

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended December 31, 2014

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from            to            .

Commission File Number: 001-35285

**Biota Pharmaceuticals, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**59-1212264**  
(I.R.S. Employer Identification No.)

**2500 Northwinds Parkway, Suite 100, Alpharetta, GA 30009**  
(Address of principal executive offices, including zip code)

**(678) 221 3343**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of the registrant's common stock, par value \$0.10 per share at February 5, 2015 was 35,100,961 shares.

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**PART I. FINANCIAL INFORMATION**  
**ITEM 1. Financial Statements**

**Biota Pharmaceuticals, Inc.**  
**Condensed Consolidated Balance Sheets**  
**(Unaudited)**  
(in millions, except per share amounts)

	<u>December 31, 2014</u>	<u>June 30, 2014</u>
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 63.7	\$ 81.7
Other accounts receivable	7.0	0.9
Short-term investments	7.1	-
Contract receivable	7.4	17.8
Prepaid and other current assets	1.0	0.7
<b>Total current assets</b>	<b>86.2</b>	<b>101.1</b>
<b>Non-current assets:</b>		
Long-term investments	5.8	10.0
Deferred tax asset	0.3	0.9
Property and equipment, net	1.1	2.0
<b>Total non-current assets</b>	<b>7.2</b>	<b>12.9</b>
<b>Total assets</b>	<b>\$ 93.4</b>	<b>\$ 114.0</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities:</b>		
Contract payable and accrued expenses	\$ 4.4	\$ 18.6
Accounts payable	1.7	2.8
Accrued expenses	3.7	3.4
Accrued severance obligations	0.8	1.2
Deferred tax liability	0.3	0.9
<b>Total current liabilities</b>	<b>10.9</b>	<b>26.9</b>
<b>Non-current liabilities:</b>		
Other liabilities, net of current portion	0.1	0.2
<b>Total liabilities</b>	<b>11.0</b>	<b>27.1</b>
<b>Stockholders' equity:</b>		
Common stock, \$0.10 par value: 200,000,000 shares authorized; 35,100,961 and 35,100,961 shares issued and outstanding at December 31, 2014 and June 30, 2014, respectively	3.5	3.5
Additional paid-in capital	147.4	146.4
Accumulated other comprehensive income	21.7	26.8
Accumulated deficit	(90.2)	(89.8)
<b>Total stockholders' equity</b>	<b>82.4</b>	<b>86.9</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 93.4</b>	<b>\$ 114.0</b>

See accompanying notes to these financial statements.

**Biota Pharmaceuticals, Inc.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
**(unaudited)**

(in millions, except per share amounts)

	<b>Three Months Ended December 31,</b>		<b>Six Months Ended December 31,</b>	
	<b>2014</b>	<b>2013</b>	<b>2014</b>	<b>2013</b>
<b>Revenue:</b>				
Royalty revenue and milestones	\$ 6.5	\$ 6.0	\$ 6.5	\$ 6.0
Revenue from services	7.4	12.4	8.1	24.6
Other	-	0.1	-	0.2
<b>Total revenue</b>	<b>13.9</b>	<b>18.5</b>	<b>14.6</b>	<b>30.8</b>
<b>Operating expense:</b>				
Cost of revenue	1.6	11.4	3.3	22.2
Research and development	4.8	4.2	9.7	7.1
General and administrative	2.6	3.1	5.0	5.5
Foreign exchange (gain) loss	(1.5)	(0.1)	(2.8)	0.2
<b>Total operating expense</b>	<b>7.5</b>	<b>18.6</b>	<b>15.2</b>	<b>35.0</b>
<b>Income (loss) from operations</b>	<b>6.4</b>	<b>(0.1)</b>	<b>(0.6)</b>	<b>(4.2)</b>
<b>Non-operating income:</b>				
Interest income	0.1	-	0.2	0.1
<b>Total non-operating income</b>	<b>0.1</b>	<b>-</b>	<b>0.2</b>	<b>0.1</b>
<b>Income (loss) before tax</b>	<b>6.5</b>	<b>(0.1)</b>	<b>(0.4)</b>	<b>(4.1)</b>
Income tax benefit	-	-	-	0.1
<b>Net income (loss)</b>	<b>\$ 6.5</b>	<b>\$ (0.1)</b>	<b>\$ (0.4)</b>	<b>\$ (4.0)</b>
<b>Basic net income (loss) per share</b>				
<b>Basic net income (loss) per share</b>	<b>\$ 0.19</b>	<b>\$ (0.00)</b>	<b>\$ (0.01)</b>	<b>\$ (0.14)</b>
<b>Diluted net income (loss) per share</b>	<b>\$ 0.19</b>	<b>\$ (0.00)</b>	<b>\$ (0.01)</b>	<b>\$ (0.14)</b>
<b>Basic weighted-average shares outstanding</b>	<b>35,100,961</b>	<b>28,291,665</b>	<b>35,100,961</b>	<b>28,286,404</b>
<b>Diluted weighted-average shares outstanding</b>	<b>35,103,086</b>	<b>28,291,665</b>	<b>35,100,961</b>	<b>28,286,404</b>
<b>Comprehensive (loss) income:</b>				
Net income (loss)	\$ 6.5	\$ (0.1)	\$ (0.4)	\$ (4.0)
Exchange differences on translation of foreign operations	(2.5)	(1.0)	(5.0)	(0.7)
Change in fair value of available for sale investments	(0.1)	-	(0.1)	-
<b>Total comprehensive income (loss)</b>	<b>\$ 3.9</b>	<b>\$ (1.1)</b>	<b>\$ (5.5)</b>	<b>\$ (4.7)</b>

See accompanying notes to these financial statements.

**Biota Pharmaceuticals, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity**  
**(unaudited)**

(in millions, except for share amounts)

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Treasury Shares</u>		<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Income</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>		<u>Shares</u>	<u>Amount</u>			
<b>Balances at July 1, 2014</b>	35,100,961	\$ 3.5	\$ 146.4	-	\$ -	\$ (89.8)	\$ 26.8	\$ 86.9
Exchange differences on translation of foreign operations	-	-	-	-	-	-	(5.0)	(5.0)
Change in fair value of investments	-	-	-	-	-	-	(0.1)	(0.1)
Net loss	-	-	-	-	-	(0.4)	-	(0.4)
Share-based compensation	-	-	1.0	-	-	-	-	1.0
<b>Balances at December 31, 2014</b>	<u>35,100,961</u>	<u>\$ 3.5</u>	<u>\$ 147.4</u>	<u>-</u>	<u>\$ -</u>	<u>\$ (90.2)</u>	<u>\$ 21.7</u>	<u>\$ 82.4</u>

See accompanying notes to the financial statements.

**Biota Pharmaceuticals, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
**(unaudited)**  
(in millions)

	<b>Six Months Ended December 31,</b>	
	<b>2014</b>	<b>2013</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (0.4)	\$ (4.0)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	0.8	1.0
Share-based compensation	1.0	0.9
Change in operating assets and liabilities:		
Accounts receivables	2.0	(16.7)
Prepaid expenses and other current assets	(0.3)	1.2
Deferred revenue	-	(0.2)
Accounts payable and accrued expenses	(12.6)	4.2
Accrued severance obligations	(1.1)	(1.0)
Net cash used in operating activities	(10.6)	(14.6)
<b>Cash flows from investing activities:</b>		
Purchases of short and long-term investments	(9.9)	-
Call redemption of long-term investments	6.9	-
Purchases of property and equipment	-	(0.1)
Net cash used in investing activities	(3.0)	(0.1)
Decrease in cash and cash equivalents	(13.6)	(14.7)
Cash and cash equivalents at beginning of period	81.7	66.8
Effects of exchange rate movements on cash and cash equivalents	(4.4)	(0.7)
<b>Cash and cash equivalents at end of period</b>	<b>\$ 63.7</b>	<b>\$ 51.4</b>

See accompanying notes to these financial statements.

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

**(1) Company Overview**

Biota Pharmaceuticals, Inc., together with its wholly owned subsidiaries (“Biota”, or the “Company”) is a biopharmaceutical company focused on the discovery and development of products to prevent and treat serious and potentially life-threatening infectious diseases. The Company has been incorporated in the state of Delaware since 1969 and its corporate headquarters are located in Alpharetta, Georgia.

The Company is currently focused on developing oral, small molecule antiviral compounds to treat a number of respiratory-related infections. The Company recently initiated a Phase 2b clinical trial (named SPIRITUS), a randomized, double-blind, placebo-controlled dose-ranging for BTA-798, also known as vapendavir, in moderate and severe asthmatic patients at risk of loss of asthma control and exacerbations due to presumptive human rhinovirus (“HRV”) infection. The Company has successfully completed two other Phase 2 trials of vapendavir to-date and recently completed additional Phase 1 bioavailability and drug-drug interaction study of vapendavir in healthy volunteers. In addition, the Company is developing laninamivir octanoate, a long-acting neuraminidase inhibitor (“NI”) for the treatment of influenza A and B. On August 1, 2014, the Company reported top-line safety and efficacy results from a randomized, double-blind, placebo-controlled, parallel-arm Phase 2 clinical trial (named IGLOO), comparing the safety and efficacy of a 40 mg and an 80 mg dose of laninamivir octanoate to placebo. As compared to placebo, neither the 40 mg nor the 80 mg cohort achieved a statistically significant reduction in the median time to alleviation of all influenza associated symptoms, the primary endpoint, as measured by the Flu-iiQ patient-recorded outcome questionnaire. Certain important secondary endpoints, including quantitative viral shedding, and secondary bacterial infections, as well as the time to alleviation of systemic symptoms, did achieve statistically significant results for laninamivir octanoate treated cohorts compared to placebo.

In addition to these Phase 2 clinical-stage development programs, the Company is also developing orally bioavailable F and non-F protein compounds for the treatment of respiratory syncytial virus (“RSV”) infections in children, the elderly and immune-compromised patients. The Company is currently conducting investigational new drug application (“IND”) enabling studies with BTA-C585, the lead compound from its F-protein inhibitor program.

In March 2011, the Company was awarded a contract from the U.S. Office of Biomedical Advanced Research and Development Authority (“BARDA”) designed to provide up to \$231 million in support of the development of and submission for a New Drug Application (“NDA”) of laninamivir octanoate for the treatment of influenza A and B infections in the United States. On May 7, 2014, the U.S. Department of Health and Human Services (“HHS”) office of the Assistant Secretary for Preparedness and Response (“ASPR”) and BARDA notified the Company of its decision to terminate the contract for the convenience of the U.S. Government. The Company continues to work with BARDA to close out this contract, which involves finalizing invoices and billings, determining the nature and extent of any equitable adjustments, and negotiating a final termination settlement.

Although several of the Company’s influenza product candidates have been successfully developed and commercialized to date by other larger pharmaceutical companies under collaboration, license or commercialization agreements, the Company has not independently developed or received regulatory approval for any product candidate, and the Company does not currently have any sales, marketing or commercial capabilities. Therefore, it is possible that the Company may not successfully derive any significant product revenues from any product candidates that it is developing now, or may develop in the future. The Company expects to incur losses for the foreseeable future as it intends to support the clinical and preclinical development of its product candidates. Also, due to the termination of its contract with BARDA, the Company anticipates that its revenue from service and cost of revenue will decline substantially in fiscal 2015 as compared to recent historical levels and will not recur in fiscal 2016.



**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

The Company plans to continue to finance its operations with (i) its existing cash, cash equivalents and investments, (ii) proceeds from existing or potential future royalty-bearing licenses or collaborative research and development arrangements, (iii) future equity and/or debt financings, or (iv) other financing arrangements. The Company's ability to continue to support its operations is dependent, in the near-term, upon managing its cash resources, continuing to receive royalty revenue under existing licenses, receiving final reimbursements from BARDA related to the close-out of its terminated contract, entering into future collaboration, license or commercialization agreements, successfully developing its product candidates, executing future financings and ultimately, upon obtaining approval of its products for sale and achieving positive cash flows from operations on a consistent basis. There can be no assurance that additional capital or funds will be available on terms acceptable to the Company, if at all, or that the Company will be able to enter into collaboration, license or commercialization agreements in the future, or that the Company will ever generate significant product revenue and become operationally profitable on a consistent basis.

**(2) Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. All material adjustments considered necessary for a fair presentation have been included. Certain information and footnotes disclosure normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to instructions, rules and regulations prescribed by the U.S. Securities and Exchange Commission ("SEC"). Except as disclosed herein, there has been no material change in the information disclosed in the notes to the consolidated financial statements included in the Company's Annual Report on Form 10-K that was filed with the SEC on September 30, 2014.

The unaudited interim consolidated financial statements include the accounts of the Company and all of its wholly owned subsidiaries. All inter-company transactions and balances are eliminated in consolidation.

Operating results for the six months ended December 31, 2014 are not necessarily indicative of those in future quarters or the annual results that may be expected for the Company's fiscal year ending June 30, 2015. For a more complete discussion of the Company's significant accounting policies and other information, this report should be read in conjunction with the consolidated financial statements for the fiscal year ended June 30, 2014 included in the Company's Annual Report on Form 10-K that was filed with the SEC on September 30, 2014.

The Company's significant accounting policies have not changed since June 30, 2014, except as outlined below:

***Recent Accounting Standards***

In August 2014, the Financial Accounting Standards Board issued authoritative accounting guidance related to management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. Management's evaluation should be based on relevant conditions and events that are known and reasonably knowable at the date that the financial statements are issued. In doing so, the amendments should reduce diversity in the timing and content of footnote disclosures. This guidance is effective for public and non-public entities for annual periods ending after December 15, 2016, and interim periods thereafter. Early adoption is permitted. The Company is currently assessing the expected impact, if any, that this Accounting Standards Update will have on the consolidated financial statements.

In May 2014, the Financial Accounting Standards Board issued authoritative accounting guidance related to revenue from contracts with customers. This guidance is a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. This guidance is effective for annual reporting periods beginning after December 15, 2016 and early adoption is not permitted. The Company will adopt this guidance on July 1, 2017. Companies may use either a full retrospective or a modified retrospective approach to adopt this guidance. The Company is evaluating which transition approach to use and its impact, if any, on its consolidated financial statements.

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

**(3) Fair Value Measurements**

A fair value hierarchy has been established which requires the Company to maximize the use of observable inputs, where available, and minimize the use of unobservable inputs when measuring fair value. The fair value hierarchy describes three levels of inputs that may be used to measure fair value:

- Level 1** Quoted prices in active markets for identical assets or liabilities.
- Level 2** Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3** Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The following table sets forth the financial assets and liabilities that were measured at fair value on a recurring basis at December 31, 2014 and June 30, 2014, by level within the fair value hierarchy. The assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

The Company's long-term and short-term investments have been classified as Level 2, which have been initially valued at the transaction price and subsequently revalued, at the end of each reporting period, utilizing a third party pricing service. The pricing service utilizes industry standard valuation models and observable market inputs to determine value that include surveying the bond dealer community, obtaining benchmark quotes, incorporating relevant trade data, and updating spreads daily. There have been no transfers of assets or liabilities between the fair value measurement classifications during the periods presented.

	<b>Total</b>	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<b>December 31, 2014</b>				
Cash equivalents	\$ 26.9	\$ 26.9	\$ —	\$ —
Short-term investments available-for-sale	7.1	—	7.1	—
Long-term investments available-for-sale	5.8	—	5.8	—
<b>Total</b>	<b>\$ 39.8</b>	<b>\$ 26.9</b>	<b>\$ 12.9</b>	<b>\$ —</b>

	<b>Total</b>	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<b>June 30, 2014</b>				
Cash equivalents	\$ 36.9	\$ 36.9	\$ —	\$ —
Long-term investments available-for-sale	10.0	—	10.0	—
<b>Total</b>	<b>\$ 46.9</b>	<b>\$ 36.9</b>	<b>\$ 10.0</b>	<b>\$ —</b>

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

Cash equivalents consist primarily of money market funds. Short-term investments consist of corporate securities and have a maturity less than 365 days from the date of acquisition. Long-term investments consist of U.S. agency securities, U.S. Treasury securities, and corporate securities classified as available-for-sale and have maturities greater than 365 days from the date of acquisition.

The Company has had no realized gains or losses from the sale of investments for the six months ended December 31, 2014. The following table shows the unrealized gains and losses and fair values for those investments as of December 31, 2014 and June 30, 2014, aggregated by major security type:

	At Cost	Unrealized Gains	Unrealized (Losses)	At Fair Value
<b>December 31, 2014</b>				
Money market funds	\$ 26.9	\$ —	\$ —	\$ 26.9
Debt securities of U.S. government agencies	2.5	—	—	2.5
U.S. Treasury securities	7.6	—	(0.1)	7.5
Corporate Securities	2.9	—	—	2.9
Total	<u>\$ 39.9</u>	<u>\$ —</u>	<u>\$ (0.1)</u>	<u>\$ 39.8</u>
<b>June 30, 2014</b>				
Money market funds	\$ 36.9	\$ —	\$ —	\$ 36.9
Debt securities of U.S. government agencies	4.9	—	—	4.9
U.S. Treasury securities	5.1	—	—	5.1
Total	<u>\$ 46.9</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 46.9</u>

As of December 31, 2014 and June 30, 2014, the Company had investments in an unrealized loss position. The Company has determined that the unrealized losses of less than \$0.1 million on these investments at December 31, 2014 and June 30, 2014 are temporary in nature and expects the securities to mature at their stated maturity principal.

**(4) Accrued Expenses**

Accrued expenses consist of the following (in millions):

	December 31, 2014	June 30, 2014
Professional Fees	\$ 0.8	\$ 1.0
Salary and related costs	1.2	0.4
Research and development materials and services	1.3	0.8
Other accrued expenses	0.4	1.2
Total accrued expenses and other liabilities	<u>\$ 3.7</u>	<u>\$ 3.4</u>

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

**(5) Net Income (Loss) per share**

Basic and diluted net income (loss) per share has been computed based on net income (loss) and the weighted-average number of common shares outstanding during the applicable period. For diluted net loss per share, common stock equivalents (shares of common stock issuable upon the exercise of stock options and unvested restricted stock units) are excluded from the calculation as their inclusion would be anti-dilutive. The Company has excluded all anti-dilutive share-based awards to purchase common stock in periods indicating a loss, as their effect is anti-dilutive.

The following table sets forth the computation of historical basic and diluted net income (loss) per share.

	<b>Three Months Ended December 31 ,</b>	
	<b>2014</b>	<b>2013</b>
Net income (loss) (in millions)	\$ 6.5	\$ (0.1)
Weighted-average shares outstanding	35,100,961	28,291,665
Dilutive effect of restricted stock and stock options	2,125	-
Shares used to compute diluted earnings per share	35,103,086	28,291,665
Basic net income (loss) per share	\$ 0.19	\$ (0.00)
Diluted net income (loss) per share	\$ 0.19	\$ (0.00)
Number of anti-dilutive share-based awards excluded from computation	3,178,424	2,538,263

	<b>Six Months Ended December 31 ,</b>	
	<b>2014</b>	<b>2013</b>
Net loss (in millions)	\$ (0.4)	\$ (4.0)
Weighted-average shares outstanding	35,100,961	28,286,404
Dilutive effect of restricted stock and stock options	-	-
Shares used to compute diluted earnings per share	35,100,961	28,286,404
Basic net loss per share	\$ (0.01)	\$ (0.14)
Diluted net loss per share	\$ (0.01)	\$ (0.14)
Number of anti-dilutive share-based awards excluded from computation	3,293,424	2,538,263

**(6) Licenses, Royalty Collaborative and Contractual Arrangements**

*Royalty agreements*

The Company entered into a worldwide royalty-bearing research and license agreement with GlaxoSmithKline (“GSK”) in 1990 for the development and commercialization of zanamivir, a neuraminidase inhibitor (“NI”) marketed by GSK as Relenza® to treat influenza. Under the terms of the agreement, the Company licensed zanamivir to GSK on an exclusive basis and is entitled to receive royalty payments of 7% of GSK’s annual net sales of Relenza® in the U.S., Europe, Japan and certain other countries as well as 10% of GSK’s annual net sales of Relenza® in Australia, New Zealand, South Africa and Indonesia. The Relenza® patent portfolio is scheduled to expire as follows: December 2014 in the U.S., May 2015 in Australia, 2016 in the major countries of the European Union (“EU”), and July 2019 in Japan. On August 25, 2014, GSK filed an appeal to the United States Patent Trial Appeal Board in relation to U.S. Patent Application No. 08/737,141. GSK has verified that the Company will continue to receive royalties on the net sales of Relenza® in the United States beyond December 2014 to the extent that this patent application remains pending or is ultimately issued. The Company is unable at this time to determine the duration or the outcome of this appeal process, or how long this patent application will remain pending.

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

The Company also generates royalty revenue from the sale of laninamivir octanoate, which Daiichi Sankyo markets as Inavir<sup>®</sup> in Japan pursuant to a collaboration and license agreement that the Company entered into with Daiichi Sankyo in 2009. In September 2010, laninamivir octanoate (Inavir<sup>®</sup>) was approved for sale by the Japanese Ministry of Health and Welfare for the treatment of influenza in adults and children. In December 2013, Inavir<sup>®</sup> was also approved in Japan for the prevention of influenza in adults and children. Under the agreement, the Company currently receives a 4% royalty on net sales of Inavir<sup>®</sup> in Japan and is eligible to earn additional sales milestone payments. Under the collaboration and license agreement, the Company and Daiichi Sankyo have cross-licensed the world-wide rights to develop and commercialize the related intellectual property, and have agreed to share equally in any royalties, license fees, or milestone or other payments received from any third party licenses outside of Japan. Patents on laninamivir octanoate in Japan generally expire in 2024.

*Collaborative and contract arrangements*

In March 2011, the Company's wholly owned subsidiary, Biota Scientific Management Pty Ltd., was awarded a contract by BARDA for the late-stage development of laninamivir octanoate on a cost-plus-fixed-fee basis, the total of which was not to exceed \$231.2 million. BARDA is part of the U.S. Office of the ASPR within the HHS. The BARDA contract was designed to fund and provide the Company with all technical and clinical data and U.S. based manufacturing to support the filing of a U.S. new drug application ("NDA") with the FDA for laninamivir octanoate. The performance period of the BARDA contract commenced on March 31, 2011, and was intended to continue for five years. On May 7, 2014 HHS/ASPR/BARDA notified the Company of its decision to terminate the contract for the development of laninamivir octanoate for the convenience of the U.S. Government. The Company has been and continues to work with ASPR/BARDA to close out this contract, which involves finalizing separate invoices and billings for those activities undertaken prior to and after the termination date, determining the nature and extent of any equitable adjustments for costs incurred after the termination date, and negotiating a final termination settlement. As of December 31, 2014, the Company had \$7.4 million in accounts receivable due from BARDA, of which \$5.4 million was collected in early January 2015.

The Company was considered an active participant in the BARDA contract, with exposure to significant risks and rewards of commercialization relating to the development of laninamivir octanoate. Therefore, revenues from and costs associated with the close out of the contract are recorded and recognized on a gross basis in the consolidated statement of operations.

The following tables summarize the key components of the Company's revenues (in millions):

	<b>Three Months Ended December 31,</b>	
	<b>2014</b>	<b>2013</b>
	<b>(in millions)</b>	
Royalty revenue– Relenza <sup>®</sup>	\$ 4.2	\$ 5.4
– Inavir <sup>®</sup>	2.3	0.6
Revenue from services	7.4	12.4
Revenue under other contracts, grants and collaborations	-	0.1
<b>Total revenue</b>	<b>\$ 13.9</b>	<b>\$ 18.5</b>
	<b>Six Months Ended December 31,</b>	
	<b>2014</b>	<b>2013</b>
	<b>(in millions)</b>	
Royalty revenue– Relenza <sup>®</sup>	\$ 4.2	\$ 5.4
– Inavir <sup>®</sup>	2.3	0.6
Revenue from services	8.1	24.6
Revenue under other contracts, grants and collaborations	-	0.2
<b>Total revenue</b>	<b>\$ 14.6</b>	<b>\$ 30.8</b>

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

**(7) Share-based Compensation**

For the three months ended December 31, 2014 and 2013, the Company recorded share-based compensation expense related to grants from equity incentive plans of \$0.6 million and \$0.5 million, respectively. For the six months ended December 31, 2014 and 2013, the Company recorded share-based compensation expense related to grants from equity incentive plans of \$1.0 million and \$0.9 million, respectively. No income tax benefit was recognized in the statements of operations and no share-based compensation expense was capitalized as part of any assets for the six months ended December 31, 2014 and 2013.

*Stock Options*

The fair value of each stock option award was estimated at its respective date of grant using the Black-Scholes method with the following assumptions:

	<b>Three Months Ended December 31,</b>		<b>Six Months Ended December 31,</b>	
	<b>2014</b>	<b>2013</b>	<b>2014</b>	<b>2013</b>
Weighted-average risk-free interest rate	1.70%	1.40%	1.70%	1.49%
Dividend yield	—	—	—	—
Expected weighted-average volatility	.82	.78	.82	.78
Expected weighted-average life of options (years)	6.0	6.0	6.0	6.0
Weighted-average fair value of options granted	\$ 1.68	\$ 2.78	\$ 1.67	\$ 2.75

The risk-free interest rate is based on the expected life of the option and the corresponding U.S. Treasury bond, which in most cases is the U.S. five year Treasury bond. The expected term of stock options granted is derived from actual and expected option behavior and represents the period of time that options granted are expected to be outstanding. The Company uses historical data to estimate option exercise patterns and future employee terminations to determine expected life and forfeitures. Expected volatility is based on the historical volatility of the Company's publicly-traded common stock.

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
**(for the quarterly period ended December 31, 2014)**

A summary of the Company's outstanding stock option activity for the six months ended December 31, 2014 is as follows:

	<u>Number of Stock Options</u>	<u>Weighted Average Exercise Price Per Option</u>	<u>Weighted- Average Remaining Contractual Term (In Years)</u>	<u>Aggregate Intrinsic Value (\$000)</u>
Balance at June 30, 2014	2,463,369	\$ 9.09		
Granted	1,275,000	2.44		
Exercised	—	—		
Forfeited or expired	(444,945)	9.73		
Balance at December 31, 2014	<u>3,293,424</u>	<u>\$ 6.43</u>	<u>8.18</u>	<u>\$ -</u>

In August 2014, the Company's Board of Directors made a determination that a performance-based milestone was not achieved and as a result, performance-based stock options previously issued during fiscal 2014 would not vest and were cancelled.

The total intrinsic value of stock options exercised during the three month period ended December 31, 2014 was zero, and no cash proceeds were received by the Company. Further, no actual tax benefits were realized, as the Company currently records a full valuation allowance for all tax benefits due to uncertainties with respect to its ability to generate sufficient taxable income in the future.

The following tables summarize information relating to outstanding and exercisable options as of December 31, 2014:

Exercise Prices	<u>December 31, 2014</u>				
	<u>Outstanding Weighted Average</u>		<u>Weighted Average</u>	<u>Exercisable</u>	
	<u>Number of</u>	<u>Remaining Contractual</u>		<u>Exercise Price</u>	<u>Number of</u>
	<u>Stock Options</u>	<u>Life (In Years)</u>	<u>Exercise Price</u>	<u>Stock Options</u>	<u>Exercise Price</u>
\$ 2.20 — \$2.30	115,000	9.69	\$ 2.29	—	\$ —
\$ 2.45	1,035,000	9.75	2.45	—	—
\$ 2.47 — \$4.05	605,000	9.07	3.18	86,250	3.96
\$ 4.07 — \$75.81	1,538,424	6.67	10.69	1,046,645	13.66
	<u>3,293,424</u>	<u>8.18</u>	<u>\$ 6.43</u>	<u>1,132,895</u>	<u>12.92</u>

*Restricted and Market Stock Units (MSUs).* A summary of the Company's outstanding restricted stock and market stock unit (MSU) activity for the six months ended December 31, 2014 is as follows:

	<u>Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Balance at June 30, 2014	261,447	\$ 3.98
Awarded	40,000	2.45
Released	—	—
Forfeited	(38,152)	4.02
Balance at December 31, 2014	<u>263,295</u>	<u>\$ 3.74</u>

**Biota Pharmaceuticals, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
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In December 2013, the Company awarded 108,183 MSUs to employees that may vest on January 1, 2017. The vesting of these awards is subject to the respective employee's continued employment through this settlement period. Further, the number of MSUs granted represents the target number of units that are eligible to be earned based on the attainment of certain market-based criteria involving the Company's stock price. The number of MSUs actually earned, if any, is calculated upon the vesting of the award. Participants may ultimately earn between 0% and 250% of the target number of units granted based on actual stock performance. Accordingly, additional MSUs may be issued or currently outstanding MSUs may be cancelled upon final determination of the number of awards earned. Compensation expense, including the effect of forfeitures, is recognized over the applicable service period.

As of December 31, 2014 there was \$4.1 million of unrecognized share-based compensation expense related to all unvested share-based awards. Unrecognized stock-based compensation expense for equity awards will be adjusted for future changes in estimated forfeitures. This balance is expected to be recognized over a weighted-average period of three years.

**(8) Restructuring Charges**

The Company recognizes restructuring charges when a plan that materially changes the scope of its business or the manner in which that business is conducted is adopted and communicated to the impacted parties, and the expenses have been incurred or are reasonably estimable.

*Fiscal 2014 Restructuring Activity*

In the fourth quarter of fiscal 2014, the Company announced restructuring actions as a result of the termination of the BARDA contract for the convenience of the U.S. Government. These restructuring activities are expected to be completed in fiscal 2015.

The following is a reconciliation of the beginning and ending balances of the restructuring liability:

<b>Fiscal 2014 Restructuring Plans:</b>	<b>Balance at June 30, 2014</b>	<b>Provision</b>	<b>Payments</b>	<b>Balance at December 31, 2014</b>
Severance and employment costs	2.0	-	(1.2)	0.8
Total restructuring costs	<u>\$ 2.0</u>	<u>\$ -</u>	<u>\$ (1.2)</u>	<u>\$ 0.8</u>

The remaining severance and other employment costs of approximately \$0.8 million are scheduled to be paid by the end of fiscal 2015.



## ITEM 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

### FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. In most cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "intend," "anticipate," "believe," "estimate," "project," "predict," "forecast," "potential," "likely" or "possible", as well as the negative of such expressions, and similar expressions intended to identify forward-looking statements. These forward-looking statements include, without limitation, statements relating to:

- the time frame in which we may fully enroll and report top line-data from our recently initiated Phase 2 SPIRITUS clinical trial of vapendavir;
- the amount and timing of proceeds we believe we are entitled to receive under our terminated contract with Biomedical Advanced Research and Development Authority ("BARDA");
- the anticipated time to complete ongoing in vivo preclinical studies and file an IND for BTA-C585;
- our intention to develop a series of respiratory syncytial virus (RSV) non-fusion inhibitors and their potential as a stand-alone treatment or in combination therapy with BTA-C585;;
- our plan to meet with the U.S. Food and Drug Administration ("FDA") to determine the appropriate primary endpoint for any prospective registration trials for laninamivir octanoate;
- our plan to pursue partnering opportunities for Phase 3 development and commercialization of LANI outside of Japan;
- our anticipation that we will generally incur net losses from operations in the future due to our intention to continue to support the preclinical and clinical development of our product candidates;
- our future financing requirements, the factors that may influence the timing and amount of those requirements and our ability to fund them;
- the number of months that our current cash, cash equivalents and anticipated future proceeds from existing royalty-bearing licenses and other existing license and collaboration agreements will allow us to operate; and
- our plan to continue to finance our operations with our existing cash, cash equivalents and proceeds from existing or potential future royalty-bearing licenses, government contracts, or collaborative research and development arrangements, or through future equity and/or debt financings or other financing vehicles.

These forward looking statements are subject to key risks and uncertainties including, without limitation: we, the FDA or a similar foreign regulatory agency, a data safety monitoring board, or an institutional review board delaying, limiting, suspending or terminating the clinical development of vapendavir, BTA-C585, laninamivir octanoate or any of our clinical development programs at any time for a lack of safety, tolerability, biologic activity, commercial viability, regulatory or manufacturing issues, or any other reason whatsoever; our ability to successfully negotiate an acceptable final termination settlement with BARDA; ongoing in vivo IND-enabling studies of BTA-C585 being successfully completed and continuing to support the filing of an IND; our ability to meet and reach agreement with the FDA on an appropriate primary endpoint for any prospective registration trials for laninamivir octanoate; our ability to identify and reach agreement with viable potential partners to advance laninamivir octanoate; our ability to comply with applicable government regulations in various countries and regions in which we are conducting, or expect to conduct, clinical trials; our ability to manufacture and maintain sufficient quantities of preclinical and clinical trial material on hand to support and complete our preclinical studies or clinical trials on a timely basis; our ability to retain and recruit sufficient staff, including key executive management and employees, to manage our business; our ability to secure, manage and retain qualified third-party clinical research, preclinical research, data management, contract manufacturing and other similar vendors who we outsource many of our activities to and rely on to assist us in the design, development and implementation of the development of our product candidates; our third-party contract research, data management and manufacturing organizations fulfilling their contractual obligations on a timely basis or otherwise performing satisfactorily in the future; GSK and Daiichi Sankyo continuing to generate net sales from Relenza<sup>®</sup> and Inavir<sup>®</sup>, respectively, and otherwise continuing to fulfill their obligations under our royalty-bearing license agreements with them in the future; our ability to maintain, protect or defend our proprietary intellectual property rights from unauthorized use by others, or not infringe on the intellectual property rights of others; our ability to successfully manage our expenses, operating results and financial position in line with our plans and expectations ; the condition of the equity and debt markets and our ability to raise sufficient funding in such markets; changes in general economic business or competitive conditions related to our industry or product candidates; and other statements contained elsewhere in this in this Quarterly Report on Form 10-Q and our 2014 Annual Report on Form 10-K .

There may be events in the future that we are unable to predict accurately, or over which we have no control. You should read this Form 10-Q and the documents that we reference herein and which been filed or incorporated by reference as exhibits completely and with the understanding that our actual future results may be materially different from what we expect. Our business, financial condition, results of operations, and prospects may change. We may not update these forward-looking statements, even though our situation may change in the future, unless we have an obligation under the federal securities laws to update and disclose material developments related to previously disclosed information. We qualify all of the information presented in this Form 10-Q, and particularly our forward-looking statements, by these cautionary statements.

*Biota is a registered trademark of Biota Pharmaceuticals, Inc., Relenza<sup>®</sup> is a registered trademark of GlaxoSmithKline plc, and Inavir<sup>®</sup> is a registered trademark of Daiichi Sankyo Company, Ltd.*

*References to “we,” “us,” and “our” refer to Biota Pharmaceuticals, Inc. and its subsidiaries.*

*The following is a discussion and analysis of the major factors contributing to our results of operations for the three and six months ended December 31, 2014, and our financial condition at that date, and should be read in conjunction with the financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q.*

## **Company Overview**

We are currently focused on developing oral, small molecule compounds to treat a number of respiratory-related viral infections. We have recently initiated a Phase 2b clinical trial (named SPIRITUS), a randomized, double-blind, placebo-controlled dose-ranging for BTA-798, also known as vapendavir, in moderate-to-severe asthmatic patients at risk of loss of asthma control and exacerbations due to presumptive HRV infection. We have successfully completed two other Phase 2 trials of vapendavir to date and recently completed additional Phase 1 bioavailability and drug-drug interaction study of vapendavir in healthy volunteers. In addition we are developing laninamivir octanoate, a long-acting neuraminidase inhibitor (“NI”), for the treatment of influenza A and B. On August 1, 2014, we reported top-line safety and efficacy results from a randomized, double-blind, placebo-controlled, parallel-arm Phase 2 clinical trial (named IGLOO) comparing the safety and efficacy of a 40 mg and an 80 mg dose of laninamivir octanoate to placebo. As compared to placebo, neither the 40 mg nor the 80 mg cohort achieved a statistically significant reduction in the median time to alleviation of all influenza associated symptoms, the primary endpoint, as measured by the Flu-iiQ patient-recorded outcome questionnaire. Certain important secondary endpoints, including quantitative viral shedding, and secondary bacterial infections, as well as the time to alleviation of systemic symptoms, did achieve statistically significant results for laninamivir octanoate treated cohorts compared to placebo.

In addition to these Phase 2 clinical-stage development programs, we are also developing orally bioavailable F and non-F protein compounds for the treatment of RSV infections in children, the elderly and immune-compromised patients. We are currently conducting IND-enabling studies with BTA-C585, the lead compound from our F-protein inhibitor program.

We previously developed zanamivir, a neuraminidase inhibitor that is marketed worldwide by GSK as Relenza<sup>®</sup> for the prevention and treatment of influenza A and B. GSK markets Relenza<sup>®</sup> pursuant to a royalty-bearing research and license agreement we entered into with GSK in 1990. In 2003, we entered into a collaboration and license agreement with Daiichi Sankyo, under which each party cross-licensed its intellectual property related to second-generation, long-acting neuraminidase inhibitors, including laninamivir octanoate. In 2009, we entered into a commercialization agreement with Daiichi Sankyo that provided Daiichi Sankyo with an exclusive license to commercialize laninamivir octanoate in Japan and entitled us to receive a royalty on net sales of laninamivir octanoate in Japan. Laninamivir octanoate, which is marketed in Japan by Daiichi Sankyo as Inavir<sup>®</sup>, was approved for sale by the Japanese Ministry of Health and Welfare for the treatment of influenza A and B in adults and children in September 2010 and for the prevention of influenza A and B in December 2013. In 2009, we filed an IND with the FDA to develop laninamivir octanoate in the U.S.

In March 2011, we were awarded a contract from BARDA designed to provide up to \$231 million in support of the development of and submission for a New Drug Application (“NDA”) of laninamivir octanoate for the treatment of influenza A and B infections in the U.S. On May 7, 2014, U.S. Department of Health and Human Services (“HHS”) office of the Assistant Secretary for Preparedness and Response (“ASPR”) and BARDA notified us of its decision to terminate the contract for the convenience of the U.S. Government. We continue to work with BARDA to close out this contract, which involves finalizing invoices and billings, determining the nature and extent of any equitable adjustments, and negotiating a final termination settlement.

Although several of our influenza product candidates have been successfully developed and commercialized to date by other larger pharmaceutical companies under license, collaboration or commercialization agreements with us, we have not independently developed or received regulatory approval for any product candidate, and we do not currently have any sales, marketing or commercial capabilities. Therefore, it is possible that we may not successfully derive any significant product revenues from any product candidates that we are developing now, or may develop in the future. We expect to incur losses for the foreseeable future as we intend to support the clinical and preclinical development of our product candidates. Also, due to the recent termination of our contract with BARDA, we anticipate that our revenue from service and cost of revenue will decline substantially in fiscal 2015 as compared to recent historical levels and will not recur in fiscal 2016.

We plan to continue to finance our operations with (i) our existing cash, cash equivalents and investments, (ii) proceeds from existing or potential future royalty-bearing licenses, government contracts, or collaborative research and development arrangements, (iii) future equity and/or debt financings, or (iv) other financing arrangements. Our ability to continue to support our operations is dependent, in the near-term, upon us managing our cash resources, receipt of royalty revenue under our existing licensees, our receipt of final reimbursements and settlement proceeds from BARDA, entering into future collaboration, license or commercialization agreements, successfully developing our product candidates, executing future financings and ultimately, upon obtaining of our products for sale and achieving positive cash flows from operations on a consistent basis. There can be no assurance that additional capital or funds will be available on terms acceptable to us, if at all, or we will be able to enter into collaboration, license or commercialization agreements in the future, or that we will ever generate significant product revenue and become operationally profitable on a consistent basis.

## Recent Corporate Developments

**Vapendavir** – On February 5, 2015, we announced that we have commenced patient screening for our Phase 2b SPIRITUS trial of vapendavir in patients with moderate-to-severe asthma. The goal of the study is to enroll approximately 150 laboratory-confirmed HRV infected patients over the next 12 months and to report top-line data in mid-2016. The primary endpoint of this multi-center, randomized, double-blind, placebo-controlled dose-ranging study is the change from baseline to study day 14 in asthma control questionnaire (“ACQ”)-6 total score. The secondary endpoints are focused on safety and tolerability, lung function assessments such as forced expiratory volume in one second (“FEV1 “), incidence of asthma exacerbations, assessments of the severity and duration of cold symptoms measured by the Wisconsin Upper Respiratory Symptom Survey-21 (“WURSS-21”), and virology assessments such as changes in viral load.

**BTA-C585 and RSV Program** – On February 5, 2015, we announced we have successfully completed the requisite *in vitro* studies to support an IND application for our RSV fusion inhibitor, BTA-C585, and pending successful completion of ongoing *in vivo* studies, we intend to file the IND by mid-year 2015. In addition, we have identified a series of potent RSV non-fusion inhibitors that we intends to further develop and believe could be useful either as a stand-alone treatment and potentially in combination therapy with our fusion inhibitor (BTA-C585) for the treatment of patients infected with RSV.

**BARDA Contract Termination** – On February 5, 2015, we reported that during our second fiscal quarter, we had successfully resolved the majority of our outstanding claims with the BARDA associated with the termination of our contract with BARDA in May 2014. As of December 31, 2014, we had \$7.4 million in accounts receivable due from BARDA, of which \$5.4 million was collected in early January 2015. We believe that, pursuant to applicable government regulations, we are entitled to be reimbursed for the remaining \$2.0 million of accounts receivable we have recorded under the terminated BARDA contract. At this time, we cannot determine when and to what extent a final termination settlement will be reached with BARDA.

**Laninamivir Octanoate (“LANI”)** – On February 5, 2015, we announced that we plan to meet with the FDA next quarter to discuss the results of the LANI Phase 1 asthma and Thorough QT/QTc (“TQT”) studies, the Phase 1/2 pediatric study, and the Phase 2 IGLOO study to determine the appropriate primary endpoint for, and which patient reported outcome tools would be acceptable for use in prospective registration trials of LANI to treat uncomplicated influenza. Further, we are pursuing partnering opportunities with LANI for Phase 3 development and commercialization outside of Japan.

## CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Management’s Discussion and Analysis of Results of Operations discusses our financial results, which (except to the extent described in the Notes thereto) have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.

We base our estimates and judgments on historical experience, current economic and industry conditions, and various other factors that we believe to be reasonable under the circumstances. This forms the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies require significant judgment and estimates:

- Use of Estimates
- Revenue Recognition
- Accrued Expenses
- Share-Based Compensation

In August 2014, the Financial Accounting Standards Board issued authoritative accounting guidance related to management’s responsibility to evaluate whether there is substantial doubt about an entity’s ability to continue as a going concern and to provide related footnote disclosures. Management’s evaluation should be based on relevant conditions and events that are known and reasonably knowable at the date that the financial statements are issued. In doing so, the amendments should reduce diversity in the timing and content of footnote disclosures. This guidance is effective for public and non-public entities for annual periods ending after December 15, 2016, and interim periods thereafter. Early adoption is permitted. We are currently assessing the expected impact, if any, that this Accounting Standards Update will have on the consolidated financial statements.

In May 2014, the Financial Accounting Standards Board issued authoritative accounting guidance related to revenue from contracts with customers. This guidance is a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. This guidance is effective for annual reporting periods beginning after December 15, 2016 and early adoption is not permitted. We will adopt this guidance on July 1, 2017. Companies may use either a full retrospective or a modified retrospective approach to adopt this guidance. We are evaluating which transition approach to use and its impact, if any, on its consolidated financial statements.

## Results of Operations

### Three Months Ended December 31, 2014 and December 31, 2013

*Summary.* For the three months ended December 31, 2014, we reported a net income of \$6.5 million, as compared to a net loss of \$0.1 million in the same period of 2013. The \$6.6 million increase in net income in 2014 was primarily due to a \$9.8 million decrease in the cost of revenue, a \$1.4 million increase in foreign exchange gain, a \$0.5 million decrease in general and administrative expense and a \$0.1 million increase in interest income, offset in part by \$4.6 million decrease in revenue and a \$0.6 million increase in research and development expense. Basic and diluted net income per share were \$0.19 for the three month period ended December 31, 2014, as compared to a basic and diluted net loss per share of zero in the same period of 2013.

*Revenue.* Revenue decreased to \$13.9 million for the three months ended December 31, 2014 from \$18.5 million for the same period in 2013. The following table summarizes the key components of our revenue for the three months ended December 31, 2014 and 2013:

	Three Months Ended December 31 (in millions)	
	2014	2013
Royalty revenue— Relenza <sup>®</sup>	\$ 4.2	\$ 5.4
– Inavir <sup>®</sup>	2.3	0.6
Revenue from services	7.4	12.4
Revenue grants and other	-	0.1
<b>Total revenue</b>	<b>\$ 13.9</b>	<b>\$ 18.5</b>

Royalty revenues increase primarily due to an increase in seasonal sales of Inavir<sup>®</sup> in Japan which is marketed by Daiichi Sankyo, offset in part by lower sales of Relenza<sup>®</sup>, which is marketed worldwide by GlaxoSmithKline. Revenue from services decreased due to a reduction in contract service revenue related to the cancellation of the Company's contract with BARDA in May 2014 for the convenience of the U.S. Government, offset in part by a partial settlement of \$4.7 million for all final costs associated with the Phase 2 IGLOO clinical trial for laninamivir octanoate. Revenue from grants and other decreased due to a decrease in grant-related research activities.

*Cost of Revenue.* Cost of revenue decreased to \$1.6 million for the three months ended December 31, 2014 from \$11.4 million for the same period in 2013. The following table summarizes the components of our cost of revenue for the three months ended December 31, 2014 and 2013.

	Three Months Ended December 31 (in millions)	
	2014	2013
Direct preclinical, clinical and product development expenses	\$ 1.6	\$ 10.1
Salaries, benefits and share-based compensation expenses	-	1.2
Other expenses	-	0.1
<b>Total cost of revenue expense</b>	<b>\$ 1.6</b>	<b>\$ 11.4</b>

Direct preclinical, clinical and product development expense decreased due to the lower direct third-party clinical costs incurred associated with Phase 1 and 2 clinical trials and manufacturing activities for the laninamivir octanoate program under the terminated BARDA contract. Salaries, benefits and share-based compensation expense decreased primarily as a result of personnel no longer being allocated to work under the BARDA contract. Other expenses decreased due to reduction in miscellaneous costs as a result of the termination of the BARDA contract.

*Research and Development Expense.* Research and development expense increased to \$4.8 million for the three months ended December 31, 2014 from \$4.2 million for the same period in 2013. The following table summarizes the components of our research and development expense for the three months ended December 31, 2014 and 2013.

	<b>Three Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Direct preclinical, clinical and product development expenses	\$ 2.2	\$ 0.5
Salaries, benefits and share-based compensation expenses	1.9	2.7
Other expenses	0.1	0.4
Depreciation and facility related expenses	0.6	0.6
<b>Total research and development expense</b>	<b>\$ 4.8</b>	<b>\$ 4.2</b>

Direct preclinical, clinical and product development expense increased largely due to the initiation of the Phase 2 SPIRITUS clinical trial of vapedavir and preclinical expenses related to the ongoing IND-enabling studies associated with BTA-C585, our RSV fusion inhibitor. Salaries, benefits and share-based compensation decreased primarily due to reductions in personnel working on research activities. Other expenses decreased due to lower research and intellectual patent filing expenses on product candidates.

*General and Administrative Expense.* General and administrative expense decreased to \$2.6 million for the three months ended December 31, 2014 from \$3.1 million for the same period in 2013. The following table summarizes the components of our general and administrative expense for the three months ended December 31, 2014 and 2013.

	<b>Three Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Salaries, benefits and share-based compensation expenses	\$ 1.4	\$ 1.6
Professional and legal fees expenses	0.4	0.5
Other expenses	0.8	1.0
<b>Total general and administrative expense</b>	<b>\$ 2.6</b>	<b>\$ 3.1</b>

Salaries, benefits and share-based compensation expenses decreased as a result of reductions in personnel. Professional and legal fees expense decreased primarily due to lower professional and legal expenses related to previous integration activities. Other expenses decreased primarily due to lower insurance premiums as compared to the previous period.

*Foreign Exchange Gain, (Loss) net.* Foreign exchange gain increased due to the increase in the value of the U.S. dollar as compared to the Australian dollar during the three month period ended December 31, 2014 and the related translation of foreign currency balances and transactions in our subsidiaries that have a different functional currency than the reporting currency on our statement of operations. We translate all of the assets and liabilities of our non-U.S. subsidiaries at the period-end exchange rate and the net effect of these translation adjustments is shown on our condensed consolidated balance sheet as a component of stockholders' equity.

*Interest Income.* Interest income increased due to having a greater amount of investments in 2014 as compared to 2013 and the related yield earned on those investments.

#### **Six Months Ended December 31, 2014 and December 31, 2013**

*Summary.* For the six months ended December 31, 2014, we reported a net loss of \$0.4 million, as compared to a net loss of \$4.0 million in the same period of 2013. The \$3.6 million decrease in net loss in 2014 was primarily due to a \$18.9 million decrease in the cost of revenue, a \$3.0 million increase in foreign exchange gain, a \$0.5 million decrease in general and administrative expense and a \$0.1 million increase in interest income, offset in part by \$16.2 million decrease in revenue and a \$2.6 million increase in research and development expense and a \$0.1 million decrease in income tax benefit. Basic and diluted net loss per share were \$0.01 for the six month period ended December 31, 2014, as compared to a basic and diluted net loss per share of \$0.14 in the same period of 2013.

*Revenue.* Revenue decreased to \$14.6 million for the six months ended December 31, 2014 from \$30.8 million for the same period in 2013. The following table summarizes the key components of our revenue for the six months ended December 31, 2014 and 2013:

	<b>Six Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Royalty revenue— Relenza®	\$ 4.2	\$ 5.4
– Inavir®	2.3	0.6
Revenue from services	8.1	24.6
Revenue grants and other	-	0.2
<b>Total revenue</b>	<b>\$ 14.6</b>	<b>\$ 30.8</b>

Royalty revenue increased primarily due to higher seasonal sales of Inavir® in Japan, which is marketed by Daiichi Sankyo, offset in part by lower sales of Relenza®, which is marketed worldwide by GlaxoSmithKline. Revenue from services decreased due to a decrease in contract service revenue related to the cancellation of our contract with BARDA in May 2014 for the convenience of the U.S. Government, offset in part by a partial settlement of \$4.7 million for all final costs associated with the Phase 2 IGLOO clinical trial for laninamivir octanoate. Revenue from grants and other decreased due to a decrease in grant-related research activities.

*Cost of Revenue.* Cost of revenue decreased to \$3.3 million for the six months ended December 31, 2014 from \$22.2 million for the same period in 2013. The following table summarizes the components of our cost of revenue for the six months ended December 31, 2014 and 2013.

	<b>Six Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Direct preclinical, clinical and product development expenses	\$ 3.0	\$ 19.6
Salaries, benefits and share-based compensation expenses	0.2	2.4
Other expenses	0.1	0.2
<b>Total cost of revenue</b>	<b>\$ 3.3</b>	<b>\$ 22.2</b>

Direct preclinical, clinical and product development expense decreased due to the lower direct third-party clinical costs incurred associated with Phase 1 and 2 clinical trials and manufacturing activities for the laninamivir octanoate program under the terminated BARDA contract. Salaries, benefits and share-based compensation expense decreased primarily as a result of lower personnel being allocated to work under the BARDA contract. Other expenses decreased due to reduction in miscellaneous costs as a result of the termination of the BARDA contract.

*Research and Development Expense.* Research and development expense increased to \$9.7 million for the six months ended December 31, 2014 from \$7.1 million for the same period in 2013. The following table summarizes the components of our research and development expense for the six months ended December 31, 2014 and 2013.

	<b>Six Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Direct preclinical, clinical and product development expenses	\$ 4.5	\$ 1.1
Salaries, benefits and share-based compensation expenses	3.5	4.1
Other expenses	0.4	0.7
Depreciation and facility related expenses	1.3	1.4
<b>Total research and development expense</b>	<b>\$ 9.7</b>	<b>\$ 7.1</b>

Direct preclinical, clinical and product development expense increased due largely to an increase in direct clinical expenses associated with the initiation of the Phase 2 SPIRITUS clinical trial of vopendavir and preclinical expenses related to the ongoing IND-enabling studies associated with BTA-C585, our RSV fusion inhibitor. Salaries, benefits and share-based compensation decreased primarily due to reductions in personnel. Other expenses decreased due to lower research and intellectual patent filing expenses on product candidates.

*General and Administrative Expense.* General and administrative expense decreased to \$5.0 million for the six months ended December 31, 2014 from \$5.5 million for the same period in 2013. The following table summarizes the components of our general and administrative expense for the six months ended December 31, 2014 and 2013.

	<b>Six Months Ended December 31</b>	
	<b>(in millions)</b>	
	<b>2014</b>	<b>2013</b>
Salaries, benefits and share-based compensation expenses	\$ 2.8	\$ 2.9
Professional and legal fees expenses	0.7	0.9
Other expenses	1.4	1.7
Total general and administrative expense	<u>\$ 4.9</u>	<u>\$ 5.5</u>

Salaries, benefits and share-based compensation expenses decreased as a result of reductions in personnel. Professional and legal fees decreased primarily due to lower professional expenses related to human resources matters. Other expenses decreased primarily due to lower insurance premiums and expenses related to our public listing.

*Foreign Exchange (Gain), Loss .* Foreign exchange (gain) loss increased to a gain of \$2.8 million from a loss of \$0.2 million due to the increase in the value of the U.S. dollar as compared to the Australian dollar during the six month period ended December 31, 2014 and the related translation of foreign currency balances and transactions in our subsidiaries that have a different functional currency than the reporting currency on our statement of operations. We translate all of the assets and liabilities of our non-U.S. subsidiaries at the period-end exchange rate and the net effect of these translation adjustments is shown on our condensed consolidated balance sheet as a component of stockholders' equity.

*Interest Income.* Interest income increased due to the Company having a greater amount of investments in 2014 as compared to 2013 and the related yield earned on those investments.

## LIQUIDITY AND CAPITAL RESOURCES

For the six months ended December 31, 2014, cash and cash equivalents decreased by \$18.0 million, from \$81.7 million to \$63.7 million, including the effects of exchange rate movements on cash and cash equivalents. This decrease was primarily the result of cash being used to purchase additional liquid short-term and long-term investments and use of cash for operating activities during the period.

Net cash used in operating activities was \$10.6 million for the six months ended December 31, 2014, which reflected our net loss for the period of \$0.4 million and a net decrease in operating liabilities of \$13.7 million, offset in part by a decrease in net operating assets of \$1.7 million and non-cash charges for share-based compensation and depreciation of \$1.8 million.

Our net loss resulted largely from our funding of research and development activities including basic research, conducting clinical and preclinical studies, manufacturing and formulation of our product candidates, and ongoing general and administrative expenses, partially offset by contract service revenue, royalty revenues and interest income. The net changes in operating assets and liabilities reflects a \$12.6 million decrease in accounts payable and accrued expenses and a decrease of \$1.1 million in accrued severance obligations and a \$0.3 million increase in prepaid expenses, offset in part by a \$4.3 million decrease in accounts receivable.

Net cash used in investing activities during the six months ended December 31, 2014 consisted of \$9.9 million for purchases of short-term and long-term investments, offset in part by the call redemption of long-term investments of \$6.9 million.

At December 31, 2014, our cash and cash equivalents totaled \$63.7 million. Our cash and cash equivalents are currently held in the form of short-term deposits with large U.S. and Australian banks. Our short-term and long-term investments totaling \$12.9 million consist primarily of U.S. treasury securities and U.S. government agency securities.

Our future funding requirements are difficult to determine and will depend on a number of factors, including:

- the variability of future royalty revenue we may receive from existing royalty-bearing license agreements;
- whether or not we finalize an appropriate final termination settlement with BARDA in the future, and the timing of those payments;
- the development timelines and plans for our product candidates, including any changes to those timelines, plans or our strategy;
- the variability, timing and costs associated with conducting clinical trials for our product candidates, the rate of enrollment in such clinical trials, and the results of these clinical trials;
- the variability, timing and costs associated with conducting preclinical studies, and the results of those studies;
- the cost of scaling up, formulating and manufacturing preclinical and clinical trial materials to evaluate our product candidates;
- whether we receive regulatory approval to advance or begin the clinical development of our product candidates in a timely manner, if at all;
- the cost and time to obtain regulatory approvals required to advance the development of our product candidates;
- the scope and size of our research and development efforts;
- our pursuit, timing and the terms of any in-licensing, acquisition, co-development, and other similar collaborative clinical-stage development opportunities we may pursue in the future to better balance our pipeline;
- the size and cost of our general and administrative function we may need to manage our operations, including the infrastructure to support being a publicly-traded company; and
- the cost of filing, prosecuting, and enforcing patent and other intellectual property claims.

Based on our current strategy and operating plan, and considering the potential costs associated with advancing the clinical development and preclinical development of our product candidates, we believe that our existing cash and cash equivalents of \$63.7 million, plus our liquid investments of \$12.9 million as of December 31, 2014, along with the anticipated proceeds from existing royalty-bearing licenses and final proceeds from the close-out of our contract with BARDA, will enable us to operate for a period of at least 12 months from December 31, 2014.



We currently do not have any commitments for future funding, nor do we anticipate that we will generate significant revenue, aside from existing revenue from royalty-bearing arrangements. Therefore, in order to meet our anticipated liquidity needs beyond 12 months to support the development of our product candidates and operations, or possibly sooner in the event we enter into other transactions or revise our strategy or development plans, we may need to raise or secure additional capital. We would expect to do so primarily through the sale of additional common stock or other equity securities, as well as through proceeds from future licensing agreements, strategic collaborations, forms of debt financing, or any other financing vehicle. Funds from these sources may not be available to us on acceptable terms, if at all, and our failure to raise such funds could have a material adverse impact on our future business strategy and plans, financial condition and results of operations. If adequate funds are not available to us on acceptable terms in the future, we may be required to delay, reduce the scope of, or eliminate one or more of our research and development programs, or delay or curtail our preclinical studies and clinical trials, or reduce our internal cost structure. If additional capital is not available to us on acceptable terms, we may need to obtain funds through license agreements, or collaborative or partner arrangements pursuant to which we will likely relinquish rights to certain product candidates that we might otherwise choose to develop or commercialize independently, or be forced to enter into such arrangements earlier than we would prefer, which would likely result in less favorable transaction terms. Additional equity financings may be dilutive to holders of our common stock, and debt financing, if available, may involve significant payment obligations and covenants that restrict how we operate our business.

### **Contractual and Commercial Commitments**

There have been no material changes from the information included in our Annual Report on Form 10-K for the fiscal year ended June 30, 2014.

### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements, as defined in Item 303(a)(4) (ii) of Regulation S-K under the Securities Exchange Act of 1934, as amended.

### **ITEM 3: Quantitative and Qualitative Disclosures about Market Risk**

There has been no material change in our assessment of sensitivity to market risk since our presentation set forth in Item 7A “Quantitative and Qualitative Disclosures about Market Risk” in the Company’s Annual Report filed on Form 10-K for the fiscal year ended June 30, 2014 .

### **ITEM 4: Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

Our management, including our Chief Executive Officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

#### ***Changes in Internal Controls over Financial Reporting***

There has been no change in our internal control over financial reporting during the quarter ended December 31, 2014 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II – OTHER INFORMATION

### ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors disclosed in the “Risk Factors” section of our Annual Report on Form 10-K for the fiscal year ended June 30, 2014.

### ITEM 6. EXHIBITS

The exhibits to this report are listed in the Exhibit Index, which is incorporated into this Item 6 by reference.

**SIGNATURES**

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

**Biota Pharmaceuticals, Inc.**

Date: February 6, 2015

By: /s/ Joseph M. Patti  
Joseph M. Patti  
Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Russell H. Plumb  
Russell H. Plumb  
Executive Chairman  
(Principal Financial Officer)

By: /s/ Peter Azzarello  
Peter Azzarello  
Vice President of Finance  
(Chief Accounting Officer)

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Exhibit Title</b>	<b>Filed with this Form 10-Q</b>	<b>Incorporation by Reference</b>		
			<b>Form</b>	<b>File No.</b>	<b>Date Filed</b>
10.17	Executive Employment Agreement, dated as October 1, 2014, between Biota Pharmaceuticals, Inc. and Joseph M. Patti	X			
10.18	Executive Employment Agreement, dated as October 1, 2014, between Biota Pharmaceuticals, Inc. and Russell H. Plumb	X			
31.1*	Certification of Principal Executive Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended	X			
31.2*	Certification of Principal Financial Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended	X			
32.1*	Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. §1350	X			
101	The following materials from the Biota Pharmaceuticals, Inc. Quarterly Report on Form 10-Q for the period ended December 31, 2014 formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets as of December 31, 2014 and June 30, 2014, (ii) the Condensed Consolidated Statements of Operations for the Three Months Ended December 31, 2014, and December 31, 2013, (iii) the Condensed Statements of Stockholders' Equity for the Three Months Ended December 31, 2014, (iv) Condensed Consolidated Statements of Cash Flows for the Three Months Ended December 31, 2014, and December 31, 2013, and (v) Notes to Condensed Consolidated Financial Statements	X			

\* This certification is being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and is not to be incorporated by reference into any filing of Biota Pharmaceuticals, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**AMENDED EXECUTIVE EMPLOYMENT AGREEMENT**

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this “Agreement”), dated as of October 1, 2014 (the “Effective Date”), is between Biota Pharmaceuticals, Inc., a Delaware corporation, formally known as Biota Pharmaceuticals Inc., (the “Company”), and Joseph M. Patti (the “Executive”).

**WHEREAS**, the Company desires to avail itself of the Executive’s employment in a senior executive capacity and to compensate him for such employment; and

**WHEREAS**, the Executive is willing to be employed by the Company upon the terms and subject to the conditions contained in this Agreement.

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**Section 1. Position, Duties and Responsibilities.**

(a) During the Term (as defined in Section 2), the Executive shall serve as the Company’s Chief Executive Officer & President consistent with the bylaws of the Company, and shall be responsible for the duties identified in the attached Appendix I, such other duties as are attendant to such office and such other managerial duties and responsibilities with the Company, its affiliates, subsidiaries or divisions consistent with such position as may be assigned by the Chairman of the Board or the Board of Directors of the Company (the “Board. The Executive shall devote his full energies, interest, abilities and productive time to the business and affairs of the Company and to promoting its best interests, and agrees that during the Term, the Company shall be the Executive’s sole employer. Notwithstanding anything herein to the contrary, the Executive shall be permitted to (i) manage his personal investments, (ii) serve on the board of directors of civic and charitable organizations, and (iii) serve on the board of directors of one non-competing company, in a role other than Chairman, subject to obtaining written authorization in advance from the Board, which shall not be unreasonably withheld. The Executive and the Company mutually acknowledge and agree that his duties shall be performed from the Atlanta, Georgia metropolitan area. The Executive also acknowledges that the performance of his duties hereunder may require substantial travel from time to time.

(b) Upon termination of the Executive’s employment for any reason, Executive agrees to promptly tender his resignation as an officer of the Company and an officer and director of any subsidiary, division or affiliate of the Company.

(c) Executive understands that the provisions of any employee handbooks, personnel manuals and any and all other written statements of or regarding personnel policies, practices or procedures that are or may be issued by the Company (the “Company Policies”) do not and shall not constitute a contract of employment and do not and shall not create any vested rights; and that any such provisions may be changed, revised, modified, suspended, canceled, or eliminated by the Company at any time, in its sole discretion, with or without notice.

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(d) Executive shall comply with all applicable Company Policies, which may be in effect from time to time during the Term. Copies of all such Company Policies may be examined in the Human Resource Department of the Company. If a provision in any Company Policy conflicts with this Agreement, the terms of this Agreement shall prevail.

## **Section 2. Term of Employment.**

The term of the Executive's employment under this Agreement shall begin on the Effective Date, or if the Executive's employment actually begins after the Effective Date, the Employment Date (as defined in Section 3(d) below) and continue through December 31, 2015, and thereafter shall be renewed automatically for successive one (1) year periods (without any action by either party) effective as of January 1st of each year, unless the Executive's employment under this Agreement is earlier terminated in accordance with Section 4. Executive may elect not to renew his employment under this Agreement for any reason upon ninety (90) days prior written notice. For purposes of this Agreement, "Term" means the term of the Executive's employment under this Agreement.

## **Section 3. Compensation; Benefits; Expenses.**

(a) Base Salary. For services rendered by the Executive hereunder during the Term, the Company shall pay the Executive an annual salary equal to Five Hundred Twenty Five Thousand U.S. Dollars (\$525,000), less standard and customary deductions and withholdings, payable in equal installments at the times and pursuant to the procedures regularly established for the payment of salaries generally to employees, and as they may be amended by the Company during the Term. The Executive's salary will be reviewed from time-to-time by the Board, a committee of the Board, or otherwise in accordance with the Company's established procedures for adjusting salaries, and shall be subject to increases (but not decreases, except pursuant to an across-the-board salary reduction as described in Section 4(a)(iv)(B)).

(b) Incentive Compensation. The Executive shall be eligible to participate in such bonus and incentive (including stock option and other equity-based) compensation plans of the Company in which other executives of the Company are generally eligible to participate, as the Board or a committee thereof shall determine from time to time in its sole discretion, subject to and in accordance with the terms and provisions of such plans. Subject to the terms and conditions of such bonus and incentive compensation plans, the Executive's annual cash incentive compensation shall be targeted at not less than 50% of his then annual salary. Any cash incentive compensation earned shall be paid to the Executive by no later than September 15th of the Fiscal year following the year in which such cash incentive compensation was earned.

(c) Benefits. The Company shall provide the Executive with the right to participate in and to receive benefits from the group life, group disability and medical plans and all similar benefits made generally available to similarly situated executives of the Company. The amount and extent of benefits to which the Executive is entitled shall be governed by the specific benefit plan or plans, as such may be amended from time to time.

(d) Equity Incentives. As an inducement to entering into this Agreement, (i) on the first day of Executive's actual employment with the Company (the "Employment Date), which may differ from the Effective Date, the Executive shall be granted an equity-based incentive award consisting of (i) a restricted stock unit equal to one quarter of 1% (0.25%) of the then outstanding shares of the common stock of the Company on a fully diluted basis, one-third of which will be fully vested ninety (90) days after the Employment Date, and the other two-thirds of which shall vest in two equal installments on the first and second anniversary of the Employment Date, and (ii) a stock option with a ten (10) year term, which shall vest in three equal installments on the first, second and third anniversary of the Employment Date, to purchase 1.25% of the then outstanding shares of the common stock of the Company on a fully diluted basis at a price per share equal to the fair market value of such common stock on the Employment Date. The underlying shares of common stock issuable pursuant to these restricted stock units and stock option grants shall be registered by the Company on Form S-8 within ninety (90) days of the Employment Date. All related terms and conditions of these equity-based awards shall be included in restricted stock unit and stock option agreements, the forms of which are included herein as Exhibits 1 and 2, respectively. In addition, during the Term, the Executive shall be eligible to receive equity-based incentive awards from time to time under the Company's 2007 Omnibus Equity & Incentive Plan, or any amended or successor plan thereto.

(e) Reimbursement of Expenses. It is contemplated that in connection with the Executive's employment hereunder, he may be required to incur business, entertainment and travel expenses. The Company agrees to promptly reimburse the Executive in full for all reasonable out-of-pocket business, entertainment and other related expenses (including all reasonable expenses of travel and living expenses while away from home on business or at the request of, and in service of, the Company) incurred or expended by him incident to the performance of his duties hereunder, provided that the Executive properly accounts for such expenses in accordance with the policies and procedures established by the Board and applicable to the executives of the Company.

(f) Vacations; Holidays and Personal Days. During the Term, the Executive shall earn paid vacation at a rate equal to five (5) weeks of paid vacation during each full calendar year of his employment. Such vacation may be taken, in the Executive's discretion, at such time or times as are not inconsistent with the reasonable business needs of the Company and do not materially interfere with the operations of the Company. The Executive shall also be entitled to all paid holidays and personal days given by the Company to its executives located in the United States. Vacation, holiday and personal days shall additionally be subject to applicable Company Policies.

#### **Section 4. Termination.**

(a) The Executive's employment under this Agreement may be terminated under the following circumstances:

(i) Death. The Executive's employment shall immediately terminate upon his death.

(ii) Disability. In the event the Executive shall be unable to render the services or perform his duties hereunder by reason of "Disability," as such term is defined in the Company's Long Term Disability Plan or policy, the Company shall have the right to terminate the Executive's employment under this Agreement immediately upon notice to the Executive.

(iii) Termination of Employment by the Company for Cause. The Company may terminate the employment of the Executive immediately for Cause (as hereinafter defined). The term "Cause," as used herein, shall mean (1) the Executive's willful misconduct, gross negligence, dishonesty or fraud in the performance of his duties hereunder, (2) the material breach of this Agreement by the Executive, after written notice of such breach from Company (which notice shall describe in reasonable detail the breach), and, if curable, the breach has not been cured by Executive within, fifteen (15) days, (3) the Executive's willful refusal or failure to perform his duties hereunder or under any lawful directive of the Chief Executive Officer, Board or the Chairman of the Board, as the case may be, which is consistent with his title and position, for fifteen (15) days after receiving written notice of such refusal or failure, or (4) the conviction, plea of guilty or *nolo contendere* of the Executive in respect of any felony involving moral turpitude (other than a driving offense involving no serious bodily injury), dishonesty, theft or unethical business conduct.

(iv) Termination of Employment by Executive for Good Reason. The Executive may resign and terminate his employment hereunder for Good Reason (as defined below) by providing a written notice thereof within sixty (60) days from the occurrence of the event that the Executive is deeming Good Reason, and such condition, if curable, continues to exist uncured for thirty (30) days following the Company's receipt of such notice. Such termination will be effective thirty (30) days from the end of such cure period. For purposes of this Agreement, "Good Reason" shall mean there has occurred, without the express written consent of the Executive:

(A) the assignment to the Executive of any duties materially inconsistent with his status as the Executive Vice President, Corporate Development & Strategy of the Company or a material diminution in the nature or status of his responsibilities shall be a "Good Reason;"

(B) a reduction by the Company in the Executive's salary as in effect on the Effective Date or as the same may be increased from time to time, except for across-the-board salary reductions similarly affecting all executives of the Company,

(C) (1) commencing six (6) months after the Employment Date, locating the Company's principal executive offices outside of the Atlanta, Georgia metropolitan area or thereafter, a relocation of the Company's principal executive offices that results in an increased commuting distance of thirty-five (35) miles or more or (2) the Company's requiring the Executive to perform his duties anywhere other than the Company's principal executive offices; provided that, in any case, required travel on the Company's business to an extent consistent with the Executive's responsibilities shall not constitute "Good Reason;"

(D) the failure by the Company to continue in effect without any material adverse change any cash, equity-based or other incentive compensation plan in which the Executive was participating or the failure by the Company to continue the Executive's participation therein, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan or participation,

(E) the failure by the Company to continue to provide the Executive with benefits substantially similar to those enjoyed by the Executive under the Company's life insurance, medical, health-and-accident, or disability plans in which the Executive was participating, the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits or deprive the Executive of any other material fringe benefits enjoyed by the Executive, or the failure by the Company to provide the Executive with the number of paid vacation days to which the Executive is entitled, except for across-the-board changes in such benefits similarly affecting all executives of the Company,



(F) the failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 15 hereof, or

(G) a material breach of this Agreement by the Company after notice of such breach (which notice shall describe in reasonable detail the breach), and, if curable, after thirty (30) days from receipt of written notice from Executive, the breach is not cured.

(v) Terminations other than for Cause, Good Reason, Disability or upon Death. In addition to the foregoing, either party may terminate the Executive's employment under this Agreement at any time, by providing thirty (30) days prior written notice of his or its desire to terminate.

(b) Notice of Termination. Any termination of the Executive's employment by the Company or by the Executive (other than a termination pursuant to Section 4(a)(i) above) shall be communicated by written notice of termination to the other party.

#### **Section 5. Compensation Upon Termination.**

(a) Compensation Upon Termination Due to Death. In the event of the death of the Executive during the Term, the Executive's designated beneficiary, or, in the absence of such designation, the estate or other legal representative of the Executive (collectively, the "Estate") shall be paid, an amount equal to the sum of the Executive's unpaid salary and any earned but unpaid vacation and bonuses through such termination within sixty (60) days of the Executive's death; provided, however, that any bonus compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied as of such termination. The Estate shall be entitled to other vested death benefits in accordance with the terms of the Company's benefit programs and plans.

(b) Compensation Upon Termination for Disability. If the Executive's employment hereunder is terminated for Disability, the Executive shall be entitled to receive (if entitled thereto) disability compensation and benefits in accordance with the Company's benefit programs and plans. In addition, Executive shall be entitled to receive, within sixty (60) days after the date of such termination, any unpaid salary and any earned but unpaid vacation and bonuses through such termination; provided, however, that any bonus compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied as of such termination of employment.

(c) Compensation Upon Termination for Cause or Voluntary Termination by Executive Without Good Reason. If the Executive's employment is terminated by the Company for Cause or voluntarily by the Executive without Good Reason, the Company shall pay the Executive his unpaid salary and any accrued but unpaid vacation through such termination date, and the Company shall have no further financial obligations to the Executive. All amounts payable under this Section 5(c) shall be paid within sixty (60) days after the date of such termination.

(d) Compensation Upon Termination in Connection With a Change in Control (other than for Cause, without Good Reason, Disability or upon Death).

(i) If the Executive's employment is terminated by the Executive for Good Reason or by the Company for any reason other than pursuant to Section 4(a)(i), 4(a)(ii) or 4(a)(iii) hereof, in either case, within three (3) months prior to or one (1) year after the consummation of a Change in Control (as hereafter defined) (or otherwise in contemplation of a Change in Control that is reasonably likely to occur), the Company shall pay to the Executive (or in the event of the Executive's death, the Estate) a lump-sum cash amount equal to the sum of (w) the Executive's unpaid salary and vacation through such termination; plus (x) any bonus compensation earned and unpaid through such termination; provided, however, that any bonus compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied as of such termination; plus (y) the product of (A) a fraction, the numerator of which is the number of months in the Change in Control Severance Period (as hereafter defined) and the denominator of which is 12 and (B) the sum of (1) Executive's annual base salary as then in effect and (2) the bonus or incentive compensation paid to the Executive in respect of the most recent fiscal year prior to the year in which the Change in Control occurs; plus (z) a payment equal to the present value of the premium payments that would be made by the Company if Executive were to continue to be covered under the Company's group health, life and disability insurance for the Change in Control Severance Period, which amount shall be determined by the Company in its sole discretion. All amounts payable under clauses (w) and (x) of this Section 5(d)(i) shall be paid within sixty (60) days after such termination of employment and all amounts payable under clauses (y) and (z) of this Section 5(d)(i) shall be paid upon the effectiveness of the release referenced in Section 5 (f) below, or upon Executive's death, if earlier, (provided that, if the sixty (60) day period referred to in Section 5(f) below overlaps two calendar years, such payment shall not be made earlier than the first payroll date in the second calendar year). The "Change in Control Severance Period" shall be eighteen (24) months.

(ii) Notwithstanding any other provision herein to the contrary, in the event that the Executive becomes entitled to any payments under Section 5(d)(i) or otherwise, ("Termination Payments") and any portion of such Termination Payments, when combined with any other payments or benefits provided to the Executive (including, without limiting the generality of the foregoing, by reason of any stock options), in the absence of this Section 5(d)(ii), would be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), then (subject to Section 5(d)(iii) hereof) Termination Payments shall be reduced such that none of the Termination Payments and any other payments or benefits received or to be received by the Executive in connection with a Change in Control or the termination of the Executive's employment (whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement with the Company, any person whose actions result in a Change in Control or any person having such a relationship with the Company or such person as to require attribution of stock ownership between the parties under Section 318(a) of the Code) shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code. For purposes of applying the foregoing sentence, if in the opinion of tax counsel selected by the Company and reasonably acceptable to the Executive, such payments or benefits (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code, then such amounts shall be excluded from any such calculation. Furthermore, in determining the maximum amount of the payments to the Executive which would not constitute a parachute payment within the meaning of Sections 280G(b)(1) and (4) of the Code, the value of any non-cash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code or any applicable proposed or final Treasury Regulations promulgated under the Code. Any reduction in Termination Payments under this Section 5(d)(ii) shall be done first by reducing any cash payments with the last payment reduced first; next any equity or equity derivatives that are included under Code Section 280G at full value rather than accelerated value, with the highest value reduced first; next any non-cash, non-equity-based benefits, with the latest scheduled benefit reduced first; finally any equity or equity derivatives based on accelerated value shall be reduced with the highest value reduced first (with all equity and equity derivative values to be determined under Treasury Regulation Section 1.280G-1, Q&A 24).

(iii) If the net after-tax amount of the Termination Payments which would be payable to the Executive in the absence of the reduction described in Section 5(d)(i) above exceeds the net after-tax amount of the Termination Payments which would be payable to the Executive if the reduction described in Section 5(d)(ii) above were applicable, then the reduction to the Executive's Termination Payments described in Section 5(d)(ii) above shall not be applicable. For purposes of computing such net after-tax amounts, the Termination Payments shall be treated as subject to Federal income tax and any state and local income taxes (based upon the residence of the Executive at the time the first amount of Termination Payments is to be paid hereunder) at the highest marginal rate of income tax imposed upon individuals (but without assuming any reduction in Federal income taxes that could be obtained from the deduction of any such state or local taxes if paid in such year), shall be subject only to the Medicare portion of the F.I.C.A tax and, in calculating the net after-tax amount of the Termination Payments which would otherwise be payable to the Executive if the reduction described in Section 5(d)(ii) above were not applicable, any applicable Excise Tax, and all such taxes shall be computed based upon the tax rates in effect for the calendar year in which the first amount of Termination Payments are to be paid hereunder. The determination of the net after-tax amounts will be made by tax counsel selected by the Company and reasonably acceptable to the Executive, whose determination will be binding on both the Executive and the Company.

(iv) For purposes of this Agreement, a "Change in Control" of the Company shall mean (A) the consummation of a merger or consolidation of the Company in which the stockholders of the Company immediately prior to such merger or consolidation would not, immediately after the merger or consolidation, beneficially own (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), directly or indirectly, shares representing in the aggregate 45% or more of the combined voting power of the securities of the corporation issuing cash or securities in the merger or consolidation (or of its ultimate parent corporation, if any); (B) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company, or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 45% of the combined voting power of the voting securities of which are owned by persons in substantially the same proportion as their ownership of the Company immediately prior to such sale; (C) during any period of two (2) consecutive years, the first year of which shall not be earlier than 2015, individuals who at the beginning of such period constitute the Board, including for this purpose any new director whose election or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period or whose election or nomination for election was previously so approved but excluding for this purpose any such new director whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of an individual, corporation, partnership, group, association or other entity or Person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than the Board, cease for any reason to constitute a majority thereof; or (D) such other similar transaction not specifically identified above, which in the sole discretion of the Board (or committee thereof) effectively constitutes a change in control of the Company.

(e) Compensation Upon All Other Terminations. If the Company terminates the Executive's employment under this Agreement for any reason other than pursuant to Section 4(a)(i), 4(a)(ii), 4(a)(iii) or Section 5(d) or if Executive terminates his employment for Good Reason other than pursuant to Section 5(d), then the Company shall pay Executive a lump sum equal to the sum of (v) Executive's unpaid salary through such termination; plus (w) any bonus compensation earned and unpaid through such termination; provided, however, that any bonus compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or satisfied as of such termination; plus (x) the Executive's salary for the Severance Period (as defined below); plus (y) the product of (1) a fraction, the numerator of which is the number of months in the Severance Period and the denominator of which is 12 and (2) the bonus or incentive compensation paid to the Executive in respect of the most recent fiscal year prior to the year in which such termination occurs; plus (z) an amount equal to the present value of the premium payments that would be made by the Company if Executive were to continue to be covered under the Company's group health, life and disability insurance for the Severance Period, which amount shall be determined by the Company in its sole discretion. All amounts payable under clauses (v) and (w) of this Section 5(e) shall be paid within sixty (60) days after such termination of employment and all amounts payable under clauses (x), (y) and (z) of this Section 5(e) shall be paid in cash in a lump-sum upon the effectiveness of the release referenced in Section 5 (f) below, or upon Executive's death, if earlier (provided that, if the sixty (60) day period referred to in Section 5(f) below overlaps two calendar years, such payment shall not be made earlier than the first payroll date in the second calendar year). The "Severance Period" shall be twelve (18) months.

(f) Notwithstanding anything else contained herein, the obligation of the Company to make any severance payments to the Executive hereunder (other than accrued and unpaid salary, earned and unpaid bonuses and other payments required under law) shall be conditioned upon (i) the execution and delivery by the Executive of a release from liability in favor of the Company in form and substance reasonably satisfactory to the Company, such that such release is effective, with all revocation periods having expired unexercised, within 60 days after the date of the Executive's termination of employment and (ii) the Executive having tendered his resignation as an officer and director of any subsidiary of the Company.

(g) The parties hereto agree that any termination of the Executive's employment for Good Reason or by the Company other than for Cause is intended to qualify as an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n). Thus, no severance payment required pursuant to Sections 5(d) or 5(e) shall occur unless and until Executive incurs a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h).

#### **Section 6. Confidentiality.**

(a) Each Item, Trade Secret and piece of Confidential Information (in each case, as defined below) that has come or comes into Executive's possession by reason of his employment are the property of the Company and shall not be used by Executive in any way except in the course of his employment by, and for the benefit of, the Company. Executive will not remove any Items from premises owned or leased by the Company except as his duties shall require, and upon termination of his employment, all Items (including any copies or excerpts thereof) will be turned over to the Chief Executive Officer.

(b) Executive will preserve as confidential all Confidential Information that has been or may be obtained by him. Executive will not, without written authority from the Company, use for his own benefit or purposes, or disclose to others, either during his employment or for two (2) years thereafter, any Confidential Information or any copy or notes made from any Item embodying Confidential Information except as required by his employment with the Company or to the extent disclosure is or may be required by a statute, by a court of law, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) with jurisdiction to order him to divulge, disclose or make accessible such information, provided, however, that the Executive shall give the Company notice of any such request or demand for such information upon his receipt of same and the Executive shall reasonably cooperate with the Company in any application the Company may make seeking a protective order barring disclosure by the Executive. Executive understands that his obligations with respect to Confidential Information shall continue for two years after termination of his employment with the Company. These restrictions concerning use and disclosure of Confidential Information shall not apply to information which is or becomes publicly known by lawful means, or comes into Executive's possession from sources not under an obligation of confidentiality to the Company.

(c) Executive agrees to hold in confidence all Trade Secrets of the Company that came into his knowledge during or in connection with his employment by the Company and shall not disclose, publish or make use of at any time after the date hereof such Trade Secrets without the prior written consent of the Company for as long as the information remains a Trade Secret.

(d) Executive understands that any entrusting of Confidential Information or Trade Secrets to him by the Company is done in reliance on a confidential relationship arising out of his employment with the Company. Executive further understands that Confidential Information or Trade Secrets that he may acquire or to which he may have access, especially with regard to research and development projects and findings, formulae, designs, formulation, processes, the identity of suppliers, customers and patients, methods of manufacture, and cost and pricing data is of great value to the Company.

(e) Executive agrees that following termination of his employment with the Company, Executive will, if at all possible before answering but in any event as soon thereafter as practicable, make every effort to contact the Company's General Counsel or Chief Executive Officer if Executive is served with a subpoena or other legal process asking for a deposition, testimony or other statement, or other potential evidence to be used in connection with any lawsuit to which the Company is a party or involving Executive's employment with the Company or any Confidential Information or Trade Secret of the Company.

(f) For purposes of this Agreement: (i) "Confidential Information" means information relating to the present or planned business of the Company which has not been released publicly by authorized representatives of the Company. Executive understands that Confidential Information may include, for example, discoveries, inventions, know-how and products, customer, patient, supplier and competitor information, sales, pricing, cost, and financial data, research, development, marketing and sales programs and strategies, manufacturing, marketing and service techniques, processes and practices, and regulatory strategies. Executive understands further that Confidential Information also includes all information received by the Company under an obligation of confidentiality to a third party; (ii) "Items" include documents, reports, drawings, photographs, designs, specifications, formulae, plans, samples, research or development information, prototypes, tools, equipment, proposals, marketing or sales plans, customer information, customer lists, patient lists, patient information, regulatory files, financial data, costs, pricing information, supplier information, written, printed or graphic matter, or other information and materials that concern the Company's business that come into Executive's possession or about which Executive has knowledge by reason of his employment; and (iii) "Trade Secrets" include all information, including a formula, pattern, process, compilation, program, device, method, or technique that (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (C) otherwise satisfies the requirements of the Georgia Trade Secrets Act.

## **Section 7. Proprietary Information.**

(a) All Inventions (as defined below) related to the present or planned business of the Company, which have been or are conceived or reduced to practice by Executive, either alone or with others, during the period of his employment or during a period of one (1) year after termination of such employment, whether or not done during his regular working hours, are the sole property of the Company. The provisions of this paragraph shall not apply to an invention for which no equipment, supplies, facilities or confidential or trade secret information of the Company was used and which was developed entirely on Executive's own time, unless (a) the invention relates to (i) the business of the Company, or (ii) the Executive's actual or demonstrably anticipated research or development for the Company, or (b) the invention results from any work performed by Executive for the Company.

(b) Executive will disclose promptly and in writing to the Company, through the Chairman of the Board or General Counsel, all Inventions which are covered by this Agreement, and Executive agrees to assign to the Company or its nominee all his right, title, and interest in and to such Inventions. Executive agrees not to disclose any of these Inventions to others, without the express consent of the Company. Executive will, at any time during or after his employment, on request of the Company, execute specific assignments in favor of the Company or its nominee of his interest in and to any of the Inventions covered by this Agreement, as well as execute all papers, render all assistance, and perform all lawful acts which the Company considers necessary or advisable for the preparation, filing, prosecution, issuance, procurement, maintenance or enforcement of patent applications and patents of the United States and foreign countries for these Inventions, and for the transfer of any interest Executive may have. Executive will execute any and all papers and documents required to vest title in the Company or its nominee in the above Inventions, patent applications, patents, and interests. Executive understands that if he is not employed by the Company at the time he is requested to execute any document under this Section 7(b), Executive shall receive fifty dollars (\$50.00) for the execution of each document, and one hundred fifty dollars (\$150.00) per day for each day or portion thereof spent at the request of the Company in the performance of acts pursuant to this Section 7(b), plus reimbursement for any out-of-pocket expenses incurred by Executive at the Company's request in such performance. Executive further understands that the absence of a request by the Company for information, or for the making of an oath, or for the execution of any document, shall in no way be construed to constitute a waiver of the Company's rights under this Agreement. Should the Company be unable to secure the Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright, or other right or protection relating to any Invention, whether due to the Executive's mental or physical incapacity or any other cause, the Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as the Executive's agent and attorney in fact, to act for and in the Executive's behalf and stead and to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights, or other rights or protections with the same force and effect as if executed and delivered by the Executive.

(c) Executive has disclosed to the Company all continuing obligations which he has with respect to the assignment of Inventions to any previous employers, and Executive claims no previous unpatented Inventions as his own, except for those which have been reduced to practice and which are shown on a schedule, if any, attached to this agreement. Executive understands that the Company does not seek any confidential or trade secret information which Executive may have acquired from a previous employer, and Executive will not disclose to or utilize any such information on behalf of the Company.

(d) All writings and other works which may be copyrighted (including computer programs) which are related to the present or planned business of the Company and are prepared by Executive during his employment by the Company shall be, to the extent permitted by law, works made for hire, and the authorship and copyright of the work shall be in the Company's name. To the extent that such writings and works are not works for hire, Executive agrees to the waiver of "moral rights" in such writings and works, and to assign to the Company all Executive's right, title and interest in and to such writings and works, including copyright.

(e) Executive will permit the Company and its agents to use and distribute any pictorial images which are taken of him during his employment by the Company as often as desired for any lawful purpose. Executive waives all rights of prior inspection or approval and releases the Company and its agents from any and all claims or demands which Executive may have on account of the lawful use of publication of such pictorial images.

(f) For purposes of this Agreement, "Invention" shall mean all ideas, inventions, experiments, copyrightable expression, research, plans for products or services, marketing plans, reports, strategies, processes, computer software (including, without limitation, source code), computer programs, original works of authorship, characters, know-how, trade secrets, information, data, developments, discoveries, improvements, modifications, technology, algorithms, database schema, designs, and drawings, whether or not subject to patent or copyright protection, made, conceived, expressed, developed, or actually or constructively reduced to practice by the Executive solely or jointly with others during the Term, which refer to, are suggested by, or result (i) from any work which the Executive may perform during his employment, or (ii) from any information obtained from the Company or any affiliate of the Company, and shall not be limited to the meaning of "Invention" under the United States patent laws.

## **Section 8. Agreement Not to Compete.**

(a) While employed by the Company and thereafter for a period equal to the greater of (x) one (1) year or (y) the Change in Control Severance Period in the event of a termination pursuant to Section 5(d)(i), the Executive shall not, directly or indirectly, anywhere in the United States:

(i) render services which are similar to the services performed by Executive for the Company to any person, corporation, partnership or other entity which competes with the Company (or any subsidiary) in the business of developing small molecules for the treatment or prophylaxis of infections caused by the influenza virus, human rhinovirus (HRV), or respiratory syncytial virus (RSV) or in any other therapeutic area in which the Company has conducted human clinical trials during the shorter of the period during which the Executive has been employed or the immediately preceding one (1) year (collectively, the "Field"). Executive agrees that this covenant is especially appropriate because, if he worked for a competitor that is developing such small molecules, he would inevitably make business decisions by relying on his knowledge of the Company's Confidential Information and Trade Secrets; thus, he would inevitably provide such competitors with the Company's Confidential Information and Trade Secrets. The Company's Confidential Information and Trade Secrets are not generally known by others in the industry, and they would provide an unfair advantage for competitors. Further, the Company recognizes that there are some companies who develop or provide many products and services, some of which may be competitive and some which may not be. Accordingly, this covenant only prohibits Executive from rendering services similar to the services performed by Executive for the Company to or for the benefit of that section, division, group, subsidiary, affiliate or operating unit of a competitor that actually operates in the Field;

(ii) solicit for employment of any person who was employed by the Company (or any subsidiary) during the Executive's employment with the Company and with whom the Executive had contact during the last year of his employment with the Company; or

(iii) call on or solicit, directly or indirectly for the purpose of providing services related to the development of compound for the treatment of infections caused by influenza virus, HRV, or RSV, any person or entity known by the Executive to be a customer of the Company (or of any subsidiary), or with which the Company (or any subsidiary) was in negotiations to become a customer of the Company (or such subsidiary), as the case may be, during the Executive's employment with the Company, and with whom the Executive had direct contact. For purpose of this section, "contact" means interaction between the Executive and the client within the last year of Executive's employment to further the business relationship, sell to, or perform services for the client, and interaction between the Executive and prospective client within the last year of Executive's employment to develop a business relationship.

(b) If any of the restrictions contained in this Section 8 shall be deemed by any court of competent jurisdiction to be unenforceable by reason of the extent, duration or geographical scope thereof, or otherwise, then the parties agree that such court shall modify such restriction, only to the extent necessary to render it enforceable and, in its reduced form, such restriction shall then be enforced, and in its reduced form this Section 8 shall be enforceable in the manner contemplated hereby.

(c) The Executive and the Company agree to revise the specific description of the Company's line of business set forth in Section 8(a) as appropriate to reflect any material change in the Company's business due to an in-licensing, merger, acquisition or similar strategic transactions.

## **Section 9. Company Resources.**

Executive may not use any of the Company's (or any affiliate's) equipment for personal purposes without written permission from the Company. The Executive may not give access to the Company's (or any affiliate's) offices or files to any person not in the employ of the Company without written permission of the Company.



**Section 10. Injunctive Relief.**

Executive understands and agrees that the Company will suffer irreparable harm in the event that the Executive breaches any of the Executive's obligations under Sections 6, 7, 8 or 9 hereof and that monetary damages will be inadequate to compensate the Company for such breach. Accordingly, the Executive agrees that, in the event of a breach or threatened breach by the Executive of any of the provisions of Sections 6, 7, 8 or 9 hereof, the Company shall be entitled to appropriate injunctive relief, in addition to any other rights, remedies or damages available to the Company at law or in equity.

**Section 11. Severability.**

In the event any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this Agreement shall remain in full force and effect.

**Section 12. Survival.**

Sections 1(d) and 4 through 18 shall survive the termination of this Agreement and the Executive's employment under this Agreement for any reason.

**Section 13. Representations, Warranties, and Covenants.**

Executive represents, warrants, and covenants that the Executive's performance of all the terms of this Agreement and any services to be rendered as an employee of the Company do not and will not breach any fiduciary or other duty or any covenant, agreement or understanding (including, without limitation, any agreement relating to any proprietary information, knowledge or data acquired by the Executive in confidence, trust or otherwise prior to the Executive's employment by the Company) to which the Executive is a party or by the terms of which the Executive may be bound. The Executive further covenants and agrees not to enter into any agreement or understanding, either written or oral, in conflict with the provisions of this Agreement.

**Section 14. Accounting for Profits; Indemnification.**

Executive covenants and agrees that, if the Executive shall violate any of the Executive's covenants or agreements contained in Sections 6, 7, 8 or 9 hereof, the Company shall be entitled to an accounting and repayment of all profits, compensation, royalties, commissions, remunerations or benefits which the Executive directly or indirectly shall have realized or may realize relating to, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which the Company is or may be entitled at law or in equity or otherwise under this Agreement. The Executive hereby agrees to defend, indemnify and hold harmless the Company against and in respect of: (a) any and all losses and damages resulting from, relating or incident to, or arising out of any misrepresentation or breach by the Executive of any of the Executive's representations, warranties, covenants or agreements made or contained in this Agreement; and (b) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable attorneys' fees) incident to the foregoing.

## **Section 15. General.**

This Agreement supersedes and replaces any existing agreement between the Executive and the Company relating generally to the same subject matter and may be modified only in a writing signed by the parties hereto. Failure to enforce any provision of the Agreement shall not constitute a waiver of any term herein, unless such waiver is made in writing. The Executive agrees that he will not assign, transfer, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement. Any purported assignment, transfer, or disposition shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above. The use of any gender herein shall be applicable to all genders.

## **Section 16. Executive Acknowledgment.**

Executive acknowledges (a) that he has consulted with, or has had the opportunity to consult with, independent counsel of his own choice concerning this Agreement and has been advised to do so by the Company, and (b) that he has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on his own judgment.

## **Section 17. Section 409A.**

This Agreement is intended to comply with, or otherwise be exempt from, Code Section 409A and the parties hereto agree to interpret, apply and administer this Agreement in the least restrictive manner necessary to comply therewith and without resulting in any increase in the amounts owed hereunder by the Company. However, the Company does not guarantee any particular tax effect for income provided to Executive pursuant to this Agreement. In any event, except for the Company's responsibility to withhold applicable income and employment taxes from compensation paid or provided to Executive, or as the result of the Company's negligence or intentional misconduct, the Company shall not be responsible for the payment of any applicable taxes on compensation paid or provided to Executive pursuant to this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, if the Executive is a "specified employee" within the meaning of Code Section 409A and the regulations issued thereunder, and a payment or benefit provided for in this Agreement would be subject to additional tax under Code Section 409A if such payment or benefit is paid within six (6) months after the Executive's "separation from service" (within the meaning of Code Section 409A), then such payment or benefit required under this Agreement shall not be paid (or commence) during the six-month period immediately following the Executive's separation from service except as provided in the immediately following sentence. In such an event, any payments or benefits that would otherwise have been made or provided during such six-month period and which would have incurred such additional tax under Code Section 409A shall instead be paid to the Executive in a lump-sum cash payment on the earlier of (i) the date that is six months and one day following the Executive's separation from service or (ii) the 10th business day following the Executive's death. If the Executive's termination of employment hereunder does not constitute a "separation from service" within the meaning of Code Section 409A, then any amounts payable hereunder on account of a termination of the Executive's employment and which are subject to Code Section 409A shall not be paid until the Executive has experienced a "separation from service" within the meaning of Code Section 409A.

For purposes of Code Section 409(A), the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

In addition, no reimbursement or in-kind benefit shall be subject to liquidation or exchange for another benefit and the amount available for reimbursement, or in-kind benefits provided, during any calendar year shall not affect the amount available for reimbursement, or in-kind benefits to be provided, in a subsequent calendar year. Any reimbursement to which the Executive is entitled hereunder shall be made no later than the last day of the calendar year following the calendar year in which such expenses were incurred.

**Section 18. Choice of Law.**

This Agreement will be governed by and construed in accordance with the laws of the United States and the state of Georgia. Each party consents to the jurisdiction and venue of the state and federal courts in Atlanta, Georgia, if applicable, in any action, suit or proceeding arising out of or relating to this Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first set forth above.

BIOTA PHARMACEUTICALS, INC.

\_\_\_\_\_  
By: Jim Fox  
Title: Chairman of the Board

EXECUTIVE

\_\_\_\_\_  
Joseph Patti

## Appendix I

**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this “Agreement”), dated as of October 1, 2014 (the “Effective Date”), is between Biota Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and Russell H. Plumb (the “Executive”).

**WHEREAS**, the Executive is willing to voluntarily resign his position as President and Chief Executive Officer of the Company and be employed by it upon the terms and subject to the conditions contained in this Agreement and to accept the role as the Executive Chairman of the Company’s Board of Directors.

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**Section 1. Position, Duties and Responsibilities.**

(a) During the Term (as defined in Section 2), the Executive shall serve as the Executive Chairman of the Company’s Board of Directors (“Executive Chairman”) consistent with the by-laws of the Company, and shall be responsible for the duties identified in Appendix I attached hereto. The Executive shall devote sufficient energies, interest, abilities and productive time to the affairs of the Company and to promoting its best interests, and agrees that during the Term, the Company shall be the Executive’s sole employer. Notwithstanding anything herein to the contrary, the Executive shall be permitted to (i) manage his personal investments, (ii) serve on the board of directors of civic and charitable organizations, and (iii) serve on the board of directors of other non-competing companies in a role other than Executive Chairman, subject to obtaining written authorization in advance from the Board, which shall not be unreasonably withheld. The Executive and the Company mutually acknowledge and agree that his duties shall be generally performed from the Company’s principal executive offices in Alpharetta, Georgia or the Executive’s principal residence in Florida, as may be required. The Executive also acknowledges that the performance of his duties hereunder may require him to travel from time to time.

(b) During the Term, the Company agrees to nominate Executive for election as the Executive Chairman of the Company’s Board of Directors, and the Executive agrees to accept such nomination if elected to such position by the stockholders of the Company and to serve as such during the Term without any compensation other than that specified in this Agreement. The Company agrees that during the Term, the Board of Directors shall include the Executive in the slate for election as a director.

(c) Executive understands that the provisions of any employee handbooks, and any and all other written statements of or regarding personnel policies, practices or procedures that are or may be issued by the Company (the “Company Policies”) do not and shall not constitute a contract of employment and do not and shall not create any vested rights; and that any such provisions may be changed, revised, modified, suspended, canceled, or eliminated by the Company at any time, in its sole discretion, with or without notice.

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(d) Executive shall comply with all applicable Company Policies, which may be in effect from time to time during the Term. Copies of all such Company Policies may be examined in the Human Resource Department of the Company. If a provision in any Company Policy conflicts with this Agreement, the terms of this Agreement shall prevail.

## **Section 2. Term of Employment.**

The term of the Executive's employment under this Agreement shall begin on the Effective Date and continue through the earlier of (i) the date on which the Company's stockholders do not elect him to serve on the Board and (ii) the Company's first annual stockholder meeting in calendar year 2015 at which directors are elected (the "Term"). Notwithstanding the foregoing, the Executive's employment under this Agreement may be terminated earlier in accordance with Section 4.

## **Section 3. Compensation; Benefits; Expenses.**

(a) Base Salary. For services rendered by the Executive hereunder during the Term, the Company shall pay the Executive an annual salary equal to Two Hundred and Fifty Thousand U.S. Dollars (\$250,000), less standard and customary deductions and withholdings, payable in substantially equal installments at the times and pursuant to the procedures regularly established for the payment of salaries generally to employees, and as they may be amended by the Company during the Term. The Executive's base salary may be reviewed from time-to-time by the Board or a committee of the Board and can be subject to an increase, but not a decrease.

(b) Incentive Compensation. The Executive shall be eligible for cash incentive compensation during the Term based on the achievement of certain performance goals determined by the Board or a committee thereof. Subject to the terms and conditions of any such cash incentive compensation plan, the Executive's annual cash incentive compensation shall be targeted at 40% of his then base salary. Any cash incentive compensation earned shall be paid to the Executive by no later than March 15th of the year following the year in which such cash incentive compensation was earned.

(c) Equity Incentive. Promptly after the Effective Date, the Executive shall be granted an equity-based incentive award from the Company's 2007 Omnibus Equity and Incentive Plan consisting of a restricted stock unit (RSU) covering to 40,000 shares of the common stock of the Company. The RSU shall vest in whole or in part based upon the achievement of certain performance goals during the Term as outlined in a restricted stock unit agreement, the form of which is included herein as Exhibit 1.

(d) Benefits. Subject to the Executive's satisfaction of any applicable eligibility and other requirements, the Company shall provide the Executive with the right to participate in and to receive benefits from the group life, group disability and group medical plans and all similar broad-based benefits made generally available to similarly situated executives of the Company. The amount and extent of benefits to which the Executive is entitled shall be governed by the specific benefit plan or plans, as such may be amended from time to time.

(e) Reimbursement of Expenses. It is contemplated that in connection with the Executive's employment hereunder and as a director, he may be required to incur business, entertainment and travel expenses from time-to-time. The Company agrees to promptly reimburse the Executive in full for all reasonable out-of-pocket business, entertainment and other related expenses (including all reasonable expenses of travel and living expenses while away from home on business or at the request of, and in service of, the Company) incurred or expended by him incident to the performance of his duties hereunder and as a director; provided, however that the Executive properly account for such expenses in accordance with the policies and procedures established by the Board and applicable to the executives of the Company.

(f) Vacations, Holidays and Personal Days. During the Term, the Executive shall be entitled to all paid holidays provided by the Company to its executives located in the United States. The Executive shall not be entitled to any paid vacation days under this Agreement.

#### **Section 4. Termination.**

(a) The Executive's employment under this Agreement may be terminated under the following circumstances:

(i) Death. The Executive's employment shall immediately terminate upon his death.

(ii) Disability. In the event the Executive shall be unable to render the services or perform his duties contemplated hereunder by reason of "Disability," as such term is defined in the Company's Long Term Disability Plan or policy, the Company shall have the right to terminate the Executive's employment under this Agreement immediately upon notice to the Executive.

(iii) Termination of Employment by the Company for Cause. The Company may terminate the employment of the Executive immediately for Cause (as hereinafter defined). The term "Cause," as used herein, shall mean (1) the Executive's willful misconduct, gross negligence, dishonesty or fraud in the performance of his duties hereunder; or (2) the material breach of this Agreement by the Executive, after written notice of such breach from Company (which notice shall describe in reasonable detail the breach), and, if curable, the breach has not been cured by Executive within fifteen (15) days; or (3) the Executive's willful refusal or failure to perform his duties hereunder or under any lawful directive of the Board which is consistent with his title and position, for fifteen (15) days after receiving written notice of such refusal or failure; or (4) the conviction, plea of guilty or *nolo contendere* of the Executive in respect of any felony involving moral turpitude (other than a driving offense involving no serious bodily injury to others), dishonesty, theft or unethical business conduct.



(iv) Termination of Employment by Executive for Good Reason. The Executive may resign and terminate his employment hereunder for Good Reason (as defined below) by providing written notice thereof within sixty (60) days from the occurrence of the event that the Executive is deeming Good Reason, and such condition, if curable, continues to exist uncured for thirty (30) days following the Company's receipt of such notice. Such termination will be effective thirty (30) days from the end of such cure period. For purposes of this Agreement, "Good Reason" shall mean there has occurred, without the express written consent of the Executive:

(A) the assignment to the Executive of any duties materially inconsistent with his status and role as the Executive Chairman of the Board of Directors, or the Company's failure to include the Executive in its slate for election as a director at any stockholders' meeting occurring during the Term; provided, however, that the failure of the Company's stockholders to elect the Executive as a director shall not be considered a "Good Reason";

(B) a reduction by the Company in the Executive's base salary;

(C) the Company requiring the Executive to perform his duties anywhere other than the Company's principal executive offices; provided that, in any case, required travel on the Company's business to an extent consistent with the Executive's responsibilities shall not constitute "Good Reason";

(D) the failure by the Company to continue in effect the cash and equity-based incentive compensation plan as outlined in Section 3(b) and (c) above, unless a mutually acceptable equitable arrangement has been made with respect to such plan or participation; or

(E) a material breach of this Agreement by the Company after notice of such breach (which notice shall describe in reasonable detail the breach), and, if curable, after thirty (30) days from receipt of written notice from Executive, the breach is not cured.

(v) Terminations other than for Cause, Good Reason, Disability or upon Death. In addition to the foregoing, either party may terminate the Executive's employment under this Agreement at any time by providing sixty (60) days prior written notice of his or its desire to terminate.

(vi) Expiration of the Term. If not terminated earlier, Executive's employment with the Company shall terminate upon expiration of the Term.

(b) Notice of Termination. Any termination of the Executive's employment by the Company or by the Executive (other than a termination pursuant to Section 4(a)(i) or Section 4(a)(vi) above) shall be communicated by written notice of termination to the other party.

(c) Resignation from Board of Directors. In the event that Executive's employment with the Company is terminated for any reason, Executive agrees to resign as a director of the Company if so requested by the Company.

## Section 5. Compensation Upon Termination.

(a) Compensation Upon Termination Due to Death. In the event of the death of the Executive during the Term, the Executive's designated beneficiary, or, in the absence of such designation, the estate or other legal representative of the Executive (collectively, the "Estate") shall be paid, an amount equal to the sum of the Executive's unpaid salary and any earned but unpaid cash incentive compensation through such termination within sixty (60) days of the Executive's death; provided, however, that any cash incentive compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied as of such termination. The Estate shall be entitled to other vested death benefits in accordance with the terms of the Company's benefit programs and plans.

(b) Compensation Upon Termination for Disability. If the Executive's employment is terminated for Disability during the Term, the Executive shall be entitled to receive (if entitled thereto) disability compensation and benefits in accordance with the Company's benefit programs and plans. In addition, Executive shall be entitled to receive, within sixty (60) days after the date of such termination, any unpaid salary and any earned but unpaid cash incentive compensation through such termination; provided, however, that any cash incentive compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied, as of such termination of employment.

(c) Compensation Upon Termination for Cause; Upon Voluntary Termination by Executive Without Good Reason; or Upon the Expiration of the Term. If the Executive's employment is terminated during the Term by the Company for Cause or voluntarily by the Executive without Good Reason, or is terminated pursuant to Section 4(a)(vi) above, the Company shall pay the Executive his unpaid salary through such termination date and the Company shall have no further financial obligations to the Executive. All amounts payable under this Section 5(c) shall be paid within sixty (60) days after the date of such termination.

(d) Compensation Upon Termination in Connection With a Change in Control (other than for Cause, without Good Reason, Disability, Expiration of the Term or upon Death).

(i) If the Executive's employment is terminated during the Term by the Executive for Good Reason or by the Company for any reason other than pursuant to Section 4(a)(i), 4(a)(ii) or 4(a)(iii) hereof within one (1) year after the consummation of a Change in Control (as hereafter defined), the Company shall pay to the Executive (or in the event of the Executive's death, the Estate) a lump-sum cash amount equal to the sum of (w) the Executive's unpaid salary through such termination; plus (x) any cash incentive compensation earned and unpaid through such termination; provided, however, that any cash incentive compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or otherwise satisfied as of such termination; plus (y) the product of (A) a fraction, the numerator of which is the number of months in the Change in Control Severance Period (as hereafter defined) and the denominator of which is 12 and (B) the Executive's annual base salary as then in effect plus (z) a payment equal to the present value of the premium payments that would be made by the Company if Executive were to continue to be covered under the Company's group health, life and disability insurance for the Change in Control Severance Period, which amount shall be determined by the Company in its sole discretion. All amounts payable under clauses (w) and (x) of this Section 5(d)(i) shall be paid within sixty (60) days after such termination of employment and all amounts payable under clauses (y) and (z) of this Section 5(d)(i) shall be paid upon the effectiveness of the release referenced in Section 5 (f) below, or upon Executive's death, if earlier, (provided that, if the sixty (60) day period referred to in Section 5(f) below overlaps two calendar years, such payment shall not be made earlier than the first payroll date in the second calendar year). The "Change in Control Severance Period" shall be six (6) months.

(ii) Notwithstanding any other provision herein to the contrary, in the event that the Executive becomes entitled to any payments under Section 5(d)(i) or otherwise, (“Termination Payments”) and any portion of such Termination Payments, when combined with any other payments or benefits provided to the Executive (including, without limiting the generality of the foregoing, by reason of any stock options), in the absence of this Section 5(d)(ii), would be subject to the tax (the “Excise Tax”) imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the “Code”), then (subject to Section 5(d)(iii) hereof) Termination Payments shall be reduced such that none of the Termination Payments and any other payments or benefits received or to be received by the Executive in connection with a Change in Control or the termination of the Executive’s employment (whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement with the Company, any person whose actions result in a Change in Control or any person having such a relationship with the Company or such person as to require attribution of stock ownership between the parties under Section 318(a) of the Code) shall be treated as “parachute payments” within the meaning of Section 280G(b)(2) of the Code. For purposes of applying the foregoing sentence, if in the opinion of tax counsel selected by the Company and reasonably acceptable to the Executive, such payments or benefits (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code, then such amounts shall be excluded from any such calculation. Furthermore, in determining the maximum amount of the payments to the Executive which would not constitute a parachute payment within the meaning of Sections 280G(b)(1) and (4) of the Code, the value of any non-cash benefits or any deferred payment or benefit shall be determined by the Company’s independent auditors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code or any applicable proposed or final Treasury Regulations promulgated under the Code. Any reduction in Termination Payments under this Section 5(d)(ii) shall be done first by reducing any cash payments with the last payment reduced first; next any equity or equity derivatives that are included under Code Section 280G at full value rather than accelerated value, with the highest value reduced first; next any non-cash, non-equity-based benefits, with the latest scheduled benefit reduced first; finally any equity or equity derivatives based on accelerated value shall be reduced with the highest value reduced first (with all equity and equity derivative values to be determined under Treasury Regulation Section 1.280G-1, Q&A 24).

(iii) If the net after-tax amount of the Termination Payments which would be payable to the Executive in the absence of the reduction described in Section 5(d)(i) above exceeds the net after-tax amount of the Termination Payments which would be payable to the Executive if the reduction described in Section 5(d)(ii) above were applicable, then the reduction to the Executive's Termination Payments described in Section 5(d)(ii) above shall not be applicable. For purposes of computing such net after-tax amounts, the Termination Payments shall be treated as subject to Federal income tax and any state and local income taxes (based upon the residence of the Executive at the time the first amount of Termination Payments is to be paid hereunder) at the highest marginal rate of income tax imposed upon individuals (but without assuming any reduction in Federal income taxes that could be obtained from the deduction of any such state or local taxes if paid in such year), shall be subject only to the Medicare portion of the F.I.C.A. tax and, in calculating the net after-tax amount of the Termination Payments which would otherwise be payable to the Executive if the reduction described in Section 5(d)(ii) above were not applicable, any applicable Excise Tax, and all such taxes shall be computed based upon the tax rates in effect for the calendar year in which the first amount of Termination Payments are to be paid hereunder. The determination of the net after-tax amounts will be made by tax counsel selected by the Company and reasonably acceptable to the Executive, whose determination will be binding on both the Executive and the Company.

(iv) For purposes of this Agreement, a "Change in Control" of the Company shall mean (A) the consummation of a merger or consolidation of the Company in which the stockholders of the Company immediately prior to such merger or consolidation would not, immediately after the merger or consolidation, beneficially own (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), directly or indirectly, shares representing in the aggregate 45% or more of the combined voting power of the securities of the corporation issuing cash or securities in the merger or consolidation (or of its ultimate parent corporation, if any); (B) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company, or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 45% of the combined voting power of the voting securities of which are owned by persons in substantially the same proportion as their ownership of the Company immediately prior to such sale; or (C) such other similar transaction not specifically identified above, which in the sole discretion of the Board (or committee thereof) effectively constitutes a change in control of the Company.

(e) Compensation Upon All Other Terminations. If the Company terminates the Executive's employment during the Term for any reason other than pursuant to Section 4(a)(i), 4(a)(ii), 4(a)(iii) or Section 5(d) or if Executive terminates his employment during the Term for Good Reason other than pursuant to Section 5(d), then the Company shall pay Executive a lump sum equal to the sum of (v) Executive's unpaid salary through such termination; plus (w) any cash incentive compensation earned and unpaid through such termination; provided, however, that any cash incentive compensation conditioned upon the satisfaction of performance goals shall not be deemed earned or payable unless such performance goals have been achieved or satisfied as of such termination; plus (x) the Executive's salary for the Severance Period (as defined below); plus (y) an amount equal to the present value of the premium payments that would be made by the Company if Executive were to continue to be covered under the Company's group health, life and disability insurance for the Severance Period, which amount shall be determined by the Company in its sole discretion. All amounts payable under clauses (v) and (w) of this Section 5(e) shall be paid within sixty (60) days after such termination of employment and all amounts payable under clauses (x) and (y) of this Section 5(e) shall be paid in cash in a lump-sum upon the effectiveness of the release referenced in Section 5 (f) below, or upon Executive's death, if earlier (provided that, if the sixty (60) day period referred to in Section 5(f) below overlaps two calendar years, such payment shall not be made earlier than the first payroll date in the second calendar year). The "Severance Period" shall be three (3) months.

(f) Notwithstanding anything else contained herein, the obligation of the Company to make any severance payments to the Executive hereunder (other than accrued and unpaid salary, earned and unpaid cash incentive compensation and other payments required under law) shall be conditioned upon the execution and delivery by the Executive of a release from liability in favor of the Company in form and substance reasonably satisfactory to the Company, such that said release is effective, with all revocation periods having expired unexercised, within sixty (60) days after the date of the Executive's termination of employment.

(g) The parties hereto agree that any termination of the Executive's employment for Good Reason or by the Company other than for Cause is intended to qualify as an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n). Thus, no severance payment required pursuant to Sections 5(d) or 5(e) shall occur unless and until Executive incurs a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h).

#### **Section 6. Confidentiality.**

(a) Each Item, Trade Secret and piece of Confidential Information (in each case, as defined below) that has come or comes into Executive's possession by reason of his previous employment with the Company, or hereunder, are the property of the Company and shall not be used by Executive in any way except in the course of his employment by, and for the benefit of, the Company. Executive will not remove any Items from premises owned or leased by the Company except as his duties shall require, and upon termination of his employment, all Items (including any copies or excerpts thereof) will be turned over to the Chairman of the Board.

(b) Executive will preserve as confidential all Confidential Information that has been or may be obtained by him. Executive will not, without written authority from the Company, use for his own benefit or purposes, or disclose to others, either during his employment or for two (2) years thereafter, any Confidential Information or any copy or notes made from any Item embodying Confidential Information except as required by his employment with the Company or to the extent disclosure is or may be required by a statute, by a court of law, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) with jurisdiction to order him to divulge, disclose or make accessible such information, provided, however, that the Executive shall give the Company notice of any such request or demand for such information upon his receipt of same and the Executive shall reasonably cooperate with the Company in any application the Company may make seeking a protective order barring disclosure by the Executive. Executive understands that his obligations with respect to Confidential Information shall continue for two years after termination of his employment with the Company under this Agreement. These restrictions concerning use and disclosure of Confidential Information shall not apply to information which is or becomes publicly known by lawful means, or comes into Executive's possession from sources not under an obligation of confidentiality to the Company.

(c) Executive agrees to hold in confidence all Trade Secrets of the Company that come to his knowledge during or in connection with his employment by the Company and shall not disclose, publish or make use of at any time after the date hereof such Trade Secrets without the prior written consent of the Company for as long as the information remains a Trade Secret.

(d) Executive understands that any entrusting of Confidential Information or Trade Secrets to him by the Company is done in reliance on a confidential relationship arising out of his employment with the Company. Executive further understands that Confidential Information or Trade Secrets that he may acquire or to which he may have access, especially with regard to research and development projects and findings, formulae, designs, formulation, processes, the identity of suppliers, customers and patients, methods of manufacture, and cost and pricing data is of great value to the Company.

(e) Executive agrees that following termination of his employment with the Company, Executive will, if at all possible before answering but in any event as soon thereafter as practicable, make every effort to contact the Company's General Counsel if Executive is served with a subpoena or other legal process asking for a deposition, testimony or other statement, or other potential evidence to be used in connection with any lawsuit to which the Company is a party or involving Executive's employment with the Company or any Confidential Information or Trade Secret of the Company.

(f) For purposes of this Agreement: (i) "Confidential Information" means information relating to the present or planned business of the Company which has not been released publicly by authorized representatives of the Company. Executive understands that Confidential Information may include, for example, discoveries, inventions, know-how and products, customer, patient, supplier and competitor information, sales, pricing, cost, and financial data, research, development, marketing and sales programs and strategies, manufacturing, marketing and service techniques, processes and practices, and regulatory strategies. Executive understands further that Confidential Information also includes all information received by the Company under an obligation of confidentiality to a third party; (ii) "Items" include documents, reports, drawings, photographs, designs, specifications, formulae, plans, samples, research or development information, prototypes, tools, equipment, proposals, marketing or sales plans, customer information, customer lists, patient lists, patient information, regulatory files, financial data, costs, pricing information, supplier information, written, printed or graphic matter, or other information and materials that concern the Company's business that come into Executive's possession or about which Executive has knowledge by reason of his employment; and (iii) "Trade Secrets" include all information, including a formula, pattern, process, compilation, program, device, method, or technique that (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (C) otherwise satisfies the requirements of the Georgia Trade Secrets Act.

## Section 7. Proprietary Information.

(a) All Inventions (as defined below) related to the present or planned business of the Company, which have been or are conceived or reduced to practice by Executive, either alone or with others, during the period of his employment or during a period of one (1) year after termination of such employment, whether or not done during his regular working hours, are the sole property of the Company. The provisions of this paragraph shall not apply to an invention for which no equipment, supplies, facilities or confidential or trade secret information of the Company was used and which was developed entirely on Executive's own time, unless (a) the invention relates to (i) the business of the Company, or (ii) the Executive's actual or demonstrably anticipated research or development for the Company, or (b) the invention results from any work performed by Executive for the Company.

(b) Executive will disclose promptly and in writing to the Company, through the General Counsel, all Inventions which are covered by this Agreement, and Executive agrees to assign to the Company or its nominee all his right, title, and interest in and to such Inventions. Executive agrees not to disclose any of these Inventions to others, without the express consent of the Company. Executive will, at any time during or after his employment, on request of the Company, execute specific assignments in favor of the Company or its nominee of his interest in and to any of the Inventions covered by this Agreement, as well as execute all papers, render all assistance, and perform all lawful acts which the Company considers necessary or advisable for the preparation, filing, prosecution, issuance, procurement, maintenance or enforcement of patent applications and patents of the United States and foreign countries for these Inventions, and for the transfer of any interest Executive may have. Executive will execute any and all papers and documents required to vest title in the Company or its nominee in the above Inventions, patent applications, patents, and interests. Executive understands that if he is not employed by the Company at the time he is requested to execute any document under this Section 7(b), Executive shall receive fifty dollars (\$50.00) for the execution of each document, and one hundred fifty dollars (\$150.00) per day for each day or portion thereof spent at the request of the Company in the performance of acts pursuant to this Section 7(b), plus reimbursement for any out-of-pocket expenses incurred by Executive at the Company's request in such performance. Executive further understands that the absence of a request by the Company for information, or for the making of an oath, or for the execution of any document, shall in no way be construed to constitute a waiver of the Company's rights under this Agreement. Should the Company be unable to secure the Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright, or other right or protection relating to any Invention, whether due to the Executive's mental or physical incapacity or any other cause, the Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as the Executive's agent and attorney in fact, to act for and in the Executive's behalf and stead and to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights, or other rights or protections with the same force and effect as if executed and delivered by the Executive.

(c) Executive has disclosed to the Company all continuing obligations which he has with respect to the assignment of Inventions to any previous employers, and Executive claims no previous unpatented Inventions as his own, except for those which have been reduced to practice and which are shown on a schedule, if any, attached to this agreement. Executive understands that the Company does not seek any confidential or trade secret information which Executive may have acquired from a previous employer, and Executive will not disclose to or utilize any such information on behalf of the Company.

(d) All writings and other works which may be copyrighted (including computer programs) which are related to the present or planned business of the Company and are prepared by Executive during his employment by the Company shall be, to the extent permitted by law, works made for hire, and the authorship and copyright of the work shall be in the Company's name. To the extent that such writings and works are not works for hire, Executive agrees to the waiver of "moral rights" in such writings and works, and to assign to the Company all Executive's right, title and interest in and to such writings and works, including copyright.

(e) Executive will permit the Company and its agents to use and distribute any pictorial images which are taken of him during his employment by the Company as often as desired for any lawful purpose. Executive waives all rights of prior inspection or approval and releases the Company and its agents from any and all claims or demands which Executive may have on account of the lawful use of publication of such pictorial images.

(f) For purposes of this Agreement, "Invention" shall mean all ideas, inventions, experiments, copyrightable expression, research, plans for products or services, marketing plans, reports, strategies, processes, computer software (including, without limitation, source code), computer programs, original works of authorship, characters, know-how, trade secrets, information, data, developments, discoveries, improvements, modifications, technology, algorithms, database schema, designs, and drawings, whether or not subject to patent or copyright protection, made, conceived, expressed, developed, or actually or constructively reduced to practice by the Executive solely or jointly with others during the Term, which refer to, are suggested by, or result (i) from any work which the Executive may perform during his employment, or (ii) from any information obtained from the Company or any affiliate of the Company, and shall not be limited to the meaning of "Invention" under the United States patent laws.



## Section 8. Agreement Not to Compete.

(a) While employed by the Company and thereafter for a period equal to the Severance Period or the Change in Control Severance Period, if applicable, in the event of a termination pursuant to Section 4, the Executive shall not, directly or indirectly, anywhere in the United States:

(i) render services that are similar to the services performed by Executive for the Company to any person, corporation, partnership or other entity that competes with the Company (or any subsidiary) in the business of developing small molecules for the treatment of infections caused by the influenza virus, human rhinovirus (HRV), or respiratory syncytial virus (RSV) (collectively, the "Field"). Executive agrees that if he worked for a competitor that is developing these small molecules, he would inevitably make business decisions by referring to his knowledge of the Company's Confidential Information and Trade Secrets. The Company's Confidential Information and Trade Secrets are not generally known by others in the industry, and they would provide an unfair advantage for competitors. Further, the Company recognizes that there are some companies who develop or provide many products and services, some of which may be competitive and some which may not be. Accordingly, this covenant only prohibits Executive from rendering services similar to the services performed by Executive for the Company to or for the benefit of only that section, division, group, subsidiary, affiliate or operating unit of a competitor that actually operates in the Field; or

(ii) solicit for employment any person who was employed by the Company (or any subsidiary) in the U.S. during the Executive's employment with the Company and with whom the Executive had contact during the last year of his employment with the Company; or

(iii) call on or solicit, directly or indirectly for the purpose of providing services related to the development of a compound for the treatment of infections caused by influenza virus, HRV, or RSV, any person or entity known by the Executive to be a customer of the Company (or of any subsidiary), or with which the Company (or any subsidiary) was in negotiations to become a customer of the Company (or such subsidiary), as the case may be, during the Executive's employment with the Company, and with whom the Executive had direct contact. For purpose of this section, "contact" means interaction between the Executive and the client within the last year of Executive's employment to further the business relationship, sell to, or perform services for the client, and interaction between the Executive and prospective client within the last year of Executive's employment to develop a business relationship.

(b) If any of the restrictions contained in this Section 8 shall be deemed by any court of competent jurisdiction to be unenforceable by reason of the extent, duration or geographical scope thereof, or otherwise, then the parties agree that such court shall modify such restriction, only to the extent necessary to render it enforceable and, in its reduced form, such restriction shall then be enforced, and in its reduced form this Section 8 shall be enforceable in the manner contemplated hereby.

(c) The Executive and the Company agree to revise the specific description of the Company's line of business set forth in Section 8(a) as appropriate to reflect any material change in the Company's business during the Term due to an in-license, merger, acquisition or similar strategic transaction.

**Section 9. Company Resources.**

Executive may not use any of the Company's (or any affiliate's) equipment for personal purposes without written permission from the Company. The Executive may not give access to the Company's (or any affiliate's) offices or files to any person not in the employ of the Company without written permission of the Company.

**Section 10. Injunctive Relief.**

Executive understands and agrees that the Company will suffer irreparable harm in the event that the Executive breaches any of the Executive's obligations under Sections 6, 7, 8 or 9 hereof and that monetary damages will be inadequate to compensate the Company for such breach. Accordingly, the Executive agrees that, in the event of a breach or threatened breach by the Executive of any of the provisions of Sections 6, 7, 8 or 9 hereof, the Company shall be entitled to appropriate injunctive relief, in addition to any other rights, remedies or damages available to the Company at law or in equity.

**Section 11. Severability.**

In the event any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this Agreement shall remain in full force and effect.

**Section 12. Survival.**

Sections 1(d) and 4 through 18 shall survive the termination of this Agreement and the Executive's employment under this Agreement for any reason.

**Section 13. Representations, Warranties, and Covenants.**

Executive represents, warrants, and covenants that the Executive's performance of activities under the terms of this Agreement and any services to be rendered as an employee of the Company do not and will not breach any fiduciary or other duty or any covenant, agreement or understanding (including, without limitation, any agreement relating to any proprietary information, knowledge or data acquired by the Executive in confidence, trust or otherwise prior to the Executive's employment by the Company) to which the Executive is a party or by the terms of which the Executive may be bound. The Executive further covenants and agrees not to enter into any agreement or understanding, either written or oral, in conflict with the provisions of this Agreement.

**Section 14. Accounting for Profits; Indemnification.**

Executive covenants and agrees that, if the Executive shall violate any of the Executive's covenants or agreements contained in Sections 6, 7, 8 or 9 hereof, the Company shall be entitled to an accounting and repayment of all profits, compensation, royalties, commissions, remunerations or benefits which the Executive directly or indirectly shall have realized or may realize relating to, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which the Company is or may be entitled at law or in equity or otherwise under this Agreement. The Executive hereby agrees to defend, indemnify and hold harmless the Company against and in respect of: (a) any and all losses and damages resulting from, relating or incident to, or arising out of any misrepresentation or breach by the Executive of any of the Executive's representations, warranties, covenants or agreements made or contained in this Agreement; and (b) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable attorneys' fees) incident to the foregoing.

**Section 15. General.**

This Agreement supersedes and replaces any existing agreement between the Executive and the Company generally relating to the Executive's past or present employment with the Company (including, without limitation, Executive's employment agreement with the Company, dated as of November 12, 2012) and may be modified only in a writing signed by the parties hereto. Failure to enforce any provision of the Agreement shall not constitute a waiver of any term herein, unless such waiver is made in writing. The Executive agrees that he will not assign, transfer, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement. Any purported assignment, transfer, or disposition shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above. The use of any gender herein shall be applicable to all genders.

**Section 16. Executive Acknowledgment.**

Executive acknowledges (a) that he has consulted with, or has had the opportunity to consult with, independent counsel of his own choice concerning this Agreement and has been advised to do so by the Company, and (b) that he has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on his own judgment.

**Section 17. Section 409A.**

This Agreement is intended to comply with, or otherwise be exempt from, Code Section 409A and the parties hereto agree to interpret, apply and administer this Agreement in the least restrictive manner necessary to comply therewith and without resulting in any increase in the amounts owed hereunder by the Company. However, the Company does not guarantee any particular tax effect for income provided to Executive pursuant to this Agreement. In any event, except for the Company's responsibility to withhold applicable income and employment taxes from compensation paid or provided to Executive, or as the result of the Company's negligence or intentional misconduct, the Company shall not be responsible for the payment of any applicable taxes on compensation paid or provided to Executive pursuant to this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, if the Executive is a “specified employee” within the meaning of Code Section 409A and the regulations issued thereunder, and a payment or benefit provided for in this Agreement would be subject to additional tax under Code Section 409A if such payment or benefit is paid within six (6) months after the Executive’s “separation from service” (within the meaning of Code Section 409A), then such payment or benefit required under this Agreement shall not be paid (or commence) during the six-month period immediately following the Executive’s separation from service except as provided in the immediately following sentence. In such an event, any payments or benefits that would otherwise have been made or provided during such six-month period and which would have incurred such additional tax under Code Section 409A shall instead be paid to the Executive in a lump-sum cash payment on the earlier of (i) the date that is six (6) months and one (1) day following the Executive’s separation from service or (ii) the 10th business day following the Executive’s death. If the Executive’s termination of employment hereunder does not constitute a “separation from service” within the meaning of Code Section 409A, then any amounts payable hereunder on account of a termination of the Executive’s employment and which are subject to Code Section 409A shall not be paid until the Executive has experienced a “separation from service” within the meaning of Code Section 409A.

For purposes of Code Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

In addition, no reimbursement or in-kind benefit shall be subject to liquidation or exchange for another benefit and the amount available for reimbursement, or in-kind benefits provided, during any calendar year shall not affect the amount available for reimbursement, or in-kind benefits to be provided, in a subsequent calendar year. Any reimbursement to which the Executive is entitled hereunder shall be made no later than the last day of the calendar year following the calendar year in which such expenses were incurred.

**Section 18. Choice of Law.**

This Agreement will be governed by and construed in accordance with the laws of the United States and the state of Georgia, without regard to its choice of law provisions. Each party will consent to the exclusive jurisdiction and venue of the state and federal courts in Atlanta, Georgia, in any action, suit or proceeding arising out of or relating to this Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first set forth above.

**BIOTA PHARMACEUTICALS, INC.**

\_\_\_\_\_  
By:  
Title

**EXECUTIVE**

\_\_\_\_\_  
Russell H. Plumb

## Appendix I

### Executive Chairman Job Description

The Executive Chairman will report to the Board of Directors and, in particular, the Lead Director, and will be responsible for overseeing all aspects of operating and directing the Company's Board of Directors and liaising with the Company's Chief Executive Officer with respect to the development of strategic, operational and financial plans as well as business development and investor relations activities. He will particularly focus his efforts on successfully executing the Company's restructuring and transition plan, including the timely closure of the Company's operation in Melbourne, Australia, as well as successfully closing out the contract with BARDA in a timely manner.



**CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Joseph M. Patti, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Biota Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 6, 2014

By: /s/ Joseph M. Patti  
Joseph M. Patti  
Chief Executive Officer  
(Principal Executive Officer)



**CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Russell H Plumb, certify that:

6. I have reviewed this quarterly report on Form 10-Q of Biota Pharmaceuticals, Inc.;
7. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
8. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
9. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
10. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 6, 2014

By: /s/ Russell H Plumb  
Russell H Plumb  
Executive Chairman  
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Biota Pharmaceuticals, Inc. (“the Company”) for the quarterly period ended December 31, 2014 (the “Report”), I, Joseph M. Patti, Chief Executive Officer of the Company, and Russell H. Plumb, Executive Chairman of the Company each certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- To my knowledge, the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 6, 2014

By: /s/ Joseph M. Patti  
Joseph M. Patti  
Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Russell H Plumb  
Russell H Plumb  
Executive Chairman  
(Principal Financial Officer)