

**ISTA PHARMACEUTICALS, INC.**  
a Delaware corporation

CHARTER

OF

THE COMPENSATION COMMITTEE  
OF THE BOARD OF DIRECTORS

**PURPOSES**

The purposes of the Compensation Committee of the Board of Directors of ISTA Pharmaceuticals, Inc., a Delaware corporation (the “Company”) shall be to assist the Board of Directors in fulfilling its responsibilities by:

- Recommending to the Board of Directors for its approval, the compensation of the Chief Executive Officer;
- Approving the compensation of any executive officer of the Company other than the Chief Executive Officer;
- Setting the number of shares of the Company’s Common Stock reserved under the Company’s option pool and/or other equity award programs for Company employees;
- Setting the Company’s executive compensation guidelines; and
- Reviewing, approving and evaluating executive compensation plans, policies and programs for the Company.

In addition, the Compensation Committee will undertake those specific duties and responsibilities listed below and such other duties as the Board of Directors may from time to time prescribe.

**MEMBERSHIP**

The Compensation Committee members will be appointed by, and will serve at the discretion of, the Board of Directors and will consist of three (3) members of the Board of Directors. To the extent required by applicable regulatory requirements, all members of the Compensation Committee shall be independent directors, and shall satisfy the applicable NASDAQ listing standards for independence for members and any other applicable regulatory requirements. Each of the members of the Compensation Committee shall also be a “non-employee director” as such term is defined under Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and qualify as an “outside director” under Section 162(m) of the Internal Revenue Code of 1986, as amended (the “Code”) and related regulations, all as amended from time to time.

## RESPONSIBILITIES

To fulfill its responsibilities and duties hereunder, the Compensation Committee shall:

1. Evaluate Executive Officer Performance. Recommend to the Board of Directors for its approval corporate goals and objectives relevant to the compensation of the Company's executive officers. The Compensation Committee shall also establish procedures to evaluate the performance of the Chief Executive Officer and annually perform such evaluation and review the results of such evaluation with the Board of Directors. The Compensation Committee also shall review the procedures for the evaluation of other executive officers and review annually the results of the Chief Executive Officer's evaluation of such officers.
2. Executive Officer Compensation. Recommend to the Board of Directors for its approval the annual salary, bonus and other benefits of the Chief Executive Officer. The Compensation Committee also shall review and approve the annual salary, bonus, and other benefits of the other executive officers as recommended by the Chief Executive Officer. The Compensation Committee shall also be responsible for determining the Company's policy with respect to the application of Section 162(m) of the Code, and when compensation may be paid by the Company which is not deductible for Federal income tax purposes.
3. Significant Officer Contracts. Review and approve significant employment agreements, severance arrangements, change in control agreements/provisions, and other arrangements or transactions with the executive officers having any compensatory effect or purpose; provided that, the Compensation Committee shall make recommendations to the Board of Directors for its approval with respect to any such agreement or arrangement with the Chief Executive Officer.
4. Executive Compensation Programs. Ensure appropriate oversight of the Company's executive compensation programs, including reviewing on at least a periodic basis the Company's principal executive compensation programs and taking steps to modify any executive compensation programs that yield payments and benefits not reasonably related to performance.
5. Board of Director Compensation. Review and recommend to the Board of Directors appropriate director compensation programs for service as directors, committee chairs and committee members, consistent with the NASDAQ listing standards and any other applicable regulatory requirements.
6. Stock Incentive Plans. Approve stock option grants and other equity-based incentive awards under the Company's stock and incentive compensation plans, including performance criteria relating to the plans or awards, and otherwise assist the Board of Directors in administering awards under these plans; provided that the Compensation Committee shall make recommendations to the Board of Directors for its approval concerning any stock option grant or other equity-based incentive award to the Chief Executive Officer. Except for stock option grants and other equity-based incentive awards to Section 16(b) officers and directors, the Compensation Committee may delegate its responsibilities to administer and make grants under such plans to management to the extent contemplated by the documents governing such plans, except to the extent such delegation would be inconsistent with applicable law or NASDAQ listing requirements. The Compensation Committee shall also periodically assess and make recommendations to the Board concerning the Company's stock and incentive compensation

plans, including the impact of stock compensation plans on stockholder value and impact of dilution from Company stock plans.

7. Employee Benefit Plans. Review and approve any new employee benefit plan or change to an existing plan that creates a material long-term financial commitment by the Company or any subsidiary. The Compensation Committee also shall appoint the named fiduciaries and administrators for employee benefit plans in accordance with their terms and shall have the authority to remove such fiduciaries and administrators. The Compensation Committee shall review the performance of such fiduciaries and administrators periodically and remove and replace them as appropriate
8. Evaluate Human Resources Strategies. Ensure appropriate oversight of the Company's human resources policies, including periodically reviewing major strategies established to fulfill the Company's ethical and legal human resources responsibilities.
9. Retention of Compensation Consultant and other Advisors. Have authority to retain and terminate any compensation consulting firm used to evaluate director, chief executive officer or executive officer compensation, and to approve the firm's fees and other retention terms. The Compensation Committee shall also have the authority to obtain advice and assistance from internal and external legal, human resources or other advisors.
10. Compensation Committee Report. Provide annually a report of the Compensation Committee on executive officer compensation matters for inclusion in the Company's annual report and/or proxy statement in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC") and other applicable requirements.
11. Annual Review. Evaluate its performance as the Compensation Committee on an annual basis. The Compensation Committee also shall review annually and update, as necessary, this Charter's adequacy and seek approval of any such changes from the Board of Directors.

## **MEETINGS**

The Compensation Committee will meet at least two times each year. The Compensation Committee may establish its own schedule and shall provide such schedule to the Board of Directors in advance. The Compensation Committee, as it may determine to be appropriate, may meet in separate executive sessions with other directors, the Chief Executive Officer and other Company employees, agents or representatives invited by the Compensation Committee.

## **MINUTES**

The Compensation Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board of Directors.

## **REPORTS**

The Compensation Committee will report to the Board of Directors annually on executive officer compensation matters and provide a report of the Compensation Committee on such matters for inclusion in the Company's annual report and/or proxy statement in accordance with the rules and regulations of the SEC and other applicable requirements.

The Compensation Committee will also annually report to the Board of Directors the results of an annual review by the Compensation Committee of its own performance and its Charter.

The Compensation Committee will also provide additional reports to the Board of Directors as the Compensation Committee may determine to be appropriate in light of its purposes and functions.

## **COMPENSATION**

Subject to any applicable regulatory requirements, members of the Compensation Committee shall receive such fees, if any, for their service as Compensation Committee members as may be determined by the Board of Directors in its sole discretion. Such fees may include retainers or per meeting fees. Fees may be paid in such form of consideration as is determined by the Board of Directors.

## **EFFECTIVE DATE**

This Charter of the Compensation Committee has been adopted by the Board of Directors and is effective as of December 10, 2004.