

HEPALIFE TECHNOLOGIES INC

Form 8-K

March 02, 2005

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

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

**March 2, 2005**

Date of Report (Date of earliest event reported)

**HEPALIFE TECHNOLOGIES, INC.**

(Exact name of registrant as specified in its charter)

**Florida**

(State or other jurisdiction of incorporation)

**000-29819**

(Commission File Number)

**58-2349413**

(I.R.S. Employer Identification No.)

**1628 West 1st Avenue, Suite 216, Vancouver, British Columbia, V6J 1G1**

(Address of principal executive offices)

**(800) 518-4879**

(Registrant's telephone number, including area code)

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))

## **SECTION 1. Registrant's Business and Operations**

### **Item 1.01 Entry into a Material Definitive Agreement**

At a Board of Directors meeting held on March 2, 2005, the Company's Directors agreed to enter into a Market Access Services Agreement with National InfoSystems Inc., the Company's investor and media relations consultant, for a monthly fee of C\$10,500. The Market Access Services Agreement is attached as Exhibit 10.1.

### **Item 1.02 Termination of a Material Definitive Agreement**

At a Board of Directors meeting held on March 2, 2005, the Company's Board of Directors agreed to cancel 4,325,000 employee options (2,250,000 in the name of Ranjit Bhogal, 1,250,000 in the name of Bhupinder Mann and 925,000 in the name of Jeet Sidhu) that were established on January 18, 2005.

## **SECTION 2. Financial Information**

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

At a Board of Directors meeting held on March 2, 2005, the Directors agreed to reimburse Mr. Harmel S. Rayat \$700,000.00 for investor relations expenses incurred and paid for personally on behalf of the Company during the fourth quarter of calendar 2004 through the issuance of an unsecured promissory note, which is due on September 2, 2006 and bears an interest rate of 8.50%.

## **SECTION 3. Securities and Trading Markets**

None.

## **SECTION 4. Matters Related to Accountants and Financial Statements**

None.

## **SECTION 5. Corporate Governance and Management**

None.

## **SECTION 6. [Reserved]**

N/A.

**SECTION 7. Regulation FD**

None.

**SECTION 8. Other Events**

None.

**SECTION 9. Financial Statements and Exhibits**

Item 9.01 Financial Statements and Exhibits

The following exhibits are furnished as part of this report:

Exhibit 10.1 Market Access Services Agreement

Exhibit 10.2 Unsecured Promissory Note

**SIGNATURES**

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

HEPALIFE TECHNOLOGIES, INC.

/s/ Arian Soheili

Arian Soheili

President and CEO

Date: March 2, 2005

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**EXHIBIT 10.1**

**MARKET ACCESS SERVICES AGREEMENT**

This Market Access Services Agreement (this Agreement ) is made and entered into this 2nd day of March, 2005 , by and between HepaLife Technologies, Inc., a Florida corporation having offices at Suite 216, 1628 West 1st Avenue, Vancouver, BC, V6J 1G1 (hereinafter referred to as the Company ) and National InfoSystems Inc. (dba Thornhill Advisors), an Ontario corporation having an office at Suite 880, 24-155 East Beaver Creek Road, Richmond Hill, Ontario, L4B 2N1 (hereinafter referred to as the Consultant ).

Whereas the Company has a reporting obligation under the United States Securities Exchange Act of 1934, as amended (the 1934 Act ) and has its common stock quoted for trading on the NASDAQ Over-The-Counter Bulletin Board (the OTCBB );

Whereas the Consultant, a privately held corporation, is experienced and specializes in providing various investor and public relations, corporate branding and corporate image services to reporting companies and their principals (collectively, Market Access Services );

Whereas the Consultant has heretofore provided the Company with Market Access Services;

Whereas the parties hereto acknowledge and agree that there have been various discussions, negotiations, understandings and agreements between them relating to the terms and conditions of the Market Access Services and, deem it to be in their respective best interest to clarify their respective duties and obligations with respect to the Market Access Services to be provided hereunder, and by the terms and conditions of this Agreement, to replace, in their entirety, all prior discussions, negotiations, understandings and agreements with respect to such Market Access Services.

Now, Therefore, in consideration of the promises and the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1.**

**Additional Defined Terms And Interpretations.**

1.1

Additional Defined Terms. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following words and phrases shall have the following meanings:

- (a) "Board of Directors" means the Board of Directors of the Company as duly constituted from time to time;
- (b) "Business" shall mean the biotechnology research and development business as presently being conducted, or as may be conducted in the future, by the Company and/or its subsidiaries;
- (c) "business day" means any day during which Canadian Chartered Banks are open for business in the City of Vancouver, Province of British Columbia;
- (d) "Effective Date" has the meaning ascribed to it on the front page of this Agreement;
- (e) "Parties" or "Party" means, individually and collectively, the Company and/or the Consultant hereto, as the context so requires, together with each of their respective successors and permitted assigns as the context so requires;
- (f) "Regulatory Authorities" and "Regulatory Authority" means, either singularly or collectively as the context so requires, such regulatory agencies who have jurisdiction over the affairs of either of the Company and/or the Consultant and including, without limitation, and where applicable, the British Columbia Securities Commission, the United States Securities and Exchange Commission (the SEC), The National Association of Securities Dealers, Inc. (the NASD), and all regulatory authorities from whom any such authorization, approval or other action is required to be obtained or to be made in connection with the business and affairs of the Company; and

(g) "subsidiary" means any company or companies of which more than 50% of the outstanding shares carrying votes at all times (provided that the ownership of such shares confers the right at all times to elect at least a majority of the directors of such company or companies) are for the time being owned by or held for that company and/or any other company in like relation to that company and includes any company in like relation to the subsidiary.

1.2

Interpretation.

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section or other subdivision of this Agreement;

(b) any reference to an entity shall include and shall be deemed to be a reference to any entity that is a permitted successor to such entity; and

(c) words in the singular include the plural and words in the masculine gender include the feminine and neuter genders, and vice versa.

2.

## **Engagement, Term And Termination.**

2.1

Engagement.

The Company hereby retains the Consultant, as an independent contractor on a non-exclusive basis, to provide Market Access Services to the Company as more particularly set forth in Section 3 hereof, and the Consultant hereby agrees to provide such services, as an independent contractor, to the Company, all upon the terms and conditions set forth in this Agreement.

2.2

Term.

Subject to the provisions of Section 2.3 hereof, the term of this Agreement shall commence on the Effective Date and terminate on the first anniversary of the Effective Date (the Automatic Termination Date ) unless such term is otherwise extended in writing by the Parties.

2.3

Earlier Termination.

(a)

Notwithstanding any other provision of this Agreement, this Agreement may be terminated by any of the Parties hereto at any time after the Effective Date and during the continuance of this Agreement upon such Party's delivery to the other Party hereto of prior written notice of its intention to do so (the "Notice of Termination") at least 60 calendar days prior to the effective date of any such termination (the "Effective Termination Date"). In any such event the Consultant's ongoing obligation to provide the Market Access Services will continue only until the Effective Termination Date and the Company shall continue to pay to the Consultant all of the amounts otherwise payable to the Consultant under Section 4 hereof, until the Effective Termination Date.

(b)

Notwithstanding any other provision of this Agreement, this Agreement may be terminated by any of the Parties hereto at any time upon written notice to the other Party of such Party's intention to do so at least 10 calendar days prior to the effective date of any such termination (herein also the "Effective Termination Date"), and damages sought, if:

(i) the other Party fails to cure a material breach of any provision of this Agreement within 10 calendar days from its receipt of written notice from said Party (unless such

material breach cannot be reasonably cured within said 10 calendar days and the other

Party is actively pursuing to cure said material breach);

(ii) the other Party is willfully non-compliant in the performance of its

respective duties under this Agreement within 10 calendar days from its receipt of written notice from said Party (unless such willful non-compliance cannot be reasonably corrected within said 10 calendar days and the other Party is actively

pursuing to cure said willful non-compliance);

(iii) the other Party commits fraud or serious neglect or misconduct in the discharge of its respective duties hereunder or under the law; or

(iv) the other Party becomes adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy, and where any such involuntary

petition is not dismissed within 10 calendar days.

2.4

Effect of Termination.



Terms of this Agreement relating to accounting, payments, confidentiality, accountability for damages or claims and all other matters reasonably extending beyond the terms of this Agreement and to the benefit of the Parties hereto or for the protection of the Business interests of the Company shall survive the termination of this Agreement, and any matter of interpretation thereto shall be given a wide latitude in this regard.

**3.**

**Duties And Obligations Of The Consultant.**

3.1

Market Access Services.

The Consultant agrees that it will use its best efforts to provide the following services (collectively, the Market Access Services ) to the Company:

(a)

Assist the Company in establishing a financial and public relations methodology designed to increase awareness of the Company within the biotechnology sector and the investment community, through the development and implementation of appropriate plans and means for presenting the Company and its business plans, growth strategies and personnel to universities, public and private research institutions and as well as broker dealers, underwriters, and other financial institutions.

(b)

Assist the Company in the implementation of its business plan and in accurately disseminating information about or concerning the Company and its business to the biotechnology sector and the financial and industry marketplace, which information has been or will be provided by the Company.

(c)

Assist the Company, if requested, in the preparation of the Company's due diligence reports, corporate profile and fact sheets.

(d)

To expose the Company to active industry, investment and financial newsletter writers and analysts (collectively, Professional Analysts ).

(e)

Conduct, if requested, tele-conferences with the Consultant as moderator, among Company executive(s), , industry, investment and other interested participants.

(f)

Assist, if requested, the Company in the preparation and release of all press releases.

(g)

Assist, if requested, in the development and ongoing maintenance of a comprehensive Company website.

(h)

E-mail press releases, corporate announcements, broker updates, Company news developments and SEC filings to the Consultant's database of financial and investment analysts, and industry professionals.

(i)

Serve as the Company's external publicist and endeavor to obtain media coverage on the Company in both trade and industry press, on local and national radio and/or TV programming, in subscription-based financial newsletters, and on the worldwide web.

(j)

In connection with the Market Access Services to be provided, the Consultant will provide the Company with a copy of any report, release or other information concerning the Company which it intends to disseminate so as to allow the Company an opportunity to ensure that the statements and information presented are accurate and consistent with the information provided by the Company.

### 3.2

Adherence to Rules and Policies. The Consultant hereby acknowledges and agrees to abide by the reasonable rules, regulations, instructions, personnel practices and policies of the Company and any changes therein which may be adopted from time to time by the same as such rules, regulations, instructions, personnel practices and policies may be reasonably applied to the Consultant.

### 3.3

Reporting. At such time or times as may be required by the Board of Directors of the Company, acting reasonably, the Consultant will provide the Board of Directors with such information concerning the results of the Consultant's General Services and activities hereunder for the previous month as the Board of Directors may reasonably require.

### 3.4

Confidentiality. The Consultant will not, except as authorized or required by the Consultant's duties hereunder, reveal or divulge to any person or companies any information concerning the organization, business, finances, transactions or

other affairs of the Company or of any of the Company's respective subsidiaries which may come to the Consultant's knowledge during the continuance of this Agreement, and the Consultant will keep in complete secrecy all confidential information entrusted to the Consultant and will not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to the Company's Business interests. This restriction will continue to apply after the termination of this Agreement without limit in point of time but will cease to apply to information or knowledge which may come into the public domain.

### 3.5

#### Compliance With Applicable Laws.

(a)

The Consultant will comply with all applicable United States, Canadian and foreign laws, whether federal, provincial or state, applicable to the Consultant's duties hereunder and, in addition, hereby represents and warrants that any information which the Consultant may provide to any person or company hereunder will, to the best of the Consultant's knowledge, information and belief, be accurate and complete in all material respects and not misleading, and will not omit to state any fact or information concerning the Company and its business which would be material.

(b)

The Consultant understands that the Company is subject to certain obligations in connection with the disclosure of material nonpublic information to certain persons outside the Company, including broker-dealers, investment advisers, institutional investment managers (and their associated persons), investment companies, and holders of the Company's securities (collectively, the "Enumerated Persons"). In order to help assure the Company's compliance with the provisions of Regulation FD promulgated by the SEC, the Consultant will not disclose to any third party any information that has been furnished to the Consultant by the Company without the Company's prior written consent; and, further, in the event of any proposed disclosure of such information to any Enumerated Person by the Consultant, the Consultant shall assure that each such Enumerated Person agrees to keep such disclosed information in confidence by executing an appropriate confidentiality or similar agreement with the Company.

### 3.6

Opinions, Reports And Advice Of The Consultant. The Consultant acknowledges and agrees that all written and oral opinions, reports, advice and materials provided by the Consultant to the Company in connection with the Consultant's engagement hereunder are intended solely for the Company's benefit and for the Company's use only, and that any such written and oral opinions, reports, advice and information are the exclusive property of the Company. In this regard the Consultant covenants and agrees that the Company may utilize any such opinion, report, advice and materials for any other purpose whatsoever and, furthermore, may reproduce, disseminate, quote from and refer to, in whole or in part, at any time and in any manner, any such opinion, report, advice and materials in the Company's sole and absolute discretion. The Consultant further covenants and agrees that no public references to the Consultant or disclosure of the Consultant's role in respect of the Company may be made by the Consultant without the prior written consent of the Company in each specific instance and, furthermore, that any such written opinions, reports, advice or materials shall,

unless otherwise required by the Company, be provided by the Consultant to the Company in a form and with such substance as would be acceptable for filing with and approval by any Regulatory Authority having jurisdiction over the affairs of the Company from time to time.

**4.**

**The Consultant's Compensation And Expense Reimbursement.**

4.1

Fees. Upon the execution of this Agreement, in consideration of the Market Access Services to be rendered by the Consultant, the Company hereby covenants and agrees to pay the Consultant C\$10,500 per month.

4.2

Expense Reimbursement.

(a) Consultant agrees to bear and pay for all of its own expenses incurred in the performance of its duties under this Agreement (such as telephone, mailing, labor, etc.); provided that the Company shall pay all extraordinary expenses incurred by the Consultant (provided that all such extraordinary expenses shall have been approved in advance and in writing by the Company prior to Consultant incurring such expenses) such as the following:

(i)

Travel expenses, including but not limited to transportation, lodging and food expenses, when such travel is conducted on behalf of the Company;

(ii)

seminars, expositions, money and investment shows;

(iii)

radio and television time and print media advertising costs, when applicable.

(iv)

subcontract fees and costs incurred in preparation of research reports, when applicable;

(v)

cost of on-site due diligence meetings, if applicable;

(vi)

printing and publication costs of brochures and marketing materials which are not supplied by the Company; and

(vii)

printing and publication costs of Company annual reports, quarterly reports, and/or other shareholder communication collateral material which are not supplied by Company.

(b)

Anything herein to the contrary notwithstanding, the Consultant shall not incur any individual expense in excess of \$500 or \$2,500 in the aggregate without the prior written approval of the Company.

(c)

Anything herein to the contrary notwithstanding, the Company is responsible for preparing and paying the Company expenses associated with any and all documents related to any Market Access Services, that the Company and/or its counsel deems necessary in order to assure the Company's compliance with applicable laws including, but not limited to, applicable federal and state securities laws.

(d)

The Consultant may request that the Company make payment directly to any third party vendor providing any of the enumerated services and/or to make such payment in advance if so required by said vendor. Any expense reimbursement to made by the Company hereunder shall within ten (10) days of receipt of the Consultant's written invoice for the same, excluding any costs associated with material and services which are due and payable in advance of material production.

## 5.

### **Company's Additional Duties And Obligations.**

Company shall have the following duties and obligations under this Agreement:

#### 5.1

Cooperation. Cooperate fully and timely with the Consultant so as to facilitate the Consultant's performance its obligations under this Agreement. In this regard, the Company will:

(a)

will act diligently and promptly in reviewing materials submitted to it from time to time by the Consultant and inform the Consultant of any inaccuracies contained therein prior to the dissemination of such materials.

(b)

Promptly give written notice to the Consultant of any change in Company's financial condition or in the nature of its business or operations which had or might have an adverse material effect on its operations, assets, properties or prospects of its business.

5.2

Due Diligence.

The Company agrees to provide copies of due diligence information regarding the Company including, but not limited to, copies of such financial statements as it deems necessary or appropriate (it being understood that the Company files annual reports on Form 10-KSB and quarterly reports on Form 10-QSB with the SEC including financial statements of the Company and certain other disclosures which provide financial and other information regarding the Company) as well as any other information and/or documentation to such persons, including any Professional Analysts, as the Consultant, in connection with its performance of the Market Access Services, may from time to time request when and if deemed appropriate by the Company; provided that to the extent required by the Company, such information shall be furnished only pursuant to a confidentiality and non-disclosure agreement reasonably satisfactory to the parties thereto.

**6.**

**The Company's Representations and Warranties.**

The Company warrants and represents that

(a)

All written documents or materials furnished to Consultant by the Company with respect to financial affairs, operations, profitability and strategic planning of the Company are materially accurate as of the date of preparation thereof, such financial information shall have been prepared within 110 days of delivery to Consultant and Consultant may rely upon the accuracy thereof without independent investigation.

(b)

The Company is duly incorporated and validly existing, and in good standing as a corporation under the laws of the State of Florida. The Company's authorized, issued and outstanding capital stock is as set forth in the Company's most recent filings with the SEC. It has the power and the authority to own its property and conduct its business, present and proposed, as described in the filing and the Company has full corporate power and authority to enter into this Agreement.

(c)

Any shares of stock and/or any warrant of the Company which may be issued pursuant to this Agreement, will have been duly and validly authorized and, when issued and delivered, will be validly issued, fully paid and non-assessable. The stock and/or any warrant stock, upon issuance, will not be subject to the preemptive rights of any shareholder of the Company. Any warrant, when sold, issued and delivered, will constitute a valid and binding obligation of the Company enforceable against it in accordance with the terms thereof.

(d)

The Company has the power and authority to execute, deliver and perform this Agreement.

(e)

The execution and delivery by the Company of this Agreement have been duly and validly authorized by all requisite action by the Company. No license, consent or approval of any person is required for the Company's execution and delivery of this Agreement.

(f)

This Agreement has been duly executed and delivered by the Company. This Agreement is the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms, subject to the effect to any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors rights generally and to general principles of equity.

7.

**Representations and Warranties of the Consultant.**

(a)

The Consultant has the power and authority to execute, deliver and perform this Agreement.

(b)

The execution and delivery by the Consultant of this Agreement have been duly and validly authorized by all requisite action by the Consultant. No license, consent or approval of any person is required for the Consultant's execution and delivery of this Agreement.

(c)

This Agreement has been duly executed and delivered by the Consultant. This Agreement is the legal, valid and binding obligation of the Consultant enforceable against the Consultant in accordance with its respective terms, subject to the effect to any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and to general principles of equity.

**8.**

**Indemnification and Legal Proceedings.**

8.1

Indemnification.

The Parties hereto hereby each agree to indemnify and save harmless the other Party hereto and including, where applicable, their respective subsidiaries and affiliates and each of their respective directors, officers, employees and agents (each such party being an "Indemnified Party") harmless from and against any and all losses, claims, actions, suits, proceedings, damages, liabilities or expenses of whatever nature or kind and including, without limitation, any investigation expenses incurred by any Indemnified Party, to which an Indemnified Party may become subject by reason of the terms and conditions of this Agreement.

8.2

No Indemnification. This indemnity will not apply in respect of an Indemnified Party in the event and to the extent that a Court of competent jurisdiction in a final judgment shall determine that the Indemnified Party was grossly negligent, guilty of willful misconduct, or if such indemnification is otherwise impermissible under applicable law.

8.3

Claim of Indemnification. The Parties hereto agree to waive any right they might have of first requiring the Indemnified Party to proceed against or enforce any other right, power, remedy, security or claim payment from any other person before claiming this indemnity.

8.4

Notice of Claim. In case any action is brought against an Indemnified Party in respect of which indemnity may be sought against either of the Parties hereto, the Indemnified Party will give both Parties hereto prompt written notice of any such action of which the Indemnified Party has knowledge and the relevant Party will undertake the investigation and defense thereof on behalf of the Indemnified Party, including the prompt employment of counsel acceptable to the Indemnified Party affected and the relevant Party and the payment of all expenses. Failure by the Indemnified Party to



so notify shall not relieve the relevant Party of such relevant Party's obligation of indemnification hereunder unless (and only to the extent that) such failure results in a forfeiture by the relevant Party of substantive rights or defenses.

8.5

Settlement. No admission of liability and no settlement of any action shall be made without the consent of each of the Parties hereto and the consent of the Indemnified Party affected, such consent not to be unreasonable withheld.

8.6

Legal Proceedings. Notwithstanding that the Indemnifying Party will undertake the investigation and defense of any action, an Indemnified Party will have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel will be at the expense of the Indemnified Party unless:

(a) such counsel has been authorized by the Indemnifying Party;

(b) the Indemnifying Party has not assumed the defense of the action within a reasonable period of time after receiving notice of the action;

(c) the named parties to any such action include that any Party hereto and the Indemnified Party shall have been advised by counsel that there may be a conflict of interest between any Party hereto and the Indemnified Party; or

(d) there are one or more legal defenses available to the Indemnified Party which are different from or in addition to those available to any Party hereto.

8.7

Contribution. If for any reason other than the gross negligence or bad faith of the Indemnified Party being the primary cause of the loss claim, damage, liability, cost or expense, the foregoing indemnification is unavailable to the

Indemnified Party or insufficient to hold them harmless, the relevant Party shall contribute to the amount paid or payable by the Indemnified Party as a result of any and all such losses, claim, damages or liabilities in such proportion as is appropriate to reflect not only the relative benefits received by the relevant Party on the one hand and the Indemnified Party on the other, but also the relative fault of relevant Party and the Indemnified Party and other equitable considerations which may be relevant. Notwithstanding the foregoing, the relevant Party shall in any event contribute to the amount paid or payable by the Indemnified Party, as a result of the loss, claim, damage, liability, cost or expense (other than a loss, claim, damage, liability, cost or expenses, the primary cause of which is the gross negligence or bad faith of the Indemnified Party), any excess of such amount over the amount of the fees actually received by the Indemnified Party hereunder.

## **9.**

### **Force Majeure**

#### 9.1

Events. If either Party hereto is at any time either during this Agreement or thereafter prevented or delayed in complying with any provisions of this Agreement by reason of strikes, walk-outs, labour shortages, power shortages, fires, wars, acts of God, earthquakes, storms, floods, explosions, accidents, protests or demonstrations by environmental lobbyists or native rights groups, delays in transportation, breakdown of machinery, inability to obtain necessary materials in the open market, unavailability of equipment, governmental regulations restricting normal operations, shipping delays or any other reason or reasons beyond the control of that Party, then the time limited for the performance by that Party of its respective obligations hereunder shall be extended by a period of time equal in length to the period of each such prevention or delay.

#### 9.2

Notice. A Party shall within three calendar days give notice to the other Party of each event of force majeure under section "7.1" hereinabove, and upon cessation of such event shall furnish the other Party with notice of that event together with particulars of the number of days by which the obligations of that Party hereunder have been extended by virtue of such event of force majeure and all preceding events of force majeure.

## **10.**

### **Miscellaneous**

#### 10.1

Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be deemed to have been duly given when delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid to the parties hereto at their addresses indicated hereinafter. Either party may change his or

its address for the purpose of this paragraph by written notice similarly given.

10.2

Entire Agreement. This Agreement represents the entire agreement between the Parties in relation to its subject matter and supersedes and voids all prior agreements between such Parties relating to Market Access Services to be provided subsequent to the Effective Date.

10.3

Amendment of Agreement. This Agreement may be altered or amended, in whole or in part, only in a writing signed by both Parties.

10.4

Waiver. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature, unless such shall be signed by the person making such waiver and/or which so provides by its terms.

10.5

Captions and Headings. The captions appearing in this Agreement are inserted as a matter of convenience and for reference and in no way affect this Agreement, define, limit or describe its scope or any of its provisions.

10.6

Governing Law. This Agreement shall be governed by and construed exclusively by and in accordance with the laws of Florida.

10.7

Benefits. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their heirs, personal representatives, successors and assigns.

10.8

Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any way affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be carried out as if such invalid or unenforceable provision were not contained herein.

10.9

Currency. Unless otherwise specified, references to monies used in this Agreement shall be deemed to be United States dollars.

10.10

Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one (1) instrument.

10.11

No Partnership or Agency. The Parties have not created a partnership and nothing contained in this Agreement shall in any manner whatsoever constitute any Party the partner, agent or legal representative of the other Parties, nor create any fiduciary relationship between them for any purpose whatsoever.

In Witness Whereof, the Parties have executed this Agreement on the day and year first above written.

The Company

The Consultant

By:

By:

Name:

Name:

Title:

Title:

**EXHIBIT 10.2**

**HEPALIFE TECHNOLOGIES, INC.**

**PROMISSORY NOTE**

**\$700,000.00**

**March 2, 2005**

HepaLife Technologies, Inc., a Florida corporation (the "Company"), for value received, hereby promises to pay to Harmel S. Rayat ("Holder") or order, the principal sum of Seven hundred thousand dollars (\$700,000.00) with interest as provided below.

1. Payment.

(a) Payment. Subject to the provisions of Section 3 hereof relating to the revision of this Note, principal and accrued interest hereof shall be payable on September 2, 2006 (the "Maturity Date"). Payment hereunder shall be made by the Company to the Holder, at the address as provided to the Company by the Holder in writing, in lawful money of the United States of America. Interest shall accrue with respect to the unpaid principal amount of the loan from the date of this Note until such principal is paid at a rate of eight and one-half percent (8.50%) per annum (computed on the basis of a 365-day year).

(b) Prepayment. The Company shall have the right at any time and without penalty to prepay, in whole or in part, the principal outstanding and/or the interest accrued hereunder.

## 2. Events of Default.

The occurrence of any of the following shall constitute an "Event of Default" under this Note:

(a) Failure to Pay. The Company shall fail to pay (i) when due any principal payment on the due date hereunder or (ii) any interest or other payment required under the terms of this Note on the date due and such payment shall not have been made within fifteen (15) days of Company's receipt of Holder's written notice to the Company of such failure to pay; or

(b) Voluntary Bankruptcy or Insolvency Proceedings. The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors, (iii) be dissolved or liquidated in full or in part, (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) take any action for the purpose of effecting any of the foregoing; or

(c) Involuntary Bankruptcy or Insolvency Proceedings. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within thirty (30) days of commencement.

## 3. Rights of Holder Upon Default.

Upon the occurrence or existence of any Event of Default (other than an Event of Default referred to in Paragraphs 2(b) and 4(c)) and at any time thereafter during the continuance of such Event of Default, Holder may declare all outstanding Obligations payable by Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived. Upon the occurrence or existence of any Event of Default described in Paragraphs 2(b) and 4(c), immediately and without notice, all outstanding Obligations payable by Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived.

4. Miscellaneous.

(a) Amendment Provisions. Any provision of this Note other than the principal amount and identity of the Holder may be amended, waived or modified upon the written consent of the Company and the Holder.

(b) Severability. If any provision of this Note is determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions of this Note shall not in any way be affected or impaired thereby and this Note shall nevertheless be binding between the Company and the Holder.

(c) Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Florida.

(d) Binding Effect. This Note shall be binding upon, and shall inure to the benefit of, the Company and the Holder and their respective successors and assigns; provided, however, that the Company may not assign its obligations hereunder without the Holder's prior written consent.

(e) Enforcement Costs. The Company agrees to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, the Holder expends or incurs in connection with the enforcement of this Note, the collection of any sums due hereunder, any actions for declaratory relief in any way related to this Note, or the protection or preservation of any rights of the Holder hereunder.

(f) Notices. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be duly given upon receipt if personally delivered or mailed by registered or certified mail, postage prepaid, or by recognized overnight courier or personal delivery, addressed (i) if to Holder, at the address or facsimile number of such Holder, or at such other address or number as such Holder shall have furnished to the Company in writing, or (ii) if to Company, at Suite 216, 1628 West 1st Avenue, Vancouver, BC, Canada, V6J 1G1, Attention: Chief Financial Officer or at such other address as Company shall furnish to the Holder in writing.

(g) Payment. Payment shall be made in lawful tender of the United States.

(h) Headings. Section headings used in this Note have been set forth herein for convenience of reference only. Unless the contrary is compelled by the context, everything contained in each section hereof applies equally to this

entire Note.

IN WITNESS WHEREOF, the Company has caused this Note to be issued as of the date first written above.

HepaLife Technologies, Inc.

/s/ Arian Soheili

Name: Arian Soheili

Title: President and CEO