

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE  
SECURITIES ACT OF 1933**

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

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

**84-1318182**  
(IRS employer identification no.)

6725 Mesa Ridge Road, Suite 100  
San Diego, California 92121  
(858) 552-0866  
(Address of principal executive offices)

**2005 Equity Incentive Plan  
2005 Employee Stock Purchase Plan**  
(Full title of the plan)

**Carrie E. Carlander**  
**Chief Financial Officer**  
**ADVENTRX Pharmaceuticals, Inc.**  
6725 Mesa Ridge Road, Suite 100  
San Diego, California 92121  
(Name and address of agent for service)

(858) 552-0866  
(Telephone number, including  
area code, of agent for service)

**CALCULATION OF REGISTRATION FEE**

| Title Of Securities To Be Registered   | Amount To Be Registered (1) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount Of Registration Fee (4) |
|--|-----------------------------|---|---|--------------------------------|
| Common Stock, par value \$0.001 per share  |                             |   |   |                                |
| To be issued upon exercise of options to be granted under the<br><b>2005 Equity Incentive Plan</b> | 6,000,000                   | \$ 2.50/2.30(2)\$                         | 13,820,000                                | \$ 1,627                       |
| To be issued under the<br><b>2005 Employee Stock Purchase Plan</b>                                 | 1,000,000                   | \$ 2.30(3)\$                              | 2,300,000                                 | \$ 271                         |
| <b>TOTAL:</b>  |                             |   |   | <b>\$ 1,898</b>                |

- (1) In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate number of additional shares of common stock that may be offered or issued by reason of stock splits, stock dividends or similar transactions.
- (2) As to options for 100,000 shares, based on a value of \$2.50 per share. As to the remaining 5,900,000 shares, estimated solely for purposes of calculating the amount of the registration fee. The estimate is made pursuant to Rule 457(c) of the Securities Act.
- (3) Estimated solely for purposes of calculating the amount of the registration fee. The estimate is made pursuant to Rule 457(c) of the Securities Act.
- (4) Calculated pursuant to Section 6(b) of the Securities Act.

## PART I

### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information required in Part I will be sent or given to employees participating in the Plans, as specified by Rule 428(b) (1) promulgated under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the Securities and Exchange Commission (the "Commission") either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this registration statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation Of Documents By Reference.

The following documents filed by ADVENTRX Pharmaceuticals, Inc.. (the "Registrant") with the Commission pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are hereby incorporated by reference into this Registration Statement:

- (a) The section entitled "Description of Registrant's Securities" contained in the Registrant's Registration Statement on Form 8-A (file No. 001-32157) filed with the Commission on April 27, 2004, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.
- (b) The Annual Report on Form 10-KSB for the fiscal year ended December 31, 2004 filed with the Securities and Exchange Commission (the "SEC") on March 31, 2005;
- (c) The Proxy Statement on Schedule 14A filed with the SEC on April 25, 2005, a revised version of which was filed with the SEC on May 20, 2005;
- (d) The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2005 filed with the SEC on May 16, 2005;
- (e) The Current Report on Form 8-K filed with the SEC on January 26, 2005;
- (f) The Current Report on Form 8-K filed with the SEC on March 7, 2005;
- (g) The Current Report on Form 8-K filed with the SEC on March 30, 2005;
- (h) The Current Report on Form 8-K filed with the SEC on April 5, 2005;
- (i) The Current Report on Form 8-K filed with the SEC on April 11, 2005;
- (j) The Current Report on Form 8-K filed with the SEC on April 15, 2005;
- (k) The Current Report on Form 8-K filed with the SEC on April 19, 2005;
- (l) The Current Report on Form 8-K filed with the SEC on April 25, 2005;
- (m) The Current Report on Form 8-K filed with the SEC on May 2, 2005;
- (n) The Current Report on Form 8-K filed with the SEC on May 16, 2005;
- (o) The Current Report on Form 8-K filed with the SEC on June 10, 2005; and
- (p) The Current Report on Form 8-K filed with the SEC on July 6, 2005.

In addition, all documents filed with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities registered hereby have been sold or which deregisters all of such securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

#### Item 4. Description Of Securities.

Not applicable.

**Item 5. Interests Of Named Experts And Counsel.**

The validity of the common stock being offered hereby will be passed upon for the Registrant by Bingham McCutchen LLP, San Francisco, California. To our knowledge, no partner or employee of this firm is a holder of Common Stock of the Registrant or otherwise has a substantial interest in the Registrant.

**Item 6. Indemnification Of Directors And Officers.**

Section 145 of the Delaware General Corporation Law, or the DGCL, authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended.

As permitted by the DGCL, the Registrant's bylaws provide that the Registrant shall indemnify its directors and officers, and may indemnify its employees and other agents, to the fullest extent permitted by law. The bylaws also permit the Registrant to secure insurance on behalf of any officer, director, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability arising out of his or her actions in that capacity if he or she is serving at the Registrant's request. The Registrant has obtained officer and director liability insurance with respect to liabilities arising out of various matters, including matters arising under the Securities Act.

The Registrant's certificate of incorporation, as amended, provides that the Registrant shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Registrant or any predecessor of the Registrant, or serves or served at any other enterprise as a director or officer at the request of the Registrant or any predecessor to the Registrant.

The Registrant has entered into agreements with its directors that, among other things, indemnify them for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by them in any action or proceeding, including any action by or in the right of the Registrant, arising out of the person's services as a director or officer of the Registrant or any other company or enterprise to which the person provides services at the Registrant's request.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following exhibits are filed as part of this Registration Statement:

| Exhibit | Description  |
|---------|--|
| 4.1     | Specimen common stock certificate  |
| 5.1     | Opinion of Bingham McCutchen LLP as to the legality of the securities being registered |
| 10.1    | 2005 Equity Incentive Plan   |
| 10.2    | Form of Stock Option Agreement under the 2005 Equity Incentive Plan                    |
| 10.3    | 2005 Employee Stock Purchase Plan  |
| 10.4    | Form of Subscription Agreement under the 2005 Employee Stock Purchase Plan             |
| 23.1    | Consent of Bingham McCutchen LLP (included in Exhibit 5.1)                             |
| 23.2    | Consent of J.H. Cohn, LLP  |
| 24.1    | Power of Attorney (included in signature pages to this Registration Statement)         |

## Item 9. Undertakings

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

**Provided, however,** that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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

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

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, state of California, on the 12 day of July, 2005.

### ADVENTRX Pharmaceuticals, Inc.

By: /s/ Evan Levine

\_\_\_\_\_  
Evan Levine  
President and Chief Executive Officer

## POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities indicated on the 12 day of July, 2005.

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Evan M. Levine and Carrie E. Carlander, and each one of them, acting individually and without the other, as his or her attorney-in-fact, each with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or his substitute or substitutes may do or cause to be done by virtue hereof.

|   |   |
|---|---|
| <u>/s/ Evan M. Levine</u><br>Evan M. Levine           | Chief Executive Officer, President, Chief Operating Officer,<br>Secretary and Vice Chairman (Principal Executive Officer) |
| <u>/s/ Carrie E. Carlander</u><br>Carrie E. Carlander | Chief Financial Officer, Vice President, Finance and Treasurer<br>(Principal Financial and Accounting Officer)            |
| <u>/s/ M. Ross Johnson</u><br>M. Ross Johnson         | Chairman  |
| <u>/s/ Michael M. Goldberg</u><br>Michael M. Goldberg | Director  |
| <u>/s/ Mark J. Pykett</u><br>Mark J. Pykett           | Director  |
| <u>/s/ Mark Bagnall</u><br>Mark Bagnall               | Director  |

## EXHIBIT INDEX

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| 24.1    | Power of Attorney (included in signature pages to this Registration Statement)         |

NOT VALID UNLESS COUNTERSIGNED BY TRANSFER AGENT  
INCORPORATED UNDER THE LAWS OF THE STATE OF  
DELAWARE

\_\_\_\_\_

**NUMBER**

**ADVENTRX PHARMACEUTICALS, INC. LOGO**

**SHARES**

AUTHORIZED COMMON STOCK: 100,000,000 SHARES  
PAR VALUE: \$.001

CUSIP NO. 00764X 10 3

**THIS CERTIFIES THAT**

**IS THE RECORD HOLDER OF**

Shares of **ADVENTRX PHARMACEUTICALS, INC.** Common Stock transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:

\_\_\_\_\_  
PRESIDENT & SECRETARY

\_\_\_\_\_  
TREASURER

**ADVENTRX PHARMACEUTICALS, INC. CORPORATE SEAL**

COUNTERSIGNED & REGISTERED

INTERWEST TRANSFER CO. INC. P.O. BOX 17136/SALT LAKE CITY, UTAH 84117

\_\_\_\_\_  
COUNTERSIGNED Transfer Agent-Authorized Signature

\_\_\_\_\_

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

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right of survivorship and not as tenant In common.

UNIF GIFT MIN ACT - \_\_\_\_\_ CUSTODIAN \_\_\_\_\_  
(CUST) (MINOR)  
under Uniform Gifts to Minors  
Act \_\_\_\_\_  
(STATE)

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

For Value Received, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE.

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

Shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and Appoint \_\_\_\_\_

Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ELARGEMENT OR ANY CHANGE WHATEVER

NOTICE SIGNATURE GUARANTEED:

SIGNATURE (S) MUST BE GUARANTEED BY A FIRM WHICH IS A MEMBER OF A REGISTERED NATIONAL STOCK EXCHANGE, OR BY A BANK (OTHER THAN A SAVING BANK), OR A TRUST COMPANY, THE GUARANTEEING FIRM MUST BE A MEMBER OF *THE MEDALLION GUARANTEE PROGRAM*.

TRANSFER FEE WILL APPLY

\*\*\*FOR MEDALLION GUARANTEE USE ONLY\*\*\*



July 8, 2005

ADVENTRX Pharmaceuticals, Inc.  
6725 Mesa Ridge Road, Suite 100  
San Diego, CA 92121

**Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as counsel for ADVENTRX Pharmaceuticals, Inc., a Delaware corporation (the "Company"), in connection with the preparation of the Company's Registration Statement on Form S-8 proposed to be filed with the Securities and Exchange Commission on or about July 8, 2005 (the "Registration Statement").

The Registration Statement covers the registration of 7,000,000 shares of common stock, par value \$0.001 per share, of the Company (the "Shares"), 6,000,000 of which are issuable by the Company under the 2005 Equity Incentive Plan, including upon exercise of options and other similar awards granted thereunder, and 1,000,000 of which are issuable by the Company pursuant to the 2005 Employee Stock Purchase Plan (collectively, the 2005 Equity Incentive Plan and the 2005 Employee Stock Purchase Plan are referred to in this opinion as the "Plans").

We have reviewed the corporate proceedings of the Company with respect to the authorization of the Plans. We have reviewed copies of each of the Plans as currently in effect. We have also examined and relied upon such agreements, instruments, corporate records, certificates, and other documents as we have deemed necessary or appropriate as a basis for the opinions hereinafter expressed. In our examination, we have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies, the authenticity and completeness of all original documents reviewed by us in original or copy form, and the legal competence of each individual executing any document.

We further assume that all Shares issued pursuant to the Plans will be issued in accordance with the terms of the Plans and that the purchase price of each of the Shares will be at least equal to the par value of such Shares.

This opinion is limited solely to the Delaware General Corporation Law as applied by courts located in Delaware, the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting those laws.

Based upon and subject to the foregoing, we are of the opinion that the Shares, when issued and delivered upon the exercise of options or awards granted pursuant to and in accordance with the Plans and against the payment of any purchase price therefor, as specified in such Plans or documents governing such awards, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, however, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended.

Very truly yours,

/s/ Bingham McCutchen LLP

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## ADVENTRX Pharmaceuticals, Inc.

## 2005 Equity Incentive Plan

1. **Purpose.** The 2005 Equity Incentive Plan (the “*Plan*”) of ADVENTRX Pharmaceuticals, Inc., a Delaware corporation (the “*Company*”), is intended to encourage ownership of Stock by employees, consultants and directors of the Company and Affiliates and to provide additional incentive for them to promote the success of the Company’s business through the grant of Awards. The Plan is intended to be an incentive stock option plan within the meaning of Section 422 of the Code, but not all Awards are required to be Incentive Options.

2. **Definitions.** As used in the Plan, the terms set forth below shall have the meanings set forth below:

2.1 **Accelerate, Accelerated, and Acceleration** means: (a) when used with respect to an Option or Stock Appreciation Right, that as of the time of reference the Option or Stock Appreciation Right will become exercisable with respect to some or all of the Stock or Stock Appreciation Right for which it was not then otherwise exercisable by its terms; (b) when used with respect to Restricted Stock or Restricted Stock Units, that the Risk of Forfeiture otherwise applicable to such Stock or Restricted Stock Units shall expire with respect to some or all of the Restricted Stock or Units then still otherwise subject to the Risk of Forfeiture; and (c) when used with respect to Performance Units, that the applicable Performance Goals shall be deemed to have been met as to some or all of the Units.

2.2 **Acquisition** means a merger or consolidation of the Company with or into another person or the sale, transfer, or other disposition of all or substantially all of the Company’s assets to one or more other persons in a single transaction or series of related transactions.

2.3 **Affiliate** means any corporation, partnership, limited liability company, business trust, or other entity controlling, controlled by or under common control with the Company.

2.4 **Award** means any grant or sale pursuant to the Plan of Options, Stock Appreciation Rights, Performance Units, Restricted Stock, Restricted Stock Units or Stock Grants.

2.5 **Award Agreement** means an agreement between the Company and a Participant, setting forth the terms and conditions of an Award.

2.6 **Board** means the Board of Directors of the Company.

2.7 **Change of Control** means the occurrence of any of the following after the date of the approval of the Plan by the Board:

(a) an Acquisition, unless in connection with any merger or consolidation securities possessing more than 50% of the total combined voting power of the survivor’s or acquiror’s outstanding securities (or the securities of any parent thereof) are held by a person or persons who held securities possessing more than 50% of the total combined voting power of the Company’s outstanding securities immediately prior to that transaction;

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(b) any person or group of persons (within the meaning of Section 13(d)(3) of the Exchange Act) directly or indirectly acquires beneficial ownership (determined pursuant to Rule 13d-3 promulgated under the Exchange Act) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders that the Board does not recommend such stockholders accept, other than (i) the Company or an Affiliate, (ii) an employee benefit plan of the Company or any Affiliates, (iii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Affiliates, or (iv) an underwriter temporarily holding securities pursuant to an offering of such securities;

(c) over a period of 36 consecutive months or less, there is a change in the composition of the Board such that a majority of the Board members (rounded up to the next whole number, if a fraction) ceases, by reason of one or more proxy contests for the election of Board members, to be composed of individuals who either (i) have been Board members continuously since the beginning of that period, or (ii) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in the preceding clause (i) who were still in office at the time that election or nomination was approved by the Board; or

(d) a majority of the Board votes in favor of a decision that a Change of Control has occurred.

2.8 **Code** means the Internal Revenue Code of 1986, as amended, or any successor statutes thereto, and any regulations issued from time to time thereunder.

2.9 **Committee** means the Compensation Committee of the Board, which in general is responsible for the administration of the Plan, as provided in Section 5. For any period during which no such committee is in existence, "Committee" means the Board, and all authority and responsibility assigned to the Committee under the Plan shall be exercised, if at all, by the Board.

2.10 **Continuous Service** means the absence of any interruption or termination of service as an employee, director or consultant of the Company or any Subsidiary. Continuous Service shall not be considered interrupted during any period of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company and any Parent, Subsidiary or successor of the Company.

2.11 **Covered Employee** means an employee who is a "covered employee" within the meaning of Section 162(m) of the Code.

2.12 **Effective Date** means May 24, 2005, the date the requisite number of stockholders of the Company approved the Plan.

2.13 **Exchange Act** means the Securities Exchange Act of 1934, as amended.

- 2.14 **Grant Date** means the date as of which an Award is granted, as determined under Section 7.1(a).
- 2.15 **Incentive Option** means an Option which by its terms is to be treated as an “incentive stock option” within the meaning of Section 422 of the Code.
- 2.16 **Market Value** means the value of a share of Stock on a particular date determined by such methods or procedures as may be established by the Committee. Unless otherwise determined by the Committee, the Market Value of a share of Stock as of any date is the closing price for a Stock as reported on the American Stock Exchange LLC (or on any national securities exchange or other established market on which the Stock is then listed) for that date or, if no closing price is reported for that date, the closing price on the next preceding date for which a closing price was reported.
- 2.17 **Nonstatutory Option** means any Option that is not an Incentive Option.
- 2.18 **Option** means an option to purchase Stock.
- 2.19 **Optionee** means a Participant to whom an Option shall have been granted under the Plan.
- 2.20 **Parent** means a parent corporation of the Company, whether now or hereafter existing, as defined by Section 424(e) of the Code.
- 2.21 **Participant** means any holder of an outstanding Award under the Plan.
- 2.22 **Performance Criteria** means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period. The Performance Criteria used to establish Performance Goals are limited to: pre- or after-tax net earnings, sales growth, operating earnings, operating cash flow, return on net assets, return on stockholders’ equity, return on assets, return on capital, Stock price growth, stockholder returns, gross or net profit margin, earnings per share, price per share of Stock, and market share, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group, results of clinical trial or FDA approvals. The Committee will, in the manner and within the time prescribed by Section 162(m) of the Code in the case of Qualified Performance-Based Awards, objectively define the manner of calculating the Performance Criteria it selects to use for such Performance Period for such Participant.
- 2.23 **Performance Goals** means, for a Performance Period, the written goals established by the Committee for the Performance Period based upon the Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, Subsidiary, or an individual.
- 2.24 **Performance Period** means the one or more periods, which may be of varying and overlapping durations, selected by the Committee, over which the attainment of one or more Performance Goals will be measured for purposes of determining a Participant’s right to, and the payment of, a Performance Unit.

- 2.25 **Performance Unit** means a right granted to a Participant under Section 7.5 to receive cash, Stock or other Awards, the payment of which is contingent on achieving Performance Goals established by the Committee.
- 2.26 **person** means an individual, a corporation, a partnership, a limited liability company, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.
- 2.27 **Qualified Performance-Based Awards** means Awards intended to qualify as “performance-based compensation” under Section 162(m) of the Code.
- 2.28 **Restricted Stock** means a grant or sale of Stock to a Participant subject to a Risk of Forfeiture.
- 2.29 **Restricted Stock Units** means rights to receive Stock at the close of a Restriction Period, subject to a Risk of Forfeiture.
- 2.30 **Restriction Period** means the period of time, established by the Committee in connection with an Award of Restricted Stock or Restricted Stock Units, during which the Restricted Stock or Restricted Stock Units are subject to a Risk of Forfeiture described in the applicable Award Agreement.
- 2.31 **Risk of Forfeiture** means a limitation on the right of the Participant to retain Restricted Stock or Restricted Stock Units, including a right in the Company to reacquire Restricted Stock at less than the then Market Value of such Restricted Stock, arising because of the occurrence or non-occurrence of specified events or conditions.
- 2.32 **Securities Act** means the Securities Act of 1933, as amended.
- 2.33 **SEC** means the Securities and Exchange Commission.
- 2.34 **Stock** means common stock, par value \$0.001 per share, of the Company, and such other securities as may be substituted for Stock pursuant to Section 8.
- 2.35 **Stock Appreciation Right** means a right to receive any excess in the Market Value of a share of Stock (except as otherwise provided in Section 7.2(c)) over a specified exercise price.
- 2.36 **Stock Grant** means the grant of Stock not subject to restrictions or other forfeiture conditions.
- 2.37 **Subsidiary** means a subsidiary corporation of the Company, whether now or hereafter existing, as defined in Section 424(f) of the Code.

2.38 **Ten Percent Owner** means a person who owns, or is deemed within the meaning of Section 422(b)(6) of the Code to own, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company (or any Parent or Subsidiary of the Company). Whether a person is a Ten Percent Owner shall be determined with respect to an Option based on the facts existing immediately prior to the Grant Date of the Option.

2.39 **Vesting Commencement Date** means, with respect to an Option or Stock Appreciation Right, the date, determined by the Committee, on which the vesting of the Option or Stock Appreciation Right shall commence, which may be the Grant Date or a date prior to or after the Grant Date.

3. **Term of the Plan.** Unless the Plan shall have been earlier terminated by the Board, Awards may be granted under the Plan at any time in the period commencing on the Effective Date and ending immediately prior to the tenth anniversary of the Effective Date. Awards granted pursuant to the Plan within that period shall not expire solely by reason of the termination of the Plan.

4. **Stock Subject to the Plan.** Subject to Section 8, the maximum aggregate number of shares of Stock which may be issued pursuant to or subject to outstanding Awards granted under the Plan is 8,000,000, plus an annual increase to be automatically added on the first day of the Company's fiscal year beginning in 2006 equal to the lesser of (i) one percent of the number of outstanding shares of Stock on such day, (ii) 750,000 and (iii) such other amount as the Board may specify prior to the date such annual increase is to take effect. The maximum aggregate number of shares of Stock which may be issued pursuant to or subject to outstanding Incentive Options granted under the Plan is 6,000,000. For purposes of applying the foregoing limitations, if any Option or Stock Appreciation Right expires, terminates, or is cancelled for any reason without having been exercised in full, or if any other Award is forfeited by the recipient, the shares of Stock not purchased by the Optionee or which are forfeited by the recipient shall again be available for Awards to be granted under the Plan. In addition, exercise or settlement of any Award shall not count against the foregoing limitations except to the extent settled in the form of Stock. Stock issued pursuant to Awards granted under the Plan and later repurchased by the Company pursuant to any repurchase right (other than the repurchase of shares that have not vested and are subject to forfeiture prior to vesting) that the Company may have shall not be available for future grant of Awards under the Plan.

5. **Administration.** The Plan shall be administered by the Committee; *provided, however*, that at any time and on any one or more occasions the Board may itself exercise any of the powers and responsibilities assigned the Committee under the Plan and when so acting shall have the benefit of all of the provisions of the Plan pertaining to the Committee's exercise of its authorities hereunder. Subject to the provisions of the Plan, the Committee shall have complete authority, in its discretion, to make or to select the manner of making all determinations with respect to each Award to be granted by the Company under the Plan, including the employee, consultant or director to receive the Award and the form of Award. In making such determinations, the Committee may take into account the nature of the services rendered by the respective employees, consultants, and directors, their present and potential contributions to the success of the Company and Affiliates, and such other factors as the Committee in its discretion shall deem relevant. Subject to the provisions of the Plan, the Committee shall also have complete authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of the respective Award Agreements (which need not be identical), and to make all other determinations necessary or advisable for the administration of the Plan. The Committee's determinations made in good faith on matters referred to in the Plan shall be final, binding and conclusive on all persons having or claiming any interest under the Plan or an Award made pursuant to hereto.

## 6. Authorization of Grants.

6.1 Eligibility. The Committee may grant from time to time and at any time prior to the termination or expiration of the Plan one or more Awards, either alone or in combination with any other Awards, to any employee of or consultant to one or more of the Company and Affiliates or to any non-employee member of the Board or of any board of directors (or similar governing authority) of any Affiliate. However, only employees of the Company, and of any Parent or Subsidiary of the Company, shall be eligible for the grant of an Incentive Option. Further, in no event shall the number of shares of Stock covered by Options or other Awards granted to any one person in any one calendar year exceed 1,500,000 shares of Stock subject to the Plan.

6.2 General Terms of Awards. Each grant of an Award shall be subject to all applicable terms and conditions of the Plan (including but not limited to any specific terms and conditions applicable to that type of Award set out in the following Section), and such other terms and conditions, not inconsistent with the terms of the Plan, as the Committee may prescribe. No prospective Participant shall have any rights with respect to an Award, unless and until such Participant has (a) (i) executed an Award Agreement with respect to such Award and delivered a fully executed copy of such Award Agreement to the Company, or (ii) otherwise affirmatively assented to the terms and conditions of an Award Agreement with respect to such Award, including by “click through” agreement, pursuant to procedures and guidelines approved by the Committee, and (b) otherwise complied with the applicable terms and conditions of such Award.

### 6.3 Effect of Termination of Employment, Disability or Death.

(a) Termination of Employment, Etc. Unless the Committee shall provide otherwise with respect to any Award, if the Participant’s employment or other association with the Company and Affiliates ends for any reason other than by total disability or death, including because of the Participant’s employer ceasing to be an Affiliate, (i) any outstanding Option or Stock Appreciation Right of the Participant shall cease to be exercisable in any respect not later than 90 days following that event and, for the period it remains exercisable following that event, shall be exercisable only to the extent exercisable at the date of that event, subject to the condition that no Option or Stock Appreciation Right shall be exercised after its expiration in accordance with its terms, and (ii) any other outstanding Award of the Participant shall be forfeited or otherwise subject to return to or repurchase by the Company on the terms specified in the applicable Award Agreement. Military or sick leave or other public (such as jury duty) or personal leave approved by an authorized representative of the Company shall not be deemed a termination of employment or other association, *provided* that it does not exceed the longer of 90 days or the period during which the absent Participant’s reemployment rights, if any, are guaranteed by statute or by contract.

(b) Disability of Participant. If a Participant's employment or other association with the Company and Affiliates ends due to disability (as defined in Section 22(e)(3) of the Code), and such Participant was in Continuous Service from the Grant Date until the date of termination of service, (i) any outstanding Option or Stock Appreciation Right may be exercised at any time within six months following the date of termination of service, but only to the extent of the accrued right to exercise at the time of termination of service, subject to the condition that no Option or Stock Appreciation Right shall be exercised after its expiration in accordance with its terms and (ii) any other outstanding Award or the Participant shall be forfeited or otherwise subject to return or repurchase by the Company on the terms specified in the applicable Award Agreement.

(c) Death of Participant. In the event of the death of a Participant who is at the time of such Participant's death an employee, director or consultant and who was in Continuous Service as from the Grant Date until the date of death, (i) any outstanding Option or Stock Appreciation Right of such Participant shall cease to be exercisable in any respect not later than 12 months following the date of death and, for the period it remains exercisable following the date of death, shall be exercisable by such Participant's estate or by a person who acquired the right to exercise such Award by bequest, inheritance or otherwise as a result of the Participant's death, but only to the extent exercisable at the date of death, subject to the condition that no Option or Stock Appreciation Right shall be exercised after its expiration in accordance with its terms, and (ii) any other outstanding Award of such Participant shall be forfeited or otherwise subject to return to or repurchase by the Company on the terms specified in the applicable Award Agreement.

6.4 Transferability of Awards. Except as otherwise provided in this Section 6.4, Awards shall not be transferable, and no Award or interest therein may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. All of a Participant's rights in any Award may be exercised during the life of the Participant only by the Participant or the Participant's legal representative. However, the Committee may, at or after the grant of an Award of a Nonstatutory Option, or Restricted Stock, provide that such Award may be transferred by the recipient through a gift or domestic relations order in settlement of marital property rights to any of the following donees or transferees and may be reacquired by the Participant from any of such donors or transferees:

(a) any "*family member*," which includes any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships and any individual sharing the Participant's household (other than a tenant or employee);

(b) a trust in which family members have more than 50% of the beneficial interests;

(c) a foundation in which "family members" (or the Participant) control the management of assets; and

(d) any other entity in which "family members" (or the Participant) own more than 50% of the voting interests.



*provided*, that (x) any such transfer is without payment of any consideration whatsoever and that no transfer shall be valid unless first approved by the Committee, acting in its sole discretion; (y) the Award Agreement pursuant to which such Awards are granted, and any amendments thereto, must be approved by the Committee and must expressly provide for transferability in a manner consistent with this Section 6.4; and (z) subsequent transfers of transferred Awards shall be prohibited except in accordance with this Section 6.4. Following transfer, any such Awards shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, *provided* that the term of the Plan or in the Award Agreement shall continue to be applied with respect to the original Participant, following which any Options or Stock Appreciation Rights shall be exercisable by the transferee only to the extent, and for the periods specified in the Award Agreement or Section 6.3, as applicable.

## 7. Specific Terms of Awards.

### 7.1 Options.

(a) Date of Grant. The granting of an Option shall take place at the time specified in the Award Agreement. Only if expressly so provided in the applicable Award Agreement shall the Grant Date be a date other than the date on which the Award Agreement shall have been duly executed and delivered by the Company and the Optionee.

(b) Exercise Price. The per share price at which Stock may be acquired under each Incentive Option shall be not less than 100% of the Market Value of a share of Stock on the Grant Date, or not less than 110% of the Market Value of a share of Stock on the Grant Date if the Optionee is a Ten Percent Owner. The price at which shares may be acquired under each Nonstatutory Option shall not be so limited solely by reason of this Section.

(c) Option Period. No Incentive Option may be exercised on or after the tenth anniversary of the Grant Date, or on or after the fifth anniversary of the Grant Date if the Optionee is a Ten Percent Owner. The Option period under each Nonstatutory Option shall not be so limited solely by reason of this Section.

(d) Exercisability. An Option may be immediately exercisable or become exercisable in such installments, cumulative or non-cumulative, as the Committee may determine. Unless the Committee specifically determines otherwise at the time of the grant of the Option, each Option shall vest and become exercisable, cumulatively, as to one-fourth of the Stock originally subject to the Option at the first anniversary of the Vesting Commencement Date and as to one forty-eighth of the Stock originally subject to the Option at the end of each successive month thereafter until all of the Stock subject to the Option have vested, subject to Section 6.3. In the case of an Option not otherwise immediately exercisable in full, the Committee may Accelerate such Option in whole or in part at any time; *provided, however*; that in the case of an Incentive Option, any such Acceleration of the Option would not cause the Option to fail to comply with the provisions of Section 422 of the Code or the Optionee consents to the Acceleration.

(e) Method of Exercise. An Option may be exercised by the Optionee giving written notice, in the manner provided in Section 15, specifying the number of shares of Stock with respect to which the Option is then being exercised. The notice shall be accompanied by payment in the form of cash or check payable to the order of the Company in an amount equal to the exercise price of the Stock to be purchased or, if the Committee had so authorized on the grant of an Incentive Option or on or after grant of a Nonstatutory Option (and subject to such conditions, if any, as the Committee may deem necessary to avoid adverse accounting effects to the Company) by delivery to the Company of

(i) Stock having a Market Value equal to the exercise price of the Stock to be purchased upon exercise of such Option, or

(ii) unless or to the extent not prohibited by applicable law, the Optionee's executed promissory note in the principal amount equal to the exercise price of the shares to be purchased and otherwise in such form as the Committee shall have approved.

If the Stock is traded on an established market, payment of any exercise price may also be made through and under the terms and conditions of any formal cashless exercise program authorized by the Company entailing the sale of the Stock subject to an Option in a brokered transaction (other than to the Company). Receipt by the Company of such notice and payment in any authorized or combination of authorized means shall constitute the exercise of the Option. Within 30 days thereafter but subject to the remaining provisions of the Plan, the Company shall deliver or cause to be delivered to the Optionee or his agent a certificate or certificates for the number of shares of Stock then being purchased. Such shares of Stock shall be fully paid and nonassessable.

(f) Limit on Incentive Option Characterization. An Incentive Option shall be considered to be an Incentive Option only to the extent that the number of shares of Stock for which the Option first becomes exercisable in a calendar year do not have an aggregate Market Value (as of the date of the grant of the Option) in excess of the "*current limit*." The current limit for any Optionee for any calendar year shall be \$100,000 *minus* the aggregate Market Value at the date of grant of the number of shares of Stock available for purchase for the first time in the same year under each other Incentive Option previously granted to the Optionee under the Plan, and under each other incentive stock option previously granted to the Optionee under any other incentive stock option plan of the Company and Affiliates. Any Stock which would cause the foregoing limit to be violated shall be deemed to have been granted under a separate Nonstatutory Option, otherwise identical in its terms to those of the Incentive Option.

(g) Notification of Disposition. Each person exercising any Incentive Option granted under the Plan shall be deemed to have covenanted with the Company to report to the Company any disposition of such shares prior to the expiration of the holding periods specified by Section 422(a)(1) of the Code and, if and to the extent that the realization of income in such a disposition imposes upon the Company federal, state, local or other withholding tax requirements, or any such withholding is required to secure for the Company an otherwise available tax deduction, to remit to the Company an amount in cash sufficient to satisfy those requirements.

(h) Automatic Option Grants. The provisions set forth in this Section 7.1(h) shall not be amended more than once every six months other than to comport with changes in the Code, the Employee Retirement Income Security Act of 1974, as amended, or the rules promulgated thereunder. All grants of Options to non-employee directors under the Plan shall be automatic and nondiscretionary and shall be made strictly in accordance with the following provisions:

(i) No person shall have any discretion to select which non-employee directors shall be granted Options.

(ii) Each non-employee director shall be automatically granted a Nonstatutory Option (an “*Automatic Director Option*”) to purchase 50,000 shares of Stock at the first meeting of the Board following the annual meeting of stockholders in each year, commencing with the 2005 annual meeting of stockholders, provided that such director is not an employee and if, as of such date, such non-employee director shall have served on the Board for at least the preceding six months.

(iii) The terms of an Automatic Director Option granted hereunder shall be as follows:

(A) the term of the Automatic Director Option shall be 10 years;

(B) the exercise price per share shall be 105% of the Market Value per share on the date of grant of the Automatic Director Option. In the event that the date of grant of the Automatic Director Option is not a trading day, the exercise price per share shall be 105% of the Market Value on the next trading day immediately following the date of grant of the Automatic Director Option;

(C) subject to Section 9, the Automatic Director Option shall become exercisable as to 1/12th of the shares subject to the Automatic Director Option at the end of each calendar month after its date of grant, provided that the Optionee was in Continuous Service on such dates;

(D) except as the terms of this Section 7.1(h) otherwise provide, the terms and conditions of the Plan shall apply to Automatic Director Options.

(iv) In the event that any Automatic Director Option granted under the Plan would cause the number of shares subject to outstanding Options plus the number of shares previously purchased under Options to exceed the total number of authorized shares then available under the Plan, the remaining shares available for Option grant shall be granted under Options to the non-employee directors on a pro rata basis. No further grants shall be made until such time, if any, as additional shares become available for grant under the Plan through action of the Board or the stockholders to increase the number of shares which may be issued under the Plan or through cancellation or expiration of Awards previously granted hereunder.

7.2 Stock Appreciation Rights.

- (a) Tandem or Stand-Alone. Stock Appreciation Rights may be granted in tandem with an Option (at or, in the case of a Nonstatutory Option, after, the award of the Option), or alone and unrelated to an Option. Stock Appreciation Rights in tandem with an Option shall terminate to the extent that the related Option is exercised, and the related Option shall terminate to the extent that the tandem Stock Appreciation Rights are exercised.
- (b) Exercise Price. Stock Appreciation Rights shall have such exercise price as the Committee may determine, except that in the case of Stock Appreciation Rights in tandem with Options, the exercise price of the Stock Appreciation Rights shall equal the exercise price of the related Option.
- (c) Other Terms. Except as the Committee may deem inadvisable or inapplicable in the circumstances, Stock Appreciation Rights shall be subject to terms and conditions substantially similar to those applicable to a Nonstatutory Option. In addition, a Stock Appreciation Right related to an Option which can only be exercised during limited periods following a Change of Control may entitle the Participant to receive an amount based upon the highest price paid or offered for Stock in any transaction relating to the Change of Control or paid during the 30-day period immediately preceding the occurrence of the Change of Control in any transaction reported in the stock market in which the Stock is normally traded.

7.3 Restricted Stock.

- (a) Purchase Price. Shares of Restricted Stock shall be issued under the Plan for such consideration, in cash, other property or services, or any combination thereof, as is determined by the Committee.
- (b) Issuance of Certificates. Each Participant receiving a Restricted Stock Award, subject to Section 7.3(c), shall be issued a stock certificate in respect of such Restricted Stock. Such certificate shall be registered in the name of such Participant, and, if applicable, shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award substantially in the following form:

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE 2005 EQUITY INCENTIVE PLAN OF THE ISSUER AND AN AWARD AGREEMENT ENTERED INTO BY THE REGISTERED OWNER AND THE ISSUER. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE OFFICES OF THE ISSUER.

- (c) Escrow of Shares. The Committee may require that the stock certificates evidencing Restricted Stock be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and that the Participant deliver a stock power, endorsed in blank, relating to the Stock covered by such Award.

(d) Restrictions and Restriction Period. During the Restriction Period applicable to Restricted Stock, such shares shall be subject to limitations on transferability and a Risk of Forfeiture arising on the basis of such conditions related to the performance of services, Company or Affiliate performance or otherwise as the Committee may determine and provide for in the applicable Award Agreement. Any such Risk of Forfeiture may be waived or terminated, or the Restriction Period shortened, at any time by the Committee on such basis as it deems appropriate.

(e) Rights Pending Lapse of Risk of Forfeiture or Forfeiture of Award. Except as otherwise provided in the Plan or the applicable Award Agreement, at all times prior to lapse of any Risk of Forfeiture applicable to, or forfeiture of, an Award of Restricted Stock, the Participant shall have all of the rights of a stockholder of the Company, including the right to vote, and the right to receive any dividends with respect to, the Restricted Stock. The Committee, as determined at the time of Award, may permit or require the payment of cash dividends to be deferred and, if the Committee so determines, reinvested in additional Restricted Stock to the extent shares are available under Section 4.

(f) Lapse of Restrictions. If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock, the certificates for such shares shall be delivered to the Participant promptly if not theretofore so delivered.

#### 7.4 Restricted Stock Units.

(a) Character. Each Restricted Stock Unit shall entitle the recipient to a share of Stock at a close of such Restriction Period as the Committee may establish and subject to a Risk of Forfeiture arising on the basis of such conditions relating to the performance of services, Company or Affiliate performance or otherwise as the Committee may determine and provide for in the applicable Award Agreement. Any such Risk of Forfeiture may be waived or terminated, or the Restriction Period shortened, at any time by the Committee on such basis as it deems appropriate.

(b) Form and Timing of Payment. Payment of earned Restricted Stock Units shall be made in a single lump sum following the close of the applicable Restriction Period. At the discretion of the Committee, Participants may be entitled to receive payments equivalent to any dividends declared with respect to Stock referenced in grants of Restricted Stock Units but only following the close of the applicable Restriction Period and then only if the underlying Stock shall have been earned. Unless the Committee shall provide otherwise, any such dividend equivalents shall be paid, if at all, without interest or other earnings.

#### 7.5 Performance Units.

(a) Character. Each Performance Unit shall entitle the recipient to the value of a specified number of shares of Stock, over the initial value for such number of shares, if any, established by the Committee at the time of grant, at the close of a specified Performance Period to the extent specified Performance Goals shall have been achieved.

(b) Earning of Performance Units. The Committee shall set Performance Goals in its discretion which, depending on the extent to which they are met within the applicable Performance Period, will determine the number and value of Performance Units that will be paid out to the Participant. After the applicable Performance Period has ended, the holder of Performance Units shall be entitled to receive payout on the number and value of Performance Units earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding Performance Goals have been achieved.

(c) Form and Timing of Payment. Payment of earned Performance Units shall be made in a single lump sum following the close of the applicable Performance Period. At the discretion of the Committee, Participants may be entitled to receive any dividends declared with respect to Stock which have been earned in connection with grants of Performance Units which have been earned, but not yet distributed to Participants. The Committee may permit or, if it so provides at grant require, a Participant to defer such Participant's receipt of the payment of cash or the delivery of Stock that would otherwise be due to such Participant by virtue of the satisfaction of any requirements or goals with respect to Performance Units. If any such deferral election is required or permitted, the Committee shall establish rules and procedures for such payment deferrals.

7.6 Stock Grants. Stock Grants shall be awarded solely in recognition of significant contributions to the success of the Company or Affiliates, in lieu of compensation otherwise already due and in such other limited circumstances as the Committee deems appropriate. Stock Grants shall be made without forfeiture conditions of any kind.

7.7 Qualified Performance-Based Awards.

(a) Purpose. The purpose of this Section 7.7 is to provide the Committee the ability to qualify Awards as "performance-based compensation" under Section 162(m) of the Code. If the Committee, in its discretion, decides to grant an Award as a Qualified Performance-Based Award, the provisions of this Section 7.7 will control over any contrary provision contained in the Plan. In the course of granting any Award, the Committee may specifically designate the Award as intended to qualify as a Qualified Performance-Based Award. However, no Award shall be considered to have failed to qualify as a Qualified Performance-Based Award solely because the Award is not expressly designated as a Qualified Performance-Based Award, if the Award otherwise satisfies the provisions of this Section 7.7 and the requirements of Section 162(m) of the Code and the regulations promulgated thereunder applicable to "performance-based compensation."

(b) Authority. All grants of Awards intended to qualify as Qualified Performance-Based Awards and determination of terms applicable thereto shall be made by the Committee or, if not all of the members thereof qualify as "**Outside Directors**" within the meaning of applicable IRS regulations under Section 162 of the Code, a subcommittee of the Committee consisting of such of the members of the Committee as do so qualify. Any action by such a subcommittee shall be considered the action of the Committee for purposes of the Plan.

(c) Applicability. This Section 7.7 will apply only to those Covered Employees, or to those persons who the Committee determines are reasonably likely to become Covered Employees in the period covered by an Award, selected by the Committee to receive Qualified Performance-Based Awards. The Committee may, in its discretion, grant Awards to Covered Employees that do not satisfy the requirements of this Section 7.7.

(d) Discretion of Committee with Respect to Qualified Performance-Based Awards. Options may be granted as Qualified Performance-Based Awards in accordance with Section 7.1, except that the exercise price of any Option intended to qualify as a Qualified Performance-Based Award shall in no event be less than the Market Value of the Stock on the date of grant. With regard to other Awards intended to qualify as Qualified Performance-Based Awards, such as Restricted Stock, Restricted Stock Units, or Performance Units, the Committee will have full discretion to select the length of any applicable Restriction Period or Performance Period, the kind or level of the applicable Performance Goal, and whether the Performance Goal is to apply to the Company, a Subsidiary or any division or business unit or to the individual. Any Performance Goal or Goals applicable to Qualified Performance-Based Awards shall be objective, shall be established not later than 90 days after the beginning of any applicable Performance Period (or at such other date as may be required or permitted for “performance-based compensation” under Section 162(m) of the Code) and shall otherwise meet the requirements of Section 162(m) of the Code, including the requirement that the outcome of the Performance Goal or Goals be substantially uncertain (as defined in the regulations under Section 162(m) of the Code) at the time established.

(e) Payment of Qualified Performance-Based Awards. A Participant will be eligible to receive payment under a Qualified Performance-Based Award which is subject to achievement of a Performance Goal or Goals only if the applicable Performance Goal or Goals period are achieved within the applicable Performance Period, as determined by the Committee. In determining the actual size of an individual Qualified Performance-Based Award, the Committee may reduce or eliminate the amount of the Qualified Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.

(f) Maximum Award Payable. The maximum Qualified Performance-Based Award payment to any one Participant under the Plan for a Performance Period is the number of shares of Stock set forth in Section 4, or if the Qualified Performance-Based Award is paid in cash, that number of shares multiplied by the Market Value of the Stock as of the date the Qualified Performance-Based Award is granted.

(g) Limitation on Adjustments for Certain Events. No adjustment of any Qualified Performance-Based Award pursuant to Section 8 shall be made except on such basis, if any, as will not cause such Award to provide other than “performance-based compensation” within the meaning of Section 162(m) of the Code.

7.8 Awards to Participants Outside the United States. The Committee may modify the terms of any Award under the Plan, granted to a Participant who is, at the time of grant or during the term of the Award, resident or primarily employed outside of the United States in any manner deemed by the Committee to be necessary or appropriate in order that the Award shall conform to laws, regulations, and customs of the country in which the Participant is then resident or primarily employed, or so that the value and other benefits of the Award to the Participant, as affected by foreign tax laws and other restrictions applicable as a result of the Participant’s residence or employment abroad, shall be comparable to the value of such an Award to a Participant who is resident or primarily employed in the United States. The Committee may establish supplements to, or amendments, restatements, or alternative versions of, the Plan for the purpose of granting and administering any such modified Award. No such modification, supplement, amendment, restatement or alternative version may increase the share limit of Section 4.

7.9 Notwithstanding any other provisions of the Plan, it is not intended that any grant of an Award shall result in the deferral of compensation within the meaning of Section 409A of the Code; *provided, however*, that to the extent the grant of an Award would result in the deferral of compensation under Section 409A of the Code, such Award shall comply with the requirements of Section 409A of the Code. .

## 8. Adjustment Provisions.

8.1 Adjustment for Corporate Actions. All of the share numbers set forth in the Plan reflect the capital structure of the Company as of the Effective Date. Subject to Section 8.2, if subsequent to that date the outstanding number of shares of Stock (or any other securities covered by the Plan by reason of the prior application of this Section) are increased, decreased, or exchanged for a different number or kind of shares or other securities, or if additional shares or new or different shares or other securities are distributed with respect to such outstanding Stock, through merger, consolidation, sale of all or substantially all the property of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other similar distribution with respect to such Stock, an appropriate and proportionate adjustment will be made in (i) the maximum numbers and kinds of shares provided in Section 4, (ii) the numbers and kinds of shares or other securities subject to the then outstanding Awards, (iii) the exercise price for each share or other unit of any other securities subject to then outstanding Options and Stock Appreciation Rights (without change in the aggregate purchase price as to which such Options or Rights remain exercisable), and (iv) the repurchase price of each share of Restricted Stock then subject to a Risk of Forfeiture in the form of a Company repurchase right.

### 8.2 Treatment in Certain Acquisitions.

(a) Subject to any provisions of then outstanding Awards granting different rights to the holders thereof, in the event of an Acquisition constituting a Change of Control in which outstanding Awards are not Accelerated in full, any then outstanding Awards shall nevertheless Accelerate in full if not assumed or replaced by comparable Awards referencing shares of the capital stock of the successor or acquiring entity or the entity in control of such successor or acquiring entity, and thereafter (or after a reasonable period following such Acquisition, as determined by the Committee) terminate. As to any one or more outstanding Awards which are not otherwise Accelerated in full by reason of such Acquisition, the Committee may also, either in advance of such Acquisition or at the time thereof and upon such terms as it may deem appropriate, provide for the Acceleration of such outstanding Awards in the event that the employment of the Participants should subsequently terminate following such Acquisition. Each outstanding Award that is assumed in connection with such Acquisition, or is otherwise to continue in effect subsequent to such Acquisition, will be appropriately adjusted, immediately after such Acquisition, as to the number and class of securities and other relevant terms in accordance with Section 8.1.



(b) For the purposes of this Section 8.2, an Award shall be considered assumed or replaced by a comparable Award if, following the Acquisition constituting a Change of Control, the Award confers the right to purchase, for each share of Stock subject to the Award immediately prior to such Acquisition, the consideration (whether stock, cash or other securities or property) received in such Acquisition by holders of Stock on the effective date of such Acquisition (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Stock); *provided, however*, that if such consideration received in such Acquisition was not solely common stock of the successor corporation or its Parent or Subsidiary, the Committee may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Award for each share of Stock subject to the Award to be solely common stock of the successor corporation or its Parent or Subsidiary equal in fair market value to the per share consideration received by holders of Stock in such Acquisition.

8.3 Dissolution or Liquidation. Upon dissolution or liquidation of the Company, other than as part of an Acquisition or similar transaction, (a) each outstanding Option and Stock Appreciation Right shall terminate, but the Optionee or Stock Appreciation Right holder shall have the right, immediately prior to such dissolution or liquidation, to exercise the Option or Stock Appreciation Right to the extent exercisable on the date of dissolution or liquidation; (b) each share of Restricted Stock that is subject to a Risk of Forfeiture immediately prior to such dissolution or liquidation may, at the election of the Company, be forfeited by the Company prior to such dissolution or liquidation pursuant to the terms of the applicable Award Agreement; and (c) subject to subparts (a) and (b) of this Section 8.3, each other outstanding Award shall be forfeited.

8.4 Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events. In the event of any corporate action not specifically covered by the preceding sections, including but not limited to an extraordinary cash distribution on Stock, a corporate separation or other reorganization or liquidation, the Committee may make such adjustment of outstanding Awards and their terms, if any, as it, in its sole discretion, may deem equitable and appropriate in the circumstances. The Committee may make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in this Section 8.4) affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

8.5 Related Matters. Any adjustment in Awards made pursuant to this Section 8 shall be determined and made, if at all, by the Committee and shall include any correlative modification of terms, including of Option exercise prices, rates of vesting or exercisability, Risks of Forfeiture, applicable repurchase prices for Restricted Stock, and Performance Goals and other financial objectives which the Committee may deem necessary or appropriate so as to ensure the rights of the Participants in their respective Awards are not substantially diminished nor enlarged as a result of the adjustment and corporate action other than as expressly contemplated in this Section 8. No fraction of a share shall be purchasable or deliverable upon exercise, but in the event any adjustment hereunder of the number of shares covered by an Award shall cause such number to include a fraction of a share, such number of shares shall be adjusted to the nearest smaller whole number of shares. No adjustment of an Option exercise price per share pursuant to this Section 8 shall result in an exercise price which is less than the par value of the Stock.

## 9. Settlement of Awards

9.1 In General. Options and Restricted Stock shall be settled in accordance with their terms. All other Awards may be settled in cash, Stock, or other Awards, or a combination thereof, as determined by the Committee at or after grant and subject to any contrary Award Agreement. The Committee may not require settlement of any Award in Stock pursuant to the immediately preceding sentence to the extent issuance of such Stock would be prohibited or unreasonably delayed by reason of any other provision of the Plan.

9.2 Violation of Law. Notwithstanding any other provision of the Plan or the relevant Award Agreement, if, at any time, in the reasonable opinion of the Company, the issuance of Stock covered by an Award may constitute a violation of law, then the Company may delay such issuance and the delivery of a certificate for such shares until (i) approval shall have been obtained from such governmental agencies, other than the SEC, as may be required under any applicable law, rule, or regulation and (ii) in the case where such issuance would constitute a violation of a law administered by or a regulation of the SEC, one of the following conditions shall have been satisfied:

(a) the shares are at the time of the issue of such shares effectively registered under the Securities Act; or

(b) the Company shall have determined, on such basis as it deems appropriate (including an opinion of counsel in form and substance satisfactory to the Company) that the sale, transfer, assignment, pledge, encumbrance or other disposition of such shares or such beneficial interest, as the case may be, does not require registration under the Securities Act or any applicable State securities laws.

The Company shall make all reasonable efforts to bring about the occurrence of said events.

9.3 Corporate Restrictions on Rights in Stock. Any Stock to be issued pursuant to Awards granted under the Plan shall be subject to all restrictions upon the transfer thereof which may be now or hereafter imposed by the charter, certificate or articles, or bylaws, of the Company.

9.4 Investment Representations. The Company shall be under no obligation to issue any shares covered by any Award unless the shares to be issued pursuant to Awards granted under the Plan have been effectively registered under the Securities Act, or the Participant shall have made such written representations to the Company (upon which the Company believes it may reasonably rely) as the Company may deem necessary or appropriate for purposes of confirming that the issuance of such shares will be exempt from the registration requirements of the Securities Act and any applicable state securities laws and otherwise in compliance with all applicable laws, rules and regulations, including but not limited to that the Participant is acquiring the shares for such Participant's own account for the purpose of investment and not with a view to, or for sale in connection with, the distribution of any such shares.

9.5 Registration. If the Company shall deem it necessary or desirable to register under the Securities Act or other applicable statutes any Stock issued or to be issued pursuant to Awards granted under the Plan, or to qualify any such Stock for exemption from the Securities Act or other applicable statutes, then the Company shall take such action at its own expense. The Company may require from each recipient of an Award, or each holder of Stock acquired pursuant to the Plan, such information in writing for use in any registration statement, prospectus, preliminary prospectus or offering circular as is reasonably necessary for that purpose and may require reasonable indemnity to the Company and its officers and directors from that holder against all losses, claims, damage and liabilities arising from use of the information so furnished and caused by any untrue statement of any material fact therein or caused by the omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made. In addition, the Company may require of any such person that such person agree that, without the prior written consent of the Company or the managing underwriter in any public offering of Stock, such person will not sell, make any short sale of, loan, grant any option for the purchase of, pledge or otherwise encumber, or otherwise dispose of, any Stock during the 180-day period commencing on the effective date of the registration statement relating to the underwritten public offering of securities. Without limiting the generality of the foregoing provisions of this Section 9.5, if in connection with any underwritten public offering of securities of the Company the managing underwriter of such offering requires that the Company's directors and officers enter into a lock-up agreement containing provisions that are more restrictive than the provisions set forth in the preceding sentence, then (a) each holder of Stock acquired pursuant to the Plan (regardless of whether such person has complied or complies with the provisions of clause (b) below) shall be bound by, and shall be deemed to have agreed to, the same lock-up terms as those to which the Company's directors and officers are required to adhere; and (b) at the request of the Company or such managing underwriter, each such person shall execute and deliver a lock-up agreement in form and substance equivalent to that which is required to be executed by the Company's directors and officers.

9.6 Placement of Legends; Stop Orders; etc. Each share of Stock to be issued pursuant to Awards granted under the Plan may bear a reference to the investment representation made in accordance with Section 9.4 in addition to any other applicable restriction under the Plan, the terms of the Award and, if applicable, to the fact that no registration statement has been filed with the SEC in respect to such Stock. All certificates for Stock or other securities delivered under the Plan shall be subject to such stock transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of any stock exchange upon which the Stock is then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

9.7 **Tax Withholding.** Whenever Stock are issued or to be issued pursuant to Awards granted under the Plan, the Company shall have the right to require the recipient to remit to the Company an amount sufficient to satisfy federal, state, local or other withholding tax requirements if, when, and to the extent required by law (whether so required to secure for the Company an otherwise available tax deduction or otherwise) prior to the delivery of any certificate or certificates for such shares. The obligations of the Company under the Plan shall be conditional on satisfaction of all such withholding obligations and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the recipient of an Award. However, in such cases Participants may elect, subject to the approval of the Committee, to satisfy an applicable withholding requirement, in whole or in part, by having the Company withhold shares to satisfy their tax obligations. Participants may only elect to have shares withheld having a Market Value on the date the tax is to be determined equal to the minimum statutory total tax which could be imposed on the transaction. All elections shall be irrevocable, made in writing, signed by the Participant, and shall be subject to any restrictions or limitations that the Committee deems appropriate.

10. **Reservation of Stock.** The Company shall at all times during the term of the Plan and any outstanding Awards granted hereunder reserve or otherwise keep available such number of shares of Stock as will be sufficient to satisfy the requirements of the Plan (if then in effect) and the Awards and shall pay all fees and expenses necessarily incurred by the Company in connection therewith.

11. **Limitation of Rights in Stock; No Special Service Rights.** Subject to Section 7.3(e), a Participant shall not be deemed for any purpose to be a stockholder of the Company with respect to any of the Stock subject to an Award, unless and until a certificate shall have been issued therefor and delivered to the Participant or his/her agent. Any Stock to be issued pursuant to Awards granted under the Plan shall be subject to all restrictions upon the transfer thereof which may be now or hereafter imposed by the certificate of incorporation and the bylaws of the Company. Nothing contained in the Plan or in any Award Agreement shall confer upon any recipient of an Award any right with respect to the continuation of such recipient's employment or other association with the Company (or any Affiliate), or interfere in any way with the right of the Company (or any Affiliate), subject to the terms of any separate employment or consulting agreement or provision of law or certificate of incorporation or bylaws to the contrary, at any time to terminate such employment or consulting agreement or to increase or decrease, or otherwise adjust, the other terms and conditions of the recipient's employment or other association with the Company and Affiliates.

12. **Unfunded Status of the Plan.** The Plan is intended to constitute an "unfunded" plan for incentive compensation, and the Plan is not intended to constitute a plan subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended. With respect to any payments not yet made to a Participant by the Company, nothing contained in this Plan shall give any such Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Stock or payments with respect to Options, Stock Appreciation Rights and other Awards hereunder, *provided, however*, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

13. **Nonexclusivity of the Plan.** Neither the adoption of the Plan by the Board nor the submission of the Plan to the stockholders of the Company shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including without limitation, the granting of stock options and restricted stock other than under the Plan, and such arrangements may be either applicable generally or only in specific cases.

**14. Termination and Amendment of the Plan.**

14.1 The Board may at any time terminate the Plan or make such modifications of the Plan as it shall deem advisable. Unless the Board otherwise expressly provides, no amendment of the Plan shall affect the terms of any Award outstanding on the date of such amendment unless such amendment is necessary to comply with Section 409A of the Code. In any case, no termination or amendment of the Plan may, without the consent of any recipient of an Award granted hereunder, adversely affect the rights of the recipient under such Award.

14.2 The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, provided that the Award as amended is consistent with the terms of the Plan, but no such amendment shall impair the rights of the recipient of such Award without such recipient's consent unless the impairment of such rights is necessary to comply with Section 409A of the Code.

**15. Notices and Other Communications.** Any notice, demand, request or other communication hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by first class registered, certified or overnight mail, postage prepaid, or telecopied with a confirmation copy by regular, certified or overnight mail, addressed or telecopied, as the case may be, (i) if to the recipient of an Award, at such recipient's residence address last filed with the Company and (ii) if to the Company, at its principal place of business, addressed to the attention of its Chief Financial Officer, or to such other address or telecopier number or electronic mail address, as the case may be, as the addressee may have designated by notice to the addressor. All such notices, requests, demands and other communications shall be deemed to have been received: (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of mailing, when received by the addressee; (iii) in the case of facsimile transmission, when confirmed by facsimile machine report; and (iv) in the case of electronic mail, when directed to an electronic mail address at which the receiving party has consented to receive notice, *provided*, that such consent is deemed revoked if the sender is unable to deliver by electronic transmission two consecutive notices and such inability becomes known to the secretary or assistant secretary of the Company or to the transfer agent, or other person responsible for giving notice.

**16. Governing Law.** The Plan and all Award Agreements and actions taken thereunder shall be governed, interpreted and enforced in accordance with the laws of the State of California, without regard to the conflict of laws principles thereof.

### Stock Option Agreement

ADVENTRX Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and the undersigned person ("**Optionee**") have entered into this Stock Option Agreement (this "**Agreement**") effective as of the Grant Date set forth below. The Company has granted to Optionee the option (the "**Option**") to purchase the number of shares (the "**Shares**") of common stock, par value \$0.001 per share, of the Company ("**Common Stock**") set forth below at the per Share purchase price (the "**Exercise Price**") set forth below, pursuant to the terms of this Agreement. The Option was granted under the Company's 2005 Equity Incentive Plan (the "**Plan**").

Optionee Name: \_\_\_\_\_

Grant Date:MM/DD/YYYY

Vesting Commencement Date:MM/DD/YYYY

Shares:X,XXX

Exercise Price:\$X.XX

**1. Terms of Plan.** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings ascribed thereto in the Plan. Optionee confirms and acknowledges that Optionee has received and reviewed copies of the Plan and the Information Statement, dated \_\_\_\_\_, with respect to the Plan. Optionee and the Company agree that the terms and conditions of the Plan are incorporated in this Agreement by this reference.

**2. Nature of the Option.** The Option has been granted as an incentive to Optionee's Continuous Service, and is in all respects subject to such Continuous Service and all other terms and conditions of this Agreement. The Option is intended to be an [Incentive/Nonstatutory] Option within the meaning of the Plan.

**3. Vesting and Exercise of Option.** The Option shall vest and become exercisable during its term in accordance with the following provisions:

**(a) Vesting and Right of Exercise.**

**(i)** The Option shall vest and become exercisable with respect to one-fourth of the Shares at the first anniversary of the Vesting Commencement Date set forth in the preamble of this Agreement and as to one forty-eighth of the Shares at the end of each successive month thereafter until all of the Shares have vested, subject to Optionee's Continuous Service.

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(ii) In the event of Optionee's death, disability or other termination of Optionee's Continuous Service, the Option shall be exercisable in the manner and to the extent provided in Section 6.3 of the Plan.

(iii) No fraction of a Share shall be purchasable or deliverable upon exercise of the Option, but in the event any adjustment hereunder of the number of Shares shall cause such number to include a fraction of a Share, such number of Shares shall be rounded down to the nearest smaller whole number of Shares.

(b) **Method of Exercise.** In order to exercise any portion of the Option which has vested, Optionee shall notify the Company in writing of the election to exercise such vested portion of the Option and the number of Shares in respect of which the Option is being exercised, by executing and delivering the Notice of Exercise of Stock Option in the form attached hereto as *Exhibit A* (the "**Exercise Notice**"). The certificate or certificates representing Shares as to which the Option has been exercised shall be registered in the name of Optionee.

(c) **Restrictions on Exercise.**

(i) Optionee may exercise the Option only with respect to Shares that have vested in accordance with Section 3(a) of this Agreement.

(ii) Optionee may not exercise the Option if the issuance of the Shares upon such exercise or the method of payment of consideration for such Shares would constitute a violation of any applicable federal or state securities law or other law or regulation.

(iii) The method and manner of payment of the Exercise Price will be subject to the rules under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board if such rules apply to the Company at the date of exercise.

(iv) As a condition to the exercise of the Option, the Company may require Optionee to make any representation or warranty to the Company at the time of exercise of the Option as in the opinion of legal counsel for the Company may be required by any applicable law or regulation, including the execution and delivery of an appropriate representation statement. Accordingly, the stock certificate(s) for the Shares issued upon exercise of the Option may bear appropriate legends restricting transfer.

(v) Optionee may only exercise the Option upon, and the obligations of the Company under this Agreement to issue Shares to Optionee upon any exercise of the Option is conditioned on, satisfaction of all federal, state, local or other withholding tax obligations associated with such exercise (whether so required to secure for the Company an otherwise available tax deduction or otherwise) ("**Withholding Obligations**"). The Company reserves the right to require Optionee to remit to the Company an amount sufficient to satisfy all Withholding Obligations prior to the issuance of any Shares upon any exercise of the Option. Optionee authorizes the Company to withhold in accordance with applicable law from any compensation payable to Optionee any amounts necessary to meet any Withholding Obligations.

**4. Non-Transferability of Option.** The Option may not be transferred in any manner other than by will or by the laws of descent and distribution. The terms of this Agreement shall bind the executors, administrators, heirs and successors of Optionee.

**5. Method of Payment.**

(a) Upon exercise, Optionee shall pay the aggregate Exercise Price of the Shares purchased by any of the following methods, or a combination thereof, at the election of Optionee:

(i) by cash;

(ii) by certified or bank cashier's check;

(iii) if shares of Common Stock are traded on an established stock market or exchange on the date of exercise, by surrender of whole shares of Common Stock having a Market Value equal to the portion of the Exercise Price to be paid by such surrender, provided that if such shares of Common Stock to be surrendered were acquired upon exercise of an Incentive Option, Optionee must have first satisfied the holding period requirements under Section 422(a)(1) of the Code; or

(iv) if shares of Common Stock are traded on an established stock market or exchange on the date of exercise, pursuant to and under the terms and conditions of any formal cashless exercise program authorized by the Company entailing the sale of the Stock subject to an Option in a brokered transaction (other than to the Company).

(b) If Optionee shall pay all or a portion of the aggregate Exercise Price due upon an exercise of the Option by surrendering shares of Common Stock pursuant to Section 5(a)(iii), then Optionee:

(i) shall accompany the Exercise Notice with a duly endorsed blank stock power with respect to the number of shares of Common Stock to be surrendered and shall deliver the certificate(s) representing such surrendered shares to the Company at its principal offices within two business days after the date of the Exercise Notice;

(ii) authorizes and directs the Secretary of the Company to transfer so many of the shares of Common Stock represented by such certificate(s) as are necessary to pay the aggregate Exercise Price in accordance with this Agreement;



(iii) agrees that Optionee may not surrender any fractional share as payment of any portion of the Exercise Price; and

(iv) agrees that, notwithstanding any other provision in this Agreement, Optionee may only surrender shares of Common Stock owned by Optionee as of the date of the Exercise Notice in the manner and within the time periods allowed under Rule 16b-3 promulgated under the Exchange Act.

6. **Adjustments to Option.** Subject to any required action by the stockholders of the Company, the number of Shares covered by the Option, and the Exercise Price, shall be proportionately adjusted in accordance with and pursuant to Section 8.1 of the Plan. Such adjustments shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided in this Agreement, no issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares or the Exercise Price.

7. **Term of Option.** The Option may not be exercised more than 10 years after the Grant Date, and may be exercised during such term only in accordance with the terms of this Agreement.

8. **Not Employment Contract.** Nothing in this Agreement shall confer upon Optionee any right to continue in the employ of the Company or shall interfere with or restrict in any way the rights of the Company, which are hereby expressly reserved, to terminate Optionee's Continuous Service at any time for any reason whatsoever, with or without cause, subject to the provisions of applicable law.

9. **Tax Consequences Generally.** Optionee acknowledges that Optionee may suffer adverse tax consequences as a result of Optionee's exercise of the Option. Optionee acknowledges that the Company advises that Optionee consult with Optionee's tax advisers in connection with any exercise of the Option or disposition of the Shares receivable upon exercise of the Option. Optionee agrees that Optionee is not relying on the Company for any tax advice with respect to the acceptance or exercise of the Option, the disposition of any Shares Optionee may acquire upon exercise of the Option or otherwise. Any adverse consequences incurred by an Optionee with respect to the use of shares of Common Stock to pay any part of the aggregate Exercise Price or of any tax in connection with the exercise of an Option, including, without limitation, any adverse tax consequences arising as a result of a disqualifying disposition within the meaning of Section 422 of the Code shall be the sole responsibility of Optionee.

10. **Adjustments in Acquisitions.** *[APPLICABLE PROVISION TO BE DESIGNATED BY COMPENSATION COMMITTEE AT TIME OF GRANT]*

[In accordance with the provisions of Section 8.2(a) of the Plan, the Option will Accelerate in full in the event of an Acquisition constituting a Change of Control if Optionee remains employed by the Company or one of its Affiliates as of the closing date of such Acquisition, and the Option is not assumed or replaced by the successor or acquiring entity or the entity in control of such successor or acquiring entity in accordance with Section 8.2 (referred to for purposes of this section as the “**Acquirer**”). Otherwise, the Option will not Accelerate in the event of an Acquisition. In this regard, if Optionee is offered employment or some other continuing role by or on behalf of the Acquirer, including but not limited to, continuing employment with the Company, and in connection therewith, the Acquirer offers to assume or replace the Option, the Option will not Accelerate if Optionee does not accept the offer.] **OR** [Notwithstanding the provision of Section 8.2(a) of the Plan, in the event of an Acquisition, the Option will not vest and become exercisable except as follows: *[specify alternative treatment]*]

[Subject to the terms of any other written agreement between Optionee and the Company related to Optionee’s Continuous Service and in accordance with Sections 8.1, 8.2, 8.4 and 8.5 of the Plan, the Committee may, if it so determines in the exercise of its sole discretion, also make provision for proportionately adjusting the number or class of securities covered by the Option, as well as the Exercise Price, in the event that the Company effects one or more Acquisitions, corporate separations, reorganizations, liquidations or other increases or reductions of shares of its outstanding Common Stock.] OR

[If, following a Change of Control in which the Option has been assumed by the successor or acquiring entity as of the closing date of such Change of Control, in the event of Optionee’s Involuntary Termination of employment within 24 months after the closing date of such Change of Control the vesting of the assumed Option shall be accelerated such that the Option will so vest as of the effective date of such Involuntary Termination with respect to all Shares that would have become vested during such 24-month period but for the Change of Control and Involuntary Termination (assuming Optionee’s Continuous Service). An “**Involuntary Termination**” is one that occurs by reason of dismissal for any reason other than Misconduct or of voluntary resignation following: (i) a change in position that materially reduces the level of Optionee’s responsibility, (ii) a material reduction in Optionee’s base salary, or (iii) relocation by more than 50 miles; provided that (ii) and (iii) will apply only if Optionee has not consented to the change or relocation. “**Misconduct**” shall mean the commission of any act of fraud, embezzlement or dishonesty by Optionee, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Company (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business affairs of the Company (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Company (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of Optionee.]

**11. Consent of Spouse/Domestic Partner.** Optionee agrees that Optionee’s spouse’s or domestic partner’s interest in the Option is subject to this Agreement and such spouse or domestic partner is irrevocably bound by the terms and conditions of this Agreement. Optionee agrees that all community property interests of Optionee and Optionee’s spouse or domestic partner in the Option, if any, shall similarly be bound by this Agreement. Optionee agrees that this Agreement is binding upon Optionee’s and Optionee’s spouse’s or domestic partner’s executors, administrators, heirs and assigns. Optionee represents and warrants to the Company that Optionee has the authority to bind Optionee’s spouse/domestic partner with respect to the Option. Optionee agrees to execute and deliver such documents as may be necessary to carry out the intent of this Section 11 and the consent of Optionee’s spouse/domestic partner.

\_\_\_\_\_  
[Optionee Name]

**ADVENTRX Pharmaceuticals, Inc.**

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

Name: \_\_\_\_\_

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

Notice of Exercise of Stock Option

I \_\_\_\_\_ (please print legibly) hereby elect to exercise the stock options(s) identified below (the "Option(s)") granted to me by ADVENTRX Pharmaceuticals, Inc. (the "Company") under its 2005 Equity Incentive Plan (the "Plan") with respect to the number of shares of Common Stock of the Company set forth below (the "Shares"). I represent that each Share is fully vested and exercisable and subject to the Option(s). I acknowledge and agree that my exercise of the Option(s) is subject to the terms and conditions of the Plan and the Stock Option Agreement(s) governing the Option(s).

- 1. \_\_\_\_\_ Shares at \$ \_\_\_\_\_ per share (Grant date): \_\_\_\_\_
2. \_\_\_\_\_ Shares at \$ \_\_\_\_\_ per share (Grant date): \_\_\_\_\_
3. \_\_\_\_\_ Shares at \$ \_\_\_\_\_ per share (Grant date): \_\_\_\_\_
4. \_\_\_\_\_ Shares at \$ \_\_\_\_\_ per share (Grant date): \_\_\_\_\_

I choose to pay for the exercise of the above option(s) as follows (please circle applicable item numbers):

- 1. Cash: \$ \_\_\_\_\_
2. Check: \$ \_\_\_\_\_ (please make checks payable to ADVENTRX Pharmaceuticals, Inc.)
3. Surrender of \_\_\_\_\_ Shares:

Please deliver the stock certificate(s) representing the Shares to (please print legibly):

Four horizontal lines for providing the address to deliver stock certificates.

Name: \_\_\_\_\_
(please print legibly)

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

Date: \_\_\_\_\_

Phone No: \_\_\_\_\_

## ADVENTRX Pharmaceuticals, Inc.

## 2005 Employee Stock Purchase Plan

1. **Purpose.** The purpose of the 2005 Employee Stock Purchase Plan (the “*Plan*”) of ADVENTRX Pharmaceuticals, Inc., a Delaware corporation (the “*Company*”) is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock. The Company intends to have the Plan qualify as an “Employee Stock Purchase Plan” under Section 423 of the Code. The provisions of the Plan shall, accordingly, be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code.

2. **Definitions.** As used in the Plan, the terms set forth below shall have the meanings set forth below:

2.1 **Acquisition** means a merger or consolidation of the Company with and into another person or the sale, transfer, or other disposition of all or substantially all of the Company’s assets to one or more persons (other than any wholly-owned subsidiary of the Company) in a single transaction or series of related transactions.

2.2 **Board** means the Board of Directors of the Company.

2.3 **Code** means the Internal Revenue Code of 1986, as amended.

2.4 **Common Stock** means the Common Stock, par value \$0.001 per share, of the Company.

2.5 **Compensation** means all regular, straight-time compensation, including commissions, but not payments for overtime, shift premium, incentive compensation, incentive payments, bonuses and other irregular or infrequent compensation or benefits.

2.6 **Continuous Status as an Employee** means the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided, that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company and its Designated Subsidiaries.

2.7 **Contributions** means all amounts credited to the account of a participant pursuant to the Plan.

2.8 **Designated Subsidiaries** means the Subsidiaries which have been or will be designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.

2.9 **Employee** means any person, including an Officer, who is customarily employed for at least 20 hours per week and more than five months in a calendar year by the Company or one of its Designated Subsidiaries.

2.10 **Exchange Act** means the Securities Exchange Act of 1934, as amended.

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- 2.11 **Initial Offering Period** means the first Offering Period of the Plan.
- 2.12 **Offering Commencement Date** means the first business day of each Offering Period of the Plan.
- 2.13 **Offering Period** means any of the periods, generally of six months duration, as set forth in Section 4.
- 2.14 **Officer** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.
- 2.15 **Offering Termination Date** means the last business day of each Offering Period of the Plan.
- 2.16 **Parent** means a parent corporation of the Company, whether now or hereafter existing, as defined by Section 424(a) of the Code.
- 2.17 **Purchase Price** means with respect to an Offering Period an amount equal to 85% of the Fair Market Value (as defined in Section 7.2) of a Share on the Offering Commencement Date or on the Offering Termination Date, whichever is lower; provided, however, that (i) if there is an increase in the number of Shares available for issuance under the Plan as a result of a stockholder-approved amendment to the Plan, (ii) all or a portion of such additional Shares are to be issued with respect to the Offering Period underway at the time of such increase (“**Additional Shares**”), and (iii) the Fair Market Value of a Share of Common Stock on the date of such increase (the “**Approval Date Fair Market Value**”) is higher than the Fair Market Value on the Offering Commencement Date for such Offering Period, then in such instance the Purchase Price with respect to Additional Shares shall be 85% of the Approval Date Fair Market Value or the Fair Market Value of a Share of Common Stock on the Offering Termination Date, whichever is lower.
- 2.18 **Securities Act** means the Securities Act of 1933, as amended.
- 2.19 **Share** means a share of Common Stock, as adjusted in accordance with Section 18.
- 2.20 **Subsidiary** means a subsidiary corporation of the Company, whether now or hereafter existing, as defined in Section 424(f) of the Code.

The terms set forth below have the meanings ascribed to them in the following sections:

| Term                          | Section |
|-------------------------------|---------|
| Administrator                 | 13.2    |
| AMEX                          | 7.2     |
| Company                       | 1       |
| Fair Market Value             | 7.2     |
| New Offering Termination Date | 18.2    |
| Plan                          | 1       |
| Reserves                      | 18.1    |

### **3. Eligibility.**

3.1 **Eligible Persons.** Any person who is an Employee as of the Offering Commencement Date of a given Offering Period shall be eligible to participate in such Offering Period under the Plan, subject to the requirements of Sections 5.1 and the limitations imposed by Section 423(b) of the Code.

3.2 **Certain Restrictions.** Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (taking into account stock which would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or hold outstanding options to purchase stock possessing five percent or more of the total combined voting power or value of all classes of stock of the Company or of any Parent or Subsidiary of the Company, or (ii) if such option would permit such Employee's rights to purchase an aggregate of stock under all employee stock purchase plans (described in Section 423 of the Code) of the Company and its Parent or Subsidiaries with a Fair Market Value in excess of Twenty-Five Thousand Dollars (\$25,000) (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. **Offering Periods.** Each Offering Period will begin on January 1 or July 1 and end on the next following June 30 or December 31, respectively. The Initial Offering Period shall commence on July 1, 2005. At any time and from time to time, the Board may change the duration or the frequency of Offering Periods with respect to future Offering Periods or suspend operation of the Plan with respect to Offering Periods not yet commenced.

### **5. Participation**

5.1 **Subscription Agreement.** An eligible Employee may become a participant in the Plan by completing a subscription agreement on the form provided by the Company and filing it with the Company's payroll office at least five business days prior to the applicable Offering Commencement Date, unless a later time for filing the subscription agreement is set by the Board for all eligible Employees with respect to a given Offering Period. The subscription agreement shall set forth the percentage of the participant's Compensation (subject to Section 6.1) to be paid as Contributions pursuant to the Plan.

5.2 **Timing of Payroll Deductions.** Payroll deductions shall commence on the first payroll following the Offering Commencement Date and shall end on the last payroll paid on or prior to the Offering Termination Date of the Offering Period to which the subscription agreement is applicable, unless sooner terminated by the participant as provided in Section 10.

5.3 **Tax Withholding.** Each participant who purchases Shares under the Plan shall thereby be deemed to have agreed that the Company or the Subsidiary that employs the participant shall be entitled to withhold, from any other amounts that may be payable to the participant at or around the time of the purchase, such federal, state, local and foreign income, employment and other taxes which may be required to be withheld under applicable laws. In lieu of such withholding, the Company or such Subsidiary may require the participant to remit such taxes to the Company or such Subsidiary as a condition of the purchase.

### **6. Method of Payment of Contributions**

6.1 **Election.** A participant shall elect to have payroll deductions made on each payday during the Offering Period in an amount not less than one percent and not more than 10 percent (or such other percentage as the Board may establish from time to time before an Offering Commencement Date) of such participant's Compensation on each payday during the Offering Period. All payroll deductions made by a participant shall be credited to such participant's account under the Plan. A participant may not make any additional payments into such account.

6.2 Discontinuation; Changes. A participant may discontinue participation in the Plan as provided in Section 10. In addition, if the Board has so announced to Employees at least five days prior to the scheduled beginning of the next Offering Period to be affected by the Board's determination, a participant may change the rate of such participant's Contributions with respect to the Offering Period by completing and filing with the Company a new subscription agreement authorizing a change in the payroll deduction rate. If otherwise permitted, no such change shall enable a participant to resume Contributions other than as of an Offering Commencement Date, following a withdrawal of Contributions during an Offering Period pursuant to Section 10. Any such change in rate shall be effective as of the first payroll period following the date of filing of the new subscription agreement, if the agreement is filed at least 10 business days prior to such period and, if not, as of the second following payroll period.

6.3 Reductions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3.2, a participant's payroll deductions may be decreased during any Offering Period scheduled to end during the current calendar year to 0%. Payroll deductions reduced to 0% in compliance with this Section 6.3 shall re-commence automatically at the rate provided in such participant's subscription agreement at the beginning of the first Offering Period which is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 10.

## 7. **Grant of Option.**

7.1 Number of Shares. On the Offering Commencement Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on the Offering Termination Date of that Offering Period a number of Shares determined by dividing such Employee's Contributions accumulated during such Offering Period prior to such Offering Termination Date and retained in the participant's account as of the Offering Termination Date by the applicable Purchase Price. However, the Board may determine from time to time, prior to the applicable Offering Period, the maximum number of Shares an Employee may purchase during each such Offering Period, provided that any such purchase shall be subject to the limitations set forth in Sections 3.2 and 12.

7.2 Fair Market Value. The fair market value of the Common Stock on a given date (the "**Fair Market Value**") shall be (i) the closing sales price on the American Stock Exchange ("**AMEX**"), or any national securities exchange or other established market on which the Common Stock is then listed (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date) or (ii) determined by the Board in its discretion based on the closing sales price of the Common Stock for such date (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date), as reported by AMEX or other such exchange or market, or (iii) if the closing sales price is not reported, the mean of the bid and asked prices per share of the Common Stock as reported by AMEX or other such exchange.



**8. Exercise of Option.** Unless a participant withdraws from the Plan as provided in Section 10, such participant's option for the purchase of Shares will be exercised automatically on the Offering Termination Date of an Offering Period, and the maximum number of full Shares subject to the option will be purchased at the applicable Purchase Price with the accumulated Contributions in such participant's account. No fractional Shares shall be issued. The Shares purchased upon exercise of an option hereunder shall be deemed to be transferred to the participant on the Offering Termination Date. A participant's option to purchase Shares hereunder shall be exercisable only by such participant during such participant's lifetime.

**9. Delivery.** As promptly as practicable after each Offering Termination Date of each Offering Period, the Company shall arrange the delivery to or for the benefit of each participant, as appropriate, of a certificate representing the Shares purchased upon exercise of such participant's option. Any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full Share shall be retained in the participant's account for the subsequent Offering Period, subject to earlier withdrawal by the participant as provided in Section 10. Any other amounts left over in a participant's account after an Offering Termination Date shall be returned to the participant.

**10. Voluntary Withdrawal; Termination of Employment.**

10.1 Withdrawal of Contributions. A participant may withdraw all but not less than all of the Contributions credited to such participant's account under the Plan at any time prior to each Offering Termination Date by giving written notice to the Company. All of the participant's Contributions credited to such participant's account will be paid to such participant promptly after receipt of such participant's notice of withdrawal and such participant's option for the current Offering Period will be automatically terminated, and no further Contributions for the purchase of Shares will be made during the Offering Period.

10.2 Termination of Employment. Upon termination of the participant's Continuous Status as an Employee prior to the Offering Termination Date of an Offering Period for any reason, including retirement or death, the Contributions credited to such participant's account will be returned to such participant or, in the case of such participant's death, to the person or persons entitled thereto under Section 14, and such participant's option will be automatically terminated.

10.3 Automatic Withdrawal from Plan. In the event an Employee fails to remain in Continuous Status as an Employee of the Company for at least 20 hours per week during the Offering Period in which the Employee is a participant, such participant will be deemed to have elected to withdraw from the Plan and the Contributions credited to such participant's account will be returned and such participant's option terminated.

10.4 Effect of Withdrawal from Plan. A participant's withdrawal during an Offering Period will not have any effect upon such participant's eligibility to participate in a succeeding Offering Period or in any similar plan which may hereafter be adopted by the Company.

**11. Interest.** No interest shall accrue on the Contributions of a participant in the Plan.

## 12. Stock.

12.1 Maximum Number of Shares. Subject to adjustment as provided in Section 18, the maximum number of Shares which shall be made available for sale under the Plan shall be 1,000,000 Shares, plus an annual increase to be added on the first day of the Company's fiscal year beginning in 2006 and on each anniversary of that date thereafter equal to the lesser of (i) one percent of the number of outstanding shares of Stock on such day, (ii) 750,000 and (iii) such other amount as the Board may specify prior to the date such annual increase is to take effect. If the Board determines that, on a given Offering Termination Date, the number of shares with respect to which options are to be exercised may exceed (i) the number of Shares that were available for sale under the Plan on the Offering Commencement Date, or (ii) the number of shares available for sale under the Plan on such Offering Termination Date, the Board may in its sole discretion provide that the Company shall make a pro rata allocation of the Shares available for purchase on such Offering Commencement Date or Offering Termination Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Offering Termination Date. The Company may make pro rata allocation of the Shares available on the Offering Commencement Date of the applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Offering Commencement Date.

12.2 No Interest or Voting Right. The participant shall have no interest or voting right in Shares covered by such participant's option until such option has been exercised.

12.3 Registration of Shares. Shares to be delivered to a participant under the Plan will be registered in the name of the participant or in the name of the participant and such participant's spouse, as directed by the participant.

## 13. Administration.

13.1 Board Authority. The Board, or a committee named by the Board, shall supervise and administer the Plan and shall have full power to adopt, amend and rescind any rules deemed desirable and appropriate for the administration of the Plan and not inconsistent with the Plan, to construe and interpret the Plan, and to make all other determinations necessary or advisable for the administration of the Plan. The Board's determinations made in good faith on matters referred to in this Plan shall be final, binding and conclusive on all persons having or claiming any interest under this Plan.

13.2 Designation of Administrator. The Board may from time to time designate an employee or retain a third party to address routine administrative matters. Any employee or third party so designated may be referred to herein as the "**Administrator.**"

## 14. Designation of Beneficiary.

14.1 Designation. A participant may file a written designation of a beneficiary who is to receive any Shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to the end of an Offering Period but prior to delivery to such participant of such Shares and cash. Any such beneficiary shall also be entitled to receive any cash from the participant's account under the Plan in the event of such participant's death prior to the Offering Termination Date of an Offering Period.

14.2 Changes to Designation; Lack of Designation. Such designation of beneficiary may be changed by the participant at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such Shares or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

**15. Transferability of Options and Shares.**

15.1 Restrictions on Transfer. Neither Contributions credited to a participant's account nor any rights with regard to the exercise of an option or to receive Shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 14) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 10. In addition, if the Board has so announced to Employees at least five days prior to the scheduled beginning of the next Offering Period to be affected by the Board's determination, any Shares acquired on the Offering Termination Date of such Offering Period may be subject to restrictions specified by the Board on the transfer of such Shares.

15.2 Notice of Transfer. Any participant selling or transferring any or all of such participant's Shares purchased pursuant to the Plan must provide written notice of such sale or transfer to the Company within five business days after the date of sale or transfer. Such notice to the Company shall include the gross sales price, if any, the Offering Period during which the Shares being sold were purchased by the participant, the number of Shares being sold or transferred and the date of sale or transfer.

**16. Use of Funds.** All Contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose and shall be subject to claims by creditors of the Company, and the Company shall not be obligated to segregate such Contributions from its other assets. The Company shall not pay any interest on any Contributions.

**17. Reports.** Individual accounts will be maintained for each participant in the Plan. Statements of account will be given to participating Employees at least annually, which statements will set forth the amounts of Contributions, the per Share Purchase Price, the number of Shares purchased and the remaining cash balance, if any.

**18. Adjustments Upon Changes in Capitalization; Acquisitions.**

18.1 Adjustment. Subject to any required action by the stockholders of the Company, the number of shares covered by each option under the Plan which has not yet been exercised and the number of Shares which have been authorized for issuance under the Plan but have not yet been placed under option (collectively, the "*Reserves*"), as well as the maximum number of Shares which may be purchased by a participant in an Offering Period, the number of Shares set forth in Section 12.1, and the price per Share of Common Stock covered by each option under the Plan which has not yet been exercised, shall be proportionately adjusted for any increase or decrease in the number of the Company's issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock (including any such change in the number of Shares effected in connection with a change in domicile of the Company), or any other increase or decrease in the number of Shares effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company or the "cashless" or "net" exercise of any derivative securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

18.2 Acquisitions. In the event of a dissolution or liquidation of the Company, the Offering Period then in progress will terminate immediately prior to the consummation of such action, unless otherwise provided by the Board. In the event of an Acquisition, each option outstanding under the Plan shall be assumed or an equivalent option shall be substituted by the successor corporation or a parent or Subsidiary of such successor corporation. In the event that the successor corporation refuses to assume or substitute for outstanding options, the Offering Period then in progress shall be shortened and a new Offering Termination Date shall be set (the "***New Offering Termination Date***"), as of which date the Offering Period then in progress will terminate. The New Offering Termination Date shall be on or before the date of consummation of the transaction and the Board shall notify each participant in writing, at least ten days prior to the New Offering Termination Date, that the Offering Termination Date for such participant's option has been changed to the New Offering Termination Date and that such participant's option will be exercised automatically on the New Offering Termination Date, unless prior to such date such participant has withdrawn from the Offering Period as provided in Section 10. For purposes of this Section 18, an option granted under the Plan shall be deemed to be assumed, without limitation, if, at the time of issuance of the stock or other consideration upon an Acquisition, each holder of an option under the Plan would be entitled to receive upon exercise of the option the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to the transaction, the holder of the number of Shares covered by the option at such time (after giving effect to any adjustments in the number of Shares covered by the option as provided for in this Section 18); provided, however, that if the consideration received in the transaction is not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Board may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in Fair Market Value to the per Share consideration received by holders of Common Stock in the transaction.

18.3 Other Adjustments. The Board may, if it so determines in the exercise of its sole discretion, also make provision for adjusting the Reserves, as well as the price per Share of Common Stock covered by each outstanding option, in the event that the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of Shares of its outstanding Common Stock, and in the event of the Company's being consolidated with or merged into any other corporation.

## **19. Amendment or Termination.**

19.1 Amendment or Termination by the Board. The Board may at any time and for any reason terminate or amend the Plan. Except as provided in Section 18, no such termination of the Plan may affect options previously granted, provided that the Plan or an Offering Period may be terminated by the Board on an Offering Termination Date or by the Board's setting a new Offering Termination Date with respect to an Offering Period then in progress if the Board determines that termination of the Plan or the Offering Period is in the best interests of the Company and its stockholders or if continuation of the Plan or the Offering Period would cause the Company to incur adverse accounting charges as a result of the Plan. Except as provided in Section 18 and in this Section 19, no amendment to the Plan shall make any change in any option previously granted which adversely affects the rights of any participant.

19.2 Other Powers of the Board. Without stockholder consent and without regard to whether any participant rights may be considered to have been adversely affected, the Board (or its committee) shall be entitled to change the Offering Periods, limit the frequency or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Board (or its committee) determines in its sole discretion advisable which are consistent with the Plan.

**20. Notices and Other Communications.** Any notice, demand, request or other communication hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by first class registered, certified or overnight mail, postage prepaid, or telecopied with a confirmation copy by regular, certified or overnight mail, addressed or telecopied, as the case may be, (i) if to the recipient of an Award, at such participant's residence address last filed with the Company and (ii) if to the Company, at its principal place of business, addressed to the attention of its Treasurer, or to such other address or telecopier number or electronic mail address, as the case may be, as the addressee may have designated by notice to the addressor. All such notices, requests, demands and other communications shall be deemed to have been received: (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of mailing, when received by the addressee; (iii) in the case of facsimile transmission, when confirmed by facsimile machine report; and (iv) in the case of electronic mail, when directed to an electronic mail address at which the receiving party has consented to receive notice, provided, that such consent is deemed revoked if the sender is unable to deliver by electronic transmission two consecutive notices and such inability becomes known to the secretary or assistant secretary of the corporation or to the transfer agent, or other person responsible for giving notice.

**21. Conditions to Issuance of Shares.**

21.1 Compliance with Securities Laws. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such Shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act, the Exchange Act, the rules and regulations promulgated thereunder, applicable state securities laws and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

21.2 Purchaser Representation. As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

**22. Term of Plan; Effective Date.** The Plan shall be in effect for a term of ten years beginning on May 24, 2005, the date the requisite number of stockholders of the Company approved the Plan, unless earlier terminated pursuant to Section 19.

ADVENTRX Pharmaceuticals, Inc.

2005 Employee Stock Purchase Plan

Subscription Agreement

New Election \_\_\_\_

Change of Election \_\_\_\_

1. I, \_\_\_\_\_, hereby elect to participate in ADVENTRX Pharmaceuticals, Inc.'s (the "Company") 2005 Employee Stock Purchase Plan (the "Plan") for the Offering Period \_\_\_\_\_ to \_\_\_\_\_, and subscribe to purchase shares of Common Stock of the Company ("Common Stock") in accordance with this Subscription Agreement and the Plan. Capitalized terms used but not defined in this Subscription Agreement shall have the meaning ascribed to them in the Plan.

2. I elect to have Contributions in the amount of \_\_\_\_\_% of my Compensation applied to this purchase. I understand that this amount must not be less than 1% and not more than 10% of my Compensation during the Offering Period. (Please note that no fractional percentages are permitted).

3. I hereby authorize payroll deductions from each paycheck during the Offering Period at the rate stated in Item 2 of this Subscription Agreement. I understand that all payroll deductions made by me shall be credited to my account under the Plan and that I may not make any additional payments into such account. I understand that all payments made by me shall be accumulated, without interest or earnings, for the purchase of Shares at the applicable purchase price determined in accordance with the Plan. I further understand that, except as otherwise set forth in the Plan, shares will be purchased for me automatically on the Offering Termination Date of each Offering Period unless I otherwise withdraw from the Plan by giving written notice to the Company for such purpose in accordance with the Plan.

4. I understand that I may discontinue at any time prior to the Offering Termination Date my participation in the Plan as provided in Section 10 of the Plan. I acknowledge that, unless I discontinue my participation in the Plan as provided in Section 10 of the Plan, my election will continue to be effective for each successive Offering Period.

5. I have received a complete copy of the Plan. I understand that my participation in the Plan is in all respects subject to the terms of the Plan.

6. Shares purchased for me under the Plan should be issued in the name(s) of (name of employee or employee and spouse only):

\_\_\_\_\_  
\_\_\_\_\_



7. In the event of my death, I hereby designate the following as my beneficiary(ies) to receive all payments and shares due to me under the Plan:

NAME: (Please print)

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(First)

(Middle)

(Last)

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(Address)

---

(Relationship)

8. I understand that if I dispose of any shares received by me pursuant to the Plan within two years after the Offering Commencement Date (the first day of the Offering Period during which I purchased such shares) or within one year after the Offering Termination Date, I will be treated for federal income tax purposes as having received ordinary compensation income at the time of such disposition in an amount equal to the excess of the fair market value of the shares on the Offering Termination Date over the price which I paid for the shares, regardless of whether I disposed of the shares at a price less than their fair market value at the Offering Termination Date. The remainder of the gain or loss, if any, recognized on such disposition will be treated as capital gain or loss.

I hereby agree to notify the Company in writing within 30 days after the date of any such disposition, and I will make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock. The Company may, but will not be obligated to, withhold from my compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or benefits attributable to the sale or early disposition of Common Stock by me.

9. If I dispose of such shares at any time after expiration of the two-year and one-year holding periods, I understand that I will be treated for federal income tax purposes as having received compensation income only to the extent of an amount equal to the lesser of (1) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares under the option, or (2) 15% of the fair market value of the shares on the Offering Commencement Date. The remainder of the gain or loss, if any, recognized on such disposition will be treated as capital gain or loss.

I understand that this tax summary is only a summary and is subject to change. I further understand that I should consult a tax advisor concerning certain tax implications of the purchase and sale of stock under the Plan.

10.

I hereby agree to be bound by the terms of the Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Plan.

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

Date: \_\_\_\_\_

Social Security Number: \_\_\_\_\_



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 3, 2005, except for Note 9, which is as of March 28, 2005, related to the consolidated financial statements of ADVENTRX Pharmaceuticals, Inc. and Subsidiary as of and for the years ended December 31, 2004 and 2003 and for the period from June 12, 1996 (date of inception) to December 31, 2004, which report appears in the Annual Report on Form 10-KSB for the fiscal year ended December 31, 2004 previously filed by ADVENTRX Pharmaceuticals, Inc. with the Securities and Exchange Commission.

/s/ J.H. COHN LLP

San Diego, California  
July 12, 2005

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