

INVIVO THERAPEUTICS HOLDINGS CORP.

Form 10-K/A

September 12, 2013

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM 10-K/A**  
**(Amendment No. 1)**

x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2012

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

COMMISSION FILE NUMBER 000-52089

**INVIVO THERAPEUTICS HOLDINGS CORP.**

(Exact Name of Registrant as specified in its charter)

Nevada  
(State or other jurisdiction of

incorporation or organization)

36-4528166  
(I.R.S. Employer

Identification No.)

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One Kendall Square

Suite B14402

Cambridge, Massachusetts  
(Address of principal executive offices)

02139  
(Zip Code)

Registrant's telephone number, including area code: (617) 863-5500

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Title of each class

Common Stock, par value \$0.00001 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates based on the closing price of such stock on the Over-the-Counter Bulletin Board on June 29, 2012 was \$ 92,766,620.

As of March 6, 2013, the number of shares outstanding of the registrant's common stock, \$0.00001 par value per share, was 66,146,128.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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**Explanatory Note**

This Amendment No. 1 (the Amendment) to the Annual Report on Form 10-K for the fiscal year ended December 31, 2012 of InVivo Therapeutics Holdings Corp. (the Company), originally filed with the Securities and Exchange Commission on March 12, 2013 (the Original Filing), is being filed solely for the purpose of providing an updated audit report in which the Company's auditor has revised its opinion in the audit report filed with the Original Filing to clarify the inclusion of the cumulative period from November 28, 2005 (inception) to December 31, 2012. In accordance with rule 12b-15, the Company has included in this Amendment the complete text of Item 8 with the revised audit report, however no changes have been made to the financial statements appearing herein.

Other than as expressly set forth in this Amendment, the Company is not amending any other part of the Original Filing. This Amendment continues to speak as of the date of the Original Filing, except as amended by this Amendment, and does not reflect events occurring after the date of the Original Filing, or modify or update any related or other disclosures.

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**Item 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**  
*Index to Consolidated Financial Statements*

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**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of InVivo Therapeutics Holdings Corp.:

We have audited the accompanying consolidated balance sheets of InVivo Therapeutics Holdings Corp. as of December 31, 2012 and 2011, and the related consolidated statements of operations, changes stockholders' deficit and cash flows for the years then ended and for the period from November 28, 2005 (inception) to December 31, 2012. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of InVivo Therapeutics Holdings Corp. as of December 31, 2012 and 2011, and the results of its operations and its cash flows for the years then ended and the period from November 28, 2005 (inception) to December 31, 2012, in conformity with U.S. generally accepted accounting principles.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), InVivo Therapeutics Holdings Corp.'s internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 11, 2013 expressed an unqualified opinion on the effectiveness of InVivo Therapeutics Holdings Corp.'s internal control over financial reporting.

/s/ Wolf & Company, P.C.

Boston, Massachusetts

March 11, 2013

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

## Consolidated Balance Sheets

|  | December 31,  |              |
|--|---------------|--------------|
|  | 2012          | 2011         |
| <b>ASSETS:</b>   |               |              |
| Current assets:  |               |              |
| Cash and cash equivalents  | \$ 12,825,090 | \$ 4,363,712 |
| Restricted cash  | 601,351       | 547,883      |
| Prepaid expenses and other current assets  | 143,867       | 104,022      |
| Total current assets   | 13,570,308    | 5,015,617    |
| Property and equipment, net  | 2,311,942     | 520,482      |
| Other assets   | 179,415       | 166,139      |
| Total assets   | \$ 16,061,665 | \$ 5,702,238 |
| <b>LIABILITIES AND STOCKHOLDERS DEFICIT:</b>   |               |              |
| Current liabilities:   |               |              |
| Accounts payable   | \$ 1,152,550  | \$ 567,195   |
| Loan payable-current portion   |               | 50,578       |
| Capital lease payable-current portion  | 32,606        | 30,724       |
| Derivative warrant liability   | 14,584,818    | 35,473,230   |
| Accrued expenses   | 1,021,275     | 618,369      |
| Total current liabilities  | 16,791,249    | 36,740,096   |
| Loan payable-less current portion  | 1,578,000     | 83,794       |
| Capital lease payable-less current portion   | 2,799         | 38,042       |
| Total liabilities  | 18,372,048    | 36,861,932   |
| Commitments and contingencies  |               |              |
| Stockholders' deficit:   |               |              |
| Common stock, \$0.00001 par value, authorized 200,000,000 shares;                                  |               |              |
| issued and outstanding 65,881,122 and 53,760,471 shares at December 31 2012 and 2011, respectively | 659           | 538          |
| Additional paid-in capital   | 40,842,339    | 16,656,830   |
| Deficit accumulated during the development stage   | (43,153,381)  | (47,817,062) |
| Total stockholders' deficit  | (2,310,383)   | (31,159,694) |
| Total liabilities and stockholders' deficit  | \$ 16,061,665 | \$ 5,702,238 |

See notes to consolidated financial statements.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

## Consolidated Statements of Operations

|   | Years Ended<br>December 31, |                 | Period from<br>November 28,<br>2005<br>(inception) to<br>December 31,<br>2012 |
|---|-----------------------------|-----------------|---|
|   | 2012                        | 2011            |   |
| Operating expenses:   |                             |                 |   |
| Research and development                                      | \$ 6,375,795                | \$ 4,102,847    | \$ 15,259,629   |
| General and administrative                                    | 6,403,656                   | 4,555,872       | 14,655,193  |
| Total operating expenses                                      | 12,779,451                  | 8,658,719       | 29,914,822  |
| Operating loss  | (12,779,451)                | (8,658,719)     | (29,914,822)  |
| Other income (expense):                                       |                             |                 |   |
| Other income  |                             |                 | 383,000   |
| Interest income   | 35,184                      | 8,759           | 55,233  |
| Interest expense  | (71,726)                    | (12,676)        | (1,138,057)   |
| Derivatives gain (loss)                                       | 17,479,674                  | (26,065,579)    | (12,538,487)  |
| Other income (expense), net                                   | 17,443,132                  | (26,069,496)    | (13,238,311)  |
| Net income (loss)   | \$ 4,663,681                | \$ (34,728,215) | \$ (43,153,133)   |
| Net income (loss) per share, basic                            | \$ 0.07                     | \$ (0.67)       | \$ (1.22)   |
| Net income (loss) per share, diluted                          | \$ 0.06                     | \$ (0.67)       | \$ (1.22)   |
| Weighted average number of common shares outstanding, basic   | 63,226,899                  | 51,894,871      | 35,348,456  |
| Weighted average number of common shares outstanding, diluted | 71,919,419                  | 51,894,871      | 35,348,456  |

See notes to the consolidated financial statements.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

## Consolidated Statements of Changes in Stockholders' Deficit

|   | Common Stock |        | Additional<br>Paid-in<br>Capital | Deficit                            | Total<br>Stockholders<br>Deficit |
|---|--------------|--------|----------------------------------|------------------------------------|----------------------------------|
|   | Shares       | Amount |                                  | During the<br>Development<br>Stage |                                  |
| Balance on inception date, November 28, 2005  |              | \$     | \$                               | \$                                 | \$                               |
| Issuance of founders stock  | 24,787,080   | 248    |                                  | (248)                              |                                  |
| Share-based compensation expense  |              |        | 18,347                           |                                    | 18,347                           |
| Net loss  |              |        |                                  | (1,097,702)                        | (1,097,702)                      |
| Balance as of December 31, 2007   | 24,787,080   | 248    | 18,347                           | (1,097,950)                        | (1,079,355)                      |
| Share-based compensation expense  |              |        | 24,526                           |                                    | 24,526                           |
| Net loss  |              |        |                                  | (1,564,069)                        | (1,564,069)                      |
| Balance as of December 31, 2008   | 24,787,080   | 248    | 42,873                           | (2,662,019)                        | (2,618,898)                      |
| Share-based compensation expense  |              |        | 171,059                          |                                    | 171,059                          |
| Conversion of convertible notes payable and accrued interest  | 1,472,435    | 15     | 1,344,351                        |                                    | 1,344,366                        |
| Net loss  |              |        |                                  | (2,515,878)                        | (2,515,878)                      |
| Balance as of December 31, 2009   | 26,259,515   | 263    | 1,558,283                        | (5,177,897)                        | (3,619,351)                      |
| Share-based compensation expense  |              |        | 664,908                          |                                    | 664,908                          |
| Issuance of common stock in March 2010  | 1,095,258    | 10     | 999,990                          |                                    | 1,000,000                        |
| Conversion of convertible notes payable and accrued interest  | 3,792,417    | 38     | 3,328,090                        |                                    | 3,328,128                        |
| Issuance of common stock in reverse merger  | 6,999,981    | 70     | (70)                             |                                    |                                  |
| Beneficial conversion feature on notes payable  |              |        | 272,762                          |                                    | 272,762                          |
| Issuance of common stock in private placement, net of stock issuance costs of \$2,072,117 and non stock issuance costs of \$5,369,570 | 12,995,403   | 130    | 3,907,274                        |                                    | 3,907,404                        |
| Conversion of convertible bridge notes in conjunction with the private placement  | 504,597      | 5      | 504,592                          |                                    | 504,597                          |
| Net loss  |              |        |                                  | (7,910,950)                        | (7,910,950)                      |
| Balance as of December 31, 2010   | 51,647,171   | 516    | 11,235,829                       | (13,088,847)                       | (1,852,502)                      |
| Share-based compensation expense  |              |        | 921,512                          |                                    | 921,512                          |
| Issuance of common stock in private placement   | 980,392      | 10     | 1,999,990                        |                                    | 2,000,000                        |
| Issuance of common stock for services   | 215,000      | 2      | 209,448                          |                                    | 209,450                          |
| Issuance of common stock upon exercise of warrants  | 734,329      | 7      | 988,367                          |                                    | 988,374                          |
| Issuance of common stock upon exercise of stock options   | 143,731      | 2      | 10,433                           |                                    | 10,435                           |
| Issuance of common stock to 401(k) plan   | 39,848       | 1      | 41,661                           |                                    | 41,662                           |
| Fair value of warrants issued for services  |              |        | 10,051                           |                                    | 10,051                           |
| Fair value of derivative warrant liability reclassified to additional paid-in capital   |              |        | 1,239,539                        |                                    | 1,239,539                        |
| Net loss  |              |        |                                  | (34,728,215)                       | (34,728,215)                     |
| Balance as of December 31, 2011   | 53,760,471   | 538    | 16,656,830                       | (47,817,062)                       | (31,159,694)                     |
| Share-based compensation expense  |              |        | 1,232,959                        |                                    | 1,232,959                        |
| Issuance of common stock in public offering   | 9,523,810    | 95     | 18,154,948                       |                                    | 18,155,043                       |
| Issuance of common stock for services   | 15,000       |        | 24,750                           |                                    | 24,750                           |
| Issuance of common stock upon exercise of warrants  | 1,779,716    | 18     | 1,129,077                        |                                    | 1,129,095                        |
| Issuance of common stock upon exercise of stock options   | 755,020      | 8      | 111,597                          |                                    | 111,605                          |
| Issuance of common stock to 401(k) plan   | 47,105       |        | 91,524                           |                                    | 91,524                           |
| Fair value of warrants issued for services  |              |        | 31,916                           |                                    | 31,916                           |
|   |              |        | 3,408,738                        |                                    | 3,408,738                        |

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|   |            |        |               |                 |                |
|---|------------|--------|---------------|-----------------|----------------|
| Fair value of derivative warrant liability reclassified to additional paid-in capital |            |        |               |                 |                |
| Net income  |            |        |               | 4,663,681       | 4,663,681      |
| Balance as of December 31, 2012   | 65,881,122 | \$ 659 | \$ 40,842,339 | \$ (43,153,381) | \$ (2,310,383) |

See notes to the consolidated financial statements.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

## Consolidated Statements of Cash Flows

|  | Years Ended December 31, |                     | Period from  |
|--|--------------------------|---------------------|--|
|  | 2012                     | 2011                | November 28,<br>2005<br>(inception) to<br>December 31,<br>2012 |
| <b>Cash flows from operating activities:</b>   |                          |                     |  |
| Net income (loss)  | \$ 4,663,681             | \$ (34,728,215)     | \$ (43,153,133)  |
| Adjustments to reconcile net income (loss) to net cash used in operating activities: |                          |                     |  |
| Depreciation and amortization expense  | 366,893                  | 144,662             | 604,520  |
| Non-cash derivative (gain) losses  | (17,479,674)             | 26,065,579          | 12,538,487   |
| Non-cash interest expense  | 21,870                   |                     | 984,704  |
| Common stock issued to 401(k) plan   | 91,524                   | 41,662              | 133,186  |
| Common stock issued for services   | 24,750                   | 209,451             | 234,201  |
| Share-based compensation expense   | 1,232,959                | 921,512             | 3,033,311  |
| Changes in operating assets and liabilities:   |                          |                     |  |
| Restricted cash  | (53,468)                 | (547,883)           | (601,351)  |
| Prepaid expenses and other current assets  | (60,575)                 | (12,805)            | (154,546)  |
| Other assets   |                          | (125,000)           | (200,000)  |
| Accounts payable   | 585,355                  | 230,250             | 1,152,550  |
| Accrued interest payable   |                          |                     | (15,256)   |
| Accrued expenses   | 402,906                  | 370,822             | 1,021,275  |
| <b>Net cash used in operating activities</b>   | <b>(10,203,779)</b>      | <b>(7,429,965)</b>  | <b>(24,422,052)</b>  |
| <b>Cash flows from investing activities:</b>   |                          |                     |  |
| Purchases of property and equipment  | (2,140,853)              | (278,923)           | (2,771,561)  |
| <b>Net cash used in investing activities</b>   | <b>(2,140,853)</b>       | <b>(278,923)</b>    | <b>(2,771,561)</b>   |
| <b>Cash flows from financing activities:</b>   |                          |                     |  |
| Proceeds from issuance of convertible notes payable                                  |                          |                     | 4,181,000  |
| Proceeds from convertible bridge notes   |                          |                     | 500,000  |
| Principal payments on capital lease obligation                                       | (33,361)                 | (24,774)            | (58,135)   |
| Proceeds from loans payable  | 1,747,000                | 151,733             | 1,898,733  |
| Repayment of loans payable   | (303,372)                | (17,361)            | (320,733)  |
| Proceeds from issuance of common stock and warrants                                  | 19,395,743               | 2,998,808           | 33,817,838   |
| <b>Net cash provided by financing activities</b>                                     | <b>20,806,010</b>        | <b>3,108,406</b>    | <b>40,018,703</b>  |
| <b>Increase (Decrease) in cash and cash equivalents</b>                              | <b>8,461,378</b>         | <b>(4,600,482)</b>  | <b>12,825,090</b>  |
| Cash and cash equivalents at beginning of period                                     | 4,363,712                | 8,964,194           |  |
| <b>Cash and cash equivalents at end of period</b>                                    | <b>\$ 12,825,090</b>     | <b>\$ 4,363,712</b> | <b>\$ 12,825,090</b>   |
| <b>Supplemental disclosure of cash flow information and non-cash transactions:</b>   |                          |                     |  |
| Cash paid for interest   | \$ 49,862                | \$ 8,530            | \$ 155,909   |
| Conversion of convertible notes payable and accrued interest into common stock       | \$                       | \$                  | \$ 4,672,484   |
| Conversion of convertible bridge note payable and accrued interest into common stock | \$                       | \$                  | \$ 504,597   |

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|  |              |              |              |
|--|--------------|--------------|--------------|
| Asset acquired through capital lease obligation                                | \$           | \$ 93,540    | \$ 93,540    |
| Beneficial conversion feature on convertible and bridge notes payable          | \$           | \$           | \$ 134,410   |
| Fair value of warrants issued with bridge notes payable                        | \$           | \$           | \$ 178,726   |
| Fair value of warrants issued in connection with loan agreement                | \$ 31,916    | \$ 10,051    | \$ 41,967    |
| Issuance of founders shares  | \$           | \$           | \$ 248       |
| Reclassification of derivative warrant liability to additional paid-in capital | \$ 3,408,738 | \$ 1,239,539 | \$ 4,648,277 |

See notes to the consolidated financial statements.

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**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements

Years Ended December 31, 2012 and 2011, and the Period from

November 28, 2005 (Inception) through December 31, 2012

**1. NATURE OF OPERATIONS**

***Business***

InVivo Therapeutics Corporation ( InVivo ) was incorporated on November 28, 2005 under the laws of the State of Delaware. InVivo is developing and commercializing biopolymer scaffolding devices for the treatment of spinal cord injuries, peripheral nerve injuries and other neurotrauma conditions. In spinal cord injuries, the biopolymer devices are designed to protect the damaged spinal cord from further secondary injury and promote neuroplasticity, a process where functional recovery can occur through the rerouting of signaling pathways to the spared healthy tissue.

Since its inception, InVivo has devoted substantially all of its efforts to business planning, research and development, recruiting management and technical staff, acquiring operating assets and raising capital. Accordingly, InVivo is considered to be in the development stage.

***Reverse Merger***

On October 26, 2010 InVivo completed a reverse merger transaction (the Merger ) with InVivo Therapeutics Holdings Corp. (formerly Design Source, Inc.) ( ITHC ), a publicly traded company incorporated under the laws of the State of Nevada. InVivo became a wholly owned subsidiary of ITHC, which continues to operate the business of InVivo. As part of the Merger, ITHC issued 31,147,190 shares of its Common Stock to the holders of InVivo common stock on October 26, 2010 in exchange for the 2,261,862 outstanding common shares of InVivo and also issued 500,000 shares to its legal counsel in consideration for legal services provided. All share and per share amounts presented in these consolidated financial statements have been retroactively restated to reflect the 13.7706 to 1 exchange ratio of InVivo shares for ITHC shares in the Merger. Immediately prior to the Merger, ITHC had 6,999,981 shares of Common Stock outstanding.

The Merger was accounted for as a reverse merger, and InVivo is deemed to be the accounting acquirer. The Merger was recorded as a reverse recapitalization, equivalent to the issuance of common stock by InVivo for the net monetary assets of ITHC accompanied by a recapitalization. At the date of the Merger, the 6,999,981 outstanding ITHC shares were reflected as an issuance of InVivo common stock to the prior shareholders of ITHC. ITHC had no net monetary assets as of the Merger so this issuance was recorded as a reclassification between additional paid-in capital and par value of Common Stock.

The historical consolidated financial statements are those of InVivo as the accounting acquirer. The post-merger combination of ITHC and InVivo is referred to throughout these notes to consolidated financial statements as the Company. Subsequent to the Merger, the Company completed three closings as part of a private placement.

On October 26, 2010, in connection with the Merger described above, ITHC transferred all of its operating assets and liabilities to its wholly-owned subsidiary, D Source Split Corp., a company organized under the laws of Nevada ( DSSC ). DSSC was then split-off from ITHC through the sale of all outstanding shares of DSSC (the Split-Off ). The assets and liabilities of ITHC were transferred to the Split-Off Shareholders in the Split-Off. ITHC executed a split off agreement with the Split-Off Shareholders which obligates the Split-Off Shareholders to assume all prior liabilities associated with Design Source, Inc. and all DSSC liabilities. In conjunction with the Split-Off, certain shareholders of ITHC surrendered for cancellation shares of ITHC common stock for no additional consideration. The purpose of the Split-Off was to make

**Table of Contents****InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**NATURE OF OPERATIONS (continued)**

ITHC a shell company with no assets or liabilities in order to facilitate the Merger. Although all transactions related to the Merger occurred simultaneously, the Split-Off, including the cancellation of shares, was considered to have occurred immediately prior to the Merger for accounting purposes. As the accounting acquiree in a reverse merger with a shell company, the historical financial statements of ITHC are not presented and these ITHC transactions are not reflected in the Company's accompanying consolidated financial statements.

**2. SIGNIFICANT ACCOUNTING POLICIES**

A summary of the significant accounting policies followed by the Company in the preparation of the financial statements is as follows:

*Use of estimates*

The process of preparing financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of assets and liabilities at the date of financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and changes in estimates may occur.

*Principles of consolidation*

The consolidated financial statements include the accounts of InVivo Therapeutics Holdings Corp. and its wholly-owned subsidiary, InVivo Therapeutics Corporation. All significant intercompany balances and transactions have been eliminated in consolidation.

*Cash and cash equivalents*

The Company considers only those investments which are highly liquid, readily convertible to cash, and that mature within three months from date of purchase to be cash equivalents. Marketable investments are those with original maturities in excess of three months.

At December 31, 2012 and 2011, cash equivalents were comprised of money market funds. The Company had no marketable investments at December 31, 2012 and 2011.

Cash and cash equivalents consist of the following:

|  | December 31,         |                     |
|--|----------------------|---------------------|
|  | 2012                 | 2011                |
| Cash on hand                           | \$ 209,380           | \$ 133,035          |
| Money market fund                      | 12,615,710           | 4,230,677           |
| <b>Total cash and cash equivalents</b> | <b>\$ 12,825,090</b> | <b>\$ 4,363,712</b> |

*Restricted cash*

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Restricted cash of \$601,000 represents a \$290,000 security deposit related to the Company's credit card account, and a \$311,000 standby letter of credit in favor of a landlord (see Note 16).

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(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**SIGNIFICANT ACCOUNTING POLICIES (continued)*****Financial instruments***

The carrying amounts reported in the consolidated balance sheet for cash and cash equivalents and accounts payable approximate fair value based on the short-term nature of these instruments. The carrying value of loans payable approximate their fair value due to the market terms.

***Property and equipment***

Property and equipment are carried at cost. Depreciation expense is provided over the estimated useful lives of the assets using the straight-line method. A summary of the estimated useful lives is as follows:

| Classification                 | Estimated Useful Life |
|--------------------------------|-----------------------|
| Computer hardware              | 5 years               |
| Software                       | 3 years               |
| Office furniture and equipment | 5 years               |
| Research and lab equipment     | 5 years               |
| Leasehold improvements         | 6.25 years            |

Depreciation expense for the years ended December 31, 2012 and 2011 was \$349,393 and \$132,162, respectively. Maintenance and repairs are charged to expense as incurred, while any additions or improvements are capitalized.

***Research and development expenses***

Costs incurred for research and development are expensed as incurred.

***Concentrations of credit risk***

The Company has no significant off-balance-sheet concentration of credit risk such as foreign exchange contracts, option contracts or other hedging arrangements. The Company may from time to time have cash in banks in excess of FDIC insurance limits.

***Segment information***

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker, or decision making group, in making decisions regarding resource allocation and assessing performance. To date, the Company has viewed its operations and manages its business as principally one operating segment, which is developing and commercializing biopolymer scaffolding devices for the treatment of spinal cord injuries. As of December 31, 2012 and 2011, all of the Company's assets were located in the United States.

***Income taxes***

For federal and state income taxes, deferred tax assets and liabilities are recognized based upon temporary differences between the financial statement and the tax basis of assets and liabilities. Deferred income taxes are based upon prescribed rates and enacted laws applicable to periods

in which differences are expected to reverse. A valuation allowance is recorded when it is more likely than not that some portion or all of the

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**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**SIGNIFICANT ACCOUNTING POLICIES (continued)**

deferred tax assets will not be realized. Accordingly, the Company provides a valuation allowance, if necessary, to reduce deferred tax assets to amounts that are realizable. Tax positions taken or expected to be taken in the course of preparing the Company's tax returns are required to be evaluated to determine whether the tax positions are more-likely-than-not of being sustained by the applicable tax authority.

Tax positions not deemed to meet a more-likely-than-not threshold would be recorded as a tax expense in the current year. There were no uncertain tax positions that require accrual or disclosure to the financial statements as of December 31, 2012 or 2011. Tax years subsequent to 2008 remain open to examination by U.S. federal and state tax authorities.

***Impairment of long-lived assets***

The Company continually monitors events and changes in circumstances that could indicate that carrying amounts of long-lived assets may not be recoverable. An impairment loss is recognized when expected cash flows are less than an asset's carrying value. Accordingly, when indicators of impairment are present, the Company evaluates the carrying value of such assets in relation to the operating performance and future undiscounted cash flows of the underlying assets. The Company's policy is to record an impairment loss when it is determined that the carrying value of the asset may not be recoverable. No impairment charges were recorded for the years ended December 31, 2012 and 2011.

***Share-based payments***

The Company recognizes compensation costs resulting from the issuance of stock-based awards to employees, non-employees and directors as an expense in the statement of operations over the service period based on a measurement of fair value for each stock-based award. The fair value of each option grant is estimated as of the date of grant using the Black-Scholes option-pricing model. The fair value is amortized as compensation cost on a straight-line basis over the requisite service period of the awards, which is generally the vesting period. Due to its limited operating history, limited number of sales of its Common Stock and limited history of its shares being publicly traded, the Company estimates its volatility in consideration of a number of factors including the volatility of comparable public companies.

***Derivative instruments***

The Company generally does not use derivative instruments to hedge exposures to cash-flow or market risks; however, certain warrants to purchase Common Stock that do not meet the requirements for classification as equity are classified as liabilities. In such instances, net-cash settlement is assumed for financial reporting purposes, even when the terms of the underlying contracts do not provide for a net-cash settlement. Such financial instruments are initially recorded at fair value with subsequent changes in fair value charged (credited) to operations in each reporting period. If these instruments subsequently meet the requirements for classification as equity, the Company reclassifies the fair value to equity.

***Net income (loss) per common share***

Basic net income (loss) per share of Common Stock has been computed by dividing net income (loss) by the weighted average number of shares outstanding during the period. Diluted net income per share of Common Stock has been computed by dividing net income by the weighted average number of shares outstanding

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**SIGNIFICANT ACCOUNTING POLICIES (continued)**

plus the dilutive effect, if any, of outstanding stock options, warrants and convertible securities. Diluted net loss per share of Common Stock has been computed by dividing the net loss for the period by the weighted average number of shares of Common Stock outstanding during such period. In a net loss period, options, warrants and convertible securities are anti-dilutive and therefore excluded from diluted loss per share calculations.

***Recent Accounting Pronouncements***

In July 2012, the Financial Accounting Standards Board ( FASB ) issued Accounting Standards Update ( ASU ) No. 2012-02, Testing Indefinite-Lived Intangible Assets for Impairment, which gives companies the option to perform a qualitative assessment to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired. If a company determines that it is more likely than not that the fair value of such an asset exceeds its carrying amount, it would not need to calculate the fair value of the asset in that year. However, if a company concludes otherwise, it must calculate the fair value of the asset, compare that value with its carrying amount and record an impairment charge, if any. The amendments in the ASU are effective for annual and interim indefinite-lived intangible asset impairment tests performed for fiscal years beginning after September 15, 2012, which is fiscal 2013 for the Company. Early adoption is permitted. The Company is currently assessing its adoption plans.

In December 2011, the FASB issued an ASU 2011-11, Disclosures about Offsetting Assets and Liabilities (Topic 210), that provides amendments for disclosures about offsetting assets and liabilities. The amendments require an entity to disclose information about offsetting and related arrangements to enable users of its financial statements to understand the effect of those arrangements on its financial position. Entities are required to disclose both gross information and net information about both instruments and transactions eligible for offset in the statement of financial position and instruments and transactions subject to an agreement similar to a master netting arrangement. This scope would include derivatives, sale and repurchase agreements and reverse sale and repurchase agreements, and securities borrowing and securities lending arrangements. The amendments are effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods. Disclosures required by the amendments should be provided retrospectively for all comparative periods presented. For the Company, the amendment is effective for fiscal year 2013. The Company is currently evaluating the impact these amendments may have on its disclosures.

**3. PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following:

|  | December 31, |            |
|--|--------------|------------|
|  | 2012         | 2011       |
| Computer software and hardware                 | \$ 362,352   | \$ 138,662 |
| Research and lab equipment                     | 1,448,226    | 585,586    |
| Leasehold improvements                         | 298,222      |            |
| Office Equipment                               | 756,301      |            |
| Less accumulated depreciation and amortization | (553,159)    | (203,766)  |
| Net  | \$ 2,311,942 | \$ 520,482 |



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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**4. OTHER ASSETS**

Other assets consist of patent licensing fees paid to license intellectual property (see Note 15). The Company is amortizing the license fee to research and development over its 15-year term.

|                          | December 31,      |                   |
|--------------------------|-------------------|-------------------|
|                          | 2012              | 2011              |
| Patent licensing fee     | \$ 200,000        | \$ 200,000        |
| Accumulated amortization | (51,361)          | (33,861)          |
|                          | <b>\$ 148,639</b> | <b>\$ 166,139</b> |

Amortization expense was \$17,500 and \$12,500 for the years ended December 31, 2012 and 2011, respectively. Amortization expense in each of the next five years is expected to be approximately \$17,000 per year.

**5. ACCRUED EXPENSES**

Accrued expenses consisted of the following:

|                        | December 31,        |                   |
|------------------------|---------------------|-------------------|
|                        | 2012                | 2011              |
| Other accrued expenses | \$ 486,603          | \$ 115,102        |
| Accrued payroll        | 224,596             | 358,144           |
| Deferred rent payable  | 310,076             |                   |
| Accrued vacation       |                     | 145,123           |
|                        | <b>\$ 1,021,275</b> | <b>\$ 618,369</b> |

**6. FAIR VALUES OF ASSETS AND LIABILITIES**

The Company groups its assets and liabilities generally measured at fair value in three levels, based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value.

Level 1 Valuation is based on quoted prices in active markets for identical assets or liabilities. Level 1 assets and liabilities generally include debt and equity securities that are traded in an active exchange market. Valuations are obtained from readily available pricing sources for market transactions involving identical assets or liabilities.

Level 2 Valuation is based on observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

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Level 3 Valuation is based on unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation.

The Company uses valuation methods and assumptions that consider among other factors the fair value of the underlying stock, risk-free interest rate, volatility, expected life and dividend rates in estimating fair value for the warrants considered to be derivative instruments.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**FAIR VALUES OF ASSETS AND LIABILITIES (continued)**

Assets and liabilities measured at fair value on a recurring basis are summarized below:

|                              | December 31, 2012 |               |         |               |
|------------------------------|-------------------|---------------|---------|---------------|
|                              | Level 1           | Level 2       | Level 3 | Fair Value    |
| <b>Liabilities:</b>          |                   |               |         |               |
| Derivative warrant liability | \$                | \$ 14,584,818 | \$      | \$ 14,584,818 |

  

|                              | December 31, 2011 |               |         |               |
|------------------------------|-------------------|---------------|---------|---------------|
|                              | Level 1           | Level 2       | Level 3 | Fair Value    |
| <b>Liabilities:</b>          |                   |               |         |               |
| Derivative warrant liability | \$                | \$ 35,473,230 | \$      | \$ 35,473,230 |

**7. CAPITAL LEASE PAYABLE**

In February 2011, the Company entered into a capital lease agreement under which the Company leased certain laboratory equipment. Capital lease obligation consisted of the following:

|                       | December 31, |           |
|-----------------------|--------------|-----------|
|                       | 2012         | 2011      |
| Capital lease payable | \$ 35,405    | \$ 68,766 |
| Less: current portion | (32,606)     | (30,724)  |
|                       | \$ 2,799     | \$ 38,042 |

The total value of the laboratory equipment acquired under this capital lease agreement was \$124,151 including a down payment of approximately \$31,000. The capital lease is payable in monthly installments of \$2,812 payable over thirty six months with the final payment due in January 2014. For the years ended December 31, 2012 and 2011, interest expense recorded on the capital lease was \$3,189 and \$3,987, respectively. For the years ended December 31, 2012 and 2011, depreciation expense on the assets under capital lease was \$24,831 and \$22,761, respectively. The net book value at December 31, 2012 and 2011, amounted to \$76,559 and \$101,390, respectively.

**8. LOAN PAYABLE**

In October 2012, the Company entered into a loan agreement with the Massachusetts Development Finance Agency ( MassDev ) from the Commonwealth of Massachusetts's Emerging Technology fund. The loan agreement provides the Company with a \$2,000,000 line of credit, with \$200,000 to be used for working capital purposes and the remainder of which is to be used for the purchase of capital equipment. The annual

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interest rate is fixed at 6.5% with interest payments only commencing on November 1, 2012 for the first thirty months and then equal interest and principal payments over the next fifty-four months with the final maturity on October 5, 2019. Based on the \$1,578,000 balance outstanding as of December 31, 2012, equal monthly principal payments of \$29,222 will be due commencing on May 1, 2015. Therefore, for the years ending December 31, 2015, 2016, 2017 and thereafter, principal payments of approximately \$234,000, \$351,000, \$351,000 and \$642,000, respectively, will be due. In September 2012, the Company was assessed commitment fees totaling \$15,000, which was charged to interest expense. In October 2012 as part of the commitment fee, the Company issued MassDev a warrant for the purchase of 36,145 shares of Common Stock. The warrant has a seven year term and is exercisable at \$1.66 per share. The fair value of the warrant

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(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**LOAN PAYABLE (continued)**

was determined to be \$31,916 and was recorded as a deferred financing cost and is being amortized to interest expense over a seven year period commencing in October 2012. Amortization of the deferred financing cost for the year ended December 31, 2012 was \$1,140 and was included in interest expense. The equipment line of credit is secured by substantially all the assets of the Company excluding intellectual property. In the fourth quarter of 2012, the Company drew on the line and received proceeds of \$1,578,000, including \$200,000 for working capital purposes and \$1,378,000 for capital equipment. Interest expense related to this loan was \$14,794 for the year ended December 31, 2012.

In June 2011, the Company entered into a loan agreement with a bank. The loan agreement had provided the Company with a \$1,000,000 line of credit for the purchase of capital equipment. The annual interest rate was the greater of 6.75% or 3.50% above the Prime Rate. Borrowings were repayable in equal monthly installments over a thirty six month period. The Company was assessed commitment fees totaling \$10,000 and issued the bank a warrant for the purchase of 16,071 shares of Common Stock. The warrant has a seven year term and is exercisable at \$1.40 per share. The fair value of the warrant was determined to be approximately \$10,000 and was recorded as a deferred financing cost that was being amortized to interest expense over the life of the loan. Under the terms of the MassDev loan disclosed above, in October 2012 the Company repaid the outstanding balance of \$134,372 due to the bank and wrote off the remaining deferred financing costs. Amortization of deferred interest on this loan for the years ended December 31, 2012 and 2011 was \$6,219 and \$4,146, respectively, and was included in interest expense. Interest expense related to the loan payable to the bank was \$16,428 and \$8,334 for the years ended December 31, 2012 and 2011, respectively.

At December 31, loans payable consist of the following:

|                       | December 31, |            |
|-----------------------|--------------|------------|
|                       | 2012         | 2011       |
| Equipment Loan        | \$ 1,578,000 | \$ 134,372 |
| Less: current portion |              | (50,578)   |
|                       | \$ 1,578,000 | \$ 83,794  |

**9. INCOME TAXES**

No provision or benefit for federal or state income taxes has been recorded, as the Company has incurred a net loss for all of the periods presented, and the Company has provided a full valuation allowance against its deferred tax assets.

At December 31, 2012, the Company had Federal and Massachusetts net operating loss carryforwards of approximately \$26,533,000 and \$23,328,000, respectively, of which federal carryforwards will expire in varying amounts beginning in 2026. Massachusetts net operating losses began to expire in 2011. Utilization of net operating losses may be subject to substantial annual limitations due to the change in ownership provisions of the Internal Revenue Code, and similar state provisions. The annual limitations may result in the expiration of net operating losses before utilization. The Company also had research and development tax credit carryforwards at December 31, 2012 of approximately \$258,000 which will begin to expire in 2021 unless previously utilized.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**INCOME TAXES (continued)**

Significant components of the Company's net deferred tax asset are as follows:

|  | December 31,  |              |
|--|---------------|--------------|
|  | 2012          | 2011         |
| Net operating loss carryforward              | \$ 10,329,617 | \$ 5,896,441 |
| Research and development credit carryforward | 329,584       | 257,110      |
| Stock-based compensation                     | 1,090,746     | 740,714      |
| Depreciation and amortization                | (81,305)      |              |
| Charitable contributions                     | 72,693        | 68,694       |
| Subtotal                                     | 11,741,335    | 6,962,959    |
| Valuation allowance                          | (11,741,335)  | (6,962,959)  |
| Net deferred taxes                           | \$            | \$           |

The Company has maintained a full valuation allowance against its deferred tax assets in all periods presented. A valuation allowance is required to be recorded when it is more likely than not that some portion or all of the net deferred tax assets will not be realized. Since the Company cannot be assured of generating taxable income and thereby realizing the net deferred tax assets, a full valuation allowance has been provided. In the years ended December 31, 2012 and 2011, the valuation allowance increased by \$4,778,000 and \$3,374,000, respectively.

The Company has no uncertain tax positions at December 31, 2012 and 2011 that would affect its effective tax rate. The Company does not anticipate a significant change in the amount of uncertain tax positions over the next twelve months. Since the Company is in a loss carryforward position, the Company is generally subject to US federal and state income tax examinations by tax authorities for all years for which a loss carryforward is available.

Income tax benefits computed using the federal statutory income tax rate differs from the Company's effective tax rate primarily due to the following:

|                               | December 31, |        |
|-------------------------------|--------------|--------|
|                               | 2012         | 2011   |
| Statutory rate                | 34.0%        | 34.0%  |
| State taxes, net of benefit   | -14.2%       | 1.4%   |
| Permanent differences:        |              |        |
| Derivative losses             | -127.4%      | -25.7% |
| Other                         | -1.9%        | -0.2%  |
| R&D tax credit                | 7.0%         | 0.2%   |
| Increase in valuation reserve | 102.5%       | -9.7%  |
|                               | 0.0%         | 0.0%   |

**10. COMMON STOCK**

The Company has authorized 200,000,000 shares of Common Stock, \$0.00001 par value per share, of which 65,881,122, shares were issued and outstanding as of December 31, 2012, and 53,760,471 shares were issued and outstanding as of December 31, 2011.

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**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**COMMON STOCK (continued)**

In February 2012, the Company completed a public offering of Common Stock and issued 9,523,810 shares of Common Stock at a purchase price of \$2.10 per common share. The offering raised gross proceeds of approximately \$20,000,000 and the Company received net proceeds of \$18,155,000 after deducting underwriter discounts and offering expenses.

During the year ended December 31, 2012, the Company issued 755,020 shares of Common Stock upon the exercise of stock options and received cash proceeds of approximately \$112,000.

During the year ended December 31, 2012, the Company issued 1,779,716 shares of Common Stock upon the exercise of warrants, including warrants to purchase 1,865,670 shares of Common Stock exercised through cashless exercise provisions and warrants to purchase 852,946 shares of Common Stock exercised for cash, providing cash proceeds of \$1,129,000.

During 2012, the Company issued 15,000 unregistered shares with a fair value of approximately \$25,000 to an investor relations firm in exchange for services provided.

During the year ended December 31, 2012, the Company issued 47,105 shares of common stock with a fair value of \$91,524 to the Company's 401(k) plan as a matching contribution.

In December 2011, the Company completed a private placement with an investor that raised \$2,000,000 of net proceeds. In this transaction the Company issued 980,392 shares of unregistered common stock and a warrant to purchase 343,137 shares exercisable at \$03.06 per share with a five year term. The warrant was recorded as a debit and credit to additional paid-in capital.

During 2011, the Company issued 143,731 shares of Common Stock upon the exercise of stock options and received cash proceeds of approximately \$10,000.

During 2011, the Company issued 215,000 unregistered shares with a fair value of approximately \$198,000 to an investor relations firms in exchange for services provided.

In 2011, the Company issued 39,848 shares with a fair value of approximately \$42,000 to the Company's 401(k) plan as a matching contribution.

During the fourth quarter of 2011, the Company issued 734,329 shares upon the exercise of warrants and received cash proceeds of approximately \$988,000.

***Common Stock Reserves***

As of December 31, 2012, the Company had the following reserves established for the future issuance of Common Stock as follows:

|  |                   |
|--|-------------------|
| Reserves for the exercise of warrants      | 15,723,504        |
| Reserves for the exercise of stock options | 10,123,985        |
| <b>Total Reserves</b>                      | <b>25,847,489</b> |

**11. DERIVATIVE INSTRUMENTS**

Certain warrants outstanding have provisions that include anti-dilution protection and, under certain conditions, grant the right to the holder to request the Company to repurchase the warrant. Accordingly, these warrants are accounted for as derivative liabilities. The Company uses the Black-Scholes option

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**DERIVATIVE INSTRUMENTS (continued)**

pricing model and assumptions that consider among other factors the fair value of the underlying stock, risk-free interest rate, volatility, expected life and dividend rates in estimating fair value for the warrants considered to be derivative instruments. The fair value of these derivative instruments at December 31, 2012 and 2011 was \$14,584,818 and \$35,473,230, respectively and is included as a derivative warrant liability, a current liability. Changes in fair value of the derivative financial instruments are recognized currently in the Statement of Operations as a derivatives gain or loss. The warrant derivative gains (losses) are non-cash income (expenses) and for the years ended December 31, 2012 and 2011 \$17,479,674 and \$(26,065,579) respectively were included in other income (expense) in the consolidated statements of operations.

The assumptions used principally in determining the fair value of warrants were as follows:

|                         | As of December 31, |               |
|-------------------------|--------------------|---------------|
|                         | 2012               | 2011          |
| Risk free interest rate | 0.32-0.35%         | 0.52-0.58%    |
| Expected dividend yield | 0%                 | 0%            |
| Contractual term        | 2.7-2.9 years      | 3.7-3.9 years |
| Expected volatility     | 73%                | 79%           |

The primary underlying risk exposure pertaining to the warrants is the change in fair value of the underlying Common Stock for each reporting period. The table below presents the changes in derivative warrant liability during the years ended December 31, 2012 and 2011:

|   | Year Ended December 31, |               |
|---|-------------------------|---------------|
|   | 2012                    | 2011          |
| Balance at beginning of year                                  | \$ 35,473,230           | \$ 10,647,190 |
| Increase (decrease) in the fair value of the warrants         | (17,479,674)            | 26,065,579    |
| Reduction in derivative liability due to exercise of warrants | (3,408,738)             | (1,239,539)   |
| Balance at end of year  | \$ 14,584,818           | \$ 35,473,230 |

**12. STOCK OPTIONS**

In 2007, the Company adopted the 2007 Employee, Director and Consultant Stock Plan (the 2007 Plan). Pursuant to the 2007 Plan, the Company's Board of Directors (or committees and/or executive officers delegated by the Board of Directors) may grant incentive and nonqualified stock options to the Company's employees, officers, directors, consultants and advisors. As of December 31, 2012, there were options to purchase an aggregate of 3,630,756 shares of Common Stock outstanding under the 2007 Plan and no shares available for future grants under the 2007 Plan.

On October 26, 2010, the Company's Board of Directors adopted and the Company's shareholders subsequently approved the 2010 Equity Incentive Plan, (the 2010 Plan). The Company's shareholders approved amendments to the 2010 Plan on August 3, 2011 and May 30, 2012 to increase the number of shares available for issuance under the 2010 Plan. The 2010 Plan provides for grants of incentive stock options to employees and nonqualified stock options and restricted Common Stock to employees, consultants and non-employee directors of the Company.

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As of December 31, 2012, the number of shares authorized for issuance under the 2010 Plan, as amended was 6,500,000 shares. As of December 31, 2012, there were options to purchase an aggregate of 5,017,512 shares of Common Stock outstanding under the 2010 Plan and 1,475,717 shares available for future grants under the 2010 Plan. Options issued under the 2007 Plan and the 2010 Plan (collectively the Plans ) are exercisable for up to 10 years from the date of issuance.

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**STOCK OPTIONS (continued)***Share-based compensation*

For stock options issued and outstanding for the years ended December 31, 2012 and 2011, the Company recorded non-cash, stock-based compensation expense of \$1,232,959 and \$921,512, respectively, net of forfeitures.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model that uses the assumptions noted in the following table. Due to its limited operating history and limited number of sales of its Common Stock, the Company estimated its volatility in consideration of a number of factors including the volatility of comparable public companies. The Company uses historical data, as well as subsequent events occurring prior to the issuance of the financial statements, to estimate option exercises and employee terminations within the valuation model. The expected term of options granted under the Plans, all of which qualify as plain vanilla, is based on the average of the contractual term (10 years) and the vesting period (generally 48 months). For non-employee options, the expected term is the contractual term. The risk-free rate is based on the yield of a U.S. Treasury security with a term consistent with the option.

The assumptions used principally in determining the fair value of options granted were as follows:

|                                 | December 31, |            |
|---------------------------------|--------------|------------|
|                                 | 2012         | 2011       |
| Risk-free interest rate         | 0.62-1.23%   | 0.97-3.05% |
| Expected dividend yield         | 0%           | 0%         |
| Expected term (employee grants) | 6.25         | 6.25       |
| Expected volatility             | 75%          | 49%        |

A summary of option activity as of December 31, 2012 and changes for the year then ended are presented below:

| Options                          | Shares      | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Term in<br>Years | Aggregate<br>Intrinsic<br>Value |
|----------------------------------|-------------|--|---|---------------------------------|
| Outstanding at December 31, 2011 | 6,302,893   | \$ 0.76                                  |   |                                 |
| Granted                          | 4,446,000   | \$ 2.03                                  |   |                                 |
| Forfeited                        | (1,345,605) | \$ 2.03                                  |   |                                 |
| Exercised                        | (755,020)   | \$ 0.15                                  |   |                                 |
| Outstanding at December 31, 2012 | 8,648,268   | \$ 1.27                                  | 7.90  | \$ 5,616,414                    |
| Vested at December 31, 2012      | 3,882,733   | \$ 0.68                                  | 6.27  | \$ 4,407,390                    |

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The weighted average grant-date fair value of options granted during years ended December 31, 2012 and 2011 was \$1.28 and \$1.14 per share, respectively. The total fair value of options that vested in years ended December 31, 2012 and 2011, was \$1,186,098 and \$1,324,325, respectively. As of December 31, 2012, there was approximately \$3,987,404 of total unrecognized compensation expense, related to non-vested share-based option compensation arrangements. The unrecognized compensation expense is estimated to be recognized over a period of 3.07 years at December 31, 2012.

In September 2011, the Company granted 80,000 shares of Common Stock under the 2010 Plan to a consultant as a restricted stock award with 30,000 shares vesting upon FDA clearance of an Investigational Device

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## InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**STOCK OPTIONS (continued)**

Exemption to permit the commencement of a human clinical trial and 50,000 shares vesting upon FDA approval of the Company's biopolymer scaffolding device to treat spinal cord injuries. The Company had previously determined that the vesting of the 30,000 shares was probable and the fair value of these shares at \$23,400 was being amortized over an eight month period from September 2011 through April 2012. In March of 2012, the contract with the consultant was terminated and the consultant had no vested right to the restricted stock, so accordingly, the \$11,700 of expense previously recorded was reversed in 2012.

**13. WARRANTS**

The following presents information about warrants to purchase Common Stock issued and outstanding at December 31, 2012:

| Year Issued                     | Classification | Number of Warrants | Exercise Price | Date of Expiration   |
|---------------------------------|----------------|--------------------|----------------|----------------------|
| 2010                            | Derivative     | 13,387,994         | \$ 1.40        | 10/26/2015-12/3/2015 |
| 2010                            | Derivative     | 1,940,157          | \$ 1.00        | 9/26/2015-12/3/2015  |
| 2011                            | Equity         | 16,071             | \$ 1.40        | 6/17/2018            |
| 2011                            | Equity         | 343,137            | \$ 3.06        | 12/21/2016           |
| 2012                            | Equity         | 36,145             | \$ 1.66        | 10/5/2019            |
| Total                           |                | 15,723,504         |                |                      |
| Weighted average exercise price |                |                    | \$ 1.36        |                      |
| Weighted average life in years  |                |                    |                | 2.9                  |

**14. EMPLOYEE BENEFIT PLAN**

In November 2006, the Company adopted a 401(k) plan (the "Plan") covering all employees. Employees must be 21 years of age in order to participate in the Plan. Under the Plan, the Company has the option to make matching contributions. For the years ended December 31, 2012 and 2011, the Company made matching contributions in the form of shares of common stock. For the year ended December 31, 2012 and 2011, the Company issued 47,105 and 39,848 shares of common stock, respectively, and related fair values of \$91,524 and \$41,662, respectively, were recorded as expense in the Statement of Operations.

**15. INTELLECTUAL PROPERTY LICENSE**

The Company has obtained a world-wide exclusive license (the "CMCC License") for patents co-owned by Massachusetts Institute of Technology and Harvard's Children's Hospital initially covering the use of biopolymers to treat spinal cord injuries, and to promote the survival and proliferation of human stem cells in the spinal cord. During 2011, the Company obtained additional rights for use in the field of peripheral nerve

injuries. The CMCC License has a 15-year term, or as long as the life of the last expiring patent right, whichever is longer, unless terminated earlier by the licensor. In connection with the CMCC License, the Company paid an initial \$75,000 licensing fee and is required to pay certain annual maintenance fees, milestone payments and royalties. During 2011, the Company paid \$75,000 to expand the license and at December 31, 2011, accrued \$50,000 for a milestone payment. License fees are capitalized and all costs associated with maintenance of the CMCC License are expensed as incurred (see Note 4).

**Table of Contents****InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**16. COMMITMENTS AND CONTINGENCIES**

On November 29, 2011 and as amended on September 17, 2012, the Company entered into a commercial lease for 26,150 square feet of office, laboratory and manufacturing space in Cambridge, Massachusetts ( Cambridge Lease ). The term of this lease is six years and three months, with one five-year extension option. The terms of the lease requires a standby letter of credit, as amended, in the amount of \$311,000 (see Note 1).

The Cambridge Lease contains rent holidays and rent escalation clauses. The Company recognizes rent expense on a straight-line basis over the lease term and record the difference between the amount charged to expense and the rent paid as a deferred rent liability. As of December 31, 2012, the amount of deferred rent liability is \$310,076 and is included in Accrued expenses.

It is the Company s policy to assess whether improvements made to the space rented under operating leases should be accounted for as lessor or lessee assets. If the landlord/lessor makes the improvements and presents us with the finished space on a turnkey basis, we view the assets as being lessor assets. When the Company does the remodeling work and receives an allowance that may or may not cover all the costs, the Company makes a judgment as to the classification between lessor and lessee assets. The Company considers an asset to be a lessor asset if all of the following criteria are met:

the lease specifically requires the lessee to make the improvement,

the improvement is fairly generic,

the improvement increases the fair value of the property to the lessor, and

the useful life of the improvement is longer than our lease term.

If any of the above criteria are not met, the Company considers the assets to be lessee assets, which are recorded as leasehold improvements in the balance sheet and payments received from the lessor to fund any portion of the cost of lessee assets are accounted for as lease incentives. Assets considered to be lessor assets are not reflected in the Company s Consolidated Balance Sheets. To the extent that the Company paid for such lessor assets and was not reimbursed through construction allowances, such net payments are recorded as leasehold improvements, which are amortized to rent expense over the lease term. As of December 31, 2012, such leasehold improvements totaled \$298,222.

Pursuant to the terms of the non-cancelable lease agreements in effect at December 31, 2012, the future minimum rent commitments are as follows:

| <b>Year Ended December 31,</b> |           |
|--------------------------------|-----------|
| 2013                           | 1,168,659 |
| 2014                           | 1,198,265 |
| 2015                           | 1,237,533 |
| 2016                           | 1,263,642 |
| 2017                           | 1,294,859 |
| 2018                           | 1,045,752 |

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|       |             |
|-------|-------------|
| Total | \$7,208,710 |
|-------|-------------|

Total rent expense for the years ended December 31, 2012 and 2011, including month-to-month leases, was \$758,000 and \$357,000, respectively.

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**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

**COMMITMENTS AND CONTINGENCIES (continued)**

***Other Commitments***

In January 2012, the Company entered into a research contract with the Geisenger Health System under which the Company is obligated to pay Geisenger \$150,000 for a pre-clinical study that will evaluate the Company's hydrogel for the treatment of peripheral nerve injuries. During the first quarter of 2012, the Company made an up-front payment of \$60,000 for this study and expensed this cost to Research and Development. The Company did not make any other payments under this contract during fiscal year 2012.

**17. SUBSEQUENT EVENTS**

Subsequent to December 31, 2012, the Company received insurance proceeds of approximately \$1,100,000 from a settlement of a business interruption claim that covered the disruption of the Company's operations at its Cambridge, MA facility caused by water damage that occurred in November 2012. The insurance settlement will be recorded as a reduction of Research and Development Expense in the Statement of Operations for the three months ending March 31, 2013.

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**PART IV**

**Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

Financial Statements.

The financial statements listed in the Index to Consolidated Financial Statements appearing in Item 8 are filed as part of this report.

Financial Statement Schedules.

All financial statement schedules have been omitted as they are either not required, not applicable, or the information is otherwise included.

Exhibits.

The exhibits listed in the Exhibit Index immediately preceding the exhibits are filed as part of this Amendment No. 1 on Form 10-K/A.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**INVIVO THERAPEUTICS HOLDINGS CORP.**

*Date: September 12, 2013*

By: */s/ Michael J. Astrue*  
Name: *Michael J. Astrue*  
Title: *Interim Chief Executive Officer*

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**EXHIBIT INDEX**

- 23.1 Consent of Wolf & Company, P.C.
- 31.1 Certification by the Principal Executive Officer and Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.