his/her] [employment with/service to] the Company or any of its subsidiaries is at will and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment agreement between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director or officer of the Company, by the the Company's Certificate of Incorporation, its Bylaws or Delaware law.

Section 22. Right to Set-Off. In the event that the Company is obligated to make any payment to Indemnitee (other than Expense Advances) pursuant to this Agreement and Indemnitee is indebted to the Company for any reason whatsoever, the Company may set-off from such payments any amount owed to the Company.

Section 23. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a director or officer of the Company and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to a Covered Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement as of the date first above written.

DISCOVERY LABORATORIES, INC.

By: _____
Name: Mary B. Templeton
Title: Senior Vice President, General Counsel and Corporate Secretary

INDEMNITEE:

_____
Name: [Indemnitee name]

EXHIBIT A

FORM OF UNDERTAKING TO REPAY ADVANCEMENT OF EXPENSES

[DATE]
[OFFICER(S) TO WHOM NOTICE IS DELIVERED]
[COMPANY]
[ADDRESS]
[CITY], [STATE] [ZIP CODE]

Re: Undertaking to Repay Advancement of Expenses.

[Ladies and Gentlemen/Dear [ADDRESSEE]]:

This undertaking is being provided pursuant to that certain Indemnification Agreement, dated [DATE], by and between Discovery Laboratories, Inc., a Delaware corporation (the "**Company**"), and the undersigned as Indemnitee (the "**Indemnification Agreement**"). Terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indemnification Agreement. Pursuant to the Indemnification Agreement, among other things, I am entitled to the advancement of Expenses paid or incurred in connection with Claims relating to Indemnifiable Events.

I have become subject to [DESCRIPTION OF PROCEEDING] (the Proceeding) based on [my status as [an officer/[TITLE OF OFFICER]/a director] of the Company/alleged actions or failures to act in my capacity as [an officer/[TITLE OF OFFICER]/a director] of the Company. [This undertaking also constitutes notice to the Company of the Proceeding pursuant to Section 4(b) of the Indemnification Agreement].] The following is a brief description of the [current status of the] Proceeding:

[DESCRIPTION OF PROCEEDING]

[Pursuant to Section Section 4(b) of the Indemnification Agreement, the Company can (a) pay such Expenses on my behalf, (b) advance funds in an amount sufficient to pay such Expenses, or (c) reimburse me for such Expenses. Pursuant to Section 4(b) of the Indemnification Agreement, I hereby request an Expense Advance in connection with the Proceeding. The Expenses for which advances are requested are as follows:]

[DESCRIPTION OF EXPENSES]

[In connection with the request for Expense Advances [set out above/delivered to the Company separately on [DATE]],] I hereby undertake to repay any amounts paid, advanced or reimbursed by the Company for such Expense Advances to the extent that it is ultimately determined that I am not entitled to indemnification [under the Indemnification Agreement].

This undertaking shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of laws thereof.

[SIGNATURE PAGE FOLLOWS]

Very truly yours,

_____

Name:
[Title:]

[cc: [ADD PARTY NAME AND ADDRESS AS REQUIRED]]

Exhibit 99.1

Discovery Labs Announces Appointment of New Chief Executive Officer and Provides an Update on AEROSURF® Phase 2 Program

Warrington, PA — February 1, 2016 — Discovery Laboratories, Inc. (NASDAQ: DSCO), a biotechnology company focused on developing aerosolized KL4 surfactant therapies for respiratory diseases, today announced the appointment of a new Chief Executive Officer and has provided an update on its AEROSURF phase 2 program.

New President and Chief Executive Officer

Craig Fraser has been appointed as the Company's President and Chief Executive Officer, effective immediately. Mr. Fraser has also been elected to the Company's board of directors. Mr. Fraser succeeds John G. Cooper who is leaving the Company to pursue other interests.

"Craig is a proven leader with deep commercial, operational, business and drug development experience," commented John R. Leone, Chairman of the Board of Discovery Labs. "With strong leadership skills, success as a Chief Operating Officer for a publicly held biotechnology company and an impressive track record of driving performance, we believe that Craig is the right person to lead Discovery Labs and capitalize on the tremendous opportunity that exists with the Company's KL4 surfactant and aerosol delivery technologies to address a range of respiratory diseases beginning with AEROSURF for premature infants with respiratory distress syndrome."

Mr. Fraser brings to Discovery Labs over 25 years of progressive leadership experience, as well as expertise in advancing pipeline products and building global brands and businesses. Prior to joining Discovery Labs, Mr. Fraser held a number of leadership positions at several biotechnology and pharmaceutical companies, most recently as Chief Operating Officer at Aegerion Pharmaceuticals, Inc. At Aegerion, Mr. Fraser had worldwide responsibility for commercial operations, manufacturing and supply chain, as well as corporate initiatives, including strategic development for growth and sustainability. Mr. Fraser has also held senior management positions at Wyeth / Pfizer Inc., Johnson & Johnson (J&J) and Centocor. In these positions, he had responsibility for sales and marketing, including the commercialization of multiple hospital-based products, business and commercial development, and multiple drug development programs.

"Discovery Labs is committed to building a robust business that is founded on its novel KL4 surfactant and aerosol delivery technologies with the expressed goal of bringing transformational change to neonatal respiratory critical care," said Mr. Fraser. "I am very excited to have the opportunity to join a very talented team at Discovery Labs and guide the Company through the next phase of its growth while driving long-term stockholder value."

Mr. Cooper has been with Discovery Labs for 14 years, serving as its President, Chief Executive Officer and director since January 2013. Prior to that, Mr. Cooper served as President and Chief Financial Officer from 2011 to 2012 and as its Executive Vice President and Chief Financial Officer from 2001 to 2010.

“I want to thank John for his many years of dedicated service to Discovery Labs and his steadfast and passionate commitment to achieving the Company’s goal of applying its technologies to improve the care of fragile premature infants with respiratory distress syndrome. We wish John well in his future endeavors,” commented Mr. Leone.

AEROSURF Program Update

- In the fourth quarter of 2015, the Company announced top-line results of its previously completed AEROSURF phase 2a clinical program in 80 premature infants 29 to 34 week gestational age (GA) receiving nasal continuous positive airway pressure (nCPAP) for respiratory distress syndrome (RDS). The program consisted of two multicenter, randomized, open-label, controlled studies that were designed to evaluate the safety and tolerability of aerosolized KL_4 surfactant administered in five dose groups (15, 30, 45, 60 and 90 minutes), compared to infants receiving nCPAP alone. Key objectives of the program were achieved, including:

  – Overall, the safety and tolerability profile of the AEROSURF-treated groups was generally comparable to the control group. All reported adverse events and serious adverse events were those that are common and expected among premature infants with RDS.

  – Data suggest that AEROSURF may be reducing the incidence of nCPAP failure (the need for intubation and delayed surfactant therapy).

- Also in the fourth quarter of 2015, the Company initiated a phase 2a clinical trial in 32 premature infants 26 to 28 week GA receiving nCPAP for RDS. This clinical trial is a multicenter, randomized, open-label, controlled study that is designed to evaluate the safety and tolerability of aerosolized KL_4 surfactant (including with potential repeat doses) administered in two dose groups (30 and 45 minutes), compared to infants receiving nCPAP alone. The start-up activities for the trial have taken longer than anticipated at some clinical sites, due primarily to administrative matters and, with fewer sites initiated, enrollments are accruing more slowly than anticipated. As a result, the Company anticipates completing enrollment of this phase 2a trial in the second quarter of 2016 and releasing top-line results shortly thereafter in the third quarter of 2016.

- Based on the safety and tolerability profile observed to date in the phase 2a clinical program, the Company has initiated the AEROSURF phase 2b clinical trial in premature infants 26 to 32 weeks GA receiving nCPAP for RDS. The trial is a multicenter, randomized, controlled study with masked treatment assignment in approximately 240 premature infants and is designed to evaluate the safety and tolerability of aerosolized KL_4 surfactant (including with potential repeat doses) administered in two dose groups (25 and 50 minutes), compared to infants receiving nCPAP alone. The following endpoints will be evaluated: time to nCPAP failure (the need for intubation and delayed surfactant therapy), incidence of nCPAP failure and physiological parameters indicating the effectiveness of lung function. The trial is expected to be conducted in up to 60 clinical sites in the United States, Canada, Europe and Latin America. Enrollment is beginning with premature infants 29 to 32 weeks GA, and will include premature infants 26 to 28 weeks GA after completion of the ongoing phase 2a clinical trial in this age group. The Company anticipates completing enrollment for the phase 2b clinical trial by the end of 2016 and releasing top-line results in the first quarter of 2017.

As of December 31, 2015, the Company had cash and cash equivalents of $38.7 million, an amount the Company anticipates is sufficient to support the AEROSURF phase 2 clinical program and fund operations through the first quarter of 2017.

About AEROSURF®

Premature infants with severe RDS currently are treated with surfactants that can only be administered by endotracheal intubation supported with mechanical ventilation, invasive procedures that may each result in serious respiratory conditions and other complications. To avoid such complications, many neonatologists treat infants with less severe RDS by less invasive means, typically nCPAP. Unfortunately, a significant number of premature infants on nCPAP will respond poorly (an outcome referred to as nCPAP failure) and may require delayed surfactant therapy. Since neonatologists currently cannot predict which infants will experience nCPAP failure, they are faced with difficult choices in treating infants with less severe RDS. This is because the medical outcomes for those infants who experience nCPAP failure and receive delayed surfactant therapy may be less favorable than the outcomes for infants who received surfactant therapy in the first hours of life.

AEROSURF is a novel, investigational drug/device product that combines the Company's proprietary KL_4 surfactant and its aerosolization technologies. AEROSURF is being developed to potentially reduce or eliminate the need for endotracheal intubation and mechanical ventilation in the treatment of premature infants with respiratory distress syndrome (RDS). With AEROSURF, neonatologists may potentially administer aerosolized KL_4 surfactant to premature infants supported by nCPAP, without subjecting them to invasive endotracheal intubation and mechanical ventilation (each of which can result in serious respiratory conditions and other complications), which are currently required to administer surfactant therapy to premature infants. By enabling delivery of aerosolized KL_4 surfactant using less invasive procedures, AEROSURF, if approved, has the potential to address a serious unmet medical need, provide transformative clinical and pharmacoeconomic benefits, and enable the treatment of a significantly greater number of premature infants with RDS who could benefit from surfactant therapy but are currently not treated.

The Company estimates that there are currently approximately 120,000 to 150,000 premature infants in the U.S. who could benefit from surfactant therapy. However, due to the risks associated with endotracheal intubation and mechanical ventilation, only approximately 50,000 to 60,000 of these infants currently are treated with surfactants as the initial therapy for severe RDS. The remaining infants with less severe RDS are usually supported with nCPAP alone. However, a large percentage of these infants are not adequately supported with nCPAP alone (an outcome referred to as nCPAP failure) and thereafter may require delayed surfactant therapy administered by endotracheal intubation and mechanical ventilation

About Discovery Labs

Discovery Laboratories, Inc. is a biotechnology company focused on developing aerosolized KL_4 surfactant therapies for respiratory diseases. Surfactants are produced naturally in the lung and are essential for normal respiratory function and survival. If surfactant deficiency or degradation occurs, the air sacs in the lungs can collapse, resulting in severe respiratory diseases and disorders. Discovery Labs' technology platform includes a novel synthetic peptide-containing (KL_4) surfactant, that is structurally similar to pulmonary surfactant, and proprietary drug delivery technologies being developed to enable efficient delivery of aerosolized KL_4 surfactant. Discovery Labs believes that its proprietary technology platform makes it possible, for the first time, to develop a significant pipeline of aerosolized surfactant products to address a variety of respiratory diseases for which there frequently are few or no approved therapies.

For more information, please visit the Company's website at www.Discoverylabs.com.

Forward-Looking Statements

To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties, including those affecting Discovery Labs' ability successfully to complete its development programs, secure regulatory approvals for its product candidates in the U.S. and abroad, and realize the potential value and benefits of its RDS product portfolio, are described in Discovery Labs' filings with the Securities and Exchange Commission, including its most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto. Any forward-looking statement in this release speaks only as of the date on which it is made. Discovery Labs assumes no obligation to update or revise any forward-looking statements.

Contact Information:

John Tattory, Senior Vice President and Chief Financial Officer: 215.488.9418 or jtattory@discoverylabs.com