

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## PROVECTUS BIOPHARMACEUTICALS, INC.

**Form: 8-K**

**Date Filed: 2017-04-04**

Corporate Issuer CIK: 315545

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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): April 3, 2017**

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**PROVCTUS BIOPHARMACEUTICALS, INC.**

(Exact name of registrant as specified in charter)

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

**001-36457**  
(Commission  
File Number)

**90-0031917**  
(IRS Employer  
Identification No.)

**7327 Oak Ridge Hwy., Knoxville, Tennessee 37931**  
(Address of Principal Executive Offices)

**(866) 594-5999**  
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, If Changed Since Last Report)

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

As previously disclosed by Provectus Biopharmaceuticals, Inc. (the "Company") in a Current Report on Form 8-K, filed with the Securities and Exchange Commission (the "Commission") on March 23, 2017, the Company entered into an exclusive Definitive Financing Commitment Term Sheet effective as of March 19, 2017, which sets forth the terms on which a group of the Company's stockholders (the "PRH Group") will provide financing (the "Financing") to the Company (the "Term Sheet"). As described in the Term Sheet, the Financing from the PRH Group is in the form of a loan (the "Loan") that is evidenced by secured convertible promissory notes (individually a "PRH Note" and collectively, the "PRH Notes").

In connection with the funding of the First Tranche, as described in the Term Sheet, the Company, on April 3, 2017, entered into a PRH Note with Cal Enterprises LLC, a Nevada limited liability company, an affiliate of Dominic Rodrigues (the "Rodrigues Note"), in the principal amount of \$2.5 million. In addition, Eric Wachter amended and restated his promissory note from the Company in the principal amount of \$2.5 million (the "Wachter Note") in order to match the terms of the Wachter Note to the PRH Notes. As previously described, in addition to the customary provisions, each of the Rodrigues Note and the Wachter Note contains the following provisions:

- (i) They are secured on a pari passu basis by a first priority security interest on the Company's U.S. intellectual property;
- (ii) They bear interest at the rate of eight percent (8%) per annum on the outstanding principal amount;
- (iii) In the event there is a change of control of the Company's board of directors as proposed by any person or group other than the PRH Group or Dr. Wachter (the "Lenders"), the term of each of the Wachter Note and the Rodrigues Note will be accelerated and all amounts due under the Wachter Note and the Rodrigues Note will be immediately due and payable, plus interest at the rate of eight percent (8%) per annum, plus a penalty in the amount equal to ten times (10x) the outstanding principal amount of the Wachter Note and the Rodrigues Note that has been funded to the Company;
- (iv) The outstanding principal amount and interest payable under the Notes is convertible at the sole discretion of the Lenders into shares of the Company's Series D Preferred Stock, a new series of preferred stock to be designated by the Board, at a price per share equal to \$0.2862; and
- (v) Notwithstanding (v) above, the principal amount of the Notes and the interest payable thereunder will automatically convert into shares of the Company's Series D Preferred Stock at a price per share equal to \$0.2862 effective on the 18 month anniversary of the funding of the final tranche of the Financing, subject to certain exceptions.

The foregoing descriptions of the Rodrigues Note and the Wachter Note do not purport to be complete and are qualified in their entirety by reference to the Rodrigues Note and the Wachter Note, copies of which are filed as exhibits to this Current Report on Form 8-K as Exhibit 10.1 and Exhibit 10.2, respectively.

As of March 29, 2017, the Company has drawn down the entire amount of \$2.5 million of the Wachter Note. On April 3, 2017, the Company issued a borrowing request for \$500,000 under the Rodrigues Note.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information disclosed in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

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

On April 3, 2017, as a condition precedent to the funding of the First Tranche, as contemplated in the Term Sheet, three members of the Board of Directors (the "Board") of the Company resigned and the Board, as permitted by Section 4.1 of the Company's Bylaws (the "Bylaws"), decreased the size of the Board from five members to four members. The Board, as permitted by section 4.4 of the Bylaws, appointed two new members to fill the vacancies created by the aforementioned resignations.

***Director Resignations***

On April 3, 2017, each of Alfred E. Smith, IV, Timothy C. Scott and Kelly M. McMasters, MD notified the Company of their decision to resign from the Board effective immediately. No director's resignation was due to any disagreement with the Company on any matter relating to the Company's operations, policies or practices. Despite his resignation from the Board, Dr. Scott shall remain the President of the Company.

***Director Appointments***

On April 3, 2017, the Board appointed each of Dominic Rodrigues and Bruce Horowitz to the Board to fill two vacancies. In connection with their appointment to and becoming members of the Board, on April 3, 2017, each of Messrs. Rodrigues and Horowitz entered into an indemnification agreement with the Company (together, the "Director Indemnification Agreements"), whereby the Company contractually obligates itself to indemnify, and to advance expenses on behalf of, Messrs. Rodrigues and Horowitz to the fullest extent permitted by applicable law.

The Board also selected Mr. Rodrigues to serve as chairman of the Board, effective immediately.

Each of Messrs. Rodrigues and Horowitz will serve until, and will be nominated for election at, the 2017 Annual Meeting of Stockholders of the Company.

The Board determined that neither of Mr. Rodrigues nor Mr. Horowitz has any relationship with the Company or its subsidiaries, either directly or indirectly, that would be inconsistent with a determination of independence under the applicable rules and regulations of the NYSEMKT and the U.S. Securities and Exchange Commission. Messrs. Rodrigues and Horowitz have not been appointed to any Board committee at this time. Messrs. Rodrigues and Horowitz will receive compensation for serving on the Board pursuant to the Company's non-employee director compensation guidelines.

The foregoing description of the Director Indemnification Agreements does not purport to be complete and is qualified in its entirety by reference to the Director Indemnification Agreements, copies of which are filed as exhibits to this Current Report on Form 8-K as Exhibit 10.3 and Exhibit 10.4.

**Item 7.01. Regulation FD Disclosure.**

On April 4, 2017, the Company issued a press release (the "Press Release") announcing the appointments of Messrs. Rodrigues and Horowitz to the Board and the entry into the Rodrigues Note and the Wachter Note in connection with the Financing. A copy of the Press Release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Pursuant to the rules and regulations of the Commission, the information in this Item 7.01 disclosure, including Exhibit 99.1 and information set forth therein, is deemed to have been furnished and shall not be deemed to be "filed" under the Securities Exchange Act of 1934, as amended.

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

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
10.1	Secured Convertible Promissory Note between the Company and Cal Enterprises LLC, dated April 3, 2017.
10.2	Amended and Restated Secured Convertible Promissory Note between the Company and Eric A. Wachter, dated April 3, 2017.
10.3	Indemnification Agreement between the Company and Dominic Rodrigues, dated April 3, 2017.
10.4	Indemnification Agreement between the Company and Bruce Horowitz, dated April 3, 2017.
99.1	Press Release, dated April 4, 2017.

**SIGNATURE**

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

Date: April 3, 2017

**PROVECTUS BIOPHARMACEUTICALS, INC.**

By: /s/ Timothy C. Scott  
Timothy C. Scott, Ph.D.  
President

## EXHIBIT INDEX

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## SECURED CONVERTIBLE PROMISSORY NOTE

(this "Note")

Up to \$2,500,000

April 3, 2017

FOR VALUE RECEIVED, the undersigned Provectus Biopharmaceuticals, Inc., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of Cal Enterprises LLC, a Nevada limited liability company (the "Lender"), at the Lender's office located at 1930 Village Center Circle, #3-206, Las Vegas, Nevada 89144 or at such other place as the Lender may designate to the Borrower in writing from time to time, the principal sum set forth in Paragraph A below, or, if less, so much thereof as is outstanding hereunder, in lawful money of the United States of America and in immediately available funds, and to pay interest on said principal sum or the unpaid balance thereof, in like money at said office. Capitalized terms used in this Note but not immediately defined shall have the meanings set forth in Paragraph N below.

**A. Principal.** This Note is one of a series of notes, all of equal par herewith, arranged by the PRH Group up to a maximum principal amount of up to Twenty Million and no/100 Dollars (\$20,000,000) (the "PRH Financing"). This Note shall be the first tranche of the PRH Financing under the Term Sheet. This Note shall have a maximum principal amount of up to Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00), which shall be disbursed to Borrower as follows:

(i) Upon (a) delivery of the First Tranche Funding Certificate of Borrower attached hereto as Exhibit A by the Borrower to the Lender, and (b) acceptance of the First Tranche Funding Certificate by the Lender, which shall be in the sole discretion of the Lender, the Lender shall pay into Escrow the principal sum of Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00) (the "First Tranche"). At any time following the deposit of the First Tranche into Escrow, Borrower may request the funding of any portion of the First Tranche by delivering to the Lender an irrevocable borrowing request ("Borrowing Request"), which Borrowing Request is in the form attached hereto as Exhibit B, and which must be received by the Lender prior to 12:00 p.m. Eastern Time five (5) Business Days prior to the requested borrowing date ("Borrowing Date"); provided, that if the Borrowing Request is the first draw down on the First Tranche, the Borrower shall also deliver to Borrower a First Draw Certificate attached hereto as Exhibit C.

(ii) Upon receipt of any Borrowing Request, to the extent the Lender has the funds available to pay the requested borrowing, the Lender shall pay to the order of the Borrower the entire requested borrowing under such Borrowing Request by making available such requested borrowing to Borrower prior to 3:00 p.m. Eastern Time on the Borrowing Date in funds immediately available; provided, that the funding of such requested borrowing shall be subject to the sole approval of the Lender, which shall not be unreasonably withheld.

(iii) All amounts of interest that accrue to any amounts held in Escrow shall inure to the benefit of the Lender.



**B. Interest**

Interest on this Note shall accrue on the outstanding principal amount hereof at a rate equal to eight percent (8%) per annum, calculated on the basis of a 365-day year (the "Interest Rate").

**C. Payment Terms; Prepayment.** Except as set forth in Paragraph E(ii) below, Payments on this Note shall be applied in the following order: first to accrued but unpaid interest and second to principal. If any payment on this Note becomes due and payable on a day other than a Business Day, the payment date thereof shall be extended to the next succeeding Business Day. Principal and interest under this Note may be pre-paid in whole or in part at any time without premium or other prepayment charge.

**D. Attorney Fees.** The Borrower also agrees to pay the Lender for its reasonable legal and other expenses, including reasonable attorneys' fees, incurred in connection with the transactions contemplated under this Note within five (5) Business Days of the First Tranche being funded to the Borrower; provided, that Borrower has received final invoices from the providers of such services.

**E. Events of Default; Remedies.**

(i) The Borrower shall be deemed to be in default under this Note if: (a) the Borrower fails to pay, when due, any payment of principal or interest under this Note, which continues for a period of ten (10) days after the due date of such payment, (b) any action commenced by or against the Borrower under the Federal Bankruptcy Code, or other statute for the relief of creditors, which is not dismissed within sixty (60) days except for the PRH Group as contemplated in the Term Sheet, (c) a Change of Control in the Borrower, or (d) liquidation of the Borrower.

(ii) Upon an event of default, the Lender, at his option, may (a) allow this Note to remain outstanding and continue to accrue interest at the Interest Rate or (b) declare the outstanding principal balance of and all accrued but unpaid interest on this Note to be immediately due and payable. Further, if the event of default is as a result of a Change of Control, in addition to the right to declare the outstanding principal balance of and all accrued but unpaid interest on this Note to be immediately due and payable, the Lender shall (1) be entitled to be paid all financing received by the Borrower under this Note from and after the date of such Change of Control, whether such financing is by the issuance of equity, debt or a combination of both, before such financing is used for any other purpose ("Change of Control Payments") and (2) be entitled to receive a penalty payment from the Borrower equal to ten times (10x) the outstanding principal amount under this Note as of the date of such Change of Control (the "Change of Control Penalty"). Any amounts received by the Lender as Change of Control Payments shall be applied in the following order: first to the Change of Control Penalty, second to accrued but unpaid interest and third to principal.

**F. Use of Proceeds.** Any amount disbursed under this Note may be used to fund the completion of the Borrower's clinical development program as currently conducted and as modified in the future by the Board of Directors with the Lender's approval and for general corporate and administrative expenses approved by the Lender, which approval, in each case, will not be unreasonably withheld.

#### **G. Conversion.**

(i) Voluntary Conversion. The Lender may elect to convert all of the outstanding principal and accrued but unpaid interest of this Note at any time into Series D Shares. If the Lender elects to effect a conversion of this Note into Series D Shares, the Lender shall: (a) deliver a copy of the fully executed notice of conversion in the form attached hereto as Exhibit D (a "Notice of Conversion") to the Borrower and (b) surrender or cause to be surrendered this Note with delivery of the Notice of Conversion. On the Voluntary Conversion Date, the Borrower shall issue and deliver to the Lender confirmation of the number of Series D Shares that have been issued to the Lender upon conversion of this Note, which number of Series D Shares shall be calculated by dividing the Conversion Amount on the Voluntary Conversion Date by the Conversion Price. The Lender shall be treated for all purposes as the record holder of such Series D Shares at 12:01 am Eastern Time on the Voluntary Conversion Date and such Series D Shares shall be issued and outstanding as of such date. The Note will be deemed terminated on the Voluntary Conversion Date, and no interest will be deemed to accrue on or after the close of business on the Voluntary Conversion Date.

(ii) Automatic Conversion. In the event that any amount of principal and accrued but unpaid interest remains outstanding on the Automatic Conversion Date, then such amount of the outstanding principal due under this Note plus all accrued but unpaid interest shall automatically convert into such number of Series D Shares equal to (a) the Conversion Amount on the Automatic Conversion Date divided by (b) the Conversion Price effective as of 12:01 am Eastern Time on the Automatic Conversion Date. If this Note is to be automatically converted, prompt written notice shall be delivered to the Lender at the address last shown on the records of the Borrower, notifying the Lender of the conversion to be effected. Upon such conversion of this Note, the Lender hereby agrees to surrender or cause to be surrendered this Note, duly endorsed, as soon as practicable thereafter. The Note will be deemed terminated on the Automatic Conversion Date, and no interest will be deemed to accrue on or after the Automatic Conversion Date.

(iii) No Fractional Shares. No fractional Series D Shares are to be issued upon the conversion of this Note, but instead of any fraction of a Series D Share which would otherwise be issuable, the fraction of such Series D Share shall be rounded up to the nearest whole share.

(iv) Insufficient Series D Shares. Notwithstanding the foregoing, if this Note is converted, whether voluntarily or automatically under the terms hereof, and the number of authorized but unissued Series D Shares are insufficient to permit the conversion of the Conversion Amount in full, Borrower will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Series D Shares to such number of shares as shall be sufficient for such purposes. Until Borrower is able to effectuate such corporate action, Series D Shares shall be issued to the Lender in an amount equal to the amount of authorized but unissued Series D Shares available for issuance, and the portion of the Conversion Amount that remains unissued shall continue to be outstanding principal and accrued but unpaid interest of the Note.

#### **H. Maturity Date.**

This Note, including interest and principal, shall be due and payable in full (i) on such date upon which the Borrower defaults under this Note (beyond the applicable notice and cure periods), (ii) upon a Change of Control of the Borrower, or (iii) the twenty-four (24) month anniversary of the funding of the Final Tranche, the earliest of such dates being the "Maturity Date".

**I. Security Interest.**

(i) As collateral security for the full and timely payment of the principal, interest and other amounts owing under this Note and the performance of the Borrower under this Note, Borrower hereby assigns, conveys, delivers and grants to the Lender a general and continuing first priority security interest in the Intellectual Property of the Borrower (including any Subsidiary) now existing and all Records of the Borrower and the proceeds of any of the foregoing (the "Security Interest"), which Security Interest shall be pari passu with all other notes arranged by the PRH Group.

(ii) The Security Interest granted hereunder shall automatically terminate, without any action of the Borrower or the Lender, upon the occurrence of any of the following events:

- (a) a voluntary conversion of the Note under Paragraph G;
- (b) an automatic conversion of the Note under Paragraph G; and
- (c) the failure of the Lender (i) to fund the entire First Tranche into Escrow following the Borrower's delivery of the First Tranche Funding Certificate.

**J. Cumulative Remedies; No Waiver.** The Lender's rights and remedies under this Note are cumulative and in addition to all rights and remedies provided by applicable law from time to time. The exercise or direction to exercise by the Lender of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice the Lender in the exercise of any other rights or remedy. No waiver of any default shall be implied from any omission by the Lender to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Note shall be construed as a waiver of any subsequent breach of the same provision. The consent of the Lender to any act by the Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the Lender's consent to or approval of any subsequent act. The Lender's acceptance of the late performance of any obligation shall not constitute a waiver by the Lender of the right to require prompt performance of all further obligations. The Lender's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of the Lender's right to proceed with the exercise of remedies for any unfulfilled obligations, and the Lender's acceptance of any partial performance shall not constitute a waiver by the Lender of any rights relating to the unfulfilled portion of the applicable obligation.

**K. No Usury.** Nothing herein contained, nor any transaction related hereto, shall be construed or so operate as to require the Borrower to pay interest in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charged paid by the Borrower result in computation or earning of interest in excess of the maximum legal rate of interest permitted

under the law in effect while said interest is being earned, then any and all of that excess shall be and is waived by the Lender, and all that excess shall be automatically credited against and in reduction of the principal balance, and any portion of the excess that exceeds the principal balance shall be paid by the Lender to the Borrower so that under no circumstances shall the Borrower be required to pay interest in excess of the maximum rate allowed by applicable law.

**L. Jurisdiction; Waiver of Jury Trial.**

(i) THIS NOTE SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF TENNESSEE EXCEPT TO THE EXTENT SUPERSEDED BY FEDERAL LAW. THE BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN KNOX COUNTY, TENNESSEE AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS NOTE, OR ANY TRANSACTION RELATING TO OR ARISING FROM THIS NOTE, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. NOTHING HEREIN SHALL LIMIT THE LENDER'S RIGHT TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COMPETENT COURTS OF ANY OTHER JURISDICTION.

(ii) THE BORROWER AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER WRITTEN OR VERBAL) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BORROWER AND THE LENDER FOR ENTERING INTO THIS AGREEMENT.

**M. Miscellaneous.**

(i) TIME IS OF THE ESSENCE WITH RESPECT TO THIS NOTE.

(ii) This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(iii) The Borrower hereby waives presentment for payment, demand, notice, protest, notice of protest and notice of dishonor.

**N. Definitions.** The following terms used in this Note shall have the following meanings:

"Affiliate" means, with respect to any Person that directly or indirectly, through one or more intermediaries, Controls, or is controlled by, or is under common control with, such Person.

"Automatic Conversion Date" means the 18-month anniversary of the funding of the Final Tranche; provided, that the Automatic Conversion Date (i) shall be extended if, at the time of such 18-month anniversary date, a lawsuit is pending or threatened against the Borrower with respect to this Note, and shall be extended until the resolution of such lawsuit, (ii) shall

be extended if the Borrower's proxy contest with the Culpepper Group is ongoing on such 18-month anniversary date until the date such proxy contest is finalized in favor of the Borrower, and (iii) shall never be deemed to occur if the Borrower ever loses the proxy contest to the Culpepper Group or any other group of investors led by Peter Culpepper or an Affiliate of the Culpepper Group or Peter Culpepper.

"Board of Directors" means the Board of Directors of the Borrower.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in Knoxville, Tennessee.

"Change of Control" means, unless otherwise approved in writing by the PRH Group, the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d 5(b)(1) promulgated under the 1934 Act) of effective control (whether through legal or beneficial ownership of capital stock of the Borrower, by contract or otherwise) of in excess of 33% of the voting securities of the Borrower (other than by means of conversion or exercise of Series D Shares and any other securities issued together with such Series D Shares), (b) the Borrower merges into or consolidates with any other Person, or any Person merges into or consolidates with the Borrower and, after giving effect to such transaction, the stockholders of the Borrower immediately prior to such transaction own less than 66% of the aggregate voting power of the Borrower or the successor entity of such transaction, (c) the Borrower sells or transfers all or substantially all of its assets to another Person and the stockholders of the Borrower immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one half of the members of the Board of Directors on the date hereof except for directors appointed or approved by PRH Group, or (e) the execution by the Borrower of an agreement to which the Borrower is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Controls" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Conversion Amount" means (a) the entire principal amount of this Note, plus (b) all accrued and unpaid interest.

"Conversion Price" means \$0.2862.

"Culpepper Group" means that certain group composed of Peter Culpepper and such other director nominees listed in that certain definitive Schedule 14A proxy statement filed with the Securities and Exchange Commission on January 27, 2017 and as may be subsequently amended or reconstituted.

"Escrow" means one or more accounts agreed upon by the Borrower and the Lender to hold the amounts to be funded to the Borrower pursuant to the terms of this Note.

"Final Tranche" shall mean the earlier of: (i) the date of the funding of a Borrowing Request that results in \$20,000,000 in principal outstanding with respect to the PRH Financing or (ii) the date on which the Lender informs the Borrower that it shall not disburse any additional funds to the Borrower hereunder; provided, however, that the Lender shall have funded to the Borrower at least \$10,000,000 under this Note.

"Intellectual Property" means all of Borrower's United States federal and state rights, title and interest, if any, in and to (1) the applications and registrations listed on Exhibit E attached hereto and (2) to the extent not already included on Exhibit E, all existing inventions, designs, patent applications and patents; trademarks, service marks, trade dresses, and any applications and registrations for the foregoing; copyrights and copyright applications and registrations; trade secrets; licenses to third-party intellectual property that lawfully may be assigned by Borrower; and other intellectual property rights in the United States (whether or not registered) owned by Borrower.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"PRH Group" means that group of investors led by Dominic Rodrigues, Bruce Horowitz and Ed Pershing pursuant to the terms of the Term Sheet.

"Records" means, to the extent related to the Intellectual Property of the Borrower, all books, correspondence, files, records, invoices and other papers and documents in Borrower's possession or custody, including without limitation to the extent so related, all tapes, cards, computer runs, computer programs, and other papers and documents in possession or control of Borrower or any computer bureau from time to time acting for Borrower, whether in physical or electronic formats.

"Series D Shares" means shares of Series D Convertible Preferred Stock, par value \$0.001 per share, of the Borrower.

"Subsidiary" means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the directors, managers or other persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of its respective Subsidiaries.

"Term Sheet" means Amended and Restated Confidential Definitive Financing Commitment Term Sheet dated effective March 19, 2017 (the "Term Sheet") by and between the Borrower, Dominic Rodrigues and Bruce Horowitz.

"Voluntary Conversion Date" means the date which is three (3) Business Days following the date the Notice of Conversion is delivered to the Borrower.

*[Signatures contained on next page.]*

\_\_\_\_\_  
Name: Timothy C. Scott  
Title: President

STATE OF TENNESSEE        )  
                                      ) ss.  
COUNTY OF KNOX         )

Before me, the undersigned authority, on this day personally appeared Timothy C. Scott, President of Provectus Biopharmaceuticals, Inc., and such person is known to me to be the person whose name is subscribed to the foregoing instrument, and upon his oath acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this     day of March, 2017.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_



**Exhibit A**

**First Tranche Funding Certificate  
(See Attached)**

**FIRST TRANCHE FUNDING CERTIFICATE  
OF  
PROVECTUS BIOPHARMACEUTICALS, INC.**

**March [•], 2017**

The undersigned, in his capacity as the President of Provectus Biopharmaceuticals, Inc., a Delaware corporation (the “Borrower”), hereby delivers this First Tranche Funding Certificate on behalf of the Borrower pursuant to that Secured Convertible Promissory Note dated as of the date hereof (the “Note”) made by the Borrower payable to Cal Enterprises LLC, a Nevada limited liability company (the “Lender”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Note.

The undersigned certifies on behalf of the Borrower, and not in any individual capacity (and without personal liability), that, as of the date hereof:

1. Eric Wachter has funded the balance of his \$2,500,000 loan to the Borrower.
2. The Borrower has provided to the Lender all requested information regarding the financial requirements of the Borrower’s clinical development program and operating capital needs.
3. The Borrower has provided to the Lender all requested information regarding the Borrower’s ownership of the Intellectual Property of the Borrower free and clear of all liens, claims and encumbrances.
4. The Borrower has provided to the Lender the Note and such other documents required by the Lender and to the Lender’s legal counsel with respect to the loan evidenced by the Note.
5. There have been no changes to the management of the Borrower or the Borrower’s Board since the date of the Term Sheet.
6. Effective March 17, 2017, the Borrower cancelled and terminated its public rights offering, and, to the Borrower’s actual knowledge, all monies deposited with Broadridge, Maxim and/or or any other securities firm have been returned to the investors.
7. The Borrower covenants that it will provide to the Lender any additional documentation reasonably requested by the Lender to further evidence that the Borrower has terminated its relationship with Maxim Group relationship effective March 31, 2017 with no 30-day extension.
8. (i) Alfred E. Smith, IV, Timothy C. Scott and Kelly McMasters have tendered their resignations as directors effective immediately following the filing of the Borrower’s Annual Report on Form 10-K with the Securities and Exchange Commission (the “SEC”) so long as the First Tranche has been funded into Escrow on such date, and (ii) the Board has adopted resolutions effective immediately following the filing of the Borrower’s Annual Report on Form 10-K with the SEC so long as the First Tranche has been funded into Escrow on such

date: (a) nominating and appointing Bruce Horowitz and Dominic Rodrigues as directors to replace the vacancies created by the resignations of Al Smith, Tim Scott and Kelly McMasters, (b) reducing the size of the Board to four (4) directors until such time as the Lender's third director has been appointed and (c) appointing Dominic Rodrigues as the chairman of the Board.

9. Each of Eric Wachter, Timothy C. Scott and John Glass hereby certify that they will remain continuously employed by the Borrower until the funding and disbursement of the First Tranche to the Borrower unless otherwise determined by the Board.
10. The Borrower has publicly announced via press release a summary of the terms of the Term Sheet.
11. Since the date of the Term Sheet, the Borrower has not (i) entered into any new personnel contracts or extended any existing material contracts; (ii) recapitalized the equity securities of the Borrower; (iii) reclassified or amended any existing securities of the Borrower; (iv) encumbered or created any form of indebtedness except as contemplated by Section 1 above and the Note; (v) created any form of lien or other security interest on any of the Borrower's Intellectual Property except as described in the Note; (vi) entered into any contingent financing arrangement with other financing sources or (vii) hired any officers, employees, consultants or advisors.
12. The Borrower has arranged to continue to include Alfred E. Smith, IV, Timothy C. Scott, and Kelly McMasters under the Borrower's long-term D&O liability insurance coverage following their respective resignations from the Board.
13. The Borrower has arranged to place all the new directors of the Borrower appointed to the Board pursuant to the terms of the Term Sheet and the Note under any and all current and planned D&O insurance policies of the Borrower.
14. The Board has adopted and approved director indemnification agreements approved by the Lender to be entered into by Bruce Horowitz, Dominic Rodrigues and Edward Pershing upon their respective appointments to the Board.
15. Except as has been publicly disclosed in the Borrower's filings with the SEC, there are no (a) lawsuits pending or, to the actual knowledge of the Borrower, threatened against the Borrower, except (i) for any action that may result from the Borrower's actions against Dr. H. Craig Dees and Mr. Peter Culpepper in response to the Borrower's actions against such individuals as described in the Term Sheet and the Borrower's filing with the SEC and (ii) for the lawsuit filed by Porter, LeVay & Rose, Inc., (b) administrative or government investigations into the Borrower except for the SEC investigation currently being conducted and (c) actual or, to the actual knowledge of the Borrower, threatened conflicts with, or violation of, any statute, rule, regulation or standard applicable to the Borrower, its present or future operations, or the Borrower's products and/or services. The Borrower covenants to notify the Lender in writing of any of the actions listed in items (a) through (c) above filed or threatened against the Borrower within 48 hours of the Borrower's receipt of notice of such an action.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this First Tranche Funding Certificate as of the date first written above.

**PROVECTUS BIOPHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name: Timothy C. Scott  
Title: President

**PROVECTUS PHARMATECH, INC.**

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

**PROVECTUS BIOTECH, INC.**

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

**PURE-IFIC CORP.**

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

The undersigned individuals join this Certificate, and hereby certify, with respect to the certification made to the Lender in Section 9 above only in their individual capacities.

By: \_\_\_\_\_  
Name: Eric A. Wachter

By: \_\_\_\_\_  
Name: Timothy C. Scott

By: \_\_\_\_\_  
Name: John R. Glass

**Exhibit B**

**Form of Borrowing Request  
(See Attached)**

Exhibit B

## BORROWING REQUEST

[DATE]

Cal Enterprises LLC

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Re: Borrowing under that certain Secured Convertible Promissory Note dated March [•], 2017 issued by Provectus Biopharmaceuticals, Inc., a Delaware corporation (the "Borrower"), in favor of the Lender in an original principal sum of up to \$2,500,000 ("Promissory Note"). Capitalized terms used herein but not defined have the meaning given to them in the Promissory Note.

To Whom it May Concern:

Please advance \$ \_\_\_\_\_ to the Borrower on the Borrowing Date, which the Borrower requests be \_\_\_\_\_ (a business day).

Very truly yours,

**PROVECTUS BIOPHARMACEUTICALS, INC.**

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

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

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



**Exhibit C**

**First Draw Certificate  
(See Attached)**

Exhibit C

**FIRST DRAW CERTIFICATE  
OF  
PROVECTUS BIOPHARMACEUTICALS, INC.**

[•], 2017

The undersigned, in his capacity as the President of Provectus Biopharmaceuticals, Inc., a Delaware corporation (the “Borrower”), hereby delivers this First Draw Certificate on behalf of the Borrower pursuant to Secured Convertible Promissory Note dated March [•], 2017 (the “Note”) made by the Borrower payable to the Lender. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Note.

The undersigned certifies on behalf of the Borrower, and not in any individual capacity (and without personal liability), that, as of the date hereof:

1. Contingent upon the Lender’s funding of the First Tranche, Eric Wachter has irrevocably instructed the Borrower to convert his entire financing of \$2,500,000 pursuant to that Convertible Promissory Note dated February 21, 2017 into a promissory note having the same terms as the Note.
2. Since March [•], 2017, there have been no material adverse changes in the financial condition, operations or prospects of the Borrower.
3. The Borrower has provided such information and documents as reasonably requested by the Lender with respect to its due diligence examination of the Borrower.
4. Enclosed herewith is evidence demonstrating that, as of the date set forth therein, there are no perfected security interests in the Borrower’s assets other than perfected security interests held by the Lender.
5. Eric Wachter, Tim Scott, and John Glass have agreed to stay employed by the Borrower in their current capacities.
6. The Board has taken all actions necessary (a) to allow for the changes of the directors of the Board contemplated by the Term Sheet, (b) to designate a new series of preferred stock as the Series D Convertible Preferred Stock and (c) to adopt the rights and preferences of the Series D Convertible Preferred Stock as described in the Term Sheet; provided, however, that with respect to clauses (b) and (c), the Borrower will not file a Certificate of Designation with respect to the Series D Convertible Preferred Stock until such time as the Borrower’s shareholders have approved an amendment to the Certificate of Incorporation of the Borrower to increase the number of authorized shares of preferred stock that the Borrower is authorized to issue].
7. The Board has set May 23, 2017 as the date of the 2017 annual meeting of stockholders of the Borrower.

8. [The Borrower has filed a proxy statement with the SEC regarding its 2017 annual meeting of stockholders (the "Borrower Proxy Statement"), and such proxy statement discusses the proxy statement filed by Peter Culpepper and his associates (the "Culpepper Proxy Statement"). The Board has recommended in the Borrower Proxy Statement that shareholders reject the Culpepper Proxy Statement and the proposed slate of directors set forth in the Culpepper Proxy Statement.]
9. The Borrower has provided to the Lender evidence of the recording of a UCC-1 Financing Statement and such other required public filings necessary to perfect the security interest of the Lender in the Borrower's Intellectual Property and the Records pertaining thereto as security for the Loan.

\* \* \* \* \*

[Signature page follows]

**IN WITNESS WHEREOF** , the undersigned has executed this First Draw Certificate as of the date first written above.

**PROVECTUS BIOPHARMACEUTICALS, INC.**

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

**Exhibit D**

**Form of Notice of Conversion  
(See Attached)**

Exhibit D

## NOTICE OF CONVERSION

The undersigned hereby irrevocably elects to convert (the "Conversion") \$ \_\_\_\_\_ principal amount of the Convertible Note plus \$ \_\_\_\_\_ accrued and unpaid interest on such principal amount into Series D Shares of Provectus Biopharmaceuticals, Inc. (the "Company") according to the conditions of the Secured Convertible Promissory Note dated March [•], 2017, as of the date written below. No fee will be charged to the Lender for the conversion.

The undersigned represents and warrants that it understands that all offers and sales by the undersigned of the Series D Shares issuable to the undersigned upon Conversion of this Secured Convertible Promissory Note shall be made pursuant to registration of such securities under the Securities Act of 1933, as amended (the "Act"), or pursuant to an exemption from registration under the Act.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of Conversion Securities  
to be Issued: \_\_\_\_\_

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

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

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

\_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGED AND AGREED:

PROVECTUS BIOPHARMACEUTICALS, INC.

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Exhibit E**

**Intellectual Property  
(See Attached)**

Exhibit E

U.S. Patent Registrations

U.S. PATENT NO.

6,331,286  
6,451,597  
6,468,777  
6,493,570  
6,495,360  
6,541,223  
6,986,740  
6,991,776  
7,201,914  
7,338,652  
7,402,299  
8,470,296  
8,530,675  
8,974,363  
9,107,887  
9,273,022  
9,422,260

U.S. Patent Applications

U.S. APPLICATION NO.

14/748,579  
14/748,608  
14/748,634  
14/974,357



U.S. Trademark Registrations

MARK	U.S. REGISTRATION NO.
PROVTECTUS	3,919,981
PROVTECTUS and Design	3,919,982
	
PH-10	4,974,860
PV-10	5,096,447 <sup>1</sup>

U.S. Trademark Applications

MARK	U.S. APPLICATION NO.
TINCTURA DATUM EST	87/021,563
WHEN PATIENTS WIN, WE ALL WIN	86/739,133

<sup>1</sup> There is a misfiled security agreement recorded for U.S. Reg. No. 5,096,447 intended to be recorded for U.S. Application Serial No. 85/096,447.

**AMENDED AND RESTATED SECURED CONVERTIBLE PROMISSORY NOTE**  
**(this "Note")**

\$2,500,000

April 3, 2017

FOR VALUE RECEIVED, the undersigned Provectus Biopharmaceuticals, Inc., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of Eric A. Wachter, a resident of the State of Tennessee (the "Lender"), at the Lender's office located at 7327 Oak Ridge Highway, Suite A, Knoxville, Tennessee 37931-3488 or at such other place as the Lender may designate to the Borrower in writing from time to time, the principal sum set forth in Paragraph A below, or, if less, so much thereof as is outstanding hereunder, in lawful money of the United States of America and in immediately available funds, and to pay interest on said principal sum or the unpaid balance thereof, in like money at said office. Capitalized terms used in this Note but not immediately defined shall have the meanings set forth in Paragraph M below.

**A. Principal.** This Note shall have a maximum principal amount of Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00).

**B. Interest.** Interest on this Note shall accrue on the outstanding principal amount hereof at a rate equal to eight percent (8%) per annum, calculated on the basis of a 365-day year (the "Interest Rate").

**C. Payment Terms; Prepayment.** Except as set forth in Paragraph D(iii) below, Payments on this Note shall be applied in the following order: first to accrued but unpaid interest and second to principal. If any payment on this Note becomes due and payable on a day other than a Business Day, the payment date thereof shall be extended to the next succeeding Business Day. Principal and interest under this Note may be pre-paid in whole or in part at any time without premium or other prepayment charge.

**D. Events of Default; Remedies.**

(i) The Borrower shall be deemed to be in default under this Note if: (a) the Borrower fails to pay, when due, any payment of principal or interest under this Note, which continues for a period of ten (10) days after the due date of such payment, (b) any action commenced by or against the Borrower under the Federal Bankruptcy Code, or other statute for the relief of creditors, which is not dismissed within sixty (60) days, (c) a Change of Control in the Borrower, or (d) liquidation of the Borrower.

(ii) Upon an event of default, the Lender, at his option, may (a) allow this Note to remain outstanding and continue to accrue interest at the Interest Rate or (b) declare the outstanding principal balance of and all accrued but unpaid interest on this Note to be immediately due and payable. Further, if the event of default is as a result of a Change of Control, in addition to the right to declare the outstanding principal balance of and all accrued but unpaid interest on this Note to be immediately due and payable, the Lender shall (1) be entitled to be paid all financing received by the

Borrower under this Note from and after the date of such Change of Control, whether such financing is by the issuance of equity, debt or a combination of both, before such financing is used for any other purpose ("Change of Control Payments") and (2) be entitled to receive a penalty payment from the Borrower equal to ten times (10x) the outstanding principal amount under this Note as of the date of such Change of Control (the "Change of Control Penalty"). Any amounts received by the Lender as Change of Control Payments shall be applied in the following order: first to the Change of Control Penalty, second to accrued but unpaid interest and third to principal.

**E. Use of Proceeds.** Any amount disbursed under this Note may be used to fund the completion of the Borrower's clinical development program as currently conducted and as modified in the future by the Board of Directors with the Lender's approval and for general corporate and administrative expenses approved by the Lender, which approval, in each case, will not be unreasonably withheld.

**F. Conversion.**

(i) Voluntary Conversion. The Lender may elect to convert all of the outstanding principal and accrued but unpaid interest of this Note at any time into Series D Shares. If the Lender elects to effect a conversion of this Note into Series D Shares, the Lender shall: (a) deliver a copy of the fully executed notice of conversion in the form attached hereto as **Exhibit A** (a "Notice of Conversion") to the Borrower and (b) surrender or cause to be surrendered this Note with delivery of the Notice of Conversion. On the Voluntary Conversion Date, the Borrower shall issue and deliver to the Lender confirmation of the number of Series D Shares that have been issued to the Lender upon conversion of this Note, which number of Series D Shares shall be calculated by dividing the Conversion Amount on the Voluntary Conversion Date by the Conversion Price. The Lender shall be treated for all purposes as the record holder of such Series D Shares at 12:01 am Eastern Time on the Voluntary Conversion Date and such Series D Shares shall be issued and outstanding as of such date. The Note will be deemed terminated on the Voluntary Conversion Date, and no interest will be deemed to accrue on or after the close of business on the Voluntary Conversion Date.

(ii) Automatic Conversion. In the event that any amount of principal and accrued but unpaid interest remains outstanding on the Automatic Conversion Date, then such amount of the outstanding principal due under this Note plus all accrued but unpaid interest shall automatically convert into such number of Series D Shares equal to (a) the Conversion Amount on the Automatic Conversion Date divided by (b) the Conversion Price effective as of 12:01 am Eastern Time on the Automatic Conversion Date. If this Note is to be automatically converted, prompt written notice shall be delivered to the Lender at the address last shown on the Records of the Borrower, notifying the Lender of the conversion to be effected. Upon such conversion of this Note, the Lender hereby agrees to surrender or cause to be surrendered this Note, duly endorsed, as soon as practicable thereafter. The Note will be deemed terminated on the Automatic Conversion Date, and no interest will be deemed to accrue on or after the Automatic Conversion Date.

(iii) No Fractional Shares. No fractional Series D Shares are to be issued upon the conversion of this Note, but instead of any fraction of a Series D Share which would otherwise be issuable, the fraction of such Series D Share shall be rounded up to the nearest whole share.

(iv) Insufficient Series D Shares. Notwithstanding the foregoing, if this Note is converted, whether voluntarily or automatically under the terms hereof, and the number of authorized but unissued Series D Shares are insufficient to permit the conversion of the Conversion Amount in full, Borrower will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Series D Shares to such number of shares as shall be sufficient for such purposes. Until Borrower is able to effectuate such corporate action, Series D Shares shall be issued to the Lender in an amount equal to the amount of authorized but unissued Series D Shares available for issuance, and the portion of the Conversion Amount that remains unissued shall continue to be outstanding principal and accrued but unpaid interest of the Note.

**G. Maturity Date.** This Note, including interest and principal, shall be due and payable in full (i) on such date upon which the Borrower defaults under this Note (beyond the applicable notice and cure periods), (ii) upon a Change of Control of the Borrower, or (iii) April 2, 2019, the earliest of such dates being the "Maturity Date".

**H. Security Interest.**

(i) As collateral security for the full and timely payment of the principal, interest and other amounts owing under this Note and the performance of the Borrower under this Note, Borrower hereby assigns, conveys, delivers and grants to the Lender a general and continuing first priority security interest in the Intellectual Property of the Borrower (including any Subsidiary) now existing and all Records of the Borrower and the proceeds of any of the foregoing (the "Security Interest"), which Security Interest shall be pari passu with all other notes arranged by the PRH Group.

(ii) The Security Interest granted hereunder shall automatically terminate, without any action of the Borrower or the Lender, upon the occurrence of any of the following events:

(a) a voluntary conversion of the Note under Paragraph F; and

(b) an automatic conversion of the Note under Paragraph F.

**I. Cumulative Remedies: No Waiver.** The Lender's rights and remedies under this Note are cumulative and in addition to all rights and remedies provided by applicable law from time to time. The exercise or direction to exercise by the Lender of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice the Lender in the exercise of any other rights or remedy. No waiver of any default shall be implied from any omission by the Lender to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Note shall be construed as a waiver of any subsequent breach of the same provision. The consent of the Lender to any act by the Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the Lender's consent to or

approval of any subsequent act. The Lender's acceptance of the late performance of any obligation shall not constitute a waiver by the Lender of the right to require prompt performance of all further obligations. The Lender's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of the Lender's right to proceed with the exercise of remedies for any unfulfilled obligations, and the Lender's acceptance of any partial performance shall not constitute a waiver by the Lender of any rights relating to the unfulfilled portion of the applicable obligation.

**J. No Usury.** Nothing herein contained, nor any transaction related hereto, shall be construed or so operate as to require the Borrower to pay interest in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charged paid by the Borrower result in computation or earning of interest in excess of the maximum legal rate of interest permitted under the law in effect while said interest is being earned, then any and all of that excess shall be and is waived by the Lender, and all that excess shall be automatically credited against and in reduction of the principal balance, and any portion of the excess that exceeds the principal balance shall be paid by the Lender to the Borrower so that under no circumstances shall the Borrower be required to pay interest in excess of the maximum rate allowed by applicable law.

**K. Jurisdiction: Waiver of Jury Trial.**

(i) THIS NOTE SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF TENNESSEE EXCEPT TO THE EXTENT SUPERSEDED BY FEDERAL LAW. THE BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN KNOX COUNTY, TENNESSEE AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS NOTE, OR ANY TRANSACTION RELATING TO OR ARISING FROM THIS NOTE, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. NOTHING HEREIN SHALL LIMIT THE LENDER'S RIGHT TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COMPETENT COURTS OF ANY OTHER JURISDICTION.

(ii) THE BORROWER AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER WRITTEN OR VERBAL) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BORROWER AND THE LENDER FOR ENTERING INTO THIS AGREEMENT.

**L. Miscellaneous.**

(i) TIME IS OF THE ESSENCE WITH RESPECT TO THIS NOTE.

(ii) This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(iii) The Borrower hereby waives presentment for payment, demand, notice, protest, notice of protest and notice of dishonor.

**M. Definitions.** The following terms used in this Note shall have the following meanings:

"Affiliate" means, with respect to any Person that directly or indirectly, through one or more intermediaries, Controls, or is controlled by, or is under common control with, such Person.

"Automatic Conversion Date" means October 3, 2018; provided, that the Automatic Conversion Date (i) shall be extended if, at the time of such 18-month anniversary date, a lawsuit is pending or threatened against the Borrower with respect to this Note, and shall be extended until the resolution of such lawsuit, (ii) shall be extended if the Borrower's proxy contest with the Culpepper Group is ongoing on such date until the date such proxy contest is finalized in favor of the Borrower, and (iii) shall never be deemed to occur if the Borrower ever loses the proxy contest to the Culpepper Group or any other group of investors led by Peter Culpepper or an Affiliate of the Culpepper Group or Peter Culpepper.

"Board of Directors" means the Board of Directors of the Borrower.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in Knoxville, Tennessee.

"Change of Control" means, unless otherwise approved in writing by the PRH Group, the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d 5(b)(1) promulgated under the 1934 Act) of effective control (whether through legal or beneficial ownership of capital stock of the Borrower, by contract or otherwise) of in excess of 33% of the voting securities of the Borrower (other than by means of conversion or exercise of Series D Shares and any other securities issued together with such Series D Shares), (b) the Borrower merges into or consolidates with any other Person, or any Person merges into or consolidates with the Borrower and, after giving effect to such transaction, the stockholders of the Borrower immediately prior to such transaction own less than 66% of the aggregate voting power of the Borrower or the successor entity of such transaction, (c) the Borrower sells or transfers all or substantially all of its assets to another Person and the stockholders of the Borrower immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one half of the members of the Board of Directors on the date hereof except for directors appointed or approved by Lender, or (e) the execution by the Borrower of an agreement to which the Borrower is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Controls" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Conversion Amount" means (a) the entire principal amount of this Note, plus (b) all accrued and unpaid interest.

"Conversion Price" means \$0.2862.

"Culpepper Group" means that certain group composed of Peter Culpepper and such other director nominees listed in that certain definitive Schedule 14A proxy statement filed with the Securities and Exchange Commission on January 27, 2017 and as may be subsequently amended or reconstituted.

"Intellectual Property" means all of Borrower's United States federal and state rights, title and interest, if any, in and to (1) the applications and registrations listed on Exhibit B attached hereto and (2) to the extent not already included on Exhibit B, all existing inventions, designs, patent applications and patents; trademarks, service marks, trade dresses, and any applications and registrations for the foregoing; copyrights and copyright applications and registrations; trade secrets; licenses to third-party intellectual property that lawfully may be assigned by Borrower; and other intellectual property rights in the United States (whether or not registered) owned by Borrower.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"PRH Group" means that group of investors led by Dominic Rodrigues, Bruce Horowitz and Ed Pershing pursuant to the terms of the Term Sheet.

"Records" means, to the extent related to the Intellectual Property of the Borrower, all books, correspondence, files, records, invoices and other papers and documents in Borrower's possession or custody, including without limitation to the extent so related, all tapes, cards, computer runs, computer programs, and other papers and documents in possession or control of Borrower or any computer bureau from time to time acting for Borrower, whether in physical or electronic formats.

"Series D Shares" means shares of Series D Convertible Preferred Stock, par value \$0.001 per share, of the Borrower.

"Subsidiary" means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the directors, managers or other persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of its respective Subsidiaries.

"Term Sheet" means Amended and Restated Confidential Definitive Financing Commitment Term Sheet dated effective March 19, 2017 (the "Term Sheet") by and between the Borrower, Dominic Rodrigues and Bruce Horowitz.

"Voluntary Conversion Date" means the date which is three (3) Business Days following the date the Notice of Conversion is delivered to the Borrower.

*[Signatures contained on next page.]*



\_\_\_\_\_  
Name: Timothy C. Scott  
Title: President

STATE OF TENNESSEE        )  
                                      ) ss.  
COUNTY OF KNOX         )

Before me, the undersigned authority, on this day personally appeared Timothy C. Scott, President of Provectus Biopharmaceuticals, Inc., and such person is known to me to be the person whose name is subscribed to the foregoing instrument, and upon his oath acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this     day of April, 2017.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_

**Exhibit A**

**Form of Notice of Conversion  
(See Attached)**

Exhibit A

## NOTICE OF CONVERSION

The undersigned hereby irrevocably elects to convert (the "Conversion") \$ \_\_\_\_\_ principal amount of the Convertible Note plus \$ \_\_\_\_\_ accrued and unpaid interest on such principal amount into Series D Shares of Provectus Biopharmaceuticals, Inc. (the "Company") according to the conditions of the Secured Convertible Promissory Note dated April 3, 2017, as of the date written below. No fee will be charged to the Lender for the conversion.

The undersigned represents and warrants that it understands that all offers and sales by the undersigned of the Series D Shares issuable to the undersigned upon Conversion of this Secured Convertible Promissory Note shall be made pursuant to registration of such securities under the Securities Act of 1933, as amended (the "Act"), or pursuant to an exemption from registration under the Act.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of Conversion Securities  
to be Issued: \_\_\_\_\_

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

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

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

ACKNOWLEDGED AND AGREED:

PROVECTUS BIOPHARMACEUTICALS, INC.

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Exhibit B**

**Intellectual Property  
(See Attached)**

Exhibit B

## INTELLECTUAL PROPERTY

### U.S. Patent Registrations

#### U.S. PATENT No.

6,331,286  
6,451,597  
6,468,777  
6,493,570  
6,495,360  
6,541,223  
6,986,740  
6,991,776  
7,201,914  
7,338,652  
7,402,299  
8,470,296  
8,530,675  
8,974,363  
9,107,887  
9,273,022  
9,422,260

### U.S. Patent Applications

#### U.S. APPLICATION No.

14/748,579  
14/748,608  
14/748,634  
14/974,357

U.S. Trademark Registrations

MARK  
PROVECTUS  
PROVECTUS and  
Design

U.S. REGISTRATION NO.  
3,919,981  
3,919,982

PROVECTUS

PH-10  
PV-10

4,974,860  
5,096,447 <sup>1</sup>

U.S. Trademark Applications

MARK  
TINCTURA DATUM EST  
WHEN PATIENTS  
WIN, WE ALL WIN

U.S. APPLICATION NO.  
87/021,563  
86/739,133

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<sup>1</sup> There is a misfiled security agreement recorded for U.S. Reg. No. 5,096,447 intended to be recorded for U.S. Application Serial No. 85/096,447.

**INDEMNIFICATION AGREEMENT**

THIS INDEMNIFICATION AGREEMENT (the "**Agreement**") is made and entered into as of April 3, 2017, between **PROVECTUS Biopharmaceuticals, Inc.**, a Delaware corporation (the "**Company**"), and Dominic Rodrigues ("**Indemnitee**").

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The By-laws and Certificate of Incorporation of the Company, as amended (the "**COI**"), require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). The By-laws, COI, and DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the By-laws and COI, and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Company's By-laws and COI and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified; and

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance which Indemnitee intends to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board;

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as a director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that a court of competent jurisdiction shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that



Indemnitee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Indemnification of Appointing Stockholder. If (i) Indemnitee is or was affiliated with one or more stockholders that have invested in the Company (an "**Appointing Stockholder**"), and (ii) the Appointing Stockholder is, or is threatened to be made, a party to or a participant in any Proceeding relating to or arising by reason of Appointing Stockholder's position as a stockholder of, or lender to, the Company, or Appointing Stockholder's appointment of or affiliation with Indemnitee or any other director, including without limitation any alleged misappropriation of a Company asset or corporate opportunity, any claim of misappropriation or infringement of intellectual property relating to the Company, any alleged false or misleading statement or omission made by the Company (or on its behalf) or its employees or agents, or any allegation of inappropriate control or influence over the Company or its Board members, officers, equity holders or debt holders, then the Appointing Stockholder will be entitled to indemnification hereunder for Expenses to the same extent as Indemnitee, and the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of Expenses shall apply to any such indemnification of Appointing Stockholder.

The rights provided to the Appointing Stockholder under this Section 1(d) shall be suspended during any period during which the Appointing Stockholder does not have a representative on the Company's Board; provided, however, that in the event of any such suspension, the Appointing Stockholder's rights to indemnification will not be suspended with respect to any Proceeding based in whole or in part on facts and circumstances occurring at any time prior to such suspension regardless of whether the Proceeding arises before or after such suspension. The Company and Indemnitee agree that the Appointing Stockholder is an express third party beneficiary of the terms of this Section 1(d).

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

### 3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an

indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL, public policy, and other applicable law. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no

disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company. For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified

public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to

which Indemnatee is a party is resolved in any manner other than by adverse judgment against Indemnatee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnatee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnatee to indemnification or create a presumption that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

#### 7. Remedies of Indemnatee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnatee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnatee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnatee shall be entitled to an adjudication in any other court of competent jurisdiction, of Indemnatee's entitlement to such indemnification. Indemnatee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnatee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnatee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnatee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnatee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnatee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnatee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or

to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the COI, the Company's By-laws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Company's COI, By-laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be

covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.



12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "**Corporate Status**" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "**Enterprise**" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past

five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "**Proceeding**" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of his or her Corporate Status, by reason of any action taken by him or of any inaction on his part while acting in his or her Corporate Status; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to either Indemnitee or Appointing Stockholder shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee and Appointing Stockholder indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:                   Provectus Biopharmaceuticals, Inc.  
7327 Oak Ridge Highway  
Knoxville, TN 37931

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature or electronic mail and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law. This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of Tennessee, without regard to conflict of law principles that would result in the application of any law other than the law of the state of Tennessee.

21. Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Tennessee and to the jurisdiction of the United States District Court for the Middle District of Tennessee for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement; (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Tennessee or the United States District Court for the Middle District of Tennessee; and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.



**PROVECTUS Biopharmaceuticals, Inc.**

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

Name: Timothy C. Scott

Title: President

**INDEMNITEE**

\_\_\_\_\_  
Name: Dominic Rodrigues

Address: 1930 Village Center Circle, #3-206

Las Vegas, NV 89134

**INDEMNIFICATION AGREEMENT**

THIS INDEMNIFICATION AGREEMENT (the "**Agreement**") is made and entered into as of April 3, 2017, between **PROVECTUS Biopharmaceuticals, Inc.**, a Delaware corporation (the "**Company**"), and Bruce Horowitz ("**Indemnitee**").

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The By-laws and Certificate of Incorporation of the Company, as amended (the "**COI**"), require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). The By-laws, COI, and DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the By-laws and COI, and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnatee does not regard the protection available under the Company's By-laws and COI and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnatee to serve in such capacity. Indemnatee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified; and

WHEREAS, Indemnatee has certain rights to indemnification and/or insurance which Indemnatee intends to be secondary to the primary obligation of the Company to indemnify Indemnatee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnatee's willingness to serve on the Board;

NOW, THEREFORE, in consideration of Indemnatee's agreement to serve as a director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnatee. The Company hereby agrees to hold harmless and indemnify Indemnatee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnatee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), the Indemnatee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnatee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnatee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnatee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, the Indemnatee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnatee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnatee, or on the Indemnatee's behalf, in connection with such Proceeding if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnatee shall have been adjudged to be liable to the Company unless and to the extent that a court of competent jurisdiction shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that

Indemnitee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Indemnification of Appointing Stockholder. If (i) Indemnitee is or was affiliated with one or more stockholders that have invested in the Company (an "**Appointing Stockholder**"), and (ii) the Appointing Stockholder is, or is threatened to be made, a party to or a participant in any Proceeding relating to or arising by reason of Appointing Stockholder's position as a stockholder of, or lender to, the Company, or Appointing Stockholder's appointment of or affiliation with Indemnitee or any other director, including without limitation any alleged misappropriation of a Company asset or corporate opportunity, any claim of misappropriation or infringement of intellectual property relating to the Company, any alleged false or misleading statement or omission made by the Company (or on its behalf) or its employees or agents, or any allegation of inappropriate control or influence over the Company or its Board members, officers, equity holders or debt holders, then the Appointing Stockholder will be entitled to indemnification hereunder for Expenses to the same extent as Indemnitee, and the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of Expenses shall apply to any such indemnification of Appointing Stockholder.

The rights provided to the Appointing Stockholder under this Section 1(d) shall be suspended during any period during which the Appointing Stockholder does not have a representative on the Company's Board; provided, however, that in the event of any such suspension, the Appointing Stockholder's rights to indemnification will not be suspended with respect to any Proceeding based in whole or in part on facts and circumstances occurring at any time prior to such suspension regardless of whether the Proceeding arises before or after such suspension. The Company and Indemnitee agree that the Appointing Stockholder is an express third party beneficiary of the terms of this Section 1(d).

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.



### 3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an

indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL, public policy, and other applicable law. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no

disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company. For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified

public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to

which Indemnatee is a party is resolved in any manner other than by adverse judgment against Indemnatee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnatee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnatee to indemnification or create a presumption that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

#### 7. Remedies of Indemnatee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnatee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnatee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnatee shall be entitled to an adjudication in any other court of competent jurisdiction, of Indemnatee's entitlement to such indemnification. Indemnatee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnatee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnatee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnatee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnatee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnatee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnatee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or

to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the COI, the Company's By-laws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Company's COI, By-laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be

covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "**Corporate Status**" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "**Enterprise**" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past



five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "**Proceeding**" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of his or her Corporate Status, by reason of any action taken by him or of any inaction on his part while acting in his or her Corporate Status; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to either Indemnitee or Appointing Stockholder shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee and Appointing Stockholder indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:                      Provectus Biopharmaceuticals, Inc.  
7327 Oak Ridge Highway  
Knoxville, TN 37931

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature or electronic mail and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law. This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of Tennessee, without regard to conflict of law principles that would result in the application of any law other than the law of the state of Tennessee.

21. Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Tennessee and to the jurisdiction of the United States District Court for the Middle District of Tennessee for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement; (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Tennessee or the United States District Court for the Middle District of Tennessee; and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.



**PROVECTUS Biopharmaceuticals, Inc.**

By: \_\_\_\_\_  
Name: Timothy C. Scott  
Title: President

**INDEMNITEE**

\_\_\_\_\_  
Name: Bruce Horowitz  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Contact:  
Provectus Biopharmaceuticals, Inc.  
Timothy C. Scott, President  
Phone: 866-594-5999

Allison + Partners  
Tom Smith, Managing Director –  
Investor Relations  
Phone: 646-428-0653

**FOR IMMEDIATE RELEASE**

**PROVECTUS BIOPHARMACEUTICALS CLOSES DEFINITIVE FINANCING  
WITH PRH GROUP**

**Dominic Rodrigues Elected New Chairman, Bruce Horowitz Named New Director**

KNOXVILLE, TN, April 4, 2017 — Provectus Biopharmaceuticals, Inc. (OTCQB: PVCT, [www.provectusbio.com](http://www.provectusbio.com)) ("Provectus" or the "Company"), a clinical-stage oncology and dermatology biopharmaceutical company, today announced the entry into definitive agreements related to the previously announced Definitive Financing Commitment Term Sheet (the "Definitive Financing") it entered into on March 19 with a group of the Company's stockholders referred in the Definitive Financing as the "PRH Group."

Bruce Horowitz and Dominic Rodrigues were appointed as new Board members, and Mr. Rodrigues was elected as new Board Chairman. Eric Wachter, Ph.D. and Jan Koe will remain as Board members. The Board decreased the number of directors from five to four and will operate with four directors until such time as the third PRH Group-nominated director is appointed in accordance with the Definitive Financing. Three former members of Provectus' board of directors, Kelly McMasters, M.D., Tim Scott, Ph.D., and Alfred E. Smith IV, resigned upon the PRH Group's funding into escrow of its first financing tranche of \$2.5 million and upon the draw-down by Provectus of the remainder of the \$2.5 million investment commitment from Dr. Wachter, co-founder and Chief Technology Officer.

Provectus also has adopted the basic tenets of the PRH Group's fundamental strategy for the Company: change the direction and control of the board of directors, complete a tranche-based capital formation program, and fortify the management team to support the clinical development program as well as business and corporate development opportunities.

Dominic Rodrigues said, "Our new board of directors thanks the Company's former board members for their time, effort, and service. They worked collaboratively with the new directors and others to execute the new business plan of Provectus, focusing on the goals of maximizing shareholder value, maintaining the continuity of the Company's mission, and strengthening the management team."

## About Provectus

Provectus is a clinical-stage biopharmaceutical company developing new therapies for the treatment of solid tumor cancers and dermatologic diseases. Provectus' investigational oncology drug, PV-10, is an oncolytic immunotherapy currently enrolling patients in Phase 3 clinical trials for metastatic melanoma. The Company has received orphan drug designations from the FDA for its melanoma and hepatocellular carcinoma indications. PH-10, its topical investigational drug, has completed Phase 2 clinical trials as a treatment for atopic dermatitis and psoriasis. Information about these and the Company's other clinical trials can be found at the NIH registry, [www.clinicaltrials.gov](http://www.clinicaltrials.gov). For additional information about Provectus, please visit the Company's website at [www.provectusbio.com](http://www.provectusbio.com) or contact Allison + Partners.

*FORWARD-LOOKING STATEMENTS: This release contains "forward-looking statements" as defined under U.S. federal securities laws. These statements reflect management's current knowledge, assumptions, beliefs, estimates, and expectations and express management's current views of future performance, results, and trends and may be identified by their use of terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "will," and other similar terms. Forward-looking statements are subject to a number of risks and uncertainties that could cause our actual results to materially differ from those described in the forward-looking statements. Readers should not place undue reliance on forward-looking statements. Such statements are made as of the date hereof, and we undertake no obligation to update such statements after this date.*

*Risks and uncertainties that could cause our actual results to materially differ from those described in forward-looking statements include those discussed in our filings with the Securities and Exchange Commission (including those described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2016).*

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