

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): March 29, 2013 (March 25, 2013)

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**REXAHN PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation)

001-34079  
(Commission File No.)

11-3516358  
(IRS Employer Identification Number)

15245 Shady Grove Road, Suite 455, Rockville, MD 20850  
(Address of principal executive offices and zip code)

(240) 268-5300  
(Registrant's telephone number, including area code)

Not Applicable.  
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17CFR 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-14c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

As previously announced on January 22, 2013, Dr. Chang Ahn stepped down as the Chief Executive Officer of Rexahn Pharmaceuticals, Inc. (the “Company”), effective as of February 4, 2013. Dr. Ahn transitioned into the role of Chief Scientist and remains as the Company’s Chairman of the Board.

On March 25, 2013, the Company entered into a new employment agreement with Dr. Ahn to serve as the Chief Scientist of the Company (the “Employment Agreement”). The Employment Agreement replaces and supersedes Dr. Ahn’s prior Amended and Restated Employment Agreement, dated as of September 9, 2010, with the Company. The Employment Agreement has a one year term with an automatic renewal option for additional one-year periods thereafter until terminated. Pursuant to the Employment Agreement, the Company agreed to pay Dr. Ahn an annual base salary of \$285,000 with the option of a discretionary annual cash bonus as determined by the Company’s compensation committee based on performance objectives and milestones set by the Company’s board of directors. The Employment Agreement also provides for a discretionary stock option award to purchase shares of the Company’s common stock on each anniversary of the Employment Agreement as determined by the Company’s board of directors. Any such stock option awards to be in accordance with the terms of the Rexahn Pharmaceuticals, Inc. Stock Option Plan (the “Option Plan”).

In the event Dr. Ahn’s employment is terminated by reason of death, disability, by the Company for “cause,” or by Dr. Ahn without “good reason,” all as defined in the Employment Agreement, the Company will pay Dr. Ahn his base salary owed up to the termination date, including payment for any unused vacation days. In the event Dr. Ahn’s employment is terminated by the Company without cause or Dr. Ahn terminates his employment with good reason, then Dr. Ahn’s stock options will be subject to accelerated vesting and the Company shall pay Dr. Ahn a lump sum equal to his then current annual base salary, an amount equal to the pro-rata portion of the bonus that he otherwise might have been entitled to, and COBRA premiums for twelve months, if he is eligible for coverage. In the event the Company terminates Dr. Ahn’s employment without cause or Dr. Ahn terminates his employment with good reason within the one-year period following a “Change of Control,” as defined by the Option Plan, the Company shall pay Dr. Ahn a lump sum equal to two hundred percent of his current annual base salary and a cash payment to offset any incremental additional state or federal income tax payable as a result of this salary increase in addition to the accelerated vesting of his stock options, the pro rata portion of his bonus and COBRA premiums. The Employment Agreement also contains a provision prohibiting Dr. Ahn from soliciting the Company’s executives, employees, customers or clients for a period of twelve months following his termination. The foregoing description of the Employment Agreement is qualified in its entirety by reference to the full text of the Employment Agreement, which is attached as Exhibit 10.1 hereto and incorporated by reference herein.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On March 25, 2013, the Board adopted amendments to the Company’s Amended and Restated Bylaws, as amended (the “Bylaws”), to (i) reflect that the officers of the Company include the Chief Executive Officer, but not the Chairman of the Board, (ii) eliminate the requirement that the Chairman of the Board also serve as the Chief Executive Officer of the Company, and (iii) make certain additional conforming changes (the “Amendments”). The Amendments became immediately effective on March 25, 2013. The Bylaws, which incorporate the Amendments, are attached as Exhibit 3.2 to this Current Report on Form 8-K.

**Item 9.01. Financial Statements and Exhibits.**

Exhibit No.      Description

<a href="#">3.2</a>	Amended and Restated Bylaws of Rexahn Pharmaceuticals, Inc., as amended through March 25, 2013.
<a href="#">10.1</a>	Employment Agreement by and between Rexahn Pharmaceuticals, Inc. and Dr. Chang H. Ahn, dated as of March 25, 2013.

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**SIGNATURES**

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

**REXAHN PHARMACEUTICALS, INC.**

Date: March 29, 2013

By:  /s/Tae Heum Jeong

Name: Tae Heum Jeong

Title: Chief Financial Officer

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**AMENDED AND RESTATED  
BYLAWS OF  
REXAHN PHARMACEUTICALS, INC.**

(as amended through March 25, 2013)

**ARTICLE I.**

**OFFICES**

**SECTION 1. Registered Office in Delaware; Resident Agent.** The address of the Corporation's registered office in the State of Delaware and the name and address of its resident agent in charge thereof are as filed with the Secretary of State of the State of Delaware.

**SECTION 2. Other Offices.** The Corporation may also have an office or offices at such other place or places either within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation requires.

**ARTICLE II.**

**MEETINGS OF SHAREHOLDERS**

**SECTION 1. Place of Meetings.** All meetings of the shareholders of the Corporation shall be held at such place, within or without the State of Delaware, as may from time to time be designated by resolution passed by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meetings shall not be held at any place, but may instead be held solely by means of remote communication.

**SECTION 2. Annual Meeting.** An annual meeting of the shareholders for the election of directors and for the transaction of such other proper business, notice of which was given in the notice of meeting, shall be held on a date and at a time as may from time to time be designated by resolution passed by the Board of Directors.

**SECTION 3. Special Meetings.** A special meeting of the shareholders for any purpose or purposes shall be called by the Board of Directors pursuant to a resolution adopted by the Board or by the Chairman of the Board of the Corporation.

**SECTION 4. Notice of Meetings.** Except as otherwise provided by law, written notice of each meeting of the shareholders, whether annual or special, shall be mailed, postage prepaid, or sent by electronic transmission, not less than ten nor more than sixty days before the date of the meeting, to each shareholder entitled to vote at such meeting, at the shareholder's address as it appears on the records of the Corporation. Every such notice shall state the place, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person or by proxy and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notice of any adjourned meeting of the shareholders shall not be required to be given, except when expressly required by law.

**SECTION 5. List of Shareholders.** The Secretary shall, from information obtained from the transfer agent, prepare and make, at least ten days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to shareholders of the Corporation. If the meeting is to be held at a specified place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list referred to in this section or the books of the Corporation, or to vote in person or by proxy at any meeting of shareholders.

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**SECTION 6. Quorum.** At each meeting of the shareholders, the holders of forty percent (40%) of the issued and outstanding stock of the Corporation present either in person or by proxy shall constitute a quorum for the transaction of business except where otherwise provided by law or by the Certificate of Incorporation or by these bylaws for a specified action. Except as otherwise provided by law, in the absence of a quorum, a majority in interest of the shareholders of the Corporation present in person or by proxy and entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until shareholders holding the requisite amount of stock shall be present or represented. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at a meeting as originally called, and only those shareholders entitled to vote at the meeting as originally called shall be entitled to vote at any adjournment or adjournments thereof. The absence from any meeting of the number of shareholders required by law or by the Certificate of Incorporation or by these bylaws for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if the number of shareholders required in respect of such other matter or matters shall be present.

**SECTION 7. Organization.** At every meeting of the shareholders the Chairman of the Board, or in the absence of the Chairman of the Board, a director or an officer of the Corporation designated by the Board, shall act as Chairman of the meeting and shall enforce the observance of the rules of order for the meetings of the shareholders and of the bylaws of the Corporation. The Secretary, or, in the Secretary's absence, an Assistant Secretary, shall act as Secretary at all meetings of the shareholders. In the absence from any such meeting of the Secretary and the Assistant Secretaries, the Chairman may appoint any person to act as Secretary of the meeting.

**SECTION 8. Notice of Shareholder Business and Nominations.**

(A) *Annual Meetings of Shareholders.*

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any shareholder of the Corporation who was a shareholder of record at the time of giving of notice provided for in this bylaw, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this bylaw.

(2) For nominations or other business to be properly brought before an annual meeting by a shareholder pursuant to clause (c) of paragraph (A)(1) of this bylaw, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for shareholder action. To be timely, a shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the case of the annual meeting to be held in 2005 or in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a shareholder's notice as described above. Such shareholder's notice shall set forth (a) as to each person whom the shareholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such shareholder and such beneficial owner.

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(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) *Special Meetings of Shareholders.* Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the Corporation who is a shareholder of record at the time of giving of notice provided for in this bylaw, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this bylaw. In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board of Directors, any shareholder who shall be entitled to vote at the meeting may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the shareholder's notice required by paragraph (A)(2) of this bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a shareholder's notice as described above.

(C) *General.*

(1) Only such persons who are nominated in accordance with the procedures set forth in this bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this bylaw. Except as otherwise provided by law, the Certificate of Incorporation or these bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this bylaw and, if any proposed nomination or business is not in compliance with this bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this bylaw, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this bylaw. Nothing in this bylaw shall be deemed to affect any rights (i) of shareholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

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**SECTION 9. Business and Order of Business.** At each meeting of the shareholders such business may be transacted as may properly be brought before such meeting, except as otherwise provided by law or in these bylaws. The order of business at all meetings of the shareholders shall be as determined by the Chairman of the meeting, unless otherwise determined by a majority in interest of the shareholders present in person or by proxy at such meeting and entitled to vote thereat.

**SECTION 10. Voting.** Except as otherwise provided by law, the Certificate of Incorporation or these bylaws, each shareholder shall at every meeting of the shareholders be entitled to one vote for each share of stock held by such shareholder. Any vote on stock may be given by the shareholder entitled thereto in person or by proxy appointed by an instrument in writing, subscribed (or transmitted by electronic means and authenticated as provided by law) by such shareholder or by the shareholder's attorney thereunto authorized, and delivered to the Secretary; provided, however, that no proxy shall be voted after three years from its date unless the proxy provides for a longer period. Except as otherwise provided by law, the Certificate of Incorporation or these bylaws, at all meetings of the shareholders, all matters shall be decided by the vote (which need not be by ballot) of a majority in interest of the shareholders present in person or by proxy and entitled to vote on the subject matter, a quorum being present.

**SECTION 11. Participation at Meetings Held by Remote Communication.** If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxy holders not physically present at a meeting of shareholders may, by means of remote communication: (A) participate in a meeting of shareholders; and (B) be deemed present in person and vote at a meeting of shareholders whether such meeting is to be held at a designated place or solely by means of remote communication.

### ARTICLE III.

#### BOARD OF DIRECTORS

**SECTION 1. General Powers.** The property, affairs and business of the Corporation shall be managed by or under the direction of its Board of Directors.

**SECTION 2. Number, Qualifications, and Term of Office.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the whole Board. A director need not be a shareholder.

The directors shall hold office until the expiration of their terms or their successors are elected and qualified. At each annual meeting of the shareholders of the Corporation, commencing with the 2005 annual meeting, the successors of directors whose terms expire at that meeting shall be elected by a plurality vote of all votes cast for the election of directors at such meeting to hold office for a term expiring at the next annual meeting of shareholders.

**SECTION 3. Election of Directors.** At each meeting of the shareholders for the election of directors, at which a quorum is present, the directors shall be elected by a plurality vote of all votes cast for the election of directors at such meeting.

**SECTION 4. Chairman of the Board of Directors.** The Board of Directors may elect from among its members one director to serve at its pleasure as Chairman of the Board.

**SECTION 5. Quorum and Manner of Acting.** A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting, and the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise provided by law, the Certificate of Incorporation or these bylaws. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time until a quorum shall be obtained. Notice of any adjourned meeting need not be given. The directors shall act only as a board and the individual directors shall have no power as such.

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**SECTION 6. Place of Meetings.** The Board of Directors may hold its meetings at such place or places within or without the State of Delaware as the Board may from time to time determine or as shall be specified or fixed in the respective notices or waivers of notice thereof.

**SECTION 7. First Meeting.** Promptly after each annual election of directors, the Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, at the same place as that at which the annual meeting of shareholders was held or as otherwise determined by the Board. Notice of such meeting need not be given. Such meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors.

**SECTION 8. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such places and at such times as the Board shall from time to time determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day not a legal holiday. Notice of regular meetings need not be given.

**SECTION 9. Special Meetings; Notice.** Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board and shall be called by the Chairman of the Board or the Secretary of the Corporation at the written request of three directors. Notice of each such meeting stating the time and place of the meeting shall be given to each director by mail, telephone, other electronic transmission or personally. If by mail, such notice shall be given not less than five days before the meeting; and if by telephone, other electronic transmission or personally, not less than two days before the meeting. A notice mailed at least ten days before the meeting need not state the purpose thereof except as otherwise provided in these bylaws. In all other cases the notice shall state the principal purpose or purposes of the meeting. Notice of any meeting of the Board need not be given to a director, however, if waived by the director in writing before or after such meeting or if the director shall be present at the meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**SECTION 10. Organization.** At each meeting of the Board of Directors, the Chairman of the Board, or, in his or her absence, a director or an officer of the Corporation designated by the Board shall act as Chairman of the meeting. The Secretary, or, in the Secretary's absence, any person appointed by the Chairman of the meeting, shall act as Secretary of the meeting.

**SECTION 11. Order of Business.** At all meetings of the Board of Directors, business shall be transacted in the order determined by the Board.

**SECTION 12. Resignations.** Any director of the Corporation may resign at any time by giving written notice to the Chairman of the Board or the Secretary of the Corporation. The resignation of any director shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 13. Compensation.** Each director shall be paid such compensation, if any, as shall be fixed by the Board of Directors.

**SECTION 14. Indemnification.**

(A) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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(B) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries, or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of Delaware or such other court shall deem proper.

(C) To the extent that a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (A) and (B), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection therewith. If any such person is not wholly successful in any such action, suit or proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters therein, the Corporation shall indemnify such person against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection with each claim, issue or matter that is successfully resolved. For purposes of this subsection and without limitation, the termination of any claim, issue or matter by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(D) Notwithstanding any other provision of this section, to the extent any person is a witness in, but not a party to, any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries, or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise, such person shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection therewith.

(E) Indemnification under subsections (A) and (B) shall be made only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in subsections (A) and (B). Such determination shall be made (1) if a Change of Control (as hereinafter defined) shall not have occurred, (a) with respect to a person who is a present or former director or officer of the Corporation, (i) by the Board of Directors by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum, or (ii) if there are no Disinterested Directors or, even if there are Disinterested Directors, a majority of such Disinterested Directors so directs, by (x) Independent Counsel (as hereinafter defined) in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (y) the shareholders of the Corporation; or (b) with respect to a person who is not a present or former director or officer of the Corporation, by the Chief Executive Officer of the Corporation or by such other officer of the Corporation as shall be designated from time to time by the Board of Directors; or (2) if a Change of Control shall have occurred, by Independent Counsel selected by the claimant in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, unless the claimant shall request that such determination be made by or at the direction of the Board of Directors (in the case of a claimant who is a present or former director or officer of the Corporation) or by an officer of the Corporation authorized to make such determination (in the case of a claimant who is not a present or former director or officer of the Corporation), in which case it shall be made in accordance with clause (1) of this sentence. Any claimant shall be entitled to be indemnified against the expenses (including attorneys' fees) actually and reasonably incurred by such claimant in cooperating with the person or entity making the determination of entitlement to indemnification (irrespective of the determination as to the claimant's entitlement to indemnification) and, to the extent successful, in connection with any litigation or arbitration with respect to such claim or the enforcement thereof.

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(F) If a Change of Control shall not have occurred, or if a Change of Control shall have occurred and a director, officer, employee or agent requests pursuant to clause (2) of the second sentence in subsection (E) that the determination as to whether the claimant is entitled to indemnification be made by or at the direction of the Board of Directors (in the case of a claimant who is a present or former director or officer of the Corporation) or by an officer of the Corporation authorized to make such determination (in the case of a claimant who is not a present or former director or officer of the Corporation), the claimant shall be conclusively presumed to have been determined pursuant to subsection (E) to be entitled to indemnification if (1) in the case of a claimant who is a present or former director or officer of the Corporation, (a)(i) within fifteen days after the next regularly scheduled meeting of the Board of Directors following receipt by the Corporation of the request therefor, the Board of Directors shall not have resolved by majority vote of the Disinterested Directors to submit such determination to (x) Independent Counsel for its determination or (y) the shareholders for their determination at the next annual meeting, or any special meeting that may be held earlier, after such receipt, and (ii) within sixty days after receipt by the Corporation of the request therefor (or within ninety days after such receipt if the Board of Directors in good faith determines that additional time is required by it for the determination and, prior to expiration of such sixty-day period, notifies the claimant thereof), the Board of Directors shall not have made the determination by a majority vote of the Disinterested Directors, or (b) after a resolution of the Board of Directors, timely made pursuant to clause (a)(i)(y) above, to submit the determination to the shareholders, the shareholders meeting at which the determination is to be made shall not have been held on or before the date prescribed (or on or before a later date, not to exceed sixty days beyond the original date, to which such meeting may have been postponed or adjourned on good cause by the Board of Directors acting in good faith), or (2) in the case of a claimant who is not a present or former director or officer of the Corporation, within sixty days after receipt by the Corporation of the request therefor (or within ninety days after such receipt if an officer of the Corporation authorized to make such determination in good faith determines that additional time is required for the determination and, prior to expiration of such sixty-day period, notifies the claimant thereof), an officer of the Corporation authorized to make such determination shall not have made the determination; provided, however, that this sentence shall not apply if the claimant has misstated or failed to state a material fact in connection with his or her request for indemnification. Such presumed determination that a claimant is entitled to indemnification shall be deemed to have been made (I) at the end of the sixty-day or ninety-day period (as the case may be) referred to in clause (1)(a)(ii) or (2) of the immediately preceding sentence or (II) if the Board of Directors has resolved on a timely basis to submit the determination to the shareholders, on the last date within the period prescribed by law for holding such shareholders meeting (or a postponement or adjournment thereof as permitted above).

(G) Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding to a present or former director or officer of the Corporation, promptly after receipt of a request therefor stating in reasonable detail the expenses incurred, and to a person who is not a present or former director or officer of the Corporation as authorized by the Chief Executive Officer of the Corporation or such other officer of the Corporation as shall be designated from time to time by the Board of Directors; provided that in each case the Corporation shall have received an undertaking by or on behalf of the present or former director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this section.

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(H) The Board of Directors shall establish reasonable procedures for the submission of claims for indemnification pursuant to this section, determination of the entitlement of any person thereto and review of any such determination. Such procedures shall be set forth in an appendix to these bylaws and shall be deemed for all purposes to be a part hereof.

(I) For purposes of this section,

(1) "Change of Control" means any of the following:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Corporation (the "Outstanding Corporation Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the "Outstanding Corporation Voting Securities"); provided, however, that for purposes of this subparagraph (a), the following acquisitions shall not constitute a Change of Control: (v) any acquisition directly from the Corporation, (w) any acquisition by the Corporation, (x) any acquisition by Chang H. Ahn, (y) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (z) any acquisition pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Paragraph 14(I)(1); or

(b) Individuals who, as of February \_\_, 2005, constitute the Board of Directors (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to that date whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Corporation or the acquisition of assets of another entity (a "Corporate Transaction"), in each case, unless, following such Corporate Transaction, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities immediately prior to such Corporate Transaction beneficially own, directly or indirectly, more than a 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation which as a result of such transaction owns the Corporation or all or substantially all of the Corporation's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Corporation or of such corporation resulting from such Corporate Transaction) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Corporate Transaction and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Corporate Transaction; or

(d) Approval by the Corporation's shareholders of a complete liquidation or dissolution of the Corporation.

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(2) "Disinterested Director" means a director of the Corporation who is not and was not a party to an action, suit or proceeding in respect of which indemnification is sought by a director, officer, employee or agent.

(3) "Independent Counsel" means a law firm, or a member of a law firm, that (i) is experienced in matters of corporation law; (ii) neither presently is, nor in the past five years has been, retained to represent the Corporation, the director, officer, employee or agent claiming indemnification or any other party to the action, suit or proceeding giving rise to a claim for indemnification under this section, in any matter material to the Corporation, the claimant or any such other party; and (iii) would not, under applicable standards of professional conduct then prevailing, have a conflict of interest in representing either the Corporation or such director, officer, employee or agent in an action to determine the Corporation's or such person's rights under this section.

(J) The indemnification and advancement of expenses herein provided, or granted pursuant hereto, shall not be deemed exclusive of any other rights to which any of those indemnified or eligible for advancement of expenses may be entitled under any agreement, vote of shareholders or Disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person. Notwithstanding any amendment, alteration or repeal of this section or any of its provisions, or of any of the procedures established by the Board of Directors pursuant to subsection (H) hereof, any person who is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of any partnership, joint venture, employee benefit plan or other enterprise shall be entitled to indemnification in accordance with the provisions hereof and thereof with respect to any action taken or omitted prior to such amendment, alteration or repeal except to the extent otherwise required by law.

(K) No indemnification shall be payable pursuant to this section with respect to any action against the Corporation commenced by an officer, director, employee or agent unless the Board of Directors shall have authorized the commencement thereof or unless and to the extent that this section or the procedures established pursuant to subsection (H) shall specifically provide for indemnification of expenses relating to the enforcement of rights under this section and such procedures.

#### ARTICLE IV.

#### COMMITTEES

**SECTION 1. Appointment and Powers.** The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more directors of the Corporation (or in the case of a special-purpose committee, one or more directors of the Corporation), which, to the extent provided in said resolution or in these bylaws and not inconsistent with Section 141 of the Delaware General Corporation Law, as amended, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

**SECTION 2. Term of Office and Vacancies.** Each member of a committee shall continue in office until a director to succeed him or her shall have been elected and shall have qualified, or until he or she ceases to be a director or until he or she shall have resigned or shall have been removed in the manner hereinafter provided. Any vacancy in a committee shall be filled by the vote of a majority of the whole Board of Directors at any regular or special meeting thereof.

**SECTION 3. Alternates.** The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

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**SECTION 4. Organization.** Unless otherwise provided by the Board of Directors, each committee shall appoint a chairman. Each committee shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

**SECTION 5. Resignations.** Any regular or alternate member of a committee may resign at any time by giving written notice to the Chairman of the Board, the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 6. Removal.** Any regular or alternate member of a committee may be removed with or without cause at any time by resolution passed by a majority of the whole Board of Directors at any regular or special meeting.

**SECTION 7. Meetings.** Regular meetings of each committee, of which no notice shall be necessary, shall be held on such days and at such places as the chairman of the committee shall determine or as shall be fixed by a resolution passed by a majority of all the members of such committee. Special meetings of each committee will be called by the Secretary at the request of any two members of such committee, or in such other manner as may be determined by the committee. Notice of each special meeting of a committee shall be mailed to each member thereof at least two days before the meeting or shall be given personally or by telephone or other electronic transmission at least one day before the meeting. Every such notice shall state the time and place, but need not state the purposes of the meeting. No notice of any meeting of a committee shall be required to be given to any alternate.

**SECTION 8. Quorum and Manner of Acting.** Unless otherwise provided by resolution of the Board of Directors, a majority of a committee (including alternates when acting in lieu of regular members of such committee) shall constitute a quorum for the transaction of business and the act of a majority of those present at a meeting at which a quorum is present shall be the act of such committee. The members of each committee shall act only as a committee and the individual members shall have no power as such.

**SECTION 9. Compensation.** Each regular or alternate member of a committee shall be paid such compensation, if any, as shall be fixed by the Board of Directors.

## **ARTICLE V.**

### **OFFICERS**

**SECTION 1. Officers.** The officers of the Corporation shall be a Chief Executive Officer, one or more Vice Presidents (one or more of whom may be Senior Vice Presidents or otherwise as may be designated by the Board), a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Any two or more offices may be held by the same person. The Board of Directors may also from time to time elect such other officers as it deems necessary.

**SECTION 2. Term of Office.** Each officer shall hold office until his or her successor shall have been duly elected and qualified in his or her stead, or until his or her death or until he or she shall have resigned or shall have been removed in the manner hereinafter provided.

**SECTION 3. Additional Officers; Agents.** The Chairman of the Board may from time to time appoint and remove such additional officers and agents as may be deemed necessary. Such persons shall hold office for such period, have such authority, and perform such duties as provided in these bylaws or as the Chairman of the Board may from time to time prescribe. The Board of Directors or the Chairman of the Board may from time to time authorize any officer to appoint and remove agents and employees and to prescribe their powers and duties.

**SECTION 4. Salaries.** Unless otherwise provided by resolution passed by a majority of the whole Board, the salaries of all officers elected by the Board of Directors shall be fixed by the Board of Directors.

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**SECTION 5. Removal.** Except where otherwise expressly provided in a contract authorized by the Board of Directors, any officer may be removed, either with or without cause, by the vote of a majority of the Board at any regular or special meeting or, except in the case of an officer elected by the Board, by any superior officer upon whom the power of removal may be conferred by the Board or by these bylaws.

**SECTION 6. Resignations.** Any officer elected by the Board of Directors may resign at any time by giving written notice to the Chairman of the Board or the Secretary. Any other officer may resign at any time by giving written notice to the Chairman of the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 7. Vacancies.** A vacancy in any office because of death, resignation, removal or otherwise, shall be filled for the unexpired portion of the term in the manner provided in these bylaws for regular election or appointment to such office.

**SECTION 8. Chief Executive Officer.** The Chief Executive Officer shall have general responsibility for the management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the offices of Chief Executive Officer or which are delegated to him or her by the Board of Directors. Subject to the direction of the Board of Directors, the Chief Executive Officer shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision of all of the other Officers, employees and agents of the Corporation.

**SECTION 9. Senior Vice Presidents.** One or more Senior Vice Presidents shall, subject to the control of the Chief Executive Officer, have lead accountability for components or functions of the Corporation as and to the extent designated by the Chairman of the Board or Chief Executive Officer. Each Senior Vice President shall keep the Chairman of the Board and Chief Executive Officer appropriately informed on the business and affairs of the designated components or functions of the Corporation.

**SECTION 10. Vice Presidents.** The Vice Presidents shall perform such duties as may from time to time be assigned to them or any of them by the Chairman of the Board or Chief Executive Officer.

**SECTION 11. Secretary.** The Secretary shall keep or cause to be kept in books provided for the purpose the minutes of the meetings of the shareholders, of the Board of Directors and of any committee constituted pursuant to Article IV of these bylaws. The Secretary shall be custodian of the corporate seal and see that it is affixed to all documents as required and attest the same. The Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her.

**SECTION 12. Assistant Secretaries.** At the request of the Secretary, or in the Secretary's absence or disability, the Assistant Secretary designated by the Secretary shall perform all the duties of the Secretary and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Secretary. The Assistant Secretaries shall perform such other duties as from time to time may be assigned to them.

**SECTION 13. Treasurer.** The Treasurer shall have charge of and be responsible for the receipt, disbursement and safekeeping of all funds and securities of the Corporation. The Treasurer shall deposit all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these bylaws. From time to time and whenever requested to do so, the Treasurer shall render statements of the condition of the finances of the Corporation to the Board of Directors. The Treasurer shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her.

**SECTION 14. Assistant Treasurers.** At the request of the Treasurer, or in the Treasurer's absence or disability, the Assistant Treasurer designated by the Treasurer shall perform all the duties of the Treasurer and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Treasurer. The Assistant Treasurers shall perform such other duties as from time to time may be assigned to them.

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**SECTION 15. Certain Agreements.** The Board of Directors shall have power to authorize or direct the proper officers of the Corporation, on behalf of the Corporation, to enter into valid and binding agreements in respect of employment, incentive or deferred compensation, stock options, and similar or related matters, notwithstanding the fact that a person with whom the Corporation so contracts may be a member of its Board of Directors. Any such agreement may validly and lawfully bind the Corporation for a term of more than one year, in accordance with its terms, notwithstanding the fact that one of the elements of any such agreement may involve the employment by the Corporation of an officer, as such, for such term.

## ARTICLE VI.

### AUTHORIZATIONS

**SECTION 1. Contracts.** The Board of Directors, except as otherwise provided in these bylaws, may authorize any officer, employee or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 2. Loans.** No loan shall be contracted on behalf of the Corporation and no negotiable paper shall be issued in its name, unless authorized by the Board of Directors.

**SECTION 3. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, employee or employees, of the Corporation as shall from time to time be determined in accordance with authorization of the Board of Directors.

**SECTION 4. Deposits.** All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may from time to time designate, or as may be designated by any officer or officers of the Corporation to whom such power may be delegated by the Board, and for the purpose of such deposit the officers and employees who have been authorized to do so in accordance with the determinations of the Board may endorse, assign and deliver checks, drafts, and other orders for the payment of money which are payable to the order of the Corporation.

**SECTION 5. Proxies.** Except as otherwise provided in these bylaws or in the Certificate of Incorporation, and unless otherwise provided by resolution of the Board of Directors, the Chairman of the Board or any other officer may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as a shareholder or otherwise in any other corporation any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporations, or to consent in writing to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such vote or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as such officer may deem necessary or proper in the premises.

## ARTICLE VII.

### SHARES AND THEIR TRANSFER

**SECTION 1. Shares of Stock.** Certificates for shares of the stock of the Corporation shall be in such form as shall be approved by the Board of Directors. They shall be numbered in the order of their issue, by class and series, and shall be signed by the Chairman of the Board, the Chief Executive Officer or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation. If a share certificate is countersigned (1) by a transfer agent other than the Corporation or its employee, or (2) by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a share certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue. The Board of Directors may by resolution or resolutions provide that some or all of any or all classes or series of the shares of stock of the Corporation shall be uncertificated shares. Notwithstanding the preceding sentence, every holder of uncertificated shares, upon request, shall be entitled to receive from the Corporation a certificate representing the number of shares registered in such shareholder's name on the books of the Corporation.

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**SECTION 2. Record Ownership.** A record of the name and address of each holder of the shares of the Corporation, the number of shares held by such shareholder, the number or numbers of any share certificate or certificates issued to such shareholder and the number of shares represented thereby, and the date of issuance of the shares held by such shareholder shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share of stock (including any holder registered in a book-entry or direct registration system maintained by the Corporation or a transfer agent or a registrar designated by the Board of Directors) as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as required by law.

**SECTION 3. Transfer of Stock.** Shares of stock shall be transferable on the books of the Corporation by the holder of record of such stock in person or by such person's attorney or other duly constituted representative, pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe. Any shares represented by a certificate shall be transferable upon surrender of such certificate with an assignment endorsed thereon or attached thereto duly executed and with such guarantee of signature as the Corporation may reasonably require.

**SECTION 4. Lost, Stolen and Destroyed Certificates.** The Corporation may issue a new certificate of stock or may register uncertificated shares, if then authorized by the Board of Directors, in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such person's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate, the issuance of such new certificate or the registration of such uncertificated shares.

**SECTION 5. Transfer Agent and Registrar; Regulations.** The Corporation shall, if and whenever the Board of Directors shall so determine, maintain one or more transfer offices or agencies, each in charge of a transfer agent designated by the Board of Directors, where the shares of the stock of the Corporation shall be directly transferable, and also one or more registry offices, each in charge of a registrar designated by the Board of Directors, where such shares of stock shall be registered, and no certificate for shares of the stock of the Corporation, in respect of which a registrar and transfer agent shall have been designated, shall be valid unless countersigned by such transfer agent and registered by such registrar. The Board of Directors may also make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation and concerning the registration of pledges of uncertificated shares.

**SECTION 6. Fixing Record Date.** For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is fixed (1) the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held and (2) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

**SECTION 7. Examination of Books by Shareholders.** The Board of Directors shall, subject to the laws of the State of Delaware, have power to determine from time to time, whether and to what extent and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the shareholders; and no shareholder shall have any right to inspect any book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the shareholders of the Corporation.

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## ARTICLE VIII.

### NOTICE

**SECTION 1. Manner of Giving Written Notice.** (A) Any notice in writing required by law or by these bylaws to be given to any person shall be effective if delivered personally, given by depositing the same in the post office or letter box in a postpaid envelope addressed to such person at such address as appears on the books of the Corporation or given by a form of electronic transmission consented to by such person to whom the notice is to be given. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(B) Notice by mail shall be deemed to be given at the time when the same shall be mailed and notice by other means shall be deemed given when actually delivered (and in the case of notice transmitted by a form of electronic transmission, such notice shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the shareholder).

**SECTION 2. Waiver of Notice.** Whenever any notice is required to be given to any person, a waiver thereof by such person in writing or transmitted by electronic means (and authenticated if and as required by law), whether before or after the time stated therein, shall be deemed equivalent thereto.

## ARTICLE IX.

### SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal" and "Delaware".

## ARTICLE X.

### FISCAL YEAR

The fiscal year of the Corporation shall end on December 31 of each year.

## APPENDIX

### **Procedures for Submission and Determination of Claims for Indemnification Pursuant to Article III, Section 14 of the Bylaws.**

**SECTION 1. Purpose.** The Procedures for Submission and Determination of Claims for Indemnification Pursuant to Article III, Section 14 of the bylaws (the "Procedures") are to implement the provisions of Article III, Section 14 of the bylaws of the Corporation (the "bylaws") in compliance with the requirement of subsection (H) thereof.

**SECTION 2. Definitions.** For purposes of these Procedures:

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(A) All terms that are defined in Article III, Section 14 of the bylaws shall have the meanings ascribed to them therein when used in these Procedures unless otherwise defined herein.

(B) "Expenses" include all reasonable attorneys' fees, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in, a Proceeding; and shall also include such retainers as counsel may reasonably require in advance of undertaking the representation of an Indemnitee in a Proceeding.

(C) "Indemnitee" includes any person who was or is, or is threatened to be made, a witness in or a party to any Proceeding by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under Article III, Section 14 of the bylaws) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise.

(D) "Proceeding" includes any action, suit, arbitration, alternative dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee unless the Board of Directors shall have authorized the commencement thereof.

### **SECTION 3. Submission and Determination of Claims.**

(A) To obtain indemnification or advancement of Expenses under Article III, Section 14 of the bylaws, an Indemnitee shall submit to the Secretary of the Corporation a written request therefor, including therein or therewith such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to permit a determination as to whether and what extent the Indemnitee is entitled to indemnification or advancement of Expenses, as the case may be. The Secretary shall, promptly upon receipt of a request for indemnification, advise the Board of Directors (if the Indemnitee is a present or former director or officer of the Corporation) or the officer of the Corporation authorized to make the determination as to whether an Indemnitee is entitled to indemnification (if the Indemnitee is not a present or former director or officer of the Corporation) thereof in writing if a determination in accordance with Article III, Section 14(E) of the bylaws is required.

(B) Upon written request by an Indemnitee for indemnification pursuant to Section 3(A) hereof, a determination with respect to the Indemnitee's entitlement thereto in the specific case, if required by the bylaws, shall be made in accordance with Article III, Section 14(E) of the bylaws, and, if it is so determined that the Indemnitee is entitled to indemnification, payment to the Indemnitee shall be made within ten days after such determination. The Indemnitee shall cooperate with the person, persons or entity making such determination, with respect to the Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnitee and reasonably necessary to such determination.

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(C) If entitlement to indemnification is to be made by Independent Counsel pursuant to Article III, Section 14(E) of the bylaws, the Independent Counsel shall be selected as provided in this Section 3(C). If a Change of Control shall not have occurred, the Independent Counsel shall be selected by the Board of Directors, and the Corporation shall give written notice to the Indemnitee advising the Indemnitee of the identity of the Independent Counsel so selected. If a Change of Control shall have occurred, the Independent Counsel shall be selected by the Indemnitee (unless the Indemnitee shall request that such selection be made by the Board of Directors, in which event the immediately preceding sentence shall apply), and the Indemnitee shall give written notice to the Corporation advising it of the identity of the Independent Counsel so selected. In either event, the Indemnitee or the Corporation, as the case may be, may, within seven days after such written notice of selection shall have been given, deliver to the Corporation or to the Indemnitee, as the case may be, a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article III, Section 14 of the bylaws, and the objection shall set forth with particularity the factual basis of such assertion. If such written objection is made, the Independent Counsel so selected may not serve as Independent Counsel unless and until a court has determined that such objection is without merit. If, within twenty days after the next regularly scheduled Board of Directors meeting following submission by the Indemnitee of a written request for indemnification pursuant to Section 3(A) hereof, no Independent Counsel shall have been selected and not objected to, either the Corporation or the Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Corporation or the Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Court or by such other person as the Court shall designate, and the person with respect to whom an objection is favorably resolved or the person so appointed shall act as Independent Counsel under Article III, Section 14(E) of the bylaws. The Corporation shall pay any and all reasonable fees and expenses (including without limitation any advance retainers reasonably required by counsel) of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Article III, Section 14(E) of the bylaws, and the Corporation shall pay all reasonable fees and expenses (including without limitation any advance retainers reasonably required by counsel) incident to the procedures of Article III, Section 14(E) of the bylaws and this Section 3(C), regardless of the manner in which Independent Counsel was selected or appointed. Upon the delivery of its opinion pursuant to Article III, Section 14 of the bylaws or, if earlier, the due commencement of any judicial proceeding or arbitration pursuant to Section 4(A)(3) of these Procedures, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(D) If a Change of Control shall have occurred, in making a determination with respect to entitlement to indemnification under the bylaws, the person, persons or entity making such determination shall presume that an Indemnitee is entitled to indemnification under the bylaws if the Indemnitee has submitted a request for indemnification in accordance with Section 3(A) hereof, and the Corporation shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption.

#### **SECTION 4. Review and Enforcement of Determination.**

(A) In the event that (1) advancement of Expenses is not timely made pursuant to Article III, Section 14(G) of the bylaws, (2) payment of indemnification is not made pursuant to Article III, Section 14(C) or (D) of the bylaws within ten days after receipt by the Corporation of written request therefor, (3) a determination is made pursuant to Article III, Section 14(E) of the bylaws that an Indemnitee is not entitled to indemnification under the bylaws, (4) the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Article III, Section 14(E) of the bylaws and such determination shall not have been made and delivered in a written opinion within ninety days after receipt by the Corporation of the written request for indemnification, or (5) payment of indemnification is not made within ten days after a determination has been made pursuant to Article III, Section 14(E) of the bylaws that an Indemnitee is entitled to indemnification or within ten days after such determination is deemed to have been made pursuant to Article III, Section 14(F) of the bylaws, the Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of the Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, the Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association. The Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within one year following the date on which the Indemnitee first has the right to commence such proceeding pursuant to this Section 4(A). The Corporation shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration.

(B) In the event that a determination shall have been made pursuant to Article III, Section 14(E) of the bylaws that an Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 4 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and the Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, the Corporation shall have the burden of proving in any judicial proceeding or arbitration commenced pursuant to this Section 4 that the Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

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(C) If a determination shall have been made or deemed to have been made pursuant to Article III, Section 14(E) or (F) of the bylaws that an Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 4, absent (1) a misstatement or omission of a material fact in connection with the Indemnitee's request for indemnification, or (2) a prohibition of such indemnification under applicable law.

(D) The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 4 that the procedures and presumptions of these Procedures are not valid, binding and enforceable, and shall stipulate in any such judicial proceeding or arbitration that the Corporation is bound by all the provisions of these Procedures.

(E) In the event that an Indemnitee, pursuant to this Section 4, seeks to enforce the Indemnitee's rights under, or to recover damages for breach of, Article III, Section 14 of the bylaws or these Procedures in a judicial proceeding or arbitration, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses (of the types described in the definition of Expenses in Section 2 of these Procedures) actually and reasonably incurred in such judicial proceeding or arbitration, but only if the Indemnitee prevails therein. If it shall be determined in such judicial proceeding or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the expenses incurred by the Indemnitee in connection with such judicial proceeding or arbitration shall be appropriately prorated.

**SECTION 5. Amendments.** These Procedures may be amended at any time and from time to time in the same manner as any bylaw of the Corporation in accordance with the Certificate of Incorporation; provided, however, that notwithstanding any amendment, alteration or repeal of these Procedures or any provision hereof, any Indemnitee shall be entitled to utilize these Procedures with respect to any claim for indemnification arising out of any action taken or omitted prior to such amendment, alteration or repeal except to the extent otherwise required by law.

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**EMPLOYMENT AGREEMENT**

This EMPLOYMENT AGREEMENT (this "Agreement"), dated as of March 25, 2013 ("Effective Date"), is made by and between Rexahn Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and Chang H. Ahn, Ph.D. (the "Employee").

**WITNESSETH:**

WHEREAS, the Company desires to employ the Employee pursuant to the terms and conditions contained in this Agreement; and

WHEREAS, the Employee desires to accept such employment pursuant to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. **Term.** The Employee's employment under this Agreement shall commence on the Effective Date, and unless sooner terminated pursuant to Section 7, shall continue through the first anniversary of such date (hereinafter, such period of employment is referred to as the "Term") and thereafter, shall be automatically renewed each year for a period of one year until terminated ("Extended Term"). During the Extended Term, Employee's employment is terminable "at will" (*i.e.*, with or without cause and with or without notice).

2. **Title.** The Employee will serve as the Chief Scientist of the Company. Notwithstanding the title or anything in this Agreement to the contrary, the Employee is not and shall not be an executive of the Company.

3. **Duties.** The Employee is responsible for duties commensurate with his position as the Chief Scientist of the Company, or as may be reasonably assigned to him from time to time by the Chief Executive Officer ("CEO") or Company's Board of Directors (the "Board"). The Employee agrees to devote his attention, skill and energy to the duties set forth herein and to the business of the Company, and to use his best efforts to promote the success of the Company's business.

4. **Reporting.** The Employee will report directly to the CEO.

5. **Location.** The Employee shall be based in the Company's Rockville, Maryland offices. However, the Employee acknowledges that in order to effectively perform his duties, he will occasionally be required to travel for business purposes.

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**6. Compensation.**

(a) Base Salary. The Employee will receive an annual base salary of Two Hundred Eighty Five Thousand (\$285,000) (the "Base Salary"), payable in accordance with the Company's normal payroll practices as in effect from time to time. Such Base Salary shall be adjusted for inflation each year as determined by the Consumer Price Index and shall be subject to periodic review by the Compensation Committee of the Board (the "Compensation Committee").

(b) Discretionary Annual Cash Bonus. The Employee shall be eligible to receive a discretionary annual cash bonus for each fiscal year. Whether to award such a bonus, and the amount of any such bonus, will be determined by the Compensation Committee in its sole discretion. The cash bonus will be determined by performance against goals, objectives and milestones. Any such bonus shall be paid to the Employee within sixty (60) days after the Compensation Committee determines to award such bonus. The Employee must be actively employed by the Company on the date on which such bonus is paid to the Employee.

(c) Stock Option Awards. In its sole discretion, the Board may award the Employee stock options as a bonus for performance at each anniversary from the Effective Date. All Stock Options awarded shall be in accordance with the terms of the Company's Stock Option Plan, as such Stock Option Plan may be amended, suspended or terminated from time to time.

(d) Vacation. During the Term, the Employee shall be entitled to vacation benefits in accordance with the Company's vacation policy for management and officers.

(e) Benefits. During the Term, and provided that the Employee satisfies, and continues to satisfy, any plan eligibility requirements, the Employee shall be entitled to participate in, and receive benefits under, any retirement savings plan or welfare benefit plan made available by the Company to similarly-situated executives, as such plans may be in effect from time to time. Such benefits may be changed unilaterally by the Company, without notice to the Employee.

(f) Reimbursement of Business Expenses. The Company will reimburse the Employee for all reasonable and properly-documented business-related expenses incurred or paid by him in connection with the performance of his duties hereunder, consistent with Company policy regarding reimbursement of such expenses.

(g) Term Life Insurance. The Company shall provide the Employee, at the Company's cost, with term life insurance in accordance with the Company's insurance policy, for which the Employee may designate the beneficiary.

(h) Withholdings. All payments made under this Section 6, or under any other provision of this Agreement, shall be subject to any and all federal, state and local taxes and other withholdings to the extent required by applicable law.

**7. Termination of Employment.**

(a) Due to Death. The Employee's employment with the Company will automatically terminate immediately upon his death.

(b) Due to Disability. If the Employee incurs a "Disability" (as defined below) during the Term, then the Company, in its sole discretion, shall be entitled to terminate the Employee's employment immediately upon written notice to the Employee of such decision. For purposes of this Agreement, "Disability" shall mean a physical or mental impairment that prevents the Employee from performing the essential duties of his position, with or without reasonable accommodation, for (i) a period of ninety (90) consecutive calendar days or (ii) an aggregate of ninety (90) work days in any period of six (6) months. The determination of whether the Employee incurred a Disability shall be made by the Board, in good faith, after consultation with the Employee's physician. The Employee acknowledges that the Company regards him as a "key employee" under the Family and Medical Leave Act, to the extent that Act is applicable.

(c) By the Company With Cause. During the Term, the Company shall be entitled to terminate the Employee's employment with "Cause" (as defined below) by providing written notice to the Employee of such decision. No advance notice period is required for a termination by the Company with Cause. The Company reserves the right to withdraw any and all duties from the Employee, and to exclude the Employee from the Company's premises, upon delivery of such notice of termination. For purposes of this Agreement, "Cause" shall mean any of the following:

(i) The commission by the Employee of an act of malfeasance, dishonesty, fraud or breach of trust against the Company or any of its Employees, clients or suppliers;

(ii) Material breach by the Employee of any of his obligations under this Agreement, or any other agreement between the Employee and the Company;

(iii) The Employee's failure to comply with the Company's written policies;

(iv) The Employee's failure, neglect or refusal to perform his duties under this Agreement, or to follow the lawful written directions of the Board;

(v) The Employee's commission of any act that would constitute a felony or any crime involving moral turpitude;

(vi) Any act or omission by the Employee involving dishonesty or fraud or that is, or is reasonably likely to be, injurious to the financial condition or business reputation of the Company, or that otherwise is injurious to the Company's Employees, clients or suppliers; or

(vii) The inability of the Employee to perform the duties of his position.

(d) By the Employee Without Good Reason. The Employee shall be entitled to terminate his employment with the Company by providing the Company with at least 30 days' advance written notice of such decision. The Company reserves the right to withdraw any and all duties from the Employee, and to exclude the Employee from the Company's premises, upon delivery of such notice of termination.

(e) By the Company Without Cause. The Company shall be entitled to terminate the Employee's employment without Cause by providing written notice to the Employee of such decision. No advance notice period is required for a termination by the Company without Cause. The Company reserves the right to withdraw any and all duties from the Employee, and to exclude the Employee from the Company's premises, upon delivery of such notice of termination.

(f) By the Employee With Good Reason.

(i) The Employee may voluntarily terminate his employment for "Good Reason" by notifying the Company in writing, within ninety (90) days after the initial existence of one of the events below, that the Employee intends to terminate his employment for Good Reason, and, if such Good Reason is not cured in accordance with the cure provision set forth below, the Employee must actually terminate employment no later than thirty (30) days following the initial notice of existence of such Good Reason. "Good Reason" means the occurrence of any of the following events:

(A) A material diminution in the Employee's duties or authority inconsistent with the Employee's position (including status, offices, titles and reporting requirements), excluding an isolated, insubstantial and inadvertent action not taken in bad faith that is remedied by the Company after receipt of notice thereof given by the Employee:



(B) A material reduction in the Employee's Base Salary or bonus eligibility;

(C) The Company's requiring the Employee to be based at any office that is more than 40 miles from the Employee's current office in Rockville, Maryland; or

(D) Any action or inaction by the Company that constitutes a material breach of the terms and provisions of this Agreement (and its Exhibits).

(ii) Anything herein to the contrary notwithstanding, the Employee's employment shall not be terminated for Good Reason unless he provides written notice to the Company stating the basis of such termination and the Company fails to cure the action or inaction that is such basis within thirty (30) days after receipt of such notice.

**8. Compensation Upon Termination of Employment.**

(a) Termination by Reason of Death, Disability, for Cause or by the Employee. Subject to Section 8(c) below, if the Employee's employment is terminated pursuant to Section 7(a), 7(b), 7(c) or 7(d) above, then the Company shall pay to the Employee (or his estate, as appropriate), within 30 days of his termination date:

(i) The Base Salary to which he is otherwise entitled for the period ending on the termination date.

(ii) The Base Salary to which he is entitled for any accrued but unused vacation days as of the termination date.

(b) Other Termination. If the Employee's employment is terminated pursuant to Section 7(e) or 7(f) above, but not under the circumstances contemplated by Section 8(c) below, then the Company shall pay to the Employee, within 30 days of his termination date (but in all cases subject to Section 8(d) below and not before the applicable general release becoming effective in accordance with its terms), the following amounts and benefits:

(i) A cash lump sum amount equal to his then current Base Salary on the effective date of termination, ignoring any decrease in Base Salary that forms the basis for Good Reason.

(ii) An amount equal to a pro-rata portion of the bonus to which the Employee otherwise might have been entitled pursuant to Section 6(b) above, assuming for such purposes that the Employee would have received a bonus for that fiscal year equal to Forty Percent (40%) of his then current Base Salary (*e.g.*, if one-third of the fiscal year elapsed prior to the termination date, then the Employee would receive a bonus equal to one-third of Forty Percent (40%) of his Base Salary).

(iii) If the Employee timely elects continued coverage under COBRA for himself and his covered dependents under the Company's group health plans following such termination of employment, then the Company will pay the COBRA premiums necessary to continue the Employee's health insurance coverage in effect for himself and his eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), through the earlier to occur of the expiration of the twelve-month period following his termination date or the expiration of the Employee's eligibility for the continuation coverage under COBRA. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Internal Revenue Code (the "Code") or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company, in its sole discretion, may elect instead to pay the Employee on the first day of each month of the twelve-month period, a fully taxable cash payment equal to such portion of the COBRA premiums for that month, subject to applicable tax withholdings (such amount, the "Special Severance Payment"). The Employee may, but is not obligated to, use such Special Severance Payment toward the cost of COBRA premiums. The first Special Severance Payment will occur on the date that is thirty days following the date of the Employee's termination from employment, subject to the effectiveness of the general release as set forth in Section 8(d), and subsequent payments will occur on the schedule described above. If the Employee becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the period provided in this clause, the Employee must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(iv) All of the Employee's then-outstanding Stock Options will be subject to accelerated vesting, and (if applicable) become immediately exercisable, with respect to the number of shares as to which the Stock Options that otherwise would have vested in the twelve (12) month period following the Employee's termination date.

(v) The Company will extend the post-termination exercise period applicable to the Employee's then-outstanding Stock Options until the earliest to occur of (i) twelve (12) months following his termination date, and (ii) the original term of the Stock Options.

(c) Change of Control.

(i) If the Employee's employment is terminated by the Company without Cause (and not as a result of death or a Disability) or by the Employee for Good Reason and such termination date falls within the one-year period immediately following a "Change of Control" (as defined in the Company's Stock Option Plan as in effect on the date hereof) (a "Change of Control Termination"), then the Company shall pay to the Employee, within 30 days of his termination date (but in all cases subject to Section 8(d) below and not before the applicable general release becoming effective in accordance with its terms), the following amounts:

(A) Two Hundred Percent (200%) of the Base Salary to which he is otherwise entitled for the period ending on the termination date, ignoring for purposes of calculation any decrease in Base Salary that forms the basis for Good Reason;

(B) An amount equal to a pro-rata portion of the bonus to which the Employee otherwise might have been entitled pursuant to Section 6(b) above, assuming for such purposes that the Employee would have received a bonus for that fiscal year equal to Forty Percent (40%) of his then current Base Salary (*e.g.*, if one-third of the fiscal year elapsed prior to the termination date, then the Employee would receive a bonus equal to one-third of Forty Percent (40%) of his Base Salary); and

(C) Cash payment to offset (on an after-tax basis) any incremental additional state and federal income tax that the Employee pays as a result of Section 8(c)(i)(A) and Section 8(c)(i)(B) (accelerating payment to the year of separation) subjecting him to a higher marginal tax rate bracket in the year of payment, as calculated by the Company in its discretion.

(ii) Following the Change of Control Termination, if the Employee timely elects continued coverage under COBRA for himself and his covered dependents under the Company's group health plans following such termination of employment, then the Company will pay the COBRA premiums necessary to continue the Employee's health insurance coverage in effect for himself and his eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), through the earlier to occur of the expiration of the eighteen-month period following his termination date or the expiration of the Employee's eligibility for the continuation coverage under COBRA. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company, in its sole discretion, may elect instead to pay the Employee on the first day of each month of the eighteen-month period, the Special Severance Payment. The Employee may, but is not obligated to, use such Special Severance Payment toward the cost of COBRA premiums. If the Employee becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the period provided in this clause, the Employee must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(iii) Immediately prior to a Change of Control, all options, restricted stock and other equity-based awards granted to the Employee by the Company and held by him immediately prior to such a Change of Control shall become immediately and fully vested and, in the case of Stock Options, shall remain exercisable for their respective original terms.

(d) Release Required; Certain Limitations on the Company's Obligations Hereunder. The obligations of the Company to the Employee under this Section 8 shall be subject to the Employee's execution of a general release in favor of the Company, in the form of Exhibit A hereto or in such other form reasonably satisfactory to the Company. Other than as expressly set forth in this Section 8, the Company shall have no payment or other obligations to the Employee following a termination of his employment by the Company.

**9. Confidential Information.**

(a) Non-Use and Non-Disclosure of Confidential Information. The Employee acknowledges that, during the course of his employment with the Company, he will have access to information about the Company and/or its subsidiaries and their clients and suppliers, that is confidential and/or proprietary in nature, and that belongs to the Company and/or its subsidiaries. As such, at all times, both during the Term and thereafter, the Employee will hold in the strictest confidence, and not use or attempt to use except for the benefit of the Company and/or its subsidiaries, and not disclose to any other person or entity (without the prior written authorization of the Board) any "Confidential Information" (as defined below). Notwithstanding anything contained in this Section 9, the Employee will be permitted to disclose any Confidential Information to the extent required by validly-issued legal process or court order, provided that the Employee notifies the Company and/or its subsidiaries immediately of any such legal process or court order in an effort to allow the Company and/or its subsidiaries to challenge such legal process or court order, if the Company and/or its subsidiaries so elects, prior to the Employee's disclosure of any Confidential Information.

(b) No Breach. The Employee represents and warrants that he has not and will not make unauthorized disclosure to the Company of any confidential information or trade secrets of any third party or otherwise breach any obligation of confidentiality to any third party.

(c) Definition of "Confidential Information". For purposes of this Agreement, "Confidential Information" means any confidential or proprietary information that belongs to the Company and/or its subsidiaries, or any of their clients or suppliers, including without limitation, technical data, market data, trade secrets, trademarks, service marks, copyrights, other intellectual property, know-how, research, business plans, product information, projects, services, client lists and information, client preferences, client transactions, supplier lists and information, supplier rates, software, hardware, technology, inventions, developments, processes, formulas, designs, drawings, marketing methods and strategies, pricing strategies, sales methods, financial information, revenue figures, account information, credit information, financing arrangements and other information disclosed to the Employee by the Company and/or its subsidiaries in confidence, directly or indirectly, and whether in writing, orally or by electronic records, drawings, pictures or inspection of tangible property. "Confidential Information" does not include any of the foregoing information that has entered the public domain other than by a breach of this Agreement.

**10. Return of Company Property.** Upon the termination of the Employee's employment with the Company (whether upon the expiration of the Term or thereafter), or at any time during such employment upon request by the Board, the Employee will promptly deliver to the Board (or its representative) and not keep in his possession, recreate or deliver to any other person or entity, any and all property that belongs to the Company and/or its subsidiaries, or that belongs to any other third party and is in the Employee's possession as a result of his employment with the Company, including without limitation, computer hardware and software, pagers, PDA's, Blackberries, cell phones, other electronic equipment, records, data, client lists and information, supplier lists and information, notes, reports, correspondence, financial information, account information, product information, files, electronically-stored information and other documents and information, including any and all copies of the foregoing.

**11. Intellectual Property.**

(a) Prior Inventions. The Employee hereby acknowledges and agrees that he has made no invention, original work of authorship, development, improvement, and trade secret prior to the commencement of his employment with the Company, that belong solely to the Employee or belong to the Employee jointly with others (subject to the restriction in Section 9(b))(collectively referred to as "Prior Inventions"), that relate in any way to any of the Company's and/or its subsidiaries' actual or proposed businesses, products, services or research and development, and that are not assigned to the Company and/or its subsidiaries herein. If in the course of the Employee's employment with the Company (whether during the Term or thereafter), he incorporates into any of the Company's or its subsidiaries' products, processes, services or machines, a Prior Invention owned by the Employee or in which he has an interest, then the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of, or in connection with, such product, process, service or machine.

(b) Assignment of Inventions. The Employee will promptly make full written disclosure to the Board, will hold in trust for the sole right and benefit of the Company, and hereby assigns to the Company or its designee, all his right, title and interest throughout the world in and to any and all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registerable under copyright or similar laws, that he may solely or jointly conceive or develop or reduce to practice, or cause to be developed or reduced to practice, during his employment with the Company (whether during the Term or thereafter) that (i) relate at the time of conception, development or reduction to practice to the actual or demonstrably proposed business or research and development activities of the Company and/or its subsidiaries, (ii) result from or relate to any work performed for the Company and/or its subsidiaries, whether or not during normal business hours or (iii) are developed through the use of Confidential Information (collectively referred to as "Inventions"). The Employee further acknowledges that all Inventions that are made by him (solely or jointly with others) within the scope of and during the period of his employment with the Company and/or its subsidiaries (whether during the Term or thereafter) are "works made for hire" (to the greatest extent permitted by applicable law) and are compensated by his salary, unless regulated otherwise by law.

(c) Maintenance of Invention Records. The Employee will keep and maintain adequate and current written records of all Inventions made by him (solely or jointly with others) during his employment with the Company and/or its subsidiaries (whether during the Term or thereafter). The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks or any similar format. The records will be available to and remain the sole property of the Company and its subsidiaries at all times. The Employee will not remove such records from the Company's or its subsidiaries' business premises except as expressly permitted by Company policy that may, from time to time, be revised at the sole discretion of the Company.

(d) **Further Assistance.** The Employee will assist the Company or its designee, at the Company's expense, in every way to secure the Company's rights in any Inventions and any copyrights, patents, trademarks, trade secrets, moral rights or other intellectual property rights relating thereto in any and all countries, including without limitation, the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, records and all other instruments that the Company shall deem necessary in order to apply for, obtain, maintain and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, trademarks, trade secrets, moral rights or other intellectual property rights relating thereto. The Employee acknowledges that his obligation to execute, or cause to be executed, when it is in his power to do so, any such instrument or papers shall continue after the termination of his employment with the Company until the expiration of the last such intellectual property right in any country. If the Company is unable, after reasonable effort, because of the Employee's mental or physical incapacity or unavailability for any other reason, to secure his signature to apply for or to pursue any application for any patents or copyright registrations covering Inventions assigned to the Company above, then the Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his agent and attorney in fact, to act for and in his behalf and stead to execute and file any such applications and to do all other lawfully-permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by the Employee. The Employee hereby waives and irrevocably quitclaims to the Company and/or its subsidiaries any and all claims, of any nature whatsoever, that he now or hereafter has for infringement of any and all Inventions assigned to the Company and/or its subsidiaries.

**12. No Prior Restrictions.** The Employee represents and warrants that his employment with the Company will not violate, or cause him to be in breach of, any obligation or covenant made to any former employer or other third party, and that during the course of his employment with the Company (whether during the Term or thereafter), he will not take any action that would violate or breach any legal obligation that he may have to any former employer or other third party.

**13. No Interference with Employees and Customers.** The Employee agrees that, during the Employee's employment with the Company and for a period of twelve (12) months immediately thereafter, the Employee will not, directly or indirectly through another entity, for himself or any other person or entity, (i) induce or solicit, or attempt to induce or solicit, any executive or independent contractor of the Company or its subsidiaries (or any individual who was employed or engaged by the Company or its subsidiaries during the one-year period immediately before the termination of the Employee's employment) to leave the employment of, or to cease his or her contracting relationship with, the Company or its subsidiaries, (ii) interfere in any way with the employment relationship between the Company or its subsidiaries or their executives and independent contractors, (iii) hire or engage any executive or independent contractor of the Company or its subsidiaries (or any individual who was employed or engaged by the Company or its subsidiaries during the one-year period immediately before the termination of the Employee's employment) or (iv) induce or attempt to induce any customer, supplier, licensee or other business relation of the Company or its subsidiaries to cease doing business with the Company or its subsidiaries, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or its subsidiaries.

**14. Non-Disparagement.** Both during and after the Employee's employment with the Company, both the Employee and the Company agree not to disparage, portray in a negative light, or take any action that would be harmful to, or lead to unfavorable publicity for, the other party or any of its current or former clients, suppliers, officers, directors, executives, agents, consultants, contractors, owners, parents, subsidiaries or divisions, whether in public or private, including without limitation, in any and all interviews, oral statements, written materials, electronically-displayed materials and materials or information displayed on Internet-related sites.

**15. Equitable Relief.** The Employee acknowledges that the remedy at law for his breach of Sections 9, 10, 11, 13 and 14 above will be inadequate, and that the damages flowing from such breach will not be readily susceptible to being measured in monetary terms. Accordingly, upon a violation of any part of such sections, the Company shall be entitled to immediate injunctive relief (or other equitable relief) and may obtain a temporary order restraining any further violation. No bond or other security shall be required in obtaining such equitable relief, and the Employee hereby consents to the issuance of such equitable relief. Nothing in this Section 15 shall be deemed to limit the Company's remedies at law or in equity for any breach by the Employee of any of the parts of Sections 9, 10, 11, 13 and 14 above which may be pursued or availed of by the Company.

**16. Judicial Modification.** The Employee acknowledges that it is the intent of the parties hereto that the restrictions contained or referenced in Sections 9, 10, 11, 13 and 14 above be enforced to the fullest extent permissible under the laws of each jurisdiction in which enforcement is sought. If any of the restrictions contained or referenced in such Sections is for any reason held by an arbitrator or court to be excessively broad as to duration, activity, geographical scope or subject, then such restriction shall be construed, judicially modified or "blue penciled" in such jurisdiction so as to thereafter be limited or reduced to the extent required to be enforceable in such jurisdiction under applicable law.



**17. Arbitration.** Other than actions seeking injunctive relief to enforce the provisions of Sections 9, 10, 11, 13 and 14 above (which actions may be brought by the Company in a court of appropriate jurisdiction), any and all dispute or controversy between the parties hereto, whether during the Term or thereafter, including without limitation, matters relating to, or arising out of, this Agreement, the Employee's employment with the Company and the cessation thereof, and all matters arising under any federal, state or local statute, rule or regulation or principle of contract law or common law, including but not limited to any and all medical leave statutes, wage-payment statutes, employment discrimination statutes and any other equivalent federal, state or local statute, shall be settled by arbitration administered by JAMS in Washington, D.C. pursuant to its rules applicable to employment disputes, which arbitration shall be confidential, final and binding to the fullest extent permitted by law. Each party hereto shall be responsible for paying one-half of the cost of the arbitration (including the cost of the arbitrator), and all of the cost of its own attorneys' fees and costs, unless otherwise apportioned by the arbitrator in accordance with applicable law

**18. Notices.** All notices and other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered and received by the other party, or when sent by recognized overnight courier to the following addresses:

If to the Company:

15245 Shady Grove Road  
Suite 455  
Rockville, Maryland 20850  
Attention: Secretary

If to the Employee:

at the Employee's home address  
as reflected on the Company's records

or to such other address as either party hereto will have furnished to the other in writing in accordance with this Section 18, except that such notice of change of address shall be effective only upon receipt.

19. **Severability.** In the event that any of the provisions of this Agreement, or the application of any such provisions to the Employee or the Company with respect to obligations hereunder, is held to be unlawful or unenforceable by any court or arbitrator, the remaining portions of this Agreement shall remain in full force and effect and shall not be invalidated or impaired in any manner.

20. **Waiver.** No waiver by any party hereto of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of any other term or covenant contained in this Agreement.

21. **Entire Agreement.** This Agreement contains the entire agreement between the Employee and the Company with respect to the subject matter of this Agreement, and supersedes any and all prior agreements and understandings, oral or written, between the Employee and the Company with respect to the subject matter of this Agreement.

22. **Amendments.** This Agreement may be amended only by an agreement in writing signed by the Employee and an authorized representative of the Company (other than the Employee).

23. **Section 409A Provisions**

(a) **Separation from Service.** Notwithstanding anything in this Agreement to the contrary, to the extent that any severance payments or benefits paid or provided to the Employee, if any, under this Agreement are considered deferred compensation subject to Section 409A of the Code and the final regulations and any guidance promulgated thereunder ("Section 409A") (such payments, the "Deferred Payments"), then (i) to the extent required by Section 409A, no Deferred Payments will be payable unless the Employee's termination of employment also constitutes a "separation from service," as defined in Treasury Regulations Section 1.409A-1(h) (without regard to any alternative definition thereunder) (a "Separation from Service"). Similarly, no Deferred Payments payable to the Employee, if any, under this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulations Section 1.409A-1(b)(9) will be payable until the Employee has a Separation from Service. For clarity, if the Employee terminates employment with the Company in a manner entitling the Employee to severance payments and benefits under Section 8, but does not incur a Separation from Service within the meaning of Section 409A, then any severance payments or benefits that are Deferred Payments and that are not immediately payable under this Section 23(a) will instead be paid to the Employee when the Employee incurs a Separation from Service, notwithstanding that the Employee may no longer be employed under this Agreement. For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulations Section 1.409A-2(b)(2)(iii)), the Employee's right to receive the payments under this Agreement, including the severance payments and benefits, will be treated as a right to receive a series of separate payments and, accordingly, each installment payment will at all times be considered a separate and distinct payment.

(b) Six-Month Wait for Key Employees Following Separation from Service. To the extent that any amount payable or benefit to be provided under this Agreement or any other agreement between the parties hereto constitutes an amount payable or benefit to be provided under a “nonqualified deferred compensation plan” (as defined in Section 409A) upon a Separation from Service, including any amount payable under Section 8 above, and to the extent that the Employee is deemed to be a “specified employee” (as that term is defined in Section 409A and pursuant to procedures established by the Company) on the Separation from Service date, then, notwithstanding any other provision in this Agreement or any other agreement to the contrary, such payment or benefit provision will not be made to the Employee during the six-month period immediately following the Employee’s Separation from Service date. Instead, on the first day of the seventh month following such “separation from service” date, all amounts that otherwise would have been paid or provided to the Employee during that six-month period, but were not paid or provided because of this Section 23(a), will be paid or provided to the Employee at such time, with any cash payment to be made in a single lump sum (without any interest with respect to that six-month period). This six-month delay will cease to be applicable if the Employee “separates from service” due to death or if the Employee dies before the six-month period has elapsed.

(c) Section 409A Compliance. Exceptions to Payment Delay. To the maximum extent permitted by applicable law, amounts payable to the Employee under Section 8 will be made in reliance upon Treasury Regulations Section 1.409A-1(b)(4) (with respect to short-term deferrals) or Treasury Regulations Section 1.409A-1(b)(9) (with respect to separation pay plans). Accordingly, the severance payments provided for in Section 8 are not intended to provide for any deferral of compensation subject to Section 409A of the Code to the extent (i) the severance payments payable under Section 8, by its terms and determined as of the date of the Employee’s Separation from Service, may not be made later than the 15th day of the third calendar month following the later of (1) the end of the Company’s fiscal year in which the Employee’s termination of employment occurs or (2) the end of the calendar year in which the Employee’s termination of employment occurs, or (ii) the severance payments do not exceed an amount equal to two times the lesser of (1) the amount of the Employee’s annualized compensation based upon the Employee’s annual rate of pay for the calendar year immediately preceding the calendar year in which the Employee’s termination of employment occurs (adjusted for any increase during the calendar year in which such termination of employment occurs that would be expected to continue indefinitely had the Employee remained employed with the Company) or (2) the maximum amount that may be taken into account under a qualified plan under Section 401(a)(17) of the Code for the calendar year in which the Employee’s termination of employment occurs. To the extent the payments and benefits under this Agreement are subject to Section 409A, this Agreement will be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations and official guidance thereunder. If said payments and benefits to the Employee are not exempt from or in compliance with Section 409A, the parties will attempt to bring such payments and benefits into compliance with Section 409A without diminishing the benefits to which the Employee is entitled to the greatest extent possible.

(d) **Expense Reimbursement.** If required for compliance with Section 409A of the Code, any business expenses incurred by the Employee that are reimbursed by the Company as a non-taxable reimbursement under this Agreement will be paid in accordance with Treasury Regulations Section 1.409A-3(i)(1)(iv) and in accordance with the Company's standard expense reimbursement policies, but in any event on or before the last day of the Employee's taxable year following the taxable year in which the Employee incurred the expenses. The amounts reimbursed during any taxable year of the Employee will not affect the amounts provided in any other taxable year of the Employee, and the Employee's right to reimbursement for these amounts will not be subject to liquidation or exchange for any other benefit.

**24. Successors and Assigns.** Because the Employee's obligations under this Agreement are personal in nature, the Employee's obligations may only be performed by the Employee and may not be assigned by him. This Agreement is also binding upon the Employee's successors, heirs, executors, administrators and other legal representatives, and shall inure to the benefit of the Company and its subsidiaries, successors and assigns.

**25. Consultation with Counsel.** The Employee acknowledges that he has had a full and complete opportunity to consult with counsel of his own choosing concerning the terms, enforceability and implications of this Agreement.

**26. No Other Representations.** The Employee acknowledges that the Company has made no representations or warranties to the Employee concerning the terms, enforceability or implications of this Agreement other than as reflected in this Agreement.

27. **Headings.** The titles and headings of sections and subsections contained in this Agreement are included solely for convenience of reference and will not control the meaning or interpretation of any of the provisions of this Agreement.

28. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one agreement.

29. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland, without giving effect to its conflict of laws principles.

*[Signature page follows]*

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

REXAHN PHARMACEUTICALS, INC.

CHANG H. AHN, PH.D.

By: /s/ Peter D. Susdak  
Name: Peter D. Susdak  
Title: Chief Executive Officer

/s/ Chang H. Ahn  
Signature

*[Signature page to Employment Agreement]*

**EXHIBIT A**  
**Employment Release**

In consideration of the payments and benefits set forth in Section 8 of the Agreement, I, \_\_\_\_\_, do hereby release and forever discharge Rexahn Pharmaceuticals, Inc., together with its direct and indirect subsidiaries, (the "Company"), and all present and former directors, officers, agents, representatives, employees, successors and assigns of the Company, and its direct or indirect owners, and its affiliates and all present and former directors, officers, agents, representatives, employees, successors and assigns of such affiliates (collectively, the "Released Parties") to the extent provided below.

1. Except as provided in paragraph 3 below, I knowingly and voluntarily release and forever discharge the Company and the other Released Parties from any and all claims, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs, expenses and attorneys' fees, or liabilities of any nature whatsoever in law and in equity, both past and present (through the date of this Employment Release) and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which I or any of my heirs, executors, administrators or assigns, may have, including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967, as amended (including the Older Workers Benefit Protection Act); the Equal Pay Act of 1963, as amended; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act of 1993; the Civil Rights Act of 1866, as amended; the Worker Adjustment Retraining and Notification Act; the Employee Retirement Income Security Act of 1974; any applicable Executive Order Programs; the Fair Labor Standards Act; Corporate and Criminal Fraud Accountability Act of 2002, also known as the Sarbanes Oxley Act or their state or local counterparts; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Company; or any claim for wrongful discharge, breach of contract, infliction of emotional distress, defamation; or any claim for costs, fees, or other expenses, including attorney' fees, incurred in these matters). Nothing herein releases the Company from its post-employment obligations to me pursuant to the Agreement.

Anything herein to the contrary notwithstanding, nothing herein shall release the Company or any other Released Parties from any claims or damages based on: (i) any right or claim that arises after the Execution Date, (ii) any right, including a right to a payment or benefit, the Employee may have under this Agreement or for accrued or vested benefits and stock based awards pursuant to the terms and conditions of the applicable plan document, (iii) the Employee's eligibility for indemnification, in accordance with applicable laws or the certificate of incorporation or by-laws of the Company, or under any applicable insurance policy, with respect to any liability the Employee incurs or has incurred as a director, officer or employee of the Company and its subsidiaries or (iv) any right the Employee may have to obtain contribution as permitted by law in the event of entry of judgment against him as a result of any act or failure to act for which he and the Company or any other Released Party are jointly liable.

2. I represent that I have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 1 above.

3. I acknowledge and agree that my separation from employment with the Company in compliance with the terms of the Agreement shall not serve as the basis for any claim or action, including without limitation any claim under the Age Discrimination in Employment Act of 1967.

4. In signing this Employment Release, I acknowledge and intend that it shall be effective as a bar to each and every one of the claims hereinabove mentioned or implied. I expressly consent that this Employment Release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected and unanticipated claims), if any, as well as those relating to any other claims hereinabove mentioned or implied. I acknowledge and agree that this waiver is an essential and material term of this Employment Release and that without such waiver the Company would not have agreed to the terms of the Agreement. I further agree that in the event I should bring a claim seeking damages against the Company or any Released Party, or in the event I should seek to recover against the Company or any Released Party in any claim brought by a governmental agency on my behalf, this release shall serve as a complete defense to such claims. I further agree that I am not aware of any pending claim or complaint of the type described in paragraph 1 as of the execution of this Employment Release.

5. I agree that neither this Employment Release, nor the furnishing of the consideration for this Employment Release, shall be deemed or construed at any time to be an admission by the Company, any Released Party or myself of any improper or unlawful conduct.

6. I acknowledge and agree that



(a) the consideration provided to me exceeds anything to which I am otherwise entitled and that I am owed no wages, commissions, bonuses, finder's fees, equity or incentive awards, severance pay, vacation pay or any other compensation or vested benefits or payments or remuneration of any kind or nature other than as specifically provided for in this Employment Release;

(b) if I make any claim or demand or commence or threaten to commence any action, claim or proceeding against the Company or any other Releasees with respect to any cause, matter or thing which is the subject of this Employment Release, the Company may raise this Employment Release as a complete bar to any such action, claim or proceeding, and the Company or any other Releasees, as applicable may recover from me all costs incurred in connection with such action, claim or proceeding, including attorneys' fees.

7. I agree that I will forfeit all amounts payable by the Company pursuant to the Agreement if I challenge the validity of this Employment Release. I also agree that if I violate this Employment Release by suing the Company or the other Released Parties, I will pay all costs and expenses of defending against the suit incurred by the Released Parties, including reasonable attorneys' fees, and return all payments received by me pursuant to the Agreement.

8. Notwithstanding anything in this Employment Release to the contrary, this Employment Release shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company or by any Released Party of the Agreement.

9. Whenever possible, each provision of this Employment Release shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Employment Release is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Employment Release shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

BY SIGNING THIS EMPLOYMENT RELEASE, I REPRESENT AND AGREE THAT:

1. I HAVE READ IT CAREFULLY;

2. I UNDERSTAND ALL OF ITS TERMS AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS, INCLUDING BUT NOT LIMITED TO, RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE EQUAL PAY ACT OF 1963, THE AMERICANS WITH DISABILITIES ACT OF 1990; AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED;

3. I VOLUNTARILY CONSENT TO EVERYTHING IN IT;

4. I HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING IT AND I HAVE DONE SO OR, AFTER CAREFUL READING AND CONSIDERATION I HAVE CHOSEN NOT TO DO SO OF MY OWN VOLITION;

5. I HAVE BEEN OFFERED AT LEAST 21 DAYS FROM THE DATE OF MY RECEIPT OF THIS RELEASE ON [\_\_\_\_\_, 20\_\_], TO CONSIDER IT AND THE CHANGES MADE SINCE THE [\_\_\_\_\_, 20\_\_] VERSION OF THIS RELEASE ARE NOT MATERIAL AND WILL NOT RESTART THE REQUIRED 21-DAY PERIOD;

6. THE CHANGES TO THE AGREEMENT SINCE [\_\_\_\_\_, 20\_\_] EITHER ARE NOT MATERIAL OR WERE MADE AT MY REQUEST;

7. I UNDERSTAND THAT I HAVE SEVEN DAYS AFTER THE EXECUTION OF THIS RELEASE TO REVOKE THIS RELEASE SOLELY WITH RESPECT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, AND THAT THIS RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED;

8. I HAVE SIGNED THIS EMPLOYMENT RELEASE KNOWINGLY AND VOLUNTARILY AND WITH THE ADVICE OF ANY COUNSEL RETAINED TO ADVISE ME WITH RESPECT TO IT; AND

9. I AGREE THAT THE PROVISIONS OF THIS EMPLOYMENT RELEASE MAY NOT BE AMENDED, WAIVED, CHANGED OR MODIFIED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY AND BY ME.