FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2006-04-05**
SEC Accession No. 0000902664-06-001183

SUBJECT COMPANY

AKSYS LTD

CIK:**902600**| IRS No.: **363890205** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **SC 13D/A** | Act: **34** | File No.: **005-49959** | Film No.: **06739657**
SIC: **3845** Electromedical & electrotherapeutic apparatus

Mailing Address
1113 S MILWAUKEE AVE
SUITE 300
LIBERTYVILLE IL 60048

Business Address
TWO MARRIOTT DR
STE 300
LIBERTYVILLE IL 60069
8472476051

FILED BY

DURUS LIFE SCIENCES MASTER FUND LTD

CIK:**1257242**| IRS No.: **000000000**
Type: **SC 13D/A**

Business Address
20 MARSHALL ST STE 320
SOUTH NORWALK CT 06854
2038993100

UNITED STATES
SECURITIES & EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934
(Amendment No. 4)*

Aksys, Ltd.
(Name of Issuer)

Common Stock, $.01 par value per share
(Title of Class of Securities)

010196103
(CUSIP Number)

Durus Life Sciences Master Fund Ltd.
c/o International Fund Services (Ireland) Ltd.
3rd Floor, Bishops Square
Redmonds Hill
Dublin 2, Ireland
Attention: Susan Byrne
(Name, address and telephone number of person
authorized to receive notices and communications)

March 31, 2006
(Date of event which requires filing of this statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), Rule 13d-1(f) or Rule 13d-1(g), check the following box [ ]

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 ("Exchange Act") or otherwise subject to the liabilities of that

section of the Act but shall be subject to all other provisions of the Exchange Act (however, see the Notes).

(1)	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY) Durus Life Sciences Master Fund Ltd.	
(2)	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP **	(a)[ ] (b)[x]
(3)	SEC USE ONLY	
(4)	SOURCE OF FUNDS ** WC, OO	
(5)	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)	[ ]
(6)	CITIZENSHIP OR PLACE OF ORGANIZATION Cayman Islands	
NUMBER OF SHARES	(7) SOLE VOTING POWER 61,498,118	
BENEFICIALLY OWNED BY	(8) SHARED VOTING POWER -0-	
EACH REPORTING	(9) SOLE DISPOSITIVE POWER 61,498,118	
PERSON WITH	(10) SHARED DISPOSITIVE POWER -0-	

(11)	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
	61,498,118
(12)	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES **
	[ ]
(13)	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
	85%
(14)	TYPE OF REPORTING PERSON **
	OO

** SEE INSTRUCTIONS BEFORE FILLING OUT

The Schedule 13D filed on October 30, 2003, as amended by Amendment No. 1 thereto filed on February 26, 2004, Amendment No. 2 thereto filed on November 19, 2004 and Amendment No. 3 thereto filed on March 13, 2006 (the "Schedule 13D"), by Durus Life Sciences Master Fund Ltd., a Cayman Islands Exempted Company (the "Reporting Person"), relating to the common stock, par value $.01 per share (the "Shares"), of Aksys, Ltd. (the "Issuer"), is hereby amended and supplemented as set forth below by this Amendment No. 4 to the Schedule 13D.

Item 2. Identity and Background

Item 2 of the Schedule 13D is hereby amended and restated in its entirety as follows:

(a) This Schedule 13D is being filed by Durus Life Sciences Master Fund Ltd., a Cayman Islands Exempted Company (the "Reporting Person"), to report beneficial ownership (i) resulting from transactions that had previously been reported on a Schedule 13D filed July 28, 2003 by Durus Capital Management, LLC, the Reporting Person's portfolio manager (the "Portfolio Manager"), and Scott Sacane ("Sacane"), the managing member thereof, each of whom at such time possessed voting and dispositive power over the Shares that are the subject of this Schedule 13D (the "Original Shares"), and (ii) resulting from the transaction described in Item 4. The Reporting Person acts through its board of directors, which currently consists of Leslie L. Lake, Shodhan Trivedi and Gretchen Piller.

(b) The business address of the Reporting Person and each of its directors is International Fund Services (Ireland) Limited, 3rd Floor, Bishops Square, Redmonds Hill, Dublin 2, Ireland.

(c) The Reporting Person's principal business is that of master investment fund. Ms. Lake is a Managing Director of the Invus Group, LLC, an investment firm that has its principal office at 135 E. 57th Street, 30th Floor, New York, NY 10022. Ms. Piller is a Managing Director of Research at Torrey Associates, LLC, an investment advisory firm that has its principal office at 505 Park Avenue, 5th Floor, New York, NY 10022. Mr. Trivedi is President of Opax Investments Inc., which provides asset allocation and hedge fund advisory services and has its principal office located at 2904 South Sheridan Way, Suite 202, Oakville, Ontario L6J 7G9, Canada.

(d) Neither the Reporting Person nor any of its directors has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) Neither the Reporting Person nor any of its directors has, during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and, as a result of such proceeding, was, or is subject to, a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) The Reporting Person is a Cayman Islands Exempted Company. Ms. Lake and Ms. Piller are United States citizens. Mr. Trivedi is a Canadian citizen.

Item 3. Source and Amount of Funds and Other Consideration.

Item 3 of the Schedule 13D is hereby amended and restated in its entirety as follows:

The net investment cost (including commissions, if any) of the Original Shares was approximately $165,450,664.30. The Original Shares beneficially owned by the Reporting Person were acquired with working capital of the Reporting Person and on margin.

The Shares beneficially owned by the Reporting Person as a result of entering into the Securities Purchase Agreement with the Issuer, as described in Item 4, will be acquired in exchange for $5,000,000 principal amount of the Issuer's unsecured subordinated promissory notes held by the Reporting Person and acquired by the Reporting Person pursuant to the Note Purchase Agreement described in Item 4 (the "Outstanding Notes").

Under the terms of the Securities Purchase Agreement, the Reporting Person also has the option to invest, by itself or with other investors designated by the Reporting Person, up to an additional $15,000,000 in cash for shares of preferred stock and warrants of the Issuer convertible into, and exercisable for, Shares. If the Reporting Person exercises, in whole or in part, this option

to acquire additional shares of preferred stock and warrants of the Issuer, the Reporting Person currently expects that such shares of preferred stock and warrants would be acquired with working capital of the Reporting Person.

Item 4. Purpose of Transaction.

Item 4 of the Schedule 13D is hereby amended and restated in its entirety as follows:

The Original Shares were acquired for the Reporting Person by the Portfolio Manager for investment purposes.

On February 23, 2004, the Reporting Person entered into a Settlement Agreement and Mutual Release (the "Settlement Agreement") with the Issuer, Sacane, the Portfolio Manager, Durus Capital Management (N.A.), LLC ("Durus NA") and Artal Long Biotech Portfolio LLC ("Artal"). The Reporting Person, Sacane, the Portfolio Manager, Durus NA and Artal are referred to collectively in this Schedule 13D as the "Settling Parties." In connection with the Settlement Agreement, the Reporting Person and Artal also entered into a Note Purchase Agreement (the "Note Purchase Agreement"), a Registration Rights Agreement (the "Registration Rights Agreement") and certain other documents with, or for the benefit of, the Issuer. These documents are discussed in Item 6 hereof.

The Reporting Person worked with its advisors in exploring a number of options with respect to its ownership of the Original Shares and its investment in the Issuer, including potential additional investments in the Issuer and changes in the Board of Directors and management of the Issuer. The Reporting Person entered into discussions with the Issuer concerning some of these alternatives, and, in connection with these discussions, the Issuer waived certain "standstill" and other restrictions applicable to the Reporting Person contained in the Settlement Agreement in order to permit such discussions to take place. The Reporting Person and the Issuer executed and delivered a Term Sheet dated as of March 10, 2006 with respect to a possible investment by the Reporting Person to acquire additional equity securities of the Issuer as well as to provide additional financing in the form of secured indebtedness.

SECURITIES PURCHASE AGREEMENT

On March 31, 2006, the Reporting Person entered into a securities purchase agreement with the Issuer (the "Securities Purchase Agreement") pursuant to which the Reporting Person, at a subsequent closing, in exchange for $5,000,000 principal amount of Outstanding Notes, will acquire newly issued shares of the Issuer's Series B Preferred Stock, $0.01 par value (the "Series B Preferred Stock"), convertible into 5,000,000 Shares at a conversion price of $1.00 per Share and warrants (the "Warrants") to purchase 5,000,000 Shares at an exercise price of $1.10 per share(1). The Series B Preferred Stock has voting rights, and the Reporting Person will be entitled to vote, on an as converted basis, together with the holders of Shares as a single class with respect to any matter upon which holders of Shares have the right to vote. In addition, the holders of the Series B Preferred Stock shall be entitled to elect one (1) director to the Issuer's Board of Directors. As the only holder of Series B Preferred Stock

immediately following the closing of the Securities Purchase Agreement, the Reporting Person alone shall exercise this right, along with the

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(1) Immediately upon issuance, the aggregate number of Shares into which the Series B Preferred Stock and the Warrants may be converted and exercised, respectively, will be limited to that number of Shares that may be issued by the Issuer without the approval of its stockholders as required by the Marketplace Rules of the Nasdaq Capital Market. Under the Securities Purchase Agreement, the Issuer is obligated to seek such stockholder approval promptly. By virtue of its ownership of the Original Shares and shares of Series B Preferred Stock, and the release by the Issuer of the Reporting Person from certain standstill and other restrictive covenants contained in the Settlement Agreement, as described below, the Reporting Person acting alone can approve the issuance of Shares in excess of the Nasdaq limit.

Reporting Person's right to designate a majority of the members of the Issuer's Board of Directors under the terms of the Investor Rights Agreement described below. The Reporting Person's shares of Series B Preferred Stock will have an aggregate liquidation preference of $5,000,000, accrue dividends at the rate of 10% per annum and become redeemable after seven (7) years at the option of the holders of a majority of the voting power of the shares of Series B Preferred Stock then outstanding or at the option of the Reporting Person at an earlier date upon the occurrence of specified trigger events. The Issuer is required to obtain the consent of the holders of at least two-thirds of the outstanding shares of Series B Preferred Stock prior to taking certain actions.

Following the closing of the Securities Purchase Agreement, the Reporting Person has the option to invest, by itself or with other investors designated by the Reporting Person, up to an additional $15,000,000 in cash for additional shares of Series B Preferred Stock and Warrants having essentially the same terms as the Series B Preferred Stock and Warrants acquired by the Reporting Person at the closing. If the Reporting Person (by itself or with other investors) invests the maximum additional $15,000,000 in cash for such additional shares of Series B Preferred Stock and Warrants, such additional shares of Series B Preferred Stock will be convertible into 15,000,000 Shares at a conversion price of $1.00 per Share and the additional Warrants will be exercisable to purchase 15,000,000 Shares at an exercise price of $1.10 per share.

LOAN AGREEMENTS

At the time of entering into the Securities Purchase Agreement, the Reporting Person also entered into and closed a bridge loan agreement with the Issuer (the "Bridge Loan Agreement"), pursuant to which the Reporting Person lent $5,000,000 in cash to the Issuer in exchange for $5,000,000 in principal amount of senior secured notes of the Issuer (the "Bridge Notes"). The Bridge Notes bear interest at the rate of 7% per annum, and the entire principal amount of the Bridge Notes is due and payable on January 1, 2007, unless prepaid or rolled over into longer term senior secured notes of the Issuer as contemplated by the Securities

Purchase Agreement. The Bridge Loan Agreement contains a number of reporting and other affirmative and negative covenants, including operational controls over expenditures which may be exercised by the Reporting Person. To secure its obligations under the terms of the Bridge Loan Agreement and the Bridge Notes, the Issuer has granted the Reporting Person a security interest in all of its property, including its intellectual property.

At the closing of the Securities Purchase Agreement, the Reporting Person will enter into a new loan agreement (the "Loan Agreement") with the Issuer pursuant to which the Reporting Person will exchange the Bridge Notes (plus accrued interest thereon) and approximately $10,800,000 in principal amount of Outstanding Notes for approximately $15,800,000 in aggregate principal amount of the Issuer's senior secured notes bearing interest at 7% per annum and payable in full on December 31, 2007 (the "Loan Notes"). Under the Loan Agreement, the Reporting Person will also make available to the Issuer a $5,000,000 standby line of credit (the "Line of Credit") until December 31, 2006, which line of credit can be used by the Issuer to fund its ongoing operations if it is unable to obtain financing from other sources and various funding conditions are satisfied. The Loan Agreement contains a number of affirmative and negative covenants and grants certain operational controls over expenditures to the Reporting Person. The Issuer's obligations under the Loan Agreement and the Loan Notes will also be secured by a security interest in all of the Issuer's property, including its intellectual property.

OTHER ACTIONS

The Issuer undertook and has agreed to undertake certain actions in connection with the entering into and closing of the Securities Purchase Agreement.

AMENDMENT OF SETTLEMENT AGREEMENT AND RIGHTS AGREEMENT. On March 31, 2006, the Issuer amended the Settlement Agreement to release the Reporting Person and Artal from certain standstill and other restrictive covenants contained therein, including to eliminate the requirement that the Reporting Person significantly reduce its ownership of Shares by May 2006 and to terminate the proxy granted to the Issuer by the Reporting Person under the terms of the Settlement Agreement, which proxy granted the

Issuer the power to vote the Reporting Person's Original Shares in proportion to the votes cast by other holders of Shares in matters requiring a stockholder vote. By releasing the Reporting Person from the standstill restrictions in the Settlement Agreement, the Reporting Person is free to acquire the shares of Series B Preferred Stock and the Warrants at the closing of the Securities Purchase Agreement and to exercise the option to acquire additional shares of Series B Preferred Stock and Warrants, as provided in the Securities Purchase Agreement, and the Reporting Person is no longer prohibited from acquiring more Shares or other securities of the Issuer or making any solicitation of proxies regarding the voting of Shares. In addition, in connection with the entering

into of the Securities Purchase Agreement, the Issuer took action to amend its Rights Agreement to exempt from the application thereof the transactions contemplated by the Securities Purchase Agreement, and to redeem all outstanding Rights under the Rights Agreement.

APPOINTMENT OF REPORTING PERSON DESIGNEE TO ISSUER BOARD OF DIRECTORS AND APPOINTMENT OF NEW CEO. At the time of the execution and delivery of the Securities Purchase Agreement, the Board of Directors of the Issuer increased the size of the Board to seven (7) and appointed Shodhan Trivedi, a member of the board of directors of the Reporting Person, to the Issuer's Board of Directors.

INVESTOR RIGHTS AGREEMENT. As a condition to the closing of the Securities Purchase Agreement, the Issuer has agreed to enter into an investor rights agreement with the Reporting Person and Artal (the "Investor Rights Agreement") which requires that the Issuer's Board of Directors consist of seven (7) members and grants the Reporting Person the right to designate four (4) of the seven (7) Board members (inclusive of the Board member designated by the Reporting Person as holder of the Series B Preferred Stock) and to approve the selection of the Issuer's Chairman of the Board, Chief Executive Officer and Chief Financial Officer. Under the terms of the Investor Rights Agreement, the Reporting Person's designees to the Board of Directors shall be entitled to serve on the executive committee of the Board, and the Issuer may not take certain actions without the approval of the Board of Directors, including the affirmative vote of the Board members designated by the Reporting Person.

The Investor Rights Agreement also grants the Reporting Person and Artal certain registration rights with respect to the sale of Shares into the open market, as well as providing that the Reporting Person shall have a right of first refusal in the event that the Issuer proposes to sell itself, or greater than 30% of its fully diluted capital stock, to a third party, or the Issuer otherwise accepts a bona fide offer from a third party to acquire the Issuer or such number of shares of the Issuer's capital stock, the on the same terms and conditions, including price, as the terms and conditions applying to the third party. The Investor Rights Agreement will amend and supersede the Registration Rights Agreement.

The Reporting Person originally acquired the Shares reported herein for investment in the ordinary course of business because it believes that the Shares, when purchased, were undervalued and represented an attractive investment opportunity. From time to time, representatives of the Reporting Person have met with, and expects in the future to meet with, representatives of the Board of Directors and management of the Issuer to discuss matters of strategic direction and corporate governance.

Except as set forth herein or as would occur upon completion of any of the actions discussed herein, including in the Exhibits hereto, the Reporting Person has no present plan or proposal that would relate to or result in any of the matters set forth in subparagraphs (a)-(j) of Item 4 of Schedule 13D. The Reporting Person intends to review their investment in the Issuer on a continuing basis and expects to engage in discussions with management, the Board

of Directors, other shareholders of the Issuer and other relevant parties concerning the business, operations, board composition, including directors appointed by the Reporting Person, management, strategic direction, corporate governance and future plans of the Issuer. Depending on various factors including, without limitation, the Issuer's financial position and strategic direction, the outcome of the discussions and actions referenced above, actions taken by the Board of Directors, price levels of the Shares, other investment opportunities available to the Reporting Person, conditions in the securities market and general economic and industry conditions, the Reporting Person may in the future take such actions with respect to its investment in the Issuer as it deems appropriate including, without limitation, purchasing additional Shares or selling some or all of their Shares, engaging in hedging or similar transactions with respect to the

Shares and/or otherwise changing their intention with respect to any and all matters referred to in Item 4 of Schedule 13D.

Item 5. Interest in Securities of the Issuer.

Item 5 is hereby amended and restated in its entirety as follows:

(a) As of March 31, 2006, the Reporting Person beneficially owned 61,498,118 Shares, which includes (i) 21,216,664 Original Shares, (ii) 10,000,000 Shares issuable upon conversion and exercise, respectively, of the shares of Series B Preferred Stock and Warrants to be acquired by the Reporting Person at the closing of the Securities Purchase Agreement, (iii) 30,000,000 Shares issuable upon conversion and exercise, respectively, of the additional shares of Series B Preferred Stock and Warrants that the Reporting Person has the option to purchase under the terms of the Securities Purchase Agreement, assuming an additional investment of $15,000,000, and (iv) 281,454 Shares issuable upon the exercise of other immediately exercisable warrants held by the Reporting Person. These Shares representing 85% of the Issuer's outstanding Shares. The percentage of Shares reported herein is based upon the aggregate of (x) 29,972,911 Shares reported on the Issuer's Form 10-Q for the period ending September 30, 2005 to be outstanding as of November 4, 2005, which is the most recently available filing with the SEC containing information about the number of outstanding Shares of the Issuer, (y) 2,170,543 Shares issued in connection with a financing transaction as reported by the Issuer on its current report on Form 8-K dated January 13, 2006 and (z) 40,281,454 Shares issuable upon exercise of the Series B Preferred Stock, the Warrants and other warrants held by the Reporting Person.

(b) The Reporting Person has sole voting and sole dispositive power over the 61,498,118 Shares reported herein.

(c) As describe in Item 4, on March 31, 2006, the Reporting Person

entered into the Securities Purchase Agreement with the Issuer pursuant to which the Reporting Person, in exchange for $5,000,000 principal amount of Outstanding Notes, will acquire shares of the Issuer's Series B Preferred Stock convertible into 5,000,000 Shares at a conversion price of $1.00 per Share and warrants (the "Warrants") to purchase 5,000,000 Shares at an exercise price of $1.10 per share. Following the closing of the Securities Purchase Agreement, the Reporting Person has the option to invest, by itself or with other investors designated by the Reporting Person, up to an additional $15,000,000 in cash for additional shares of Series B Preferred Stock and Warrants having essentially the same terms as the Series B Preferred Stock and Warrants acquired by the Reporting Person at the closing.

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

Item 6 is hereby supplemented by incorporating by reference herein Item 4 except for paragraphs one (1) through three (3) thereof.

Item 7. Material to be Filed as Exhibits.

Item 7 is hereby supplemented as follows:

A copy of the Securities Purchase Agreement referenced in Item 4 hereof is attached as Exhibit 8 hereto.

A copy of the Bridge Loan Agreement referenced in Item 4 hereof is attached as Exhibit 9 hereto.

A copy of the Amendment to the Settlement Agreement referenced in Item 4 hereof is attached as Exhibit 10 hereto.

A form of the Certificate of Designation is attached as Exhibit 11 hereto.

A form of the Investor Rights Agreement referenced in Item 4 hereof is attached as Exhibit 12.

A form of the Loan Agreement referenced in Item 4 hereof is attached as Exhibit 13.

A form of Warrant Agreement is attached as Exhibit 14 hereto.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

DATED: April 4, 2006

Durus Life Sciences Master Fund Ltd.

By: /s/ Leslie L. Lake

Name: Leslie L. Lake
Title: Director

EXHIBIT INDEX

1. Exhibit 8 - Securities Purchase Agreement, dated March 31, 2006

2. Exhibit 9 - Bridge Loan Agreement, dated March 31, 2006

3. Exhibit 10 -Amendment to the Settlement Agreement, dated March 31, 2006

4. Exhibit 11 - Form of Certificate of Designation

5. Exhibit 12 - Form of Investors Rights Agreement

6. Exhibit 13 - Form of Loan Agreement

7. Exhibit 14 - Form of Warrant Agreement

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (the "Agreement"), dated as of March 31, 2006, is entered into by and between Aksys, Ltd., a Delaware corporation, with headquarters located at Two Marriott Drive, Lincolnshire, Illinois 60069 (the "Company"), and Durus Life Sciences Master Fund Ltd., a Cayman Islands company ("Durus" or the "Investor," and, collectively with other investors listed on the Schedule of Investors attached hereto as Exhibit A, as amended (the "Schedule of Investors"), the "Investors").

RECITALS

A. The Company desires to issue a series of convertible preferred stock of the Company designated as Series B Convertible Preferred Stock (the "Preferred Shares"), the terms of which are set forth in the certificate of designation for such series of preferred stock in the form attached hereto as Exhibit B (the "Certificate of Designation"). The Preferred Shares shall be convertible into shares of the Company's common stock, par value $0.01 per share (the "Common Stock"), pursuant to the terms of the Certificate of Designation (such shares of Common Stock into which the Preferred Shares may be converted hereinafter referred to as the "Conversion Shares") and otherwise in accordance with the terms of the Certificate of Designation.

B. The Company also desires to issue warrants (the "Warrants") pursuant to a Warrant Agreement, substantially in the form attached hereto as Exhibit C (the "Warrant Agreement"), by and between the Company and the Warrant Agent (as defined in the Warrant Agreement), which Warrants may be exercised for a period of five (5) years from their original date of issue to acquire shares of Common Stock (the "Warrant Shares") at an initial exercise price of $1.10 per share and otherwise in accordance with the terms of the Warrant Agreement. The Warrants and the Preferred Shares will be issued in detachable Units ("Units"), each Unit consisting of (i) one (1) Preferred Share (which initially may be converted into 1000 Conversion Shares pursuant to the terms of the Certificate of Designation) and (ii) Warrants to purchase 1000 Warrant Shares at an initial exercise price of $1.10 per share.

C. The Investor wishes to purchase, and the Company wishes to sell to the Investor, upon the terms and conditions set forth in this Agreement, Units consisting of (i) that aggregate number of Preferred Shares set forth opposite the Investor's name on the Schedule of Investors and (ii) Warrants to purchase that number of Warrant Shares equal to the number of Conversion Shares underlying the Preferred Shares being purchased and set forth opposite the Investor's name on the Schedule of Investors.

D. In connection with this Agreement, the Company and the Investor are entering into a number of other agreements including: (i) a bridge loan agreement and a loan agreement, substantially in the forms attached hereto as

Exhibits D and E, respectively (the "Bridge Loan" and the "Loan Agreement", respectively, and hereinafter sometimes referred to collectively as the "Loan Agreements"), pursuant to which the Company will be issuing certain notes (the "New Notes") evidencing amounts owed by the Company under the Loan Agreements, and which Loan Agreements and the obligations thereunder will be secured and guaranteed as contemplated

therein; and (ii) an Investor Rights Agreement, substantially in the form attached hereto as Exhibit F (the "Investor Rights Agreement").

E. The Company has outstanding certain subordinated notes (the "Outstanding Notes") issued pursuant to that certain Note Purchase Agreement, dated as of February 23, 2004, by and among the Company, Durus and Artal Long Biotech Portfolio LLC ("Artal") and is willing to accept the surrender of a portion of the Outstanding Notes in exchange for the Preferred Shares and the Warrants.

F. The Units, the Preferred Shares, the Warrants, the New Notes, the Conversion Shares and the Warrant Shares are sometimes hereinafter referred to collectively as the "Securities". In consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS

1.1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS.

1.1.1. On or prior to the Initial Closing, as hereinafter defined, the Company shall adopt and file the Certificate of Designation with the Secretary of State of the State of Delaware and authorize, execute and deliver the Warrant Agreement.

1.1.2. On or prior to the Initial Closing, the Company shall have authorized (i) the sale and issuance of the Preferred Shares; (ii) the issuance of the Conversion Shares; (iii) the sale and issuance of the Warrants; and (iv) the issuance of the Warrant Shares.

1.1.3. The Preferred Shares shall be issued, and purchased by the Investors, from time to time in accordance with the terms of this Agreement in sub series, with the Preferred Shares issued at the Initial Closing, as hereinafter defined, being designated as the "Series B-1 Preferred Shares" and the Preferred Shares issued at the first Subsequent Closing, as hereinafter defined, being designated as the "Series B-2 Preferred Shares" and so on for each Subsequent Closing as contemplated in Section 1.3. As provided in and subject to the

Certificate of Designation, all Preferred Shares across all sub series shall have the same rights, preferences, privileges and restrictions, except as to voting rights as described in the Certificate of Designation. As used herein, the term "Preferred Share" and "Preferred Shares" refers to a Preferred Share of any sub series and all Preferred Shares across all sub series, respectively

1.1.4. Subject to the terms and conditions of this Agreement, at the Initial Closing, the Company shall issue to the Investor Units consisting of (i) the number of Series B-1 Preferred Shares as is set forth opposite the Investor's name on the Schedule of Investors and (ii) Warrants to acquire that number of Warrant Shares equal to the number of Conversion Shares underlying such Preferred Shares and set forth opposite the Investor's name on the Schedule of Investors.

1.1.5. The Investors shall have the option, as contemplated in Section 1.3 and subject to the terms and conditions of this Agreement, to purchase at one or more Subsequent Closings, as hereinafter defined, and the Company agrees to sell and issue to the Investors upon the exercise of such option, Units consisting of (i) the number of Preferred Shares as is set forth opposite each Investor's name on the Notice of Additional Investment as provided in Section 1.3 and (ii) Warrants to acquire that number of Warrant Shares equal to the number of Conversion Shares underlying the Preferred Shares being purchased and set forth opposite the Investor's name on the Notice of Additional Investment. At each Subsequent Closing, the Company shall issue and the Investors shall purchase Preferred Shares in consecutive sub series as described in Section 1.1.3

1.2. ISSUANCE OF SECURITIES. In consideration of the payment of the purchase price in the amount and manner contemplated in Section 1.5, the Company shall deliver to an Investor the Preferred Shares and the Warrants being purchased, each duly executed on behalf of the Company and registered in the name of the Investor or its designees.

1.3. ADDITIONAL INVESTMENT.

1.3.1. Following the Initial Closing, the Investor shall have the option, in its sole discretion, to purchase from the Company, Units at a purchase price of $1,000 per Unit, each Unit consisting of additional Preferred Shares and Warrants, for an aggregate purchase price of up to $15,000,000. The Investor may from time to time, in its sole discretion, assign this right, in whole or in part, to one or more additional investors to be designated by the Investor. Any such designated investor shall

execute and deliver a counterpart signature page to this Agreement and each of the other Transaction Documents applicable to a purchaser of Units of Preferred Shares and Warrants under this Agreement and thereby, without any further action by the Company or any Investor, become a party to and be deemed to be an Investor under this Agreement, the Investor Rights Agreement and each of the other Transaction Documents applicable to a purchaser of Units of Preferred Shares and Warrants under this Agreement, and all schedules and exhibits hereto and thereto shall automatically be updated to reflect such Investor as a party hereto and thereto.

1.3.2. The Investors may exercise the option to make an additional investment by duly executing and delivering to the Company a notice of additional investment in the form attached hereto as Exhibit G (the "Notice of Additional Investment") setting forth: (i) the names of the Investors; (ii) a declaration by the Investors desiring to exercise the option to purchase additional Units of Preferred Shares and Warrants as contemplated in this Section 1.3; (iii) the number of Units of Preferred Shares and Warrants that each Investor desires to purchase at the Subsequent Closing; and (iv) the Subsequent Closing Date. This option to purchase additional Units of Preferred Shares and Warrants shall expire on the one (1) year anniversary of the date that the Company receives shareholder approval for the issuance of the Conversion Shares and the Warrant Shares as contemplated in Section 4.13, and thereafter shall be of no force and effect.

1.4. CLOSINGS.

1.4.1. The initial closing of the sale and purchase of Units of Series B-1 Preferred Shares and Warrants under this Agreement (the "Initial Closing") shall take place at 10:00 a.m., San Francisco time, on the fifth Business Day after the satisfaction or waiver of the conditions to the Initial Closing set forth in Sections 5 and 6.1, or on such other date or time as shall be mutually agreed to by the Company and the Investor (the "Initial Closing Date"). The Initial Closing shall occur at the offices of Morrison & Foerster, 425 Market Street, San Francisco, CA 94105.

1.4.2. Following the Initial Closing, there may occur one or more subsequent closings (each a "Subsequent Closing") in connection with additional purchases of Units of Preferred Shares and Warrants as contemplated in Section 1.3. A Subsequent Closing shall take place at the offices of Morrison & Foerster at such time and on such date as shall be set forth in the Notice of

Additional Investment or such other time and date as may be mutually agreed to by the Company and the participating Investors (each a "Subsequent Closing Date"). The Initial Closing and a Subsequent Closing are sometimes hereinafter referred to without distinction as a "Closing".

1.5. PURCHASE PRICE; MANNER OF PAYMENT.

1.5.1. At the Initial Closing, the Investor shall exchange five million dollars ($5,000,000) in principal amount of Outstanding Notes for five thousand (5,000) Units, each Unit consisting of (i) one (1) Series B-1 Preferred Share (which initially may be converted into 1000 Conversion Shares pursuant to the terms of the Certificate of Designation) and (ii) Warrants with a term of five (5) years from the date of issuance to purchase 1000 Warrant Shares at an initial exercise price of $1.10 per share.

1.5.2. At one or more Subsequent Closings, Investors shall have the option to purchase up to an aggregate of fifteen thousand (15,000) additional Units at a price of one thousand dollars ($1,000) per Unit, which purchase price shall be paid via wire transfer of immediately available funds in accordance with wire instructions provided by the Company. The number of Units to be purchased by each Investor at a Subsequent Closing shall be as set forth opposite the Investor's name on the Notice of Additional Investment.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Investor that:

2.1. ORGANIZATION AND QUALIFICATION. The Company and its Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdictions in

which they are formed and have the requisite power and authority to own their properties and to carry on their businesses as now being conducted. The Company and its Subsidiaries are duly qualified as foreign entities to do business and are in good standing in every jurisdiction in which the ownership of property or the nature of their businesses conducted by them makes such qualification necessary and where the failure to qualify would reasonably be expected to have a Material Adverse Effect. "Subsidiary" means any corporation, association, partnership, limited liability company, joint venture or other entity of which more than 50% of the voting stock or other equity interest is owned directly or indirectly by any Person or one or more of the other Subsidiaries of such Person or a combination thereof. "Material Adverse Effect" means any event, matter, condition or

circumstance (including any such event, matter, condition or circumstance which would occur upon notice or lapse of time or both) which (i) has or would reasonably be expected to have a material adverse effect on (A) the business, prospects, properties, assets, operations, results of operations or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (B) the intellectual property of the Company and its Subsidiaries, taken as a whole, (C) the transactions contemplated in this Agreement or the other Transaction Documents, as hereinafter defined, or by the agreements and instruments to be entered into in connection herewith or therewith, or (D) the authority or ability of the Company to perform its obligations under this Agreement or the other Transaction Documents, or (ii) materially adversely affects the legality, validity, binding effect or enforceability of any of this Agreement or the other Transaction Documents, the rights and remedies of the Investors hereunder and thereunder, or the validity, perfection or priority of any lien granted to the Investors under any of the Transaction Documents.

2.2. AUTHORIZATION; ENFORCEMENT; VALIDITY. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the Securities, the Certificate of Designation, the Warrants, the New Notes, the Loan Agreements, the other Loan Documents (as defined in each of the Bridge Loan and the Loan Agreement), the Investor Rights Agreement and each of the other agreements and documents entered into by the parties hereto in connection with the transactions contemplated by this Agreement (this Agreement, the Securities, the Certificate of Designation, the Warrants, the New Notes, the Loan Agreements, the other Loan Documents, the Investor Rights Agreement and such other agreements and documents being hereinafter referred to collectively as the "Transaction Documents") and to issue the Securities in accordance with the terms hereof and thereof. Except as set forth on Schedule 2.2, the execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Preferred Shares, the reservation for issuance and the issuance of the Conversion Shares, the issuance of the Warrants, the reservation for issuance and issuance of the Warrant Shares and the issuance of the New Notes have been duly authorized by the Company's board of directors and no further consent or authorization is required by the Company, its board of directors or its shareholders. This Agreement and the other Transaction Documents have been, or when delivered hereunder and thereunder will have been, duly executed and delivered by the Company and constitute, or when so delivered will constitute, the legal, valid

and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such

enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law.

2.3. ISSUANCE OF SECURITIES. The issuance of the Securities is duly authorized, and the Securities, upon issuance, shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, and, subject to the filing of the Certificate of Designation, the Preferred Shares shall be entitled to the rights and preferences set forth in the Certificate of Designation. As of the Initial Closing, the Company shall have reserved from its duly authorized capital stock for the purpose of issuance not less than the sum of (i) 120% of the maximum number of Conversion Shares issuable upon conversion of the Preferred Shares (assuming for purposes hereof, that the Preferred Shares are convertible at the initial conversion price and without taking into account any limitations on the conversion of the Preferred Shares that may be set forth in the Certificate of Designation) issued at the Initial Closing and (ii) 120% of the maximum number of Warrant Shares issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants) issuable at the Initial Closing. Upon issuance or conversion in accordance with the Certificate of Designation or exercise in accordance with the Warrants, as the case may be, the Conversion Shares and the Warrant Shares, respectively, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the representations and warranties of the Investors in this Agreement, the offer and issuance by the Company of the Securities are exempt from registration under the Securities Act of 1933, as amended (the "Securities Act").

2.4. NO CONFLICTS. Except as set forth on Schedule 2.4, subject to the filing of the Certificate of Designation, the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) conflict with or result in a violation of the Company's Certificate of Incorporation, any capital stock of the Company, the Company's Bylaws or the Certificate of Designation or (ii) violate, conflict with, result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, patent, license or other instrument to which the Company or any of its Subsidiaries is a party or by which any property or asset of the Company or any of its Subsidiaries is bound or affected or (iii) result in a violation of any law, rule, regulation, order, judgment or

decree or the like (including federal and state securities laws and regulations and the rules and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by

which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iv) except as contemplated by the Transaction Documents, result in, or require, the creation, or imposition of any lien upon or with respect to any of the properties or assets of the Company or any of its Subsidiaries.

2.5. CONSENTS. Except as set forth on Schedule 2.5, the Company is not required to obtain any approval, consent, license, exemption, authorization or order of, or make any filing or registration with, any court, governmental agency or authority or any regulatory or self-regulatory agency or any other Person in connection with the execution, delivery or performance of its obligations under or contemplated by this Agreement and the other Transaction Documents. Except as set forth on Schedule 2.5, all approvals, consents, licenses, exemptions, authorizations, orders, filings and registrations which the Company is required to make or obtain pursuant to the preceding sentence will be made, obtained or effected on or prior to the Initial Closing Date, and the Company and its Subsidiaries are unaware of any facts or circumstances which might prevent the Company from making, obtaining or effecting any of the registrations, applications or filings pursuant to the preceding sentence. Except as set forth on Schedule 2.5, the Company is not in violation of the requirements of the NASDAQ Capital Market and has no knowledge of any facts which would reasonably be expected to lead to delisting or suspension of the Common Stock in the foreseeable future.

2.6. NO GENERAL SOLICITATION; PLACEMENT AGENT'S FEES. Neither the Company, nor any of its Subsidiaries or Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by the Investors) relating to or arising out of the transactions contemplated hereby or by the other Transaction Documents. The Company shall pay, and hold the Investors harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. "Affiliate" means any Person which, directly or indirectly, controls, is controlled by or is under common control with another Person. For purposes of the foregoing, "control," "controlled by" and "under common control with" with respect to any Person shall mean the possession, directly or indirectly, of the power (i) to vote ten percent (10%) or more of the securities having ordinary

voting power of the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

2.7. NO INTEGRATED OFFERING. Except as set forth on Schedule 2.7, none of the Company, its Subsidiaries, any of their Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the Securities Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval provisions, including, without limitation, under the rules

and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated.

2.8. APPLICATION OF TAKEOVER PROTECTIONS; TERMINATION OF RIGHTS AGREEMENT AND STANDSTILL RESTRICTIONS.

2.8.1. The Company and its board of directors have taken any and all actions necessary in order to render inapplicable any control share acquisition, business combination or other similar anti-takeover provision under the Certificate of Incorporation or the laws of the jurisdiction of its incorporation which is or could become applicable to the Investors as a result of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Investors' ownership of the Securities.

2.8.2. The Company and its board of directors have taken any and all actions necessary in order to render the Rights Agreement, as hereinafter defined, inapplicable to the Investors as a result of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Investors' ownership of the Securities, and in furtherance of the foregoing, the Company and its board of directors have duly authorized, executed and delivered an amendment to its Rights Agreement, dated as of October 28, 1996 and amended as of February 23, 2004 (the "Rights Agreement"), between the Company and Computershare Investor Services Inc. (formerly EquiServe Trust Company, N.A.), as successor Rights Agent to First Chicago Trust Company of New York, substantially in the form attached hereto as Exhibit H, effective immediately prior to the execution and delivery of this Agreement. In furtherance of

the foregoing, the Company and its board of directors have also taken any and all actions necessary under the Rights Agreement to redeem all outstanding Rights under the Rights Agreement so as terminate the right of the holders thereof to exercise such Rights, with their only remaining right being the right to receive the Redemption Price, as provided in the Rights Agreement, and to render the Rights Agreement of no further force and effect, to be effective immediately prior to the execution and delivery of this Agreement. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor, and as to the incumbency, authority and signature(s) of the officer(s) of the Company authorized to execute and deliver the amendment to the Rights Agreement.

2.8.3. The Company has duly authorized, executed and delivered an amendment to the Settlement Agreement and Mutual Release, dated as of February 23, 2004, among the Company, Durus, Artal and other parties thereto, substantially in the form attached hereto as Exhibit I and dated as of the date hereof, pursuant to which amendment the Company has terminated and rendered inapplicable as of the date

hereof all standstill, control and other restrictions on Durus and Artal that may be implicated by the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Investor's ownership of the Securities. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investors a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investors, and as to the incumbency, authority and signature(s) of the officer(s) of the Company authorized to execute and deliver the amendment to the Settlement Agreement and Mutual Release.

2.9. SEC DOCUMENTS; FINANCIAL STATEMENTS. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission (the "SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (all of the foregoing filed prior to the date

hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"). The Company has delivered to the Investors or their representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents complied as to form with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim financial statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present the financial position of the Company and its Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). The Company's budget for fiscal year 2006 attached hereto as Exhibit J (the "Budget") is a true and correct copy of the most recent operating budget for the Company and its Subsidiaries approved by the Company's board of directors. All financial projections and forecasts delivered to the Investors, including the Budget, represent the Company's best estimates and assumptions as to future performance, which the Company believes to be fair and reasonable in light of current and reasonably foreseeable business conditions. No information provided by or on behalf of the Company to the Investors contains any untrue statement of a material fact or omits to

state any material fact necessary in order to make the statements therein not misleading, in light of the circumstance under which they are or were made.

2.10. ABSENCE OF CERTAIN CHANGES. Except as set forth on Schedule 2.10, since the Company's most recently filed audited financial statements contained in a Form 10-K, there has been no material adverse change and no material adverse development in the business, assets, properties, operations, condition (financial or otherwise), results of operations or prospects of the Company and its Subsidiaries. Except as set forth on Schedule 2.10, since the Company's most recently filed audited

financials statements contained in a Form 10-K, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends or made any distributions on its outstanding capital stock (except dividends paid directly to the Company by its Subsidiaries), (ii) issued any shares of capital stock; (iii) sold any assets outside of the ordinary course of business; (iv) had capital expenditures, individually or in the aggregate, in excess of $50,000; (v) incurred any Indebtedness individually or in the aggregate in excess of $25,000; (vi) conducted its business and operations other than in the ordinary course of business and consistent with past practices or (vii) increased the compensation of any existing employee, officer, director or consultant, or paid or awarded any bonus, incentive compensation, service award or other like benefit to any employee, officer, director or consultant, or made any severance or termination payments, or entered into or amended any severance agreement or the like with, any employee, officer or director, or entered into any new employment, consulting, retention, incentive compensation, non-competition, retirement, parachute or indemnification agreement with any officer, director, employee or agent, or modify any such existing agreement. Except as set forth on Schedule 2.10, neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend, or may have a reasonable basis upon which, to initiate involuntary bankruptcy proceedings. Except as set forth on Schedule 2.10, the Company and its Subsidiaries, individually and on a consolidated basis, after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents to occur at the Initial Closing, will not be, Insolvent (as hereinafter defined). For purposes hereof, "Insolvent" means, with respect to any Person (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total Indebtedness (as defined in Section 2.16), (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

2.11. CONDUCT OF BUSINESS; REGULATORY PERMITS. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under the Certificate of Incorporation, the Certificate of Designation, any other certificate of designation, the preferences or rights of any other outstanding series of preferred stock of the Company, the Bylaws or any Subsidiaries' organizational charter or articles of incorporation or

bylaws (or equivalent organizational documents). Except as set forth on Schedule 2.11, neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries or by which it or its properties may be bound, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing. Without limiting the generality of the foregoing, except as set forth on Schedule 2.11, the Company is not in violation of any of the rules, regulations or requirements of the NASDAQ Capital Market and has no knowledge of any facts or circumstances that would reasonably be expected to lead to delisting or suspension of the Common Stock by the NASDAQ Capital Market in the foreseeable future. Except as set forth on Schedule 2.11, during the two years prior to the date hereof, (i) the Common Stock has been designated for quotation on the NASDAQ National Market or the NASDAQ Capital Market, (ii) trading in the Common Stock has not been suspended by the SEC, the NASDAQ National Market or the NASDAQ Capital Market and (iii) the Company has received no communication, written or oral, from the SEC, the NASDAQ National Market or the NASDAQ Capital Market regarding the suspension or delisting of the Common Stock. Except as set forth on Schedule 2.11, the Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

2.12. CORRUPT PRACTICES. Neither the Company nor any of its Subsidiaries nor any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its, his or her actions for, or on behalf of, the Company or any of its Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee using corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

2.13. SARBANES-OXLEY ACT. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 and any and all applicable rules and regulations promulgated by the SEC thereunder.

2.14. TRANSACTIONS WITH AFFILIATES. Except as set forth on Schedule 2.14, none of the officers, directors or employees of the Company or any of its Subsidiaries is presently a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including, but not

limited to, any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or Subsidiaries or any corporation, partnership, trust or other entity in which any such officer, director, or employee has a substantial interest or is an officer, director, trustee or partner.

2.15. EQUITY CAPITALIZATION. As of the date hereof, the authorized capital stock of the Company consists of 50,000,000 shares of Common Stock and 1,000,000 shares of preferred stock, par value $0.01 per share, of which as of the date hereof, 32,177,574 shares of Common Stock are issued and outstanding, 4,442,286 shares of Common Stock are reserved for issuance pursuant to securities (other than the Preferred Shares and the Warrants) exercisable or exchangeable for, or convertible into, shares of Common Stock, and no shares of preferred stock (other than the Preferred Shares) are issued and outstanding or reserved for issuance. All of such outstanding or reserved shares have been, or upon issuance will be, validly issued, fully paid and non-assessable. Except as set forth on Schedule 2.15, (i) none of the Company's share capital is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company and (ii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities. Except as set forth on Schedule 2.15, (i) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any share capital of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional share capital of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any share capital of the Company or any of its Subsidiaries; (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act; (iii) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (iv) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plans or agreements; and (v) the Company and its Subsidiaries have no liabilities or obligations required to be disclosed in the SEC Documents and not disclosed in the SEC Documents. The Company has

furnished to the Investors true, correct and complete copies of the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), and the Company's Bylaws (the "Bylaws"), and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto.

The name, capital structure and ownership of each Subsidiary of the Company on the date of this Agreement are as set forth in Schedule 2.15. All of the outstanding capital stock of, or other interest in, each such Subsidiary has been validly issued, and is fully paid and nonassessable. Except for the Subsidiaries set forth on Schedule 2.15, on the date of this Agreement, the Company has no equity interest in any Person.

2.16. INDEBTEDNESS AND OTHER CONTRACTS. Schedule 2.16 contains a complete and accurate list of all contracts, agreements, indentures, licenses or instruments material to the conduct of the Company's business as currently conducted or as presently contemplated to be conducted or involving a monetary amount in excess of $25,000. Except as set forth on Schedule 2.16, neither the Company nor any of its Subsidiaries (i) has outstanding any debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness (as defined below) of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound; (ii) is a party to any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iii) is a party to any contract, agreement, indenture, license or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement, indenture, license or instrument could reasonably be expected to result in a Material Adverse Effect; (iv) is in default (and no event has occurred which with notice or lapse of time or both could place the Company in default) under any contract, agreement, indenture, license or other instrument (including any such contract, agreement, indenture, license or other instrument relating to Indebtedness) to which the Company or any of its Subsidiaries is a party or by which any property or asset of the Company or any of its Subsidiaries is bound or affected; (v) is a party to any contract, agreement, indenture, license or instrument, the performance of which has or may reasonably be expected to have a Material Adverse Effect or (vi) has any other material liabilities, fixed or contingent, that are not reflected in the financial statements referred to in Section 2.9 or in the notes thereto. For purposes of this Agreement: (x) "Indebtedness" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds

and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "Contingent Obligations" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the

primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

2.17. ABSENCE OF LITIGATION. Except as set forth in Schedule 2.17, there is no action, suit, notice of violation, claim, proceeding, inquiry or, to the Company's knowledge, any investigation before or by any court, public board, government agency or authority, arbitrator, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, any of their respective properties, the Common Stock or any outstanding stock of the Company's Subsidiaries, or any of the Company's or its Subsidiaries' officers or directors.

2.18. INSURANCE. The properties of the Company and its Subsidiaries are insured, with financially sound and reputable insurance companies (not Affiliates of the Company), in such amounts, with such deductibles and covering such risks as is customarily carried in accordance with sound business practice by companies engaged in similar businesses and owning

similar properties in the localities where the Company or such Subsidiaries operate. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for, and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost comparable to the current cost for such coverage.

2.19. EMPLOYEE RELATIONS. Except as set forth on Schedule 2.19, neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No employee of the Company or any of its Subsidiaries is, or is expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such employee does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. Except as set forth on Schedule 2.19, the Company and its Subsidiaries are in compliance in all material respects with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours. There are no strikes, lockouts or other labor disputes against the Company or any of its Subsidiaries, or, to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries.

2.20. TITLE. Except as set forth in Schedule 2.20, the Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company

and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

2.21. INTELLECTUAL PROPERTY RIGHTS. Except as set forth in Schedule 2.21, the Company and its Subsidiaries own or possess all rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights,

inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights ("Intellectual Property Rights"), free from burdensome restrictions, necessary to conduct their respective businesses as presently conducted and as presently contemplated to be conducted in the future. Except as set forth in Schedule 2.21, none of the Company's or its Subsidiaries' Intellectual Property Rights have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned. Neither the Company nor any Subsidiary has any knowledge of any infringement by the Company or any of its Subsidiaries of the Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the best knowledge of the Company, being threatened, against the Company or any of its Subsidiaries regarding Intellectual Property Rights. The Company is unaware of any facts or circumstances which might reasonably be expected to give rise to any of the foregoing infringements or claims, actions or proceedings. No third party possesses rights to the Intellectual Property Rights of the Company or any of its Subsidiaries which, if exercised, could enable such third party to develop products competitive to those of the Company or any of its Subsidiaries or could have an adverse effect on the ability of the Company or any of its Subsidiaries to conduct its business as presently conducted or as presently contemplated to be conducted. The Company and its Subsidiaries have taken all reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights.

2.22. ENVIRONMENTAL LAWS. Each of the Company and its Subsidiaries is in compliance in all material respects with all Environmental Laws, and there are no actions, suits, claims, notices of violation, hearings, investigations or proceedings pending or, to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries, or with respect to the ownership, use, maintenance and operation of the Company's and its Subsidiaries' properties, relating to any Environmental Laws. The term "Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with (including consent decrees), any governmental agencies or authorities, in each case relating to or imposing liability or standards of conduct concerning public health, safety and environmental protection matters.

2.23. SUBSIDIARY RIGHTS. The Company and each of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

2.24. TAX STATUS. Except set forth on Schedule 2.24, the Company and each of its Subsidiaries (i) has made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes claimed to be due by the taxing authority of any jurisdiction, and, to the Company's knowledge, there is no basis for any such claim.

2.25. INTERNAL ACCOUNTING AND DISCLOSURE CONTROLS. The Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company is not an "accelerated filer" as defined in Rule 12b-2 under the Exchange Act for its fiscal year ending December 31, 2005 and, accordingly, has not complied with Section 404 of the Sarbanes-Oxley Act of 2002. The Company maintains disclosure controls and procedures that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. During the twelve (12) months immediately preceding the date hereof neither the Company nor any of its Subsidiaries have received any notice or correspondence from any accountant relating to any potential material weakness in any part of the system of internal accounting controls of the Company or any of its Subsidiaries.

2.26. INVESTMENT COMPANY STATUS. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal

underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

2.27. TRANSFER TAXES. On the applicable Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to the Investors hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

2.28. DISCLOSURE. All reports, financial and other statements, certificates and other information and disclosure provided to the Investors regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby and by the other Transaction Documents, including the Schedules to this Agreement or any other Transaction Document, furnished by or on behalf of the Company are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or its Subsidiaries during the twenty four (24) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. Except as set forth on Schedule 2.28, no event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their businesses, properties, prospects, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been publicly announced or disclosed.

2.29. ERISA. Schedule 2.29 contains a complete and accurate list of all Plans maintained or sponsored by the Company or any ERISA Affiliate or to which the Company or any ERISA Affiliate contributes. The Company and its ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Plan, and have performed all their obligations under each Plan; and no ERISA Event has occurred or is reasonably expected to occur.

2.30. NO STABILIZATION. The Company has not taken, directly or indirectly, any action designed to or that could cause or result in any stabilization or manipulation of the price of the Common Stock.

2.31. FDA AND RELATED MATTERS.

2.31.1. Schedule 2.31 sets forth a complete and accurate list, referencing relevant records and documents, for the last five (5) years, of (i) all regulatory or warning letters, notices of

adverse findings and similar letters or notices issued to the Company or any Subsidiary by the Food and Drug Administration (the "FDA") or any other governmental entity that is concerned with the safety, efficacy, reliability or manufacturing of the medical devices developed, manufactured or sold by the Company or any Subsidiary (hereinafter for purposes of this Section 2.31, "Medical

Device Regulatory Agency"); (ii) all reports, filings or communications made by the Company or any of its Subsidiaries to or with a Medical Device Regulatory Agency regarding the medical devices developed, manufactured or sold by the Company or any Subsidiary (but excluding any reports, filings or communications in connection with applications seeking approval from any such Medical Device Regulatory Agency for the marketing and sale of such medical devices); (iii) all product recalls and safety alerts conducted by or issued to the Company or any Subsidiary and any requests from the FDA or any Medical Device Regulatory Agency requesting the Company or any Subsidiary to cease to investigate, test, manufacture, market or sell any product; (iv) any civil penalty actions begun by the FDA or any Medical Device Regulatory Agency against the Company or any Subsidiary and all consent decrees issued with respect to the Company or any Subsidiary; and (v) any other communications between the Company or any Subsidiary on the one hand and the FDA or any Medical Device Regulatory Agency on the other hand. The Company has delivered to the Investors copies of all documents referred to in Schedule 2.31.

2.31.2. The Company and its Subsidiaries have obtained all consents, approvals, certifications, authorizations and permits of, and have made all filings with, or notifications to, all Medical Device Regulatory Agencies pursuant to applicable requirements of all federal laws, rules and regulations, and all corresponding state and foreign laws, rules and regulations applicable to the Company or any Subsidiary and relating to its business. The Company and its Subsidiaries are in compliance with all applicable federal laws, rules and regulations and all corresponding applicable state and foreign laws, rules and regulations relating to medical device manufacturers. The Company has no reason to believe that any of the consents, approvals, authorizations, registrations, certifications, permits, filings or notifications that it or any of its Subsidiaries has received or made to operate their respective businesses have been or are being questioned, challenged or revoked. There are no investigations or inquiries by the FDA or any Medical Device Regulatory Agency pending or threatened relating to the operation of the Company's or the Company's

Subsidiaries' businesses or the Company's or any Subsidiary's compliance with applicable laws, rules or regulations relating to medical device manufacturers.

2.32. RANKING OF PREFERRED SHARES. No issued or outstanding equity securities of the Company or any Subsidiary will be senior to or pari passu with the Preferred Shares, when issued, as to dividend rights or upon the liquidation, winding up or dissolution of the Company.

2.33. BRIDGE LOAN. The Company has duly authorized, executed and delivered the Bridge Loan, dated as of the date hereof, and has performed, satisfied and complied in all material respects with the covenants, agreements and conditions contained therein to be performed, satisfied or complied with on and as of the date hereof. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor,

and as to the incumbency, authority and signature(s) of the officer(s) of the Company authorized to execute and deliver the Bridge Loan.

2.34. CHIEF EXECUTIVE OFFICER. The Company has received and accepted a letter from William Dow, substantially in the form attached hereto as Exhibit K, in which letter Mr. Dow acknowledges and agrees to having been removed from his position as CEO of the Company and resigns as a member of the board of directors of the Company effective on and as of the date hereof. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor.

2.35. APPOINTMENT OF ACTING CEO. The Company's board of directors has appointed Laurence Birch as acting CEO and as a member of the board of directors of the Company effective on and as of the date hereof. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor.

2.36. APPOINTMENT OF DURUS BOARD MEMBER. The Company and its board of directors have taken any and all actions necessary under the Certificate of Incorporation and Bylaws to appoint to the board of

directors a member designated by Durus as a Class III director. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor.

2.37. INDEMNIFICATION AGREEMENTS. The Company has, or prior to the Initial Closing will have, executed and delivered an indemnification agreement, substantially in the form attached hereto as Exhibit L (a "New Indemnification Agreement"), dated as of the date hereof, with each member of the Company's board of directors, including the Durus designee to the board of directors as provided in Section 2.36. Simultaneously with the execution and delivery of this Agreement, the Company has delivered to the Investor a certificate, executed by the Secretary of the Company and dated as of the date hereof, certifying as to the adoption of resolutions of the Company's board of directors consistent with the foregoing, which resolutions are in a form acceptable to the Investor, and as to the incumbency, authority and signature(s) of the officer(s) of the Company authorized to execute and deliver the New Indemnification Agreements.

2.38. D&O INSURANCE. The Company has provided the Investor with evidence of and, as of the date hereof, has in full force and effect Directors and Officers liability insurance coverage for the benefit of each member of the Company's board of directors, including the Durus designee to the board of directors as provided in Section 2.36, with

such coverage, in such amount, of such duration and with such insurance carriers as is set forth in Schedule 2.39.

3. INVESTORS' REPRESENTATIONS AND WARRANTIES.

Each Investor represents and warrants to the Company that:

3.1. ORGANIZATION; AUTHORITY. The Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

3.2. INVESTMENT PURPOSE. The Investor is purchasing the Securities for its own account and not with a view to the distribution thereof, provided, however, that by making the representation herein, the Investor reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption

from registration under the Securities Act.

3.3. RELIANCE ON EXEMPTIONS. The Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities.

3.4. INFORMATION. To the knowledge of the Investor, the Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Investor or its advisors, if any, or its representatives shall modify, amend or affect the Investor's right to rely on the Company's representations and warranties contained herein. The Investor understands that its investment in the Securities involves a high degree of risk.

3.5. NO GOVERNMENTAL REVIEW. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities.

3.6. RESTRICTIONS ON TRANSFER OR RESALE; LEGENDS.

3.6.1. RESTRICTIONS ON TRANSFER OR RESALE The Investor understands that, except as provided in the Investor Rights Agreement: (i) the Securities have not been and are

not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) the resale of the Securities is registered pursuant to an effective registration statement under the Securities Act, (B) if requested by the Company, the Investor shall have delivered to the Company an opinion of counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such Securities to be sold, assigned or transferred may be sold or transferred pursuant to an exemption from such registration, or (C) the Securities are sold or transferred pursuant to Rule 144 promulgated under the Securities Act, as

amended, (or a successor rule thereto) ("Rule 144"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and (iii) except as set forth in the Investor Rights Agreement, neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

3.6.2. LEGENDS. The Investor understands that the certificates or other instruments representing the Preferred Shares, the Warrants and the New Notes and, until such time as the resale of the Conversion Shares, the Warrants and the Warrant Shares have been registered under the Securities Act as contemplated by the Investor Rights Agreement, the certificates representing the Conversion Shares, the Warrants and the Warrant Shares, except as set forth below, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

3.7. AUTHORIZATION; ENFORCEMENT. This Agreement, and the other Transaction Documents to which the Investor is a party, have been duly and validly authorized, executed and delivered on behalf of the Investor and shall constitute the legal, valid and binding obligations of the Investor enforceable against the Investor in accordance with their respective terms, except as such enforceability may be limited by general principles

of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights

and remedies.

3.8. NO CONFLICTS; NO VIOLATION. The execution, delivery and performance by the Investor of this Agreement and the other Transaction Documents to which the Investor is a party, and the consummation by the Investor of the transactions contemplated hereby and thereby, will not (i) result in a violation of the organizational documents of the Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except for, in the case of clauses (ii) and (iii) above, such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

3.9. RESIDENCY. The Investor is a resident of that jurisdiction specified below its address on the Schedule of Investors.

4. COVENANTS OF THE PARTIES.

4.1. BEST EFFORTS. Each party shall use its reasonable best efforts to satisfy each of the conditions to be satisfied by it as provided in Sections 5 and 6 of this Agreement.

4.2. REPORTING STATUS. Until the date on which the Investors shall no longer hold any Securities (the "Reporting Period"), the Company shall timely file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would no longer require or otherwise permit such termination, and the Company shall use its best efforts to maintain its eligibility to register the Conversion Shares and the Warrant Shares for resale by the Investors on Form S-3.

4.3. USE OF PROCEEDS. The Company will use the proceeds from the sale of the Securities exclusively to fund business operating plans approved by the Company's board of directors, including the approval of the members of the Company's board of directors designated by the Investors.

4.4. FINANCIAL INFORMATION. Unless filed with the SEC through the EDGAR System and available to the public through the EDGAR system, the Company agrees to send the following to the Investors during the Reporting Period (i) within one Business Day after the filing thereof with the SEC, a copy of its annual reports and Quarterly Reports on Form 10-K and 10-Q, any regularly prepared interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements

for any period, any current reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, (ii) within one (1) Business Day after release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries, and (iii) copies of any notices and other information made available or given to the shareholders of the Company generally, contemporaneously with the making available or giving thereof to the shareholders. As used in this Agreement, "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.5. LISTING. The Company will use its best efforts, so long as the Investors own any of the Securities, to obtain and maintain the listing and trading of the Common Stock (including the Conversion Shares and the Warrant Shares) on the NASDAQ Capital Market or, in lieu thereof, the NASDAQ National Market, and the Company will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the NASDAQ Capital Market or the NASDAQ National Market, as the case may be, and other exchanges or quotation systems, as applicable. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the NASDAQ Capital Market.

4.6. PLACEMENT AGENT, ADVISORY AND BROKER FEES AND EXPENSES. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by the Investors) relating to or arising out of the transactions contemplated hereby or the other Transaction Documents. The Company shall pay, and hold the Investors harmless against, any liability, loss or expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment.

4.7. VALIDITY AND RESERVATION OF SHARES.

4.7.1. VALIDITY OF SHARES. The Company shall take all actions necessary to ensure that, upon issuance or conversion in accordance with the Certificate of Designation or exercise in accordance with the Warrants, as the case may be, the Conversion Shares and the Warrant Shares, respectively, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock.

4.7.2. RESERVATION OF SHARES. The Company shall at all times have reserved from its duly authorized capital stock for the purpose of issuance not less than the sum of (i) 120% of the maximum number of Conversion Shares issuable upon conversion of the Preferred Shares (without taking into account any limitations on the

conversion of the Preferred Shares that may be set forth in the Certificate of Designation) and (ii) 120% of the maximum number of Warrant Shares issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants), based upon the conversion price of the Preferred Shares and the exercise price of the Warrants in effect from time to time. The Company shall not reduce the number of shares of Common Stock reserved for issuance as provided above without the consent of the Investors. If at any time the number of shares of Common Stock authorized and reserved for issuance is below the number of shares required in the first sentence of this Section 4.7.2, then the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares of Common Stock, including without limitation calling a special meeting of shareholders to authorize additional shares of Common Stock to meet the Company's obligations under this Section 4.7.2, and using its best efforts to obtain shareholder approval of such increase in shares. Within thirty (30) days after the Initial Closing, the Company shall call a special meeting of shareholders to authorize additional shares of Common Stock to meet the Company's obligations under this Section 4.7.2 with respect to the Preferred Shares and Warrants that may be issued at the Subsequent Closings, and use its best efforts to obtain shareholder approval of such increase in shares within ninety (90) days after the Initial Closing.

4.8. CONDUCT OF BUSINESS AND COMPLIANCE WITH LAW. Neither the Company nor any of its Subsidiaries shall violate any term of or be in default under the Certificate of Incorporation, the Certificate of Designation, any other certificate of designation, the preferences or rights of any other outstanding series of preferred stock of the Company, the Bylaws or any Subsidiaries' organizational charter or articles of incorporation or bylaws (or equivalent organizational documents). The business of the Company and its Subsidiaries shall not be conducted in violation of any applicable judgment, decree, order, statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries.

4.9. FILINGS AND CONSENTS. The Company and the Investors will cooperate with each other with respect to obtaining, as promptly as practicable, all

necessary consents, approvals, authorizations and agreements of, and the giving of all notices and making of all filings with, any third parties, including, without limitation, governmental and regulatory authorities and the NASDAQ Capital Market, necessary to authorize, approve or permit the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, requesting an exemption from NASDAQ on behalf of the Company from any applicable NASDAQ Marketplace rules or other requirements regarding the need for a vote of the Company's shareholders in order to consummate the transactions contemplated in this Agreement and the other Transaction Documents. The Company shall pay any requisite fees arising from actions taken in furtherance of this Section 4.9.

4.10. REMOVAL OF LEGENDS. Unless otherwise required by applicable state securities laws, if (i) Securities have been sold under an effective registration statement filed under the Securities Act, (ii) a holder of Securities, if requested by the Company, provides the Company with an opinion of counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that Securities to be sold,

assigned or transferred may be sold or transferred pursuant to an exemption from registration under the Securities Act or (iii) Securities can be sold without restriction under Rule 144, then the Company shall direct the transfer agent for the Securities in question to issue one or more certificates for such Securities, free from any restrictive legend, in such name and in such denominations as specified by the Securities holder.

4.11. NO INTEGRATION. None of the Company, its Subsidiaries, any of their Affiliates, nor any Person acting on their behalf will make any offers or sales of any security or solicit any offers to buy any security, under circumstances that would require registration of any of the Securities under the Securities Act or cause the offering of the Securities hereunder to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated.

4.12. OTHER CHANGES. Except as agreed to by the Investor, beginning the date hereof until the Initial Closing Date, the Company shall not, and shall not suffer or permit any of its Subsidiaries to (i) make any expenditures in respect of (A) any lease or any sale and leaseback (real or personal property) other than rental payments under real property and personal property leases set forth in Schedule 2.16, (B) any purchase or other acquisition of any fixed or capital assets or any

other assets other than expenditures in the ordinary course of business consistent with past practices not in excess of $50,000 individually and $50,000 in the aggregate, or (C) any other expenditures except in the ordinary course of business consistent with past practices, (ii) enter into any new contract, agreement, indenture, license or instrument or enter into any other transaction except on commercially reasonable terms and in the ordinary course of business consistent with past practices, (iii) establish any new Plan or change any Plan except as required by law, (iv) increase the compensation of any existing employee, officer, director or consultant, or pay or award any bonus, incentive compensation, service award or other like benefit to any employee, officer, director or consultant, or make any severance or termination payments, or enter into or amend any severance agreement with, any employee, officer or director, or enter into any new employment, consulting, non-competition, retirement, parachute or indemnification agreement with any officer, director, employee or agent, or modify any such existing agreement; or (v) take any action that, if taken prior to the date of this Agreement, would have be disclosed on a disclosure schedule to any of the Company's representations and warranties contained herein.

4.13. SHAREHOLDER APPROVAL. In order to comply with the Marketplace Rules of the NASDAQ Capital Market with respect to the issuance of the Conversion Shares and the Warrant Shares, the Company shall promptly notice and hold an annual or special meeting of its shareholders (which meeting shall take place no later than June 30, 2006) in accordance with all applicable laws and rules and regulations of the SEC and the NASDAQ Capital Market and the Company's Certificate of Incorporation and Bylaws, at which meeting the Company shall seek shareholder approval of resolutions providing for the Company's issuance of the maximum number of Conversion Shares and Warrant

Shares issuable upon the conversion and exercise of the maximum number of Preferred Shares and Warrants issuable under this Agreement and the other Transaction Documents (assuming that such Preferred Shares are converted, and such Warrants are exercised, at their initial conversion price and initial exercise price, respectively).

4.14. RIGHTS AGREEMENT. Beginning on and as of the date hereof, the Company shall take any and all actions necessary or advisable to effectuate, as promptly as practicable after the date hereof, the redemption of the outstanding Rights under the Rights Agreement as provided in Section 2.8.2 and as contemplated by Section 23 of the Rights Agreement. Without limiting the generality of the foregoing, the Company shall cause the Rights Agent to take all actions necessary or advisable in connection with the foregoing. The Company shall keep Durus informed of its actions with respect to the foregoing, and shall take all steps in connection therewith reasonably requested by Durus. All actions in

connection with the Rights Agreement shall be subject to the prior consent of the Durus, such consent not to be unreasonably withheld.

4.15. FURTHER ASSURANCES. The Company shall undertake such actions and execute and deliver such additional instruments and documents as may be reasonably requested by the Investors, before or after any Closing, in order to consummate the transactions contemplated by, and to confirm and carry out and to effectuate fully the intent and purposes of, this Agreement and the other Transaction Documents.

5. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Units of Preferred Shares and Warrants to an Investor at the Initial Closing and a Subsequent Closing, as the case may be, is subject to the satisfaction by the Investor, on or before the Initial Closing Date, and by the Investor on or before the Subsequent Closing Date, as the case may be, of each of the following conditions (any of which may be waived by the Company in whole or in part):

5.1. The Investor shall have executed and delivered this Agreement, the Loan Agreement, the Investor Rights Agreement and any other of the Transaction Documents required to be executed and delivered by the Investor at the applicable Closing.

5.2. The Investor shall have delivered at the Closing the purchase price for the Preferred Shares and the Warrants being purchased at such Closing, in the amount and manner provided for by this Agreement.

5.3. The representations and warranties of the Investor shall be true and correct in all material respects as of the date when made and as of the Initial Closing Date or the Subsequent Closing Date, as the case may be, as though made at that time, and the Investor shall have performed, satisfied and complied with in all material respects the covenants, agreements and conditions required by this Agreement and any of the other Transaction Documents to be performed, satisfied or complied with by the Investor at or prior to the Initial Closing Date or the Subsequent Closing Date, as the case may be.

5.4. No statute, rule, regulation, executive order, decree, ruling or injunction will have been enacted, entered, promulgated or endorsed by or in any court or governmental or regulatory authority of competent jurisdiction or any self regulatory organization having authority over the matters contemplated hereby which prohibits the consummation by the Investor and the Company of the purchase and sale of the Units to be acquired by such Investor at the applicable Closing.

6. CONDITIONS TO INVESTOR'S OBLIGATION TO PURCHASE.

6.1. INITIAL CLOSING. The obligation of an Investor hereunder to purchase the Units of Series B-1 Preferred Shares and Warrants at the Initial Closing is subject to the satisfaction, on or before the Initial Closing Date, of each of the following conditions (any of which may be waived by the Investor in whole or in part):

6.1.1. EXECUTION AND DELIVERY OF DOCUMENTS AND ISSUANCE OF SECURITIES. The Company shall have duly executed and delivered this Agreement, the Loan Agreement, the Investor Rights Agreement, the Warrant Agreement, the Certificate of Designation and any other of the Transaction Documents required to be executed and delivered by the Company at the Initial Closing. The Company shall have also delivered to the Investor duly executed certificates, against payment therefor, representing the Series B-1 Preferred Shares and the Warrants.

6.1.2. DUE DILIGENCE AND OTHER DOCUMENTS. The Investor shall have completed its due diligence review of the Company to its satisfaction, as determined by the Investor in its sole discretion. The Investor shall have received such other approval, opinions, documents or materials as the Investor may reasonably request.

6.1.3. REPRESENTATIONS AND WARRANTIES; PERFORMANCE OF OBLIGATIONS. The representations and warranties of the Company (before and after giving effect to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents) shall be true and correct in all material respects as of the date when made and as of the Initial Closing Date as though made at that time, and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the this Agreement, the Loan Agreement, the Investor Rights Agreement, the Warrant Agreement and the other Transaction Documents to be performed, satisfied or complied with by the Company. The Investor shall have received a certificate, executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Initial Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Investor.

6.1.4. NO RESTRAINTS; APPROVALS.

6.1.4.1. No statute, rule, regulation, executive order, decree, ruling or injunction will have been enacted, entered, promulgated or endorsed by or in any court or governmental or regulatory authority of competent jurisdiction, or any self

regulatory organization having authority over the matters contemplated hereby, which would prohibit the consummation of any of, or materially adversely affect, the transactions contemplated by this Agreement or the other Transaction Documents. No action, suit or proceeding shall have been instituted and remain pending, or have been threatened, before a court or other governmental or regulatory body of competent jurisdiction to restrain, prohibit or otherwise challenge any of the transactions contemplated by this Agreement or the other Transaction Documents (or seeking damages from the Investor, any of its Affiliates or the Company as a result thereof).

6.1.4.2. Except as contemplated by Section 4.13, the Company shall have obtained all governmental, regulatory or third party consents and approvals necessary for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company shall have obtained an exemption or other form of relief or clarification (in form and substance acceptable to the Investor) from NASDAQ to the effect that any of the NASDAQ's rules regarding the need for a vote of the Company's shareholders are inapplicable to the transactions contemplated in this Agreement and the other Transaction Documents.

6.1.4.3. The Investor shall have received a certificate, executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Initial Closing Date, certifying that all (i) authorizations, consents or approvals of, notices to or filings with any governmental or regulatory authority and (ii) approvals and consents of any other Person, required in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, shall have been obtained or made and that all applicable waiting periods have expired without notice of any action which seeks to restrain, enjoin or otherwise prohibit or materially delay the transactions contemplated by this Agreement and the other Transaction Documents and as to such other matters as may be reasonably requested by the Investor.

6.1.5. OPINION OF COMPANY COUNSEL. The Investor shall have received the opinion of the Company's outside counsel, dated as of the Initial Closing Date, in substantially the form of Exhibit M attached hereto.

6.1.6. ORGANIZATIONAL DOCUMENTS; GOOD STANDING. The Company shall have delivered to the Investor (i) a certificate evidencing the formation and good standing of the Company and each of its

material Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or equivalent) of such jurisdiction of formation as of a date within five (5) days of the Initial Closing Date, (ii) a certificate evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company conducts business and is required to so qualify, as of a date within five (5) days of the Initial Closing Date, (iii) a certified copy of

the Certificate of Incorporation as certified by the Secretary of State of the State of Delaware within five (5) days of the Initial Closing Date and (iv) a certified copy of the Certificate of Designation as certified by the Secretary of State of the State of Delaware within five (5) days of the Initial Closing Date.

6.1.7. RESOLUTIONS; INCUMBENCY. The Company shall have delivered to the Investor (i) a certificate, executed by the Secretary of the Company and dated as of the Initial Closing Date, as to (A) the resolutions adopted unanimously by the Company's board of directors with respect to the transactions contemplated by this Agreement and the other Transaction Documents, in a form acceptable to the Investor, (B) the Certificate of Incorporation, (C) the Bylaws, each as in effect at the Initial Closing, and (D) the incumbency, authority and signatures of each officer of the Company authorized to execute and deliver this Agreement and the other Transaction Documents to be executed and delivered at the Initial Closing and act with respect thereto and (ii) a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of a date within five (5) days of the Initial Closing Date.

6.1.8. CONTINUED LISTING. The Common Stock shall be listed on the NASDAQ Capital Market and shall not have been suspended, as of the Initial Closing Date, by the SEC or the NASDAQ Capital Market from trading on the NASDAQ Capital Market nor shall proceedings regarding such suspension by the SEC or the NASDAQ Capital Market have been threatened, as of the Initial Closing Date, either by the SEC or the NASDAQ Capital Market nor shall the Company be out of compliance with any of the minimum maintenance requirements of the NASDAQ Capital Market.

6.1.9. BOARD AND EMPLOYEE MATTERS.

6.1.9.1. The Company's Bylaws shall provide that its Board of

Directors shall consist of seven (7) members as of the Initial Closing Date and the Investor shall have designated at least four (4) of the Company's seven (7) board members, and such designees, on and as of the Initial Closing Date, shall have been appointed to the Company's board of directors in accordance with the Certificate of Incorporation and Bylaws such that one (1) designee is a Class I director, one (1) designee is a Class II director and two (2) designees are Class III directors, and any necessary consents, approvals, authorizations and agreements of, and the giving of all notices and making of all filings with, any third parties in connection with the appointment of such designees to the Company's board of directors shall have been received or made, as the case may be, including, without limitation, the provision of any information to the Company's shareholders in accordance with Rule 14f-1 of the Exchange Act regarding the right of the Investor to designate a majority of the members of the Company's board of directors.

6.1.9.2. The Company shall have executed and delivered a New Indemnification Agreement for each of the Investor's designees to the Company's board of directors.

6.1.9.3. The Company shall have provided the Investor with evidence of Directors and Officers liability insurance coverage for the benefit of the Investor's designees to the Company's board of directors, with coverage of the type, amount, duration and with such insurance carriers acceptable to the Investor.

6.1.9.4. The Company shall have duly authorized, executed and delivered agreements, in substantially the form attached hereto as Exhibit N, with members of the Company's existing board of directors to be designated by the Investor, pursuant to which agreements such designated members of the board shall have resigned from the board of directors of the Company on and as of the Initial Closing Date in order to create four vacancies therein that will have then been filled by appointment of the Investor's designees as provided in this Agreement.

6.1.9.5. Any disclosures to be made by the Company in connection with changes in the management and members of the board of directors of the Company shall be satisfactory to the Investor in its sole discretion.

6.1.9.6. The Company shall have entered into a consulting

agreement with William Dow substantially in the form attached hereto as Exhibit O, pursuant to which agreement Mr. Dow shall have resigned as an employee of the Company on and as of the Initial Closing Date and agreed to provide certain consulting services to the Company in exchange for certain consideration as provided therein.

6.1.10. RIGHTS AGREEMENT. The Company shall have effectuated and consummated the redemption of the outstanding Rights under the Rights Agreement, as provided in Sections 2.8.2 and 4.14, in accordance with Section 23 of the Rights Agreement.

6.1.11. MUTUAL RELEASE. The Company shall have duly authorized, executed and delivered a Mutual Release among the Company, Durus and Artal, substantially in the form attached hereto as Exhibit P and effective on and as of the Initial Closing Date.

6.1.12. OTHER MATTERS.

6.1.12.1. The Company shall have delivered to the Investor such other documents relating to the transactions contemplated by this Agreement and the other Transaction Documents as the Investor or its counsel may reasonably request.

6.1.12.2. No event or events shall have occurred since the date hereof that, taken individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

6.1.12.3. The Company shall have paid, via wire transfer of immediately available funds or other acceptable payment mechanism, the fees and expenses incurred by the Investor as provided in Section 10.3.

6.1.12.4. The Company shall have entered into an amendment to its Research, Development, and License Agreement with DEKA Research and Development Corporation, in form and substance mutually agreed to by the Company and the Investor.

6.2. SUBSEQUENT CLOSINGS. In connection with any Subsequent Closing, an Investor electing to purchase additional Units of Preferred Shares and Warrants at a Subsequent Closing shall be entitled to receive evidence of the satisfaction, on or before the Subsequent Closing Date, of each of the following conditions (any of which may be waived by the Investor in whole or in part):

6.2.1. ISSUANCE OF SECURITIES. The Company shall have delivered to the Investor duly executed certificates, against payment therefor,

representing the Preferred Shares and the Warrants.

6.2.2. REPRESENTATIONS AND WARRANTIES; PERFORMANCE OF OBLIGATIONS. The representations and warranties of the Company (before and after giving effect to the consummation of the transactions contemplated by the Transaction Documents) shall be true and correct in all material respects as of the date when made and as of the Subsequent Closing Date as though made at that time (except to the extent, and only to the extent, that the Company's representations and warranties may change as a result of the consummation of the transactions contemplated by this Agreement and the other Transaction Documents on the Initial Closing Date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by this Agreement and the other Transaction Documents to be performed, satisfied or complied with by the Company. The Investor shall have received a certificate, executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Subsequent Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Investor(s).

6.2.3. NO RESTRAINTS.

6.2.3.1. No statute, rule, regulation, executive order, decree, ruling or injunction will have been enacted, entered, promulgated or endorsed by or in any court or governmental or regulatory authority of competent jurisdiction, or any self regulatory organization having authority over the matters contemplated hereby, which would prohibit the consummation of any of, or materially adversely

affect, the transactions contemplated by this Agreement or the other Transaction Documents. No action, suit or proceeding shall have been instituted and remain pending, or have been threatened, before a court or other governmental or regulatory body of competent jurisdiction to restrain, prohibit or otherwise challenge any of the transactions contemplated by this Agreement or the other Transaction Documents (or seeking damages from the Investor, any of its Affiliates or the Company as a result thereof).

6.2.3.2. Except as contemplated by Section 4.13, the Company shall have obtained all governmental, regulatory or third party consents and approvals necessary for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company shall have obtained an exemption or other form of

relief or clarification (in form and substance acceptable to the Investor) from NASDAQ to the effect that any of the NASDAQ's rules regarding the need for a vote of the Company's shareholders are inapplicable to the transactions contemplated in this Agreement and the other Transaction Documents.

6.2.3.3. The Investor shall have received a certificate, executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Subsequent Closing Date, certifying that all (i) authorizations, consents or approvals of, notices to or filings with any governmental or regulatory authority and (ii) approvals and consents of any other Person, required in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, shall have been obtained or made and that all applicable waiting periods have expired without notice of any action which seeks to restrain, enjoin or otherwise prohibit or materially delay the transactions contemplated by this Agreement and the other Transaction Documents and as to such other matters as may be reasonably requested by the Investors.

6.2.4. OPINION OF COMPANY COUNSEL. The Investor shall have received the opinion of the Company's outside counsel, dated as of the Subsequent Closing Date, in substantially the form of Exhibit Q attached hereto.

6.2.5. ORGANIZATIONAL DOCUMENTS; GOOD STANDING. The Company shall have delivered to the Investor (i) a certificate evidencing the formation and good standing of the Company and each of its material Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or equivalent) of such jurisdiction of formation as of a date within five (5) days of the Subsequent Closing Date, (ii) a certificate evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company conducts business and is required to so qualify, as of a date within five (5) days of the Subsequent Closing Date and (iii) a certified copy of the Certificate of Incorporation as certified by the Secretary of State of the State of Delaware within five (5) days of the Subsequent Closing Date.

6.2.6. RESOLUTIONS; INCUMBENCY. The Company shall have delivered to the Investor (i) a certificate, executed by the Secretary of the Company and dated as of the Subsequent Closing Date, as to (A) the resolutions adopted by the Company's board of directors

with respect to the transactions contemplated by this Agreement and the other Transaction Documents, in a form acceptable to the Investor, (B) the Certificate of Incorporation, (C) the Bylaws, each as in effect at the Subsequent Closing, and (D) the incumbency, authority and signatures of each officer of the Company authorized to execute and deliver this Agreement and the other Transaction Documents to be executed and delivered at the Subsequent Closing and act with respect thereto and (ii) a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of a date within five (5) days of the Subsequent Closing Date.

6.2.7. CONTINUED LISTING. The Common Stock shall be listed on the NASDAQ Capital Market and shall not have been suspended, as of the Subsequent Closing Date, by the SEC or the NASDAQ Capital Market from trading on the NASDAQ Capital Market nor shall proceedings regarding such suspension by the SEC or the NASDAQ Capital Market have been threatened, as of the Subsequent Closing Date, either by the SEC or the NASDAQ Capital Market or by falling below the minimum maintenance requirements of the NASDAQ Capital Market.

6.2.8. OTHER MATTERS.

6.2.8.1. The Company shall have delivered to the Investor(s) such other documents relating to the transactions contemplated by this Agreement and the other Transaction Documents as the Investor or its counsel may reasonably request.

6.2.8.2. No event or events shall have occurred since the date hereof that, taken individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

6.2.8.3. The Company shall have paid, via wire transfer of immediately available funds or other acceptable payment mechanism, the fees and expenses incurred by the Investor(s) as provided in Section 10.3.

7. INDEMNIFICATION

In consideration of an Investor's execution and delivery of this Agreement and the other Transaction Documents and the acquisition of the Securities, and in addition to all of the Company's other obligations under this Agreement, the Loan Agreements, the Investor Rights Agreement, the Preferred Shares, the Warrants, the New Notes and the other Transaction Documents, the Company hereby acknowledges and agrees that it shall defend, protect, indemnify and hold harmless the Investor and each other holder of the Securities and each and all of their respective shareholders, partners, members, officers, directors, employees, managers and direct and indirect investors and any of the foregoing Persons'

agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement and the other Transaction Documents) (collectively the "Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses as incurred in connection therewith (regardless of whether any such Indemnitee is a party to the action for which indemnification is sought), and including reasonable attorney's fees and disbursements (the "Indemnified Liabilities"), incurred by an Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation by the Company or any breach of any representation or warranty made by the Company herein or in any other Transaction Document or in any certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained herein or in any other Transaction Document or in any certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery, performance or breach by the Company, or the enforcement by the Investor, of this Agreement or any other Transaction Document or any certificate, instrument or document contemplated hereby or thereby or (ii) the status of such Indemnitee as an investor in the Company. To the extent that the foregoing indemnification obligations on the part of the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

The indemnification obligations on the part of the Company contained in this Section 7 do not apply to amounts paid in settlement of Indemnified Liabilities if such settlement is made without the prior written consent of the Company, which consent shall not be unreasonably withheld. The Company may participate in, and assume and control, the defense of any claim with counsel mutually satisfactory to the Company and the Indemnitee. If, in the reasonable opinion of counsel mutually satisfactory to the Company and the Indemnitee, the representation by such counsel of the Company and the Indemnitee is inappropriate due to actual or potential conflicts of interests between the Indemnitee and any other party represented by such counsel in such proceeding or the actual or potential defendants in, or targets of, any such action including the Indemnitee, and any such Indemnitee reasonably determines that there may be legal defenses available to such Indemnitee that are different from or in addition to those available to the Company, then the Indemnitee is entitled to assume such defense and may retain its own counsel, with fees and expenses to be paid by the Company.

8. DEFINITIONS

"Affiliate" has the meaning set forth in Section 2.6.

"Agreement" means this Securities Purchase Agreement dated as of March 31, 2006 entered into by and between the Company and the Investor.

"Artal" has the meaning set forth in Recital E.

"Bridge Loan" has the meaning set forth in Recital D.

"Business Day" has the meaning set forth in Section 4.4.

"Bylaws" has the meanings set forth in Section 2.15.

"Certificate of Designation" has the meaning set forth in Recital A.

"Certificate of Incorporation" has the meaning set forth in Section 2.15.

"Closing" has the meaning set forth in Section 1.4.

"Common Stock" means the Company's common stock, par value $0.01 per share

"Company" means Aksys, Ltd.

"Conversion Shares" has the meaning set forth in Recital A.

"Environmental Laws" has the meaning set forth in Section 2.22.

"ERISA" means the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"ERISA Affiliate" means each business or entity which is, or within the last six years was, a member of a "controlled group of corporations", under "common control" or an "affiliated service group" with the Company within the meaning of Section 414(b), (c) or (m) of the Internal Revenue Code, required to be aggregated with the Company under Section 414(o) of the Internal Revenue Code, or is, or within the last six years was, under "common control" with the Company, within the meaning of Section 4001(a)(14) of ERISA.

"ERISA Event" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (iii) a withdrawal by the Company or any

ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of the Company or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Company or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the

commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (vi) the imposition of liability on the Company or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by the Company or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (ix) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company, or any ERISA Affiliate thereof; (x) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code with respect to any Pension Plan; (xi) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which the Company or any Subsidiary thereof may be directly or indirectly liable; (xii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Internal Revenue Code by any fiduciary or disqualified person for which the Company or any ERISA Affiliate thereof may be directly or indirectly liable; (xii) the occurrence of an act or omission which could give rise to the imposition on the Company or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xiii) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against the Company, or any Subsidiary thereof in connection with any such plan; (xiv) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (xv) the imposition of any lien on any of the rights, properties or assets of the Company or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA or to

Section 401(a)(29) or 412 of the Internal Revenue Code; or (xvi) the establishment or amendment by the Company or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of the Company.

"Exercise Price" has the meaning set forth in the Warrant Agreement.

"Indebtedness" has the meaning set forth in Section 2.16.

"Initial Closing" has the meaning set forth in Section 1.4.1.

"Initial Closing Date" has the meaning set forth in Section 1.4.1.

"Insolvent" has the meaning set forth in 2.10.

"Investor" and the "Investors" have the meaning set forth in the first paragraph of this Agreement.

"Investor Rights Agreement" has the meaning set forth in Recital D.

"Loan Agreement" has the meaning set forth in Recital D.

"Loan Agreements" has the meaning set forth in Recital D.

"Material Adverse Effect" has the meaning set forth in Section 2.1.

"Multiemployer Plan" means a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) to which the Company or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

"New Notes" has the meaning set forth in Recital D.

"Notice of Additional Investment" has the meaning set forth in Section 1.3.2.

"Outstanding Notes" has the meaning set forth in Recital E.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Company or any ERISA Affiliate thereof or to which the Company, or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or any other entity

of whatever nature or any governmental agency or authority.

"Plan" means (i) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by the Company or any Subsidiary thereof or to which the Company or any Subsidiary thereof has ever made, or was obligated to make, contributions, (ii) a Pension Plan, or (iii) a Qualified Plan.

"Preferred Shares" has the meaning set forth in Recital A.

"Qualified Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Company or any ERISA Affiliate thereof or to which the Company or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

"Redemption Price" has the meaning set forth in the Rights Agreement.

"Rights Agreement" has the meaning set forth in Section 2.8.2.

"Schedule of Investors" has the meaning set forth in the first paragraph of this Agreement.

"SEC" has the meaning set forth in Section 2.9.

"SEC Documents" has the meaning set forth in Section 2.9.

"Securities" has the meaning set forth in Recital F.

"Securities Act" has the meaning set forth in Section 2.3.

"Subsequent Closing" has the meaning set forth in Section 1.4.2.

"Subsequent Closing Date" has the meaning set forth in 1.4.2.

"Subsidiary" has the meaning set forth in Section 2.1.

"Transaction Documents" has the meaning set forth in Section 2.2.

"Units" has the meaning set forth in Recital B.

"Warrant Agent" has the meaning given to such term set forth in the Warrant Agreement.

"Warrants" has the meaning set forth in Recital B.

"Warrant Agreement" has the meaning set forth in Recital B.

"Warrant Shares" has the meaning set forth in Recital B.

9. TERMINATION. In the event that the Initial Closing shall not have occurred on or before the date that is sixty (60) days following the date hereof due to the Company's failure to satisfy the conditions set forth in Sections 6 (and Durus does not waive such unsatisfied condition(s)), Durus may, in its sole discretion, terminate this Agreement at any time after such date without any liability whatsoever to the Company; provided, however, if this Agreement is terminated pursuant to this Section 9, the Company shall remain obligated to the Investors under Section 10.3.

10. MISCELLANEOUS

10.1. PRESS RELEASES AND ANNOUNCEMENTS. All press releases and announcements concerning the transactions contemplated by this Agreement and the other Transaction Documents shall be mutually agreed to by the Company and the Investors, except for any such disclosure required by law which, in the case of such disclosure by the

Company, shall, to the extent practicable under the circumstances, be first discussed with the Investors and, in the case of such disclosure by the Investors, shall, to the extent practicable under the circumstances, be first discussed with the Company.

10.2. INTERPRETATION.

10.2.1. The various section headings are inserted for purposes of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

10.2.2. Each party hereto acknowledges that it has been represented by competent counsel and participated in the drafting of this Agreement and the other Transaction Documents and agrees that any applicable rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in connection with the construction or interpretation of this Agreement and the other Transaction Documents.

10.3. FEES AND EXPENSES. The Company shall reimburse the Investor(s) for reasonable attorney's fees and related costs and expenses incurred in connection with the transactions contemplated by this Agreement and the other Transaction Documents and due diligence in connection therewith, including fees and related costs and expenses incurred in connection with any Additional Investment by the Investor(s) as contemplated by Section 1.3, which amount(s) shall be paid to the Investors or its counsel whether or not the transactions contemplated by this Agreement

and the other Transaction Documents are consummated, including, without limitation, in the event this Agreement is terminated as contemplated in Section 9. Except as expressly set forth above, each party hereto shall be solely responsible for the payment of the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement and the other Transaction Documents. Without limiting the generality of the foregoing, the Company shall pay all stamp and other taxes, if any, which may be payable in respect of the issuance, sale and delivery to the Investor(s) or any designees of the Preferred Shares, the Warrants, the New Notes, the Conversion Shares or the Warrant Shares, and shall save the Investor harmless against any loss or liability resulting from nonpayment or delay in the payment of any such taxes.

10.4. GOVERNING LAW; JURISDICTION AND VENUE; WAIVER OF JURY TRIAL.

10.4.1. This Agreement is to be construed in accordance with and governed by the internal laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law (or any similar successor provision)) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties.

10.4.2. For purposes of any suit, action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement, each party hereto hereby expressly and irrevocably submits and consents to the exclusive jurisdiction of the courts of the State of New York sitting in the borough of Manhattan and the United States District Court for the Southern District of New York for the purposes of any such suit, action or legal proceeding, including to enforce any settlement, order or award; and agrees that such state and federal courts shall be deemed to be a convenient forum; and waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in such court any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

10.4.3. Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section by the courts of the State of New York sitting in the borough of Manhattan and the United States District Court

for the Southern District of New York and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of New York or any other jurisdiction.

10.4.4. Each party hereto hereby knowingly, voluntarily, and intentionally waives the right to a trial by jury in respect of any litigation arising out of, under or in connection with this Agreement, this waiver being a material inducement for each such party to enter into this Agreement.

10.5. SPECIFIC PERFORMANCE. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific intent or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof without the necessity of demonstration actual damages and without having to post a bond or other form of security as a condition to such relief, this being in addition to any other remedy to which they may be entitled by law or equity.

10.6. SURVIVAL. Unless this Agreement is terminated under Section 9, the representations and warranties of the parties hereunder shall survive each Closing.

10.7. THIRD PARTY BENEFICIARIES. Except as set forth in Section 7 of this Agreement, this Agreement is intended for the benefit of the parties hereto and their respective permitted successors (including subsequent Securities holders) and assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person or entity.

10.8. ENTIRE AGREEMENT. This Agreement, the other Transaction Documents and the other documents contemplated hereby and thereby (including all schedules and exhibits

thereto) constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

10.9. SEVERABILITY. The provisions of this Agreement shall be severable, and any invalidity, unenforceability or illegality of any provision or

provisions of this Agreement shall not affect any other provision or provisions of this Agreement, and each term and provision of this Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

10.10. AMENDMENT AND WAIVER. This Agreement may be amended or modified only upon the mutual written consent of the Company and the Investors. No failure to exercise and no delay in exercising any right, power or privilege granted under this Agreement shall operate as a waiver of such right, power or privilege. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

10.11. RELATIONSHIP OF THE PARTIES. For all purposes of this Agreement and the other Transaction Documents, each of the parties hereto and their respective Affiliates shall be deemed to be independent entities and, anything in this Agreement or the other Transaction Documents to the contrary notwithstanding, nothing herein shall be deemed to constitute the parties hereto or any of their respective Affiliates as partners, joint venturers, co-owners, an association or any entity separate and apart from each party itself, nor shall this Agreement or any other Transaction Documents make any party hereto an employee or agent, legal or otherwise, of the other parties for any purposes whatsoever. None of the parties hereto is authorized to make any statements or representations on behalf of any other party or in any way to obligate any other party, except as expressly authorized in writing by the other parties. Except as expressly provided in this Agreement or any other Transaction Documents, no party hereto or thereto shall assume nor shall be liable for any liabilities or obligations of the other parties, whether past, present or future.

10.12. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) two (2) days after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the parties hereto at the

respective addresses set forth below, or as notified by such party from

time to time at least ten (10) days prior to the effectiveness of such notice:

if to the Investors:	Durus Life Sciences Master Fund Ltd. c/o International Fund Services (Ireland) Ltd. 3rd Floor, Bishops Square Redmonds Hill Dublin 2, Ireland Attention: Susan Byrne Tel: (011) 35-31-707-5113 Fax: (011) 35-31-707-5013
WITH A COPY TO:	Gavin Grover, Esq. Morrison & Foerster LLP 425 Market Street San Francisco, California 94105 Tel: 415-268-7000 Fax: 415-269-7522
AND A COPY TO:	Paul N. Roth, Esq. Schulte, Roth & Zabel 919 Third Avenue New York, New York 10022 Tel: 212-756-2000 Fax: 212-593-5955
if to the Company:	Aksys, Ltd. Two Marriott Drive Lincolnshire, Illinois 60069 Tel: 847-229-2020 Fax: 847-229-2080
WITH A COPY TO:	Keith S. Crow P.C. Kirkland & Ellis LLP 200 East Randolph Drive Chicago, Illinois 60601 Tel: 312-861-2000 Fax: 312-861-2200

10.13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

10.14. ATTORNEY'S FEES. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

In Witness Whereof, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

COMPANY:

AKSYS, LTD.

By: /s/ Laurence P. Birch

Name: Laurence P. Birch
Title: CEO

INVESTOR:

DURUS LIFE SCIENCES MASTER FUND LTD.

By: /s/ Leslie L. Lake

Name: Leslie L. Lake
Title: Director

[Signature page to Securities Purchase Agreement]

Exhibit 9
[EXECUTION COPY]

BRIDGE LOAN AGREEMENT

THIS BRIDGE LOAN AGREEMENT (this "Agreement"), dated as of March 31, 2006, is made between AKSYS, LTD., a Delaware corporation (the "Company"), and DURUS LIFE SCIENCES MASTER FUND LTD., a Cayman Islands Exempted Company (the "Lender").

The Company has requested the Lender to make a bridge loan to the Company in an aggregate principal amount of $5,000,000 on the closing date hereof. the Lender is willing to make the loan to the Company upon the terms and subject to the conditions set forth in this Agreement.

Accordingly, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01 CERTAIN DEFINED TERMS. As used in this Agreement (including in the recitals hereof), the following terms shall have the following meanings:

"AFFILIATE" means any Person which, directly or indirectly, controls, is controlled by or is under common control with another Person. For purposes of the foregoing, "control," "controlled by" and "under common control with" with respect to any Person shall mean the possession, directly or indirectly, of the power (i) to vote 10% or more of the securities having ordinary voting power of the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"BANKRUPTCY CODE" means Title 11 of the United States Code entitled "Bankruptcy."

"BUSINESS DAY" means a day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

"CHANGE OF CONTROL" means the occurrence of any of the following: (a) the acquisition, directly or indirectly, by any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of beneficial ownership of more than 35% of the aggregate outstanding voting power of the capital stock of the Company (excluding, however, the acquisition of such voting power as the result of any transaction or series of related transactions pursuant to which Durus distributes securities of the Company to its stockholders, limited partners or other interest holders); (b) during any period of twelve consecutive calendar

months, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of at least a

majority of the directors of the Company then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Company; (c) in one transaction or one or more series of related transactions (i) the Company sells, transfers, leases or otherwise disposes of, or parts with control of, all or substantially all of its assets to another Person, or (ii) any entity merges with or consolidates with or into the Company or a subsidiary of the Company in a transaction pursuant to which the Company's stockholders immediately prior to such transaction, or series of related transactions, own less than 50% of the outstanding voting stock (on an as-converted to common stock basis) of the surviving, continuing or purchasing entity (or parent or subsidiary, if any) immediately after the transaction or series of related transactions; or (d) the Company shall cease to own and control, directly or indirectly, 100% of the aggregate voting capital stock of and other voting ownership interests in each Guarantor.

"CLOSING DATE" has the meaning set forth in Section 3.01.

"COLLATERAL" means the property described in the Collateral Documents, and all other property now existing or hereafter acquired which may at any time be or become subject to a Lien in favor of the Lender pursuant to the Collateral Documents or otherwise, securing the payment and performance of the Obligations.

"COLLATERAL ACCESS AGREEMENT" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Company's or its Subsidiaries' books and records, equipment or inventory, in each case, in form and substance reasonably satisfactory to the Lender.

"COLLATERAL DOCUMENTS" means any Pledge Agreement, any Security Agreement, any other agreement pursuant to which the Company, any Guarantor or any other Person provides a Lien on its assets in favor of the Lender and all filings, documents and agreements made or delivered pursuant thereto.

"COMPANY" has the meaning set forth in the recital of parties to this Agreement.

"DEFAULT" means an Event of Default or an event or condition which with notice or lapse of time or both would constitute an Event of Default.

"DOLLARS" and the sign "$" each means lawful money of the United States.

"DURUS" has the meaning set forth in the recital of parties to this Agreement.

"ENVIRONMENTAL LAWS" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with (including consent decrees), any governmental agencies or authorities, in each case relating to or imposing liability or standards of conduct concerning public health, safety and environmental protection matters.

"ERISA" means the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"ERISA AFFILIATE" means each business or entity which is, or within the last six years was, a member of a "controlled group of corporations", under "common control" or an "affiliated service group" with the Company or any Guarantor within the meaning of Section 414(b), (c) or (m) of the Internal Revenue Code, required to be aggregated with the Company or any Guarantor under Section 414(o) of the Internal Revenue Code, or is, or within the last six years was, under "common control" with the Company or any Guarantor, within the meaning of Section 4001(a)(14) of ERISA.

"ERISA EVENT" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (iii) a withdrawal by the Company, any Guarantor or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of the Company, any Guarantor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Company, any Guarantor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (vi) the imposition of liability on the Company, any Guarantor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by the Company, any Guarantor or any ERISA

Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (ix) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company, any Guarantor or any ERISA Affiliate thereof; (x) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code with respect to any Pension Plan; (xi) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which the Company, any Guarantor or any Subsidiary thereof may be directly or indirectly liable; (xii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under

Section 401(a) of the Internal Revenue Code by any fiduciary or disqualified person for which the Company, any Guarantor or any ERISA Affiliate thereof may be directly or indirectly liable; (xii) the occurrence of an act or omission which could give rise to the imposition on the Company, any Guarantor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xiii) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against the Company, any Guarantor or any Subsidiary thereof in connection with any such plan; (xiv) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (xv) the imposition of any lien on any of the rights, properties or assets of the Company, any Guarantor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA or to Section 401(a)(29) or 412 of the Internal Revenue Code; or (xvi) the establishment or amendment by the Company, any Guarantor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Guarantor.

"EVENT OF DEFAULT" has the meaning set forth in Section 6.01.

"EXCHANGE ACT" means the Securities Exchange Act of 1934.

"GAAP" means generally accepted accounting principles, consistently applied.

"GUARANTOR" means any guarantor of the Obligations.

"GUARANTOR DOCUMENTS" means the Guaranty of any Guarantor and all other documents, agreements and instruments delivered to the Lender by such Guarantor under or in connection with its Guaranty.

"GUARANTY" means the Guaranty of a Guarantor, in form and substance satisfactory to the Lender.

"INDEBTEDNESS" of any Person means, without duplication, all liabilities, obligations and indebtedness of any kind and nature, including: (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which would be capitalized in accordance with GAAP, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage,

lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above. For purposes hereof; "Contingent Obligations" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

"INSOLVENCY PROCEEDING" means (i) any case, action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other,

similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"INTERNAL REVENUE CODE" means the Internal Revenue Code of 1986, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"IRS" means the Internal Revenue Service or any successor thereto.

"LENDER" has the meaning set forth in the recital of parties to this Agreement.

"LIEN" means any mortgage, deed of trust, pledge, security interest, assignment, deposit arrangement in the nature of a security interest, charge or encumbrance, lien (statutory or otherwise) or other type of preferential arrangement (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing or any agreement to give any security interest; but not including a financing statement filed by a lessor in respect of an operating lease not intended as security).

"LOAN DOCUMENTS" means this Agreement, the Note, the Collateral Documents, any Guaranty, any other Guarantor Documents, and all other certificates, documents, agreements and instruments delivered to the Lender under or in connection with this Agreement.

"LOAN" has the meaning set forth in Section 2.01.

"MATERIAL ADVERSE EFFECT" means any event, matter, condition or circumstance (including any such event, matter, condition or circumstance which would occur upon notice or lapse of time or both) which (i) has or would reasonably be expected to have a material adverse effect on (A) the business, prospects, properties, assets, operations, results of operations or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (B) the intellectual property of the Company and its Subsidiaries, taken as a whole, (C) the transactions contemplated in the Loan Documents or the other Transactions Documents (as defined in the

Securities Purchase Agreement), or by the agreements and instruments to be entered into in connection herewith or therewith, or (D) the authority or ability of the Company to perform its obligations under the Loan Documents or the other Transactions Documents, or (ii) materially adversely affects the legality, validity, binding effect or enforceability of any of the Loan Documents or the other Transactions Documents, the rights and remedies of the Lender thereunder, or the validity, perfection or priority of any Lien granted to the Lender under any of the Collateral Documents.

"MATERIAL CONTRACT" means, (i) each contract or agreement listed as a material contract in SCHEDULE 1 hereto, and (ii) all other contracts or agreements material to the business, properties, assets, operations, results of operations or condition (financial or otherwise) or prospects of the Company and its Subsidiaries entered into after the date hereof.

"MATURITY DATE" means, unless the Loan is sooner paid or rolled over into longer term Indebtedness with the Lender in accordance with the terms of this Agreement or the Note, January 1, 2007.

"MULTIEMPLOYER PLAN" means a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) to which the Company, any Guarantor or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

"NET CASH PROCEEDS" means when used in respect of any sale of assets of, issuance of any debt or equity securities of, or the receipt of proceeds upon the incurrence of Indebtedness for borrowed money of, the Company or any Subsidiary, the gross proceeds in cash or cash equivalents received by the Company or such Subsidiary (including such proceeds subsequently received in respect of noncash consideration initially received and amounts initially placed in escrow that subsequently become available) from such disposition, issuance or incurrence of Indebtedness, less all direct costs and expenses incurred or to be incurred in connection therewith, and all federal, state, local and foreign taxes assessed or to be assessed, in connection therewith.

"NOTE" means a secured promissory note made by the Company in favor of the Lender evidencing the Loan made by the Lender, substantially in the form of EXHIBIT A.

"OBLIGATIONS" means the indebtedness, liabilities and other obligations of the Company and any Guarantor to the Lender under or in connection with this Agreement, the Note and the other Loan Documents, including the Loan, all interest accrued thereon, all fees due under this Agreement and all other amounts payable by the Company to the Lender thereunder or in connection therewith, whether now or hereafter existing or arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and including interest that accrues after the commencement by or against the Company or any Guarantor of any Insolvency Proceeding naming such Person as the debtor in such proceeding.

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"PENSION PLAN" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored

by the Company, any Guarantor or any ERISA Affiliate thereof or to which the Company, any Guarantor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA.

"PERMITTED LIENS" means: (i) Liens in favor of the Lender; (ii) the existing Liens listed in SCHEDULE 1; (iii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and which are adequately reserved for in accordance with GAAP, PROVIDED the same does not have priority over the Lender's Lien and no notice of tax lien has been filed of record; (iv) Liens of materialmen, mechanics, warehousemen, carriers or employees or other similar Liens provided for by mandatory provisions of law and securing obligations either not delinquent or being contested in good faith by appropriate proceedings, PROVIDED (A) such Liens do not have priority over the Lender's Lien and do not in the aggregate materially impair the use or value of the property or risk the loss or forfeiture thereof and (B) with respect to delinquent amounts being contested in good faith by appropriate proceedings, the aggregate amount secured by such Liens does not at any time exceed $100,000; (v) Liens consisting of deposits or pledges to secure the performance of bids, trade contracts, leases, public or statutory obligations, or other obligations of a like nature incurred in the ordinary course of business (other than for Indebtedness); (vi) restrictions and other minor encumbrances on real property which do not in the aggregate impair the use or value of such property or risk the loss or forfeiture thereof; (vii) Liens arising from judgments in circumstances not constituting an Event of Default under Section 6.01(i); and (viii) any non-exclusive licenses or sublicenses of intellectual property granted to others in the ordinary course of business of the Company which are permitted under this Agreement and do not interfere with the business of the Company and any interest or title of a licensor under any license permitted by this Agreement.

"PERSON" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or any other entity of whatever nature or any governmental agency or authority.

"PLAN" means (i) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by the Company, any Guarantor or any Subsidiary thereof or to which the Company, any Guarantor or any Subsidiary thereof has ever made, or was obligated to make, contributions, (ii) a Pension Plan, or (iii) a Qualified Plan.

"PLEDGE AGREEMENT" means a Stock Pledge Agreement among the Company, or any Guarantor, and the Lender, in form and substance satisfactory to the Lender.

"QUALIFIED PLAN" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Company, any Guarantor or any ERISA Affiliate

thereof or to which the Company, any Guarantor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

"RESPONSIBLE OFFICER" means, with respect to any Person, the chief executive officer, the president or the chief financial officer of such Person, or any other senior officer of such Person having substantially the same authority and responsibility.

"SEC" means the Securities and Exchange Commission.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SECURITIES PURCHASE AGREEMENT" means the Securities Purchase Agreement, dated as of the date hereof, among the Company and the investors listed on signature pages thereof.

"SECURITY AGREEMENT" means a Security Agreement among the Company (or any Guarantor) and the Lender, in form and substance satisfactory to the Lender.

"SOLVENT" means, as to any Person at any time, that (i) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (ii) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (iii) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

"SUBORDINATED DEBT" means the Indebtedness of the Company to the Lender and Artal Long Biotech Portfolio LLC pursuant to the Subordinated Note Purchase Agreement, and any other Indebtedness of the Company or any Subsidiary subordinated to the Obligations, incurred or outstanding and subject to a Subordination Agreement.

"SUBORDINATION AGREEMENT" means the notes issued to the Lender and Artal Long Biotech Portfolio LLC pursuant to the Subordinated Note Purchase Agreement, and any other subordination agreement with respect to Subordinated Debt among the Company, the applicable creditor(s) and the Lender, in form and substance satisfactory to the Lender and on terms satisfactory to the Lender.

"SUBORDINATED NOTE PURCHASE AGREEMENT" means that certain Note Purchase Agreement, dated as of February 23, 2004, by and among the Company, the Lender and Artal Long Biotech Portfolio LLC.

"SUBSIDIARY" means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock or other equity interest is owned directly or indirectly by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

"UNITED STATES" and "U.S." each means the United States of America.

SECTION 1.02 INTERPRETATION. In the Loan Documents, except to the extent the context otherwise requires: (i) any reference to an Article, a Section, a Schedule or an Exhibit is a reference to an article or section thereof, or a schedule or an exhibit thereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the Section or subsection in which the reference appears; (ii) the words "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement or any other Loan Document as a whole and not merely to the specific Article, Section, subsection, paragraph or clause in which the respective word appears; (iii) the meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined; (iv) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation;" (v) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, amendments and restatements and other modifications thereto (including any extensions or renewals), but only to the extent such amendments, amendments and restatements and other modifications are not prohibited by the terms of the Loan Documents; (vi) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to; (vii) any table of contents, captions and headings are for convenience of reference only and shall not affect the construction of this Agreement or any other Loan Document; and (viii) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

ARTICLE II
THE LOAN

SECTION 2.01 THE LOAN.

(a) LOAN. The Lender agrees, on the terms and conditions hereinafter set forth, to make a loan (the "Loan") to the Company on the Closing Date, in a principal amount of $5,000,000.

(b) NO REBORROWING. Any amount of the Loan repaid may not be reborrowed.

SECTION 2.02 BORROWING PROCEDURE FOR LOAN. Upon fulfillment of the conditions set forth in Article III, the Lender shall make the Loan available to the Company on the Closing Date in same day funds, or such other funds as shall separately be agreed upon by the Company and the Lender, in accordance with the payment instructions provided to the Lender .

SECTION 2.03 NOTE. As additional evidence of the Indebtedness of the Company to the Lender resulting from the Loan made by the Lender, the Company shall execute and deliver to the Lender pursuant to Article III, a Note, dated the Closing Date, in the principal amount of the Loan made by the Lender. The Lender shall record in its internal records the date and amount of the Loan made by it, the amount of principal and interest due and payable to the

Lender from time to time hereunder, the increase to principal as a result of interest added thereto from time to time hereunder, each payment of principal and interest and the resulting unpaid principal balance of the Loan. Any such recordation shall be conclusive absent manifest error of the accuracy of the information so recorded. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Company hereunder and under the Note to pay any amount owing with respect to the Loan.

SECTION 2.04 INTEREST.

(a) INTEREST RATE; INTEREST PAYMENT DATES. Subject to subsection (b) below, the Company shall pay to the Lender interest on the unpaid principal amount of the Loan (as such principal amount may be increased as a result of the provisions of this Section) from the date of the Loan until the maturity thereof, at a rate per annum equal at all times to 7% per annum, quarterly in arrears on the last Business Day in each quarter, on the date of any prepayment of the Loan, and at maturity. Except as otherwise provided herein, in lieu of payment in cash of any interest due and payable on the Loan, on each interest payment date any and all such interest payable shall be paid by adding an amount equal to the aggregate accrued but unpaid interest payable with respect to such interest payment date to the principal amount of the Loan. Notwithstanding the foregoing, upon written notice to the Lender made at least five (5) Business Day prior to the applicable interest payment date, the Company may pay in cash all interest due and payable on the Loan with respect to any interest payment dates specified in such notice.

(b) DEFAULT RATE OF INTEREST. In the event that any amount of principal of or interest on the Loan, or any other amount payable hereunder or under the Loan Documents, is not paid in full when due (whether at stated maturity, by acceleration or otherwise), the Company shall pay interest on such unpaid principal, interest or other amount, from the date such amount becomes due until the date such amount is paid in full, payable on demand, at a rate per

annum which is equal at all times to 3% higher than the rate of interest set forth in Section 2.04(a). Payment of any such interest at the rate described above shall not constitute a waiver of any Event of Default and shall be without prejudice to the right of the Lender to exercise any of its rights and remedies under the Loan Documents.

(c) COMPUTATIONS. All computations of interest hereunder shall be made on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days occurring in the period for which any such interest is payable.

(d) HIGHEST LAWFUL RATE. In no event shall the Company be obligated to pay the Lender interest, charges or fees at a rate in excess of the highest rate permitted by applicable law.

SECTION 2.05 ROLLOVER OR REPAYMENT OF THE LOAN.

(a) ROLLOVER. Upon the closing of a longer term debt financing provided by the Lender to the Company (as to which no commitment is made herein), the entire outstanding principal amount of the Loan and all accrued and unpaid interest thereon shall be rolled-over into such financing, without novation.

(b) REPAYMENT. The Company shall repay to the Lender the outstanding principal amount of the Loan in full on the Maturity Date.

SECTION 2.06 PREPAYMENTS OF THE LOAN. The Company may, upon written notice to the Lender at least five (5) Business Days prior to the proposed prepayment date, prepay the outstanding amount of the Loan in whole or in part, without premium or penalty, at any time and from time to time; PROVIDED, that any prepayment shall be in a principal amount of at least $500,000 or a greater amount in increments of $50,000. The notice given of any such prepayment shall specify the date and amount of the prepayment. If the notice of prepayment is given, the Company shall make such prepayment and the prepayment amount specified in such notice shall be due and payable on the date specified therein, with accrued and unpaid interest to such date on the amount prepaid.

SECTION 2.07 PAYMENTS.

(a) PAYMENTS. The Company shall make each payment under the Loan Documents, unconditionally in full without set-off, counterclaim or, to the extent permitted by applicable law, other defense, and free and clear of, and without reduction for or on account of, any present and future taxes or withholdings, and all liabilities with respect thereto. Subject to Section 2.04(a), each payment shall be made not later than 12:00 noon (New York time) on the day when due to the Lender in Dollars and in same day funds, or such other funds as shall be separately agreed upon by the Company and the Lender, in accordance with the Lender's payment instructions.

(b) EXTENSION. Whenever any payment hereunder shall be stated to be due, or whenever any interest payment date or any other date specified hereunder would otherwise occur, on a day other than a Business Day, then, except as otherwise provided herein, such payment shall be made, and such interest payment date or other date shall occur, on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder.

(c) APPLICATION. After the exercise of remedies provided for in Section 6.02 (or after the Loan has automatically become immediately due and payable as set forth in Section 6.02) each payment by or on behalf of the Company hereunder shall, unless a specific determination is made by the Lender with respect thereto, be applied (i) FIRST, to any fees, costs, expenses and other amounts (other than principal and interest) due the Lender; (ii) SECOND, to accrued and unpaid interest due the Lender; and (III) THIRD, to principal due the Lender.

SECTION 2.08 RIGHT OF SET-OFF. Upon the occurrence and during the continuance of any Event of Default, the Lender hereby is authorized at any time and from time to time, without notice to the Company (any such notice being expressly waived by the Company), to set off and apply any obligations or indebtedness at any time owing by such Lender to the Company against any and all of the then due Obligations of the Company now or hereafter existing under this Agreement and the other Loan Documents, irrespective of whether or not the Lender shall have made any demand under this Agreement or any such other Loan Document. The Lender agrees promptly to notify the Company after any such set-off and application made by the Lender; PROVIDED that the failure to give such notice shall not affect the

validity of such set-off and application. The rights of the Lender under this Section 2.08 are in addition to other rights and remedies (including other rights of set-off) which the Lender may have.

ARTICLE III
CONDITIONS PRECEDENT

SECTION 3.01 CONDITIONS PRECEDENT TO THE LOAN. The obligation of the Lender to make the Loan on the date of borrowing hereunder (the "Closing Date") shall be subject to the satisfaction of each of the following conditions precedent before or concurrently with the making of the Loan:

(a) LOAN DOCUMENT. The Lender shall have received the following Loan Documents: (i) this Agreement and the Note required hereunder with respect to the Loan, executed by the Company; and (ii) the Collateral Documents and the Guaranty of Aksys International, Inc., executed by each of the respective parties thereto.

(b) DOCUMENTS AND ACTIONS RELATING TO COLLATERAL. The Lender shall

have received, in form and substance satisfactory to it, results of such Lien searches as it shall reasonably request, and evidence that all filings, registrations and recordings have been made in the appropriate governmental offices, and all other action requested by the Lender has been taken, which shall be necessary to create, in favor of the Lender, a perfected first priority Lien on the Collateral.

(c) ADDITIONAL CLOSING DOCUMENTS. The Lender shall have received the following, in form and substance satisfactory to it:

(i) certificates of one or more nationally recognized insurance brokers or other insurance specialists acceptable to the Lender, dated as of a recent date prior to the Closing Date, certifying the insurance maintained by the Company and any Guarantor as required hereunder and under the Collateral Documents is in full force and effect;

(ii) evidence that all (A) authorizations, consents or approvals of, or notices to or filings with any governmental agency or authority, and (B) as requested by the Lender, approvals or consents of any other Person (including the consent of any party to a Material Contract to the grant of a security interest therein to the Lender), required in connection with the execution, delivery and performance of the Loan Documents shall have been obtained;

(iii) (A) a certificate evidencing the formation and good standing of the Company and each Guarantor in each such Person's jurisdiction of formation issued by the Secretary of State (or equivalent) of such jurisdiction of formation as of a date within five (5) days prior to the Closing Date, and (B) a certificate evidencing the Company's and each Guarantor's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which such Person conducts business and is required to so qualify, as of a date within five (5) days of the Closing Date.

(iv) (A) a certificate of the Secretary or other appropriate officer of the Company, dated the Closing Date, certifying (1) copies of the articles or certificate of

incorporation, and bylaws, or other applicable organizational documents, of the Company and the resolutions and other actions taken or adopted by the Company authorizing the execution, delivery and performance of the Loan Documents, and (2) the incumbency, authority and signatures of each officer of the Company authorized to execute and deliver the Loan Documents and act with respect thereto; and (B) a certificate of the Secretary or other appropriate officer of each Guarantor, dated the Closing Date, certifying (1) copies of the articles or certificate of incorporation, and bylaws, or other applicable organizational documents, of such Guarantor and the resolutions and other actions taken or adopted by such Guarantor authorizing the execution, delivery and performance of its Guarantor Documents, and (2) the incumbency, authority and signatures of

each officer of such Guarantor authorized to execute and deliver its Guarantor Documents and act with respect thereto.

(d) LEGAL OPINION. The Lender shall have received an opinion of legal counsel to the Company and any Guarantor, dated the Closing Date, in form and substance satisfactory to the Lender.

(e) SECURITIES PURCHASE AGREEMENT. The Securities Purchase Agreement shall have been executed and delivered by the Company and the Lender.

(f) CONTINUED LISTING. The common stock of the Company shall be listed on the NASDAQ Capital Market and shall not have been suspended, as of the Closing Date, by the SEC or the NASDAQ Capital Market from trading on the NASDAQ Capital Market nor shall proceedings regarding such suspension by the SEC or the NASDAQ Capital Market have been threatened, as of the Closing Date, either by the SEC or the NASDAQ Capital Market or by falling below the minimum maintenance requirements of the NASDAQ Capital Market.

(g) REPRESENTATIONS AND WARRANTIES; NO DEFAULT. On the date of the borrowing of the Loan, both before and after giving effect thereto and to the application of proceeds therefrom: (i) the representations and warranties contained in Article IV and in the other Loan Documents shall be true, correct and complete in all material respects on and as of the Closing Date as though made on and as of such date; (ii) no Default shall have occurred and be continuing or shall result from the making of the Loan and (iii) no event, matter, condition or circumstance shall exist that with notice, lapse of time or other action constitutes or would be reasonably expected to constitute a Material Adverse Effect. The acceptance by the Company of the proceeds of the Loan shall be deemed a certification to the Lender that on and as of the Closing Date such statements are true.

(h) ADDITIONAL DOCUMENTS. The Lender shall have received, in form and substance satisfactory to it, such additional approvals, opinions, documents and other information as the Lender may reasonably request.

(i) FEES AND EXPENSES. The Company shall have paid all invoiced costs and expenses then due hereunder and under this Agreement and the other Loan Documents

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

The Representations and Warranties of the Company set forth in Section 2 of the Securities Purchase Agreement shall be applicable to this Agreement and are incorporated herein by this reference, mutatis mutandis, and made a part of this Agreement as if fully set forth herein, including for purposes of this Article IV, all capitalized terms used in such representations and warranties, except that for purposes of this Agreement, Transaction

Documents as defined therein shall be deemed to include this Agreement and the Loan Documents.

ARTICLE V
COVENANTS

SECTION 5.01 REPORTING COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents), the Company agrees that:

(a) FINANCIAL STATEMENTS AND OTHER REPORTS. The Company will furnish to the Lender:

(i) Unless filed with the SEC through the EDGAR System and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its annual reports and quarterly reports on Form 10-K and 10-Q, any interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements for any period, any current reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, which annual reports shall be accompanied by a report and opinion thereon of a firm of independent certified public accountants of recognized national standing acceptable to the Lender and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(ii) within one (1) Business Day of the filing of any annual report and quarterly report referred to clause (i), a certificate of a Responsible Officer of the Company in form and substance satisfactory to the Lender stating whether any Default exists on the date of such certificate, and if so, setting forth the details thereof and the action which the Company is taking or proposes to take with respect thereto;

(iii) as soon as available and in any event not later than 30 days prior to the end of each fiscal year of the Company, an operating budget for the Company and its Subsidiaries approved by the Board of Directors of the Company for the upcoming fiscal year, in form and substance satisfactory to the Lender, such budget to be prepared in accordance with GAAP and on a fair and reasonable basis and in good faith, and to be based on estimates and assumptions believed by the Company to be fair and reasonable as of the time made and from the best information then available to the Company in the light of the current and reasonably foreseeable business conditions: and

(iv) not later than the last Business Day of each week, a report listing the amount of and describing in reasonable detail all expenditures to be made by the Company and its Subsidiaries for the upcoming week.

(b) ADDITIONAL INFORMATION. The Company will furnish to the Lender:

(i) promptly after the Company has knowledge or becomes aware thereof, notice of the occurrence of any Default;

(ii) prompt written notice of all actions, suits and proceedings before any governmental agency or authority or arbitrator pending, or to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries, including any actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries, or with respect to the ownership, use, maintenance and operation of their respective properties, relating to Environmental Laws, which (A) involve an aggregate liability equal to $50,000 or more, or (B) otherwise would reasonably be expected to have a Material Adverse Effect;

(iii) promptly after submission to any governmental agency or authority, all documents and information furnished to such governmental agency or authority in connection with any investigation of the Company or any of its Subsidiaries other than routine inquiries by such governmental agency or authority;

(iv) prompt written notice of any ERISA Event affecting the Company or any ERISA Affiliate (but in no event more than ten (10) Business Days after such event), together with a copy of any notice with respect to such event that may be required to be filed with a governmental agency or authority and any notice delivered by a governmental agency or authority to the Company or any ERISA Affiliate with respect to such event;

(v) as soon as possible and in any event within ten (10) Business Days after execution, receipt or delivery thereof, copies of material notices that the Company or any Subsidiary delivers or receives in connection with any Material Contract;

(vi) prompt written notice of any other condition or event which has resulted, or that could reasonably be expected to result, in a Material Adverse Effect;

(vii) prompt notice of (A) any material change in the composition of the Company's and its Subsidiaries' intellectual property, taken as a whole, (B) the registration (or filed application for registration) of any copyright, patent or trademark not previously disclosed in writing to the Lender, and (C) any event that materially adversely affects the value of the Company's and its Subsidiaries' intellectual property;

(viii) within three (3) Business Day after release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries,

(ix) Unless filed with the SEC through the EDGAR system and available to the public through the EDGAR system, copies of any notices, reports

and other

information made available or given to the shareholders of the Company generally, and copies of all other reports or filings, if any, by the Company or any of its Subsidiaries with the SEC or any national securities exchange; contemporaneously with the making available or giving thereof to the shareholders or the filing with the SEC or such other national securities exchange; and

(x) such other statements, budgets, forecasts, projections, reports, or other information respecting the operations, prospects, value, properties, business or condition (financial or otherwise) of the Company or its Subsidiaries (including with respect to the Collateral) as the Lender may from time to time reasonably request, in form and substance reasonably satisfactory to the Lender.

Each notice pursuant to clauses (i) through (vii)of this subsection (b) shall be accompanied by a written statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and the action which the Company is taking or proposes to take with respect thereto.

SECTION 5.02 AFFIRMATIVE COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents), the Company agrees that (provided, that if any action required to be taken by the Company or any of its Subsidiaries under this Section 5.02 will require the Company or such Subsidiary to make any expenditure in respect thereof, the Company or such Subsidiary may take such action and make such expenditure in the ordinary course of business, consistent with past practice until the Company receives written notice from the Lender stating that all expenditures of the Company and its Subsidiaries after the date thereof will require the Lender's prior approval, which notice the Lender may give at any time in its sole discretion; thereafter such action and expenditure may only be made with the Lender's prior approval):

(a) PRESERVATION OF EXISTENCE, ETC. The Company will, and will cause each of its Subsidiaries to, maintain and preserve its legal existence, its rights to transact business and all other rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties, except in connection with any transactions expressly permitted by Section 5.03, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in the jurisdiction of its formation and in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(b) REPORTING STATUS. The Company will timely file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Company

shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(c) LISTING. The Company will use its best efforts, to obtain and maintain the listing and trading of the Common Stock (as defined in the Securities Purchase Agreement) of the Company on the NASDAQ Capital Market or, in lieu thereof, the NASDAQ National Market, and the Company will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of NASDAQ Capital Market or the NASDAQ

National Market, as the case may be, and other exchanges or quotation systems, as applicable. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the NASDAQ Capital Market.

(d) PAYMENT OF TAXES, ETC. The Company will, and will cause each of its Subsidiaries to, timely file all tax returns and reports, and to pay and discharge (i) all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, all trade accounts payable in accordance with usual and customary business terms, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Company or any Subsidiary, except to the extent such taxes, fees, assessments or governmental charges or levies, or such trade accounts or claims, are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (ii) all other lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and (iii) all permitted Indebtedness, as and when due and payable, except to the extent any trade accounts are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

(e) MAINTENANCE OF INSURANCE. The Company will, and will cause each of its Subsidiaries to, carry and maintain in full force and effect, at its own expense and with financially sound and reputable insurance companies (not Affiliates of the Company), insurance in such amounts, with such deductibles and covering such risks as is customarily carried in accordance with sound business practice by companies engaged in the same or similar businesses and owning similar properties in the localities where the Company or such Subsidiary operates, and in any event in amount, adequacy and scope satisfactory to the Board of Directors of the Company.

(f) KEEPING OF RECORDS AND BOOKS OF ACCOUNT. The Company will, and will cause each of its Subsidiaries to, keep adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all financial transactions of the Company and its Subsidiaries.

(g) INSPECTION RIGHTS. The Company will at any reasonable time and from time to time, at the Company's expense, (i) permit the Lender or any of its agents or representatives to visit and inspect any of the Collateral or other properties of the Company and its Subsidiaries and to examine and make copies of and abstracts from the records and books of account of the Company and its Subsidiaries, and to discuss the business affairs, finances and accounts of the Company and any such Subsidiary with any of the officers, employees or accountants of the Company or such Subsidiary, and (ii) and permit the Lender or any of its agents or representatives to conduct periodic audits of the Collateral at such frequencies as the Lender shall deem appropriate; PROVIDED, that so long as no Event of Default shall have occurred and be continuing, such inspections and audits for which the Company shall be charged shall be limited to two (2) in any one calendar year. In furtherance of the foregoing, the Company hereby authorizes and will cause each of its Subsidiaries to authorize, its and each Subsidiaries'

independent accountants to discuss the business affairs, finances and accounts of such Person with the agents and representatives of the Lender in accordance with this Section.

(h) COMPLIANCE WITH LAWS, AGREEMENTS, ETC. The Company will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations and orders of any governmental agency or authority, including all Environmental Laws and ERISA, and the terms of any Material Contract and (to the extent such non-compliance could reasonably be expected to have a Material Adverse Effect) the terms of any indenture, contract or other instrument to which it may be a party or under which it or its properties may be bound.

(i) MAINTENANCE OF PROPERTIES, ETC. The Company will, and will cause each of its Subsidiaries to, conduct its business in the ordinary course, consistent with past practices, and maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition and otherwise in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear excepted.

(j) LICENSES. The Company will, and will cause each of its Subsidiaries to, obtain and maintain, and to take all action necessary to timely renew, all licenses, permits, authorizations, consents, filings, exemptions, registrations and other governmental approvals of any governmental agency or authority necessary or useful in connection with the execution, delivery and performance of the Loan Documents, the consummation of the transactions therein contemplated or (except where the failure to do so could not reasonably be expected to result in liabilities or obligations in excess of $10,000 individually or in the aggregate at any time outstanding) the operation and proper conduct of its business and ownership of its properties.

(k) PROTECTION OF INTELLECTUAL PROPERTY RIGHTS. Except, in the case of clauses (i) and (iii), if reasonably and in good faith determined by the Board of Directors of the Company that such intellectual property is of negligible economic value to the Company or its Subsidiaries, the Company will, and will cause each of its Subsidiaries to: (i) protect, defend and maintain the validity and enforceability of its intellectual property; (ii) promptly advise the Lender in writing of any infringements of its intellectual property; and (iii) not allow any intellectual property to be abandoned, forfeited or dedicated to the public without the Lender's written consent

(l) USE OF PROCEEDS. The Company will use the proceeds of the Loan (i) solely to fund the Company's ordinary course business operations as specified in reasonable detail in writing to the Lender from time to time and as approved in writing by the Lender prior to such use of the Loan proceeds, and (ii) only after the Company has demonstrated that it has expended all of the Company's other cash and cash equivalents including any investments or other liquid assets, other than any restricted cash or cash equivalents held at, and for the benefit of, JPMorgan Chase Bank, NA, to secure the Company's reimbursement obligation as of the date hereof with respect to a letter of credit issued by JPMorgan Chase Bank, NA, for the benefit of Two Lincolnshire Office Venture, LLC in connection with the Company's lease of the premises at Two Marriott Drive, Lincolnshire, Illinois, provided that in no event shall the amount of such restricted cash or cash equivalents be increased without the Lender's approval. The Company will hold the unexpended proceeds of the Loan in a segregated bank account apart from the other

cash assets of the Company which account will be subject to an account control agreement in favor of the Lender. No part of such proceeds will be used for "purchasing" or "carrying" any "margin stock", or for any purpose which violates, or which would be inconsistent with, the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(m) ADDITIONAL SUBSIDIARIES. (i) Promptly after the date the Company organizes, creates or acquires any additional Subsidiary, and, in any event, within two Business Days following receipt by the Company from the Lender of a security agreement and a guaranty of the Obligations each in form and substance satisfactory to the Lender, the Company shall cause such Subsidiary to execute and deliver such guaranty and security agreement to the Lender; (ii) within five days after the date such Subsidiary becomes a Subsidiary, the Company shall (A) deliver to the Lender a supplement to the Security Agreement executed by the Company referencing such new Subsidiary, and (B) cause such Subsidiary to have executed and filed any UCC-1 financing statements furnished by the Lender in each jurisdiction in which such filing is necessary to perfect the security interest of the Lender in the Collateral of such Subsidiary and in which the Lender request that such filing be made; (iii) additionally, the Company and such Subsidiary shall have executed and delivered to the Lender such other items as reasonably requested by the Lender in connection with the foregoing, including resolutions, incumbency and officers' certificates, opinions of

counsel, search reports and other certificates and documents; and (iv) the Lender may elect in its sole discretion to waive any such collateral delivery requirement set forth in this subsection (m) for any Subsidiary that will remain a dormant or shell Subsidiary. The Lender agrees to waive any such requirement in the case of any non-U.S. Subsidiary (or in the case of a stock pledge, to require the pledge of not more than 65% of the capital stock or other ownership interests of any such Subsidiary constituting a direct (I.E., "first tier") non-U.S. Subsidiary), if any adverse tax consequences under applicable U.S. tax law would result therefrom. The provisions of this subsection (m) shall not be deemed to be implied consent to any such organization, creation or acquisition of any additional Subsidiary otherwise prohibited by the terms and conditions of this Agreement.

(n) SUBORDINATION. The Company will cause all Specified Indebtedness now or hereafter owed by it to any Person to be subordinated in right of payment and security to the Indebtedness and other Obligations owing to the Lender in accordance with a Subordination Agreement. As used herein, "Specified Indebtedness" means all Indebtedness owing to any of its Affiliates (other than the Lender) and Indebtedness of the types referred to in clauses (i), (iii), (iv), (v) and (vi) of the definition of "Indebtedness" herein and all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in such clauses (i), (iii), (iv), (v) and (vi), but Specified Indebtedness shall not include the Indebtedness listed on SCHEDULE 1 (other than the Indebtedness under the Subordinated Note Purchase Agreement).

(o) RESPONSIBLE OFFICER CHANGE. If any Responsible Officer ceases to hold such office with the Company, the Company shall replace such Responsible Officer with a replacement satisfactory to the Lender within 60 days after such Responsible Officer's departure from the Company.

(p) FURTHER ASSURANCES AND ADDITIONAL ACTS. The Company will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as the Lender shall

deem necessary or reasonably appropriate to effectuate the purposes of the Loan Documents, and promptly provide the Lender with evidence of the foregoing satisfactory in form and substance to the Lender.

(q) COLLATERAL ACCESS AGREEMENTS. On or prior to the date that is 30 days after the Closing Date, the Company will deliver to the Lender Collateral Access Agreements with respect to each of the following locations: (i) 2 Marriott Drive, Lincolnshire, IL 60069; and (ii) Optimum Warehousing and Distribution, 450 Barclay Blvd., Lincolnshire, IL 60069, and (iii) Ameriwater, 1257 Stanley Ave., Dayton, OH 45404.

(r) THIRD PARTY CONSENTS. On or prior to the date that is 30 days after the Closing Date, the Company will deliver to the Lender all consents,

approvals and authorizations from third Persons required under any Material Contract or other document necessary for the grant in the Loan Documents of any Lien in favor of the Lenders as reasonably requested by, and in form and substance reasonably satisfactory to, the Lender.

SECTION 5.03 NEGATIVE COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents), the Company agrees that (provided, that, notwithstanding anything to the contrary in clauses (e) and (m) below, the Company or any of its Subsidiaries may take any action or make any expenditure described in clauses (e) and (m) in the ordinary course of business, consistent with past practice until the Company receives written notice from the Lender stating that all expenditures and such actions of the Company and its Subsidiaries after the date thereof will require the Lender's prior approval, which notice the Lender may give at any time in its sole discretion; thereafter such expenditures and such actions may only be made with the Lender's prior approval):

(a) INDEBTEDNESS. The Company will not, and will not permit any of its Subsidiaries to, create, incur, assume or otherwise become liable for or suffer to exist any Indebtedness, other than: (i) Indebtedness of the Company to the Lender; (ii) the existing Indebtedness listed in SCHEDULE 1; (iii) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Company's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP; and (iv) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by the Company or any such Subsidiary in the ordinary course of business.

(b) LIENS; NEGATIVE PLEDGES. The Company will not, and will not permit any of its Subsidiaries to, (i) create, incur, assume or suffer to exist any Lien upon or with respect to any of its properties, revenues or assets, whether now owned or hereafter acquired, other than Permitted Liens, and (ii) enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties, revenues or assets, whether now owned or hereafter acquired.

(c) CHANGE IN NATURE OF BUSINESS. The Company will not, and will not permit any of its Subsidiaries to, engage in any line of business different from those lines of business carried on by it at the date hereof.

(d) RESTRICTIONS ON FUNDAMENTAL CHANGES. The Company will not, and will not permit any of its Subsidiaries to, enter into any merger, consolidation or other combination, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, or agree to do any of the foregoing.

(e) SALES OF ASSETS. The Company will not, and will not permit any of its Subsidiaries to, sell, lease, transfer, or otherwise dispose of, or part with control of (whether in one transaction or a series of transactions) any assets (including any shares of stock in any Subsidiary or other Person), except: (i) sales or operating leases of, or other dispositions of inventory, and the license, sublicense and grant of distribution and similar rights, in the ordinary course of business.

(f) DISTRIBUTIONS. (i) The Company will not declare or pay any dividends in respect of the Company's capital stock or other equity interests, or purchase, redeem, retire or otherwise acquire for value any of its capital stock or other equity interests now or hereafter outstanding, return any capital to its shareholders as such, or make any distribution of assets, shares of capital stock, warrants, rights, options, obligations or securities thereto to its shareholders as such, or permit any of its Subsidiaries to purchase, redeem, retire, or otherwise acquire for value any stock of the Company, or make any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of its capital stock now or hereafter outstanding. (ii) The Company will not permit any Subsidiary of the Company to grant or otherwise agree to or suffer to exist any consensual restrictions on the ability of such Subsidiary to pay dividends and make other distributions to the Company, or to pay any Indebtedness owed to the Company or transfer properties and assets to the Company.

(g) LOANS AND INVESTMENTS. The Company will not, and will not permit any of its Subsidiaries to, purchase or otherwise acquire the capital stock or other equity interests, assets (constituting a business unit), obligations or other securities of or any interest in any Person, or otherwise make any loan, advance or extend any other credit to, guarantee the obligations of or make any additional capital contributions or other investments in any Person, or commit or agree to any of the foregoing, other than investments (i) listed in SCHEDULE 1, and (ii) in connection with extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business, and (iii) received in connection with any Insolvency Proceeding in respect of any customers or suppliers. The Company will not, and will not permit any of its Subsidiaries to organize, create or acquire any Subsidiaries other than the Subsidiaries set forth in SCHEDULE 1.

(h) TRANSACTIONS WITH RELATED PARTIES. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly enter into any transaction with any Affiliate unless disclosed to and approved by the Lender.

(i) ERISA. The Company shall not, and shall not permit any of its ERISA Affiliates to: (i) terminate any Pension Plan so as to result in liability to the Company or any ERISA Affiliate: (ii) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a liability to any ERISA Affiliate; (iii) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any

liability to the Company or any ERISA Affiliate; (iv) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could result in any liability to any ERISA Affiliate; (v) permit the present value of all nonforfeitable accrued benefits under any Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan; or (vi) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Lender of any of its rights under this Agreement, the Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Internal Revenue Code.

(j) LIMITATION ON ISSUANCE OF CAPITAL STOCK. The Company shall not, and shall not permit any of its Subsidiaries to, issue or sell or enter into any agreement or arrangement for the issuance and sale of, any shares of its capital stock or other equity interests, any securities convertible into or exchangeable for its capital stock or any options or warrants with respect thereto, except, with the Lender's approval, any such issuance and sale of equity securities of the Company pursuant to a stock option plan or restricted stock purchase plan approved by the Compensation Committee of the Company's Board of Directors, including the approval of the member(s) of the Compensation Committee elected or otherwise designated by Durus.

(k) MODIFICATIONS OF INDEBTEDNESS, ORGANIZATIONAL DOCUMENTS AND CERTAIN OTHER AGREEMENTS; ETC. The Company shall not, and shall not permit any of its Subsidiaries to (i) amend, modify or otherwise change any statement, budget, forecast, projection and operating plan and report delivered to the Lender, unless approved by its Board of Directors and the Lender; (ii) amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, or would otherwise be adverse to the Lender or the issuer of such Indebtedness in any respect, (iii) except for the Obligations, make any voluntary or optional payment, prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness, or refund, refinance, replace or exchange any Indebtedness, or make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any outstanding Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing, (iv) amend, modify or otherwise change any of its organizational documents, or (v) amend, modify or otherwise change any material provision of any Material Contract, or accelerate, terminate or cancel any Material Contract.

(l) REDEMPTION OF SUBORDINATED DEBT. The Company shall not, and shall not permit any of its Subsidiaries to (other than with respect to Subordinated Debt owing to the Lender) (i) agree to or permit any amendment, modification or waiver

of any provision of any agreement related to any Subordinated Debt (including any amendment, modification or waiver pursuant to an exchange of other securities or instruments for outstanding Subordinated Debt), or (ii) make any voluntary or optional payment or repayment on, redemption, conversion, exchange or acquisition for value of, or any sinking fund or similar payment with respect to, any Subordinated Debt.

(m) OTHER CHANGES. The Company shall not, and shall not suffer or permit any of its Subsidiaries, to (i) make any expenditures, including any expenditures in respect of (A) any lease or any sale and leaseback (real or personal property), (B) any purchase or other acquisition of any fixed or capital assets or any other assets, or (C) any other expenditures in the ordinary course of business, (ii) enter into any new contract, agreement, indenture, license or instrument or enter into any other transaction, (iii) establish any new Plan or change any Plan except as required by law, (iv) have any material loss of customers of the Company or its Subsidiaries except for potential loss of customers who are outside of a PHD operating districts established at the direction of the Board of Directors of the Company, or (v) pay or increase the compensation of any existing employee, officer, director or consultant, or to pay or award any bonus, incentive compensation, service award or other like benefit to any employee, officer, director or consultant, or to make any severance or termination payments, or enter into or amend any severance agreement with, any employee, officer or director, or enter into any new employment, consulting, non-competition, retirement, parachute or indemnification agreement with any officer, director, employee or agent, or modify any such existing agreement.

(n) ACCOUNTING CHANGES. The Company shall not, and shall not suffer or permit any of its Subsidiaries to, make any change in accounting treatment or reporting practices, except as required or permitted by GAAP, or change its fiscal year or that of any of its consolidated Subsidiaries.

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.01 EVENTS OF DEFAULT. Any of the following events which shall occur shall constitute an "Event of Default":

(a) PAYMENTS. The Company shall fail (i) to pay when due any amount of principal of, or interest on, the Loan or the Note, or (ii) to pay any other amount payable under any of the Loan Documents within three (3) Business Days after written demand therefor.

(b) REPRESENTATIONS AND WARRANTIES. Any representation or warranty by the Company or any Guarantor under or in connection with the Loan Documents shall prove to have been incorrect in any material respect when made or deemed made.

(c) FAILURE BY COMPANY TO PERFORM CERTAIN COVENANTS. The Company shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01 or 5.03, or clauses (a), (e), (g), (l), (m), (q) and (r) of 5.02

(d) FAILURE BY COMPANY TO PERFORM OTHER COVENANTS. The Company shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed and any such failure shall remain unremedied for a period

of 12 days from the occurrence thereof (unless the Lender determines that such failure is not capable of remedy).

(e) INSOLVENCY; VOLUNTARY PROCEEDINGS. The Company, any Guarantor or any Subsidiary thereof (i) ceases or fails to be Solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing.

(f) INVOLUNTARY PROCEEDINGS. (i) Any involuntary Insolvency Proceeding is commenced or filed against the Company, any Guarantor or any Subsidiary thereof, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of such Person's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 30 days after commencement, filing or levy; (ii) the Company, any Guarantor or any Subsidiary thereof admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) the Company, any Guarantor or any Subsidiary thereof acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business.

(g) DISSOLUTION, ETC. The Company, any Guarantor or any of their respective Subsidiaries shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), (ii) suspend its operations, or (iii) take any action to authorize any of the actions or events set forth above in this subsection (g).

(h) DEFAULT UNDER OTHER AGREEMENTS. (i) The Company, any Guarantor or any of their respective Subsidiaries shall fail (A) to make any payment of any

principal of, or interest or premium on, any Indebtedness (other than in respect of the Loan) having an aggregate principal amount (including undrawn committed or available amounts) of more than $100,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable notice or grace period, if any, specified in the agreement or instrument relating to such Indebtedness as of the date of such failure; or (B) to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such Indebtedness, when required to be performed or observed, or any other event shall occur or condition shall exist under any such agreement or instrument, and such failure, event or condition shall continue after the applicable, notice or grace period, if any, specified in such agreement or instrument, if the effect of such failure, event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; (ii) any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or (iii) there is a default under any Material Contract and such default results in the right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of the Company's, any Guarantor's or any of their respective Subsidiaries' obligations thereunder, to terminate, cancel or amend such Material Contract, or to refuse to renew such

Material Contract pursuant to an automatic renewal right therein, or any Material Contract terminates other than in accordance with its terms or with the approval of the Board of Directors of the Company.

(i) JUDGMENTS. (i) Any judgment or order for the payment of money in excess of, individually or in the aggregate, $100,000 shall be rendered against the Company, any Guarantor or any of their respective Subsidiaries; or (ii) any non-monetary judgment or order shall be rendered against the Company, any Guarantor or any such Subsidiary involving an aggregate amount in excess of $100,000; and in each case there shall be any period of 10 consecutive days during which such judgment continues unsatisfied or during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

(j) MATERIAL ADVERSE EFFECT. Any event, matter, condition or circumstance occurs (including any such event, matter, condition or circumstance which would occur upon notice or lapse of time or both) which has or would reasonably be expected to have a Material Adverse Effect.

(k) FAILURE BY GUARANTOR TO PERFORM COVENANTS; INVALIDITY OF GUARANTY. Any Guarantor shall fail to perform or observe any term, covenant or agreement contained in its Guaranty on its part to be performed or observed, or any default shall occur under the Guaranty, and any such failure or default shall continue after the applicable grace period, if any, specified in its Guaranty as of the date of such failure, or any "Event of Default" as defined in such Guaranty shall have occurred; or any Guaranty or any other Guarantor Document

shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Guarantor or any other Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder.

(l) COLLATERAL DOCUMENTS. The Company shall fail to perform or observe any term, covenant or agreement contained in the Collateral Documents on its part to be performed or observed and any such failure shall remain unremedied beyond the grace period, if any, specified therein (unless the Lender determines that such failure is not capable of remedy), or any "Event of Default" as defined in any Collateral Document shall have occurred; or any of the Collateral Documents after delivery thereof shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or the Company or any other Person shall contest in any manner the validity or enforceability thereof, or the Company or any other Person shall deny that it has any further liability or obligation thereunder; or any of the Collateral Documents for any reason, except to the extent permitted by the terms thereof, shall cease to create a valid and perfected first priority Lien subject only to Permitted Liens in any of the Collateral purported to be covered thereby.

(m) ERISA. There shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of the Company, any Guarantor or any ERISA Affiliate thereof in excess of $100,000 during the term of this Agreement; or there exists, an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA) individually or in the aggregate under all Pension Plans (excluding for

purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds $100,000.

(n) CHANGE IN CONTROL. A Change in Control shall have occurred unless consented to in writing by the Lender.

(o) SUBORDINATION. Any Subordination Agreement (other than with respect to Subordinated Debt owing to the Lender) shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, any Person (other than the Lender) shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Indebtedness hereunder shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any Subordination Agreement.

(p) CONSENTS, ETC. Any law, decree, license, permit, consent, authorization, registration or approval now or hereafter necessary to enable the Company or any Guarantor to comply with its obligations incurred in the Loan Documents shall be modified in any manner that has an adverse effect on the Loan and the Loan Documents, revoked, withdrawn or withheld or shall cease to remain in full force and effect.

SECTION 6.02 EFFECT OF EVENT OF DEFAULT. If any Event of Default shall occur and be continuing, the Lender may by notice to the Company, declare the entire unpaid principal amount of the Loan and the Notes related thereto, all interest accrued and unpaid thereon and all other Obligations to be forthwith due and payable, whereupon the Loan and any such Notes, all such accrued interest and all such other Obligations shall become and be forthwith due and payable; in each case, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company, PROVIDED that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code, the result which would otherwise occur only upon giving of notice by the Lender to the Company as specified herein shall occur automatically, without the giving of any such notice. If any Event of Default shall occur and be continuing, whether or not the actions referred to above have been taken, the Lender may (A) exercise any or all of the Lender's rights and remedies under the Collateral Documents, and (B) proceed to enforce all other rights and remedies available to the Lender under the Loan Documents and applicable law.

ARTICLE VII
MISCELLANEOUS

SECTION 7.01 AMENDMENTS AND WAIVERS. Except as otherwise provided herein or in any other Loan Document, no amendment to any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by the Company (and/or any Guarantor or other party thereto, as applicable) and the Lender; and no waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by the Company, any Guarantor or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7.02 NOTICES. All notices and other communications required or permitted hereunder or under the other Loan Documents shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) two (2) days after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the parties hereto at their respective addresses or facsimile numbers set forth below their names on the signature pages hereof, or as notified by such party from time to time at least ten (10) days prior to the effectiveness of such notice.

SECTION 7.03 NO WAIVER; CUMULATIVE REMEDIES. No failure on the part of the Lender to exercise, and no delay in exercising, any right, remedy, power

or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under the Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Lender.

SECTION 7.04 COSTS AND EXPENSES; INDEMNITY.

(a) COSTS AND EXPENSES. The Company agrees to pay on demand: (i) the reasonable out-of-pocket costs and expenses of the Lender and any of its Affiliates, and the reasonable fees and disbursements of counsel to the Lender in connection with the negotiation, preparation, execution, delivery and administration of the Loan Documents, and any amendments, modifications or waivers of the terms thereof, and the custody of the Collateral; (ii) all audit, consulting, appraisal, search, recording, filing and similar costs, fees and expenses incurred or sustained by the Lender or any of its Affiliates in connection with the Loan Documents or the Collateral; and (iii) all costs and expenses of the Lender and its Affiliates, and fees and disbursements of counsel, in connection with (A) any Default, (B) the enforcement or attempted enforcement of, and preservation of any rights or interests under, the Loan Documents, (C) any out-of-court workout or other refinancing or restructuring or any bankruptcy or insolvency case or proceeding, and (D) the preservation, protection, sale or collection of, or other realization upon, any of the Collateral, including all expenses of taking, collecting, holding, sorting, handling, preparing for sale, selling, or the like, and other such expenses of sales and collections of Collateral.

(b) OTHER CHARGES. The Company also agrees to indemnify the Lender against and hold it harmless from any and all present and future stamp, transfer, documentary and other such taxes, levies, fees, assessments and other charges made by any jurisdiction by reason of the execution, delivery, performance and enforcement of the Loan Documents.

(c) INDEMNIFICATION. Whether or not the transactions contemplated hereby shall be consummated, the Company hereby agrees to indemnify the Lender, any Affiliate thereof and their respective directors, officers, employees, agents, counsel and other advisors (each an "Indemnified Person") against, and hold each of them harmless from, any and all liabilities, obligations, losses, claims, damages, penalties, actions, judgments, suits, costs,

expenses or disbursements of any kind or nature whatsoever, including the reasonable fees and disbursements of counsel to an Indemnified Person, which may be imposed on or incurred by any Indemnified Person, or asserted against any Indemnified Person by any third party or by the Company or any Guarantor, in any way relating to or arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the

parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby or the Collateral, (ii) the Loan or the use or intended use of the proceeds thereof, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any Guarantor (the "Indemnified Liabilities"); PROVIDED that the Company shall not be liable to any Indemnified Person for any portion of such Indemnified Liabilities to the extent they resulted from such Indemnified Person's gross negligence or willful misconduct. If and to the extent that the foregoing indemnification is for any reason held unenforceable, the Company agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law

SECTION 7.05 SURVIVAL. All covenants, agreements, representations and warranties made in any Loan Documents shall, except to the extent otherwise provided therein, survive the execution and delivery of this Agreement, the making of the Loan and the execution and delivery of any Notes, and shall continue in full force and effect so long as the Loan shall remain outstanding or any other Obligations remain unpaid or any obligation to perform any other act hereunder or under any other Loan Document remains unsatisfied. Without limiting the generality of the foregoing, the obligations of the Company under Section 7.04, and all similar obligations under the other Loan Documents (including all obligations to pay costs and expenses and all indemnity obligations), shall survive the repayment of the Loan.

SECTION 7.06 BENEFITS OF AGREEMENT. The Loan Documents are entered into for the sole protection and benefit of the parties hereto and their successors and assigns, and no other Person other than any Indemnified persons referred to in Section 7.04(c) shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, any Loan Document.

SECTION 7.07 BINDING EFFECT; ASSIGNMENT.

(a) BINDING EFFECT. This Agreement shall become effective when it shall have been executed by the Company and the Lender and thereafter shall be binding upon, inure to the benefit of and be enforceable by the Company, the Lender and their respective successors and assigns.

(b) ASSIGNMENT. The Company shall not have the right to assign its rights and obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of the Lender. The Lender may sell, assign, transfer or grant participations in all or any portion of the Lender's rights and obligations hereunder and under the other Loan Documents to any other Person. In connection with any partial assignment, upon the request of the assigning Lender or the assignee, the Company shall execute and deliver substitute

Notes to the assigning Lender or the assignee, dated the effective date of such assignment, setting forth the principal amount of the Loan held by such assigning Lender and assignee (after giving effect to the assignment), and containing other appropriate insertions, and the assigning Lender shall thereupon return the Note previously held by it

SECTION 7.08 GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (AS PERMITTED BY SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SIMILAR SUCCESSOR PROVISION)) WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE INTERNAL LAWS OF THE STATE OF NEW YORK TO THE RIGHTS AND DUTIES OF THE PARTIES.

SECTION 7.09 WAIVER OF JURY TRIAL. THE COMPANY AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THIS WAIVER BEING A MATERIAL INDUCEMENT FOR EACH SUCH PARTY TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 7.10 SUBMISSION TO JURISDICTION.

(a) For purposes of any suit, action or other legal proceeding relating to the Loan Documents or the enforcement of any provision of the Loan Documents, each party hereto hereby expressly and irrevocably submits and consents to the exclusive jurisdiction (unless waived by the Lender) of the courts of the State of New York sitting in the borough of Manhattan and the United States District Court for the Southern District of New York for the purposes of any such suit, action or legal proceeding, including to enforce any settlement, order or award; and agrees that such state and federal courts shall be deemed to be a convenient forum; and waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in such court any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that the Loan Documents or the subject matter thereof may not be enforced in or by such court.

(b) Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section by the courts of the State of New York sitting in the borough of Manhattan or the United States District Court for the Southern District of New York and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of New York or any other jurisdiction.

SECTION 7.11 ENTIRE AGREEMENT. The Loan Documents reflect the entire agreement between the Company and the Lender with respect to the matters set forth herein and

therein and supersede any prior agreements, commitments, drafts, communication, discussions and understandings, oral or written, with respect thereto.

SECTION 7.12 PAYMENTS SET ASIDE. To the extent that any payment by or on behalf of the Company is made to the Lender, or the Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code or other U.S. Federal, state or foreign liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws, or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred.

SECTION 7.13 SEVERABILITY. If any provision of any of the Loan Documents shall be prohibited by or invalid under any applicable law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of such Loan Document, or the validity or effectiveness of such provision in any other jurisdiction.

SECTION 7.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

THE COMPANY

AKSYS, LTD.

By /s/ Laurence P. Birch

Title: CEO

Address:

Two Marriott Drive
Lincolnshire, Illinois 60069

Attn.:
_____

Fax No. 847-229-2080

WITH A COPY TO:

Keith S. Crow P.C.
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601
Fax: 312-861-2200

THE LENDER

DURUS LIFE SCIENCES MASTER FUND LTD.

By /s/ Leslie L. Lake
_____
Title: Director

Address:

Durus Life Sciences Master Fund Ltd.
c/o International Fund Services (Ireland) Ltd.
3rd Floor, Bishops Square
Redmonds Hill
Dublin 2, Ireland
Attention: Susan Byrne
Fax: (011) 35-31-707-5013

WITH A COPY TO:

Gavin Grover, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Fax: 415-269-7522

AND WITH A COPY TO:

Paul N. Roth, Esq.
Schulte, Roth & Zabel
919 Third Avenue
New York, New York 10022
Fax: 212-593-5955

Exhibit 10

AMENDMENT TO
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Amendment to Settlement Agreement and Mutual Release (this "Amendment") is entered into as of March 31, 2006 by and among AKSYS, LTD., a Delaware corporation (the "Company"), DURUS LIFE SCIENCES MASTER FUND LTD., a Cayman Islands company ("Durus"), and ARTAL LONG BIOTECH PORTFOLIO LLC, a Delaware limited liability company ("Artal"). Durus and Artal are collectively referred to herein as the "Investors," and each is individually referred to herein as an "Investor."

A. The Company, Durus, Durus Capital Management, LLC, Durus Capital Management (N.A.), LLC, Artal and Scott Sacane are parties to that certain Settlement Agreement and Mutual Release, dated as of February 23, 2004 (the "Settlement Agreement").

B. Under the terms of the Settlement Agreement, the parties agreed to certain matters related to, among other things, the acquisition, ownership, trading or disposition of shares of the Company's common stock by the Investors.

C. In connection with the execution and delivery of the Securities Purchase Agreement, dated as of March 31, 2006, by and between the Company and Durus (the "Purchase Agreement") and the execution and delivery of the Transaction Documents (as defined in the Purchase Agreement), the Company and the Investors have agreed to amend the Settlement Agreement as provided herein as to themselves only in accordance with Section 17(b) of the Settlement Agreement.

D. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Settlement Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investors hereby agree as follows:

1. Amendment to Settlement Agreement. Effective immediately upon execution of this Amendment, as between the Company, on the one hand, and each of the Investors and their respective Affiliates and Associates, on the other hand, the following sections of the Settlement Agreement are hereby terminated and deemed to be deleted in their entirety and are and shall be of no further force and effect: Sections 3, 5, 6, 7, 11(c), 11(d), 12, 13 and 27(a).

2. Termination of Irrevocable Proxy. The Company hereby consents to the termination of the irrevocable proxies provided by the Investors to any and all Voting Designees pursuant to Section 16 of the Settlement Agreement, including Georgeson Shareholder Communications, Inc., and the Company hereby authorizes

the Investors to provide written notice to such Voting Designees of the Company's consent to such termination.

3. Full Force and Effect. Except as expressly modified by this Amendment, all terms, conditions and provisions of the Settlement Agreement shall remain in full force

and effect. In the event of any inconsistency or conflict between the Settlement Agreement and this Amendment, the terms, conditions and provisions of this Amendment shall govern and control.

4. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile, telecopy or other reproduction of this Amendment may be executed by any party hereto and delivered by such party by facsimile or other electronic transmission, and such execution and delivery shall be considered valid, binding and effective for all purposes.

5. Further Assurance. The parties hereto further agree to do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto may reasonably request in order to effect the foregoing.

6. Entire Agreement. The Settlement Agreement, the Purchase Agreement, the Mutual Release, the amendment to the Rights Agreement (referenced in Section 2.8.2 of the Purchase Agreement) and this Amendment constitute the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions and agreements, whether oral or written, and all communications between the parties relating to the subject matter of the Settlement Agreement, the Investor Rights Agreement and this Amendment, including any limitations on the Investors' and their respective Affiliates' and Associates' right to vote or take any other action with respect to the shares of capital stock of the Company held by them.

6. Governing Law. This Amendment shall be governed by and construed in accordance with the law of the State of Delaware, without giving effect to the conflicts or choice of law provisions thereof.

[Signature page follows]

IN WITNESS WHEREOF, the Investors and the Company have executed this Amendment to Settlement Agreement as of the date first above written.

AKSYS, LTD.

By: /s/ Laurence P. Birch

Name: Laurence P. Birch
Title: CEO

DURUS LIFE SCIENCES MASTER FUND LTD.

By: /s/ Leslie L. Lake

Name: Leslie L. Lake
Title: Director

ARTAL LONG BIOTECH PORTFOLIO LLC

By: Artal Alternative Treasury Management
Its: Managing Member

By: /s/ Christian Tedeschi

Name: Christian Tedeschi
Title: Managing Director

Exhibit 11

Exhibit B

CERTIFICATE OF DESIGNATION
OF
RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK
OF
AKSYS, LTD.

The undersigned officer of Aksys, Ltd., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

A. The Corporation has authorized 1,000,000 shares of Preferred Stock, par value $0.01 per share, none of which has been issued.

B. Pursuant to the authority conferred upon the Board of Directors of the Corporation (the "Board") by its Restated Certificate of Incorporation (the "Certificate of Incorporation"), and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board has duly adopted the following recitals and resolutions in accordance with the powers granted it by the Certificate of Incorporation, which resolutions remains in full force and effect on the date hereof:

WHEREAS, the Certificate of Incorporation provides for a class of stock designated "Preferred Stock, issuable from time to time in one or more series;"

WHEREAS, the Board is authorized, within the limitations and restrictions stated in the Certificate of Incorporation, to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon each wholly unissued series of Preferred Stock, to fix the number of shares constituting each such series and to determine the designation thereof; and,

WHEREAS, the Board desires, pursuant to its authority as aforesaid, to designate a series of Preferred Stock as "Series B Convertible Preferred Stock" and to fix and determine the number of shares constituting such series and the rights, preferences, privileges and restrictions of such Series.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates such new series of Preferred Stock and the number of shares constituting such series as follows:

I. DESIGNATION OF SERIES. The Corporation shall have a series of Preferred Stock designated as "Series B Convertible Preferred Stock" (the "Series B Preferred"), which Series B Preferred, subject to the terms and conditions of this Certificate of Designation, may be issued from time to time in sub series, with the first issuance of Series B Preferred designated as Series B-1 and additional issuances of Series B Preferred designated as Series B-2 and so on. Each share of Series B Preferred no matter the sub series shall have the same rights, preferences, privileges and restrictions as any other share of Series B Preferred, except that shares of Series B

Preferred of different sub series may have different voting rights as provided in Section IV 5(a) of this Certificate of Designation.

II. DESIGNATION OF NUMBER OF SHARES OF SERIES B PREFERRED. The number of shares constituting the Series B Preferred shall be 20,000 shares.

III. RANK OF SERIES B PREFERRED. The Series B Preferred shall, with respect to dividend rights and rights on liquidation, winding up and dissolution, rank senior to all classes of common stock of the Corporation (including Common Stock (as hereinafter defined)) and senior to any other class of capital stock or series of preferred stock, unless the issuance of capital stock being on parity with or senior to the Series B Preferred shall be in compliance with Section IV 6(d) of this Certificate of Designation.

IV. FIXING THE RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF THE SERIES B PREFERRED. The following rights, preferences, privileges and restrictions are hereby granted to and imposed upon the Series B Preferred:

1. Dividends.

(a) The holders of Series B Preferred shall be entitled to receive cumulative, preferential cash dividends out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividends on the Corporation's common stock, $0.01 par value ("Common Stock") or on any other existing or future class or series of Preferred Stock (together with the Common Stock, the "Junior Stock"), at a rate per annum equal to ten percent (10%) of the "Original Issue Price" of one-thousand dollars ($1,000.00) per outstanding share of Series B Preferred (as adjusted for any stock splits, stock dividends, combinations, recapitalizations or the like (collectively "Recapitalizations")). Dividends on each share of Series B Preferred shall accrue quarterly on the last day of March, June, September and December of each year whether or not declared and whether or not funds are legally available for payment and shall be payable in arrears on each succeeding April 1, July 1, October 1 and January 1, respectively (each such date being hereinafter referred

to as a "Preferred Dividend Payment Date"), commencing on the date of issuance of such share of Series B Preferred. Dividends on the Series B Preferred shall be cumulative from and after the last Preferred Dividend Payment Date provided that all dividends have been paid through such date and shall compound quarterly, to the extent they are unpaid, at the rate of 10% per annum computed on the basis of a 360-day year of twelve 30-day months. Accrued but unpaid dividends on the Series B Preferred shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Junior Stock. Cumulative dividends (and any interest thereon) with respect to a share of Series B Preferred which are accrued, payable and/or in arrears shall be added to the Original Issue Price and taken into account when calculating the number of Conversion Shares into which such share of Series B Preferred is convertible at the then applicable Conversion Price as provided in Section 4 below.

(b) After payment of any dividends pursuant to Section 1(a) above, any additional dividends shall be distributed among all holders of Junior Stock and all holders of Series B Preferred in proportion to the number of shares of Common Stock which would be held

by each such holder if all shares of all series of Preferred Stock were converted to Common Stock at the then effective conversion rate for each such series of Preferred Stock.

2. LIQUIDATION PREFERENCE.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including any action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding up, relief from creditors or any general assignment for the benefit of creditors, marshalling of assets for creditors or other similar arrangement) the holders of Series B Preferred shall be entitled to receive in cash out of the assets of the Corporation legally available for distribution to its stockholders whether such assets are capital or surplus or otherwise and whether or not any dividends in respect of the Series B Preferred have been declared, prior and in preference to any payment made or any distribution of any of the assets of the Corporation to the holders of Junior Stock, an amount per Series B Preferred share equal to the greater of (i) the sum of (A) the Original Issue Price (subject to adjustment for Recapitalizations) and (B) all accrued but unpaid dividends on such Series B Preferred share (whether or not declared) computed to the date of payment and (ii) the amount, if any, which the holder of such Series B Preferred share would have received in such liquidation, dissolution or winding up assuming all shares of Series B Preferred had been converted into Common Stock at the then applicable Conversion Price immediately

prior to the liquidation, dissolution or winding up of the Corporation (such amount being hereinafter referred to as the "Series B Liquidation Preference"). If upon the occurrence of such an event, the assets and funds distributed to the holders of the Series B Preferred shall be insufficient to pay to such holders the full Series B Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of the Series B Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section 2(a). In furtherance of the foregoing, the Corporation shall, to the extent necessary, cause such actions to be taken by any of its subsidiaries so as to enable the proceeds of any such liquidation, dissolution or winding up to be distributed to the holders of Series B Preferred in accordance with this Section.

(b) For purposes of this Section 2, a "Change of Control" shall be deemed to be a liquidation, dissolution, or winding up of the Corporation, unless the holders of at least a majority of the voting power of the Series B Preferred then outstanding voting together as a single class, with voting rights determined in accordance with Section 5 below, shall determine otherwise. A "Change of Control" means the occurrence of any of the following: (i) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of beneficial ownership of more than 35% of the aggregate outstanding voting power of the capital stock of the Corporation (excluding, however, the acquisition of such voting power as a result of any transaction or series of related transactions pursuant to which the initial holder of the Series B Preferred distributes securities of the Corporation, including shares of the Series B Preferred, Conversion Shares, as defined in Section 4, and/or other shares of Common Stock, to its stockholders, limited partners or other interest holders); (ii) the members of the Board, including the Board members elected or otherwise designated by holders of Series B Preferred, who are members as of the date of first issuance of the Series B Preferred Stock (the "Purchase Date") of

the Board (all such Board members collectively referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual who becomes a member of the Board after the Purchase Date and whose election, or nomination for election by the Corporation's stockholders, is approved by a vote of at least a majority of the Board members then comprising the Incumbent Board shall be considered to be a member of the Incumbent Board; or (iii) in one transaction or one or more series of related transactions (A) the Corporation sells, transfers, leases or otherwise disposes of, or parts with control of, all or substantially all of its assets, or the assets of such subsidiary or subsidiaries of the Corporation any of the assets of which constitute all or substantially all of the assets of the

business of the Corporation and its subsidiaries taken as a whole, to another person or entity, or (B) any entity merges with or into or consolidates with or into the Corporation or a subsidiary of the Corporation in a transaction or series of transactions pursuant to which the Corporation's stockholders immediately prior to such transaction, or series of related transactions, own less than 50% of the outstanding voting stock (on an as-converted to Common Stock basis) of the surviving, continuing or purchasing entity (or parent or subsidiary, if any) immediately after the transaction or series of related transactions.

(c) In the case of a deemed liquidation, dissolution or winding up of the Corporation under Section 2(b), the holders of Series B Preferred shall be entitled to receive, upon the consummation of any such transaction, consideration in the same form as is to be provided to other stockholders in such transaction (whether cash, shares of stock, securities, other property or any combination thereof), having a fair market value (determined in good faith by the Board) equal to the Series B Liquidation Preference to which such holders of Series B Preferred would otherwise have been entitled pursuant to Section 2(a).

(d) For purposes of Section 2(c), the value of any consideration received, other than cash or securities, shall be the fair market value of such consideration as determined by the Board in good faith. Any securities shall be valued as follows:

(i) if traded on a national securities exchange or the Nasdaq National Market or the Nasdaq Capital Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or the Nasdaq National Market or the Nasdaq Capital Market, as the case may be, over the twenty (20) day period ending one (1) business day prior to the closing of such transaction;

(ii) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) day period ending three (3) days prior to the closing; and

(iii) if there is no active public trading market for the securities, the value thereof shall be the fair market value thereof as determined by the Board in good faith.

(e) The Corporation shall give each holder of Series B Preferred written notice of an impending transaction contemplated by Section 2(b) not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall

describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series B Preferred that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series B Preferred. Notwithstanding the foregoing, the Corporation's obligation to provide notice under this Section 2(e) is subject and subordinate to the Corporation's legal obligations regarding the handling and dissemination of material non-public information under the Exchange Act, and the rules and regulations of the quotation system or securities exchange on which the Common Stock may at any time be listed and other applicable law.

(f) In the event the requirements of Section 2(c) are not complied with, or in the event of a deemed liquidation, dissolution or winding up of the Corporation under Section 2(b), the proceeds of which are insufficient to pay the Optional Redemption Price for all shares of Series B Preferred outstanding as contemplated in Section 3, the Corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of Section 2(c) have been complied with and the proceeds of such deemed liquidation, dissolution or winding up are sufficient to pay the Optional Redemption Price for all shares of Series B Preferred outstanding; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the Series B Preferred shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(e) above.

(g) Nothing in this Section 2 shall be deemed to prevent redemption of the Series B Preferred in the manner provided in Section 3.

3. REDEMPTION AT OPTION OF HOLDERS OF SERIES B PREFERRED.

(a) TRIGGERING EVENT. A "Triggering Event" shall be deemed to have occurred at such time as any of the following events:

1. the Corporation materially defaults on its obligations under the Investor Rights Agreement, dated as of March __, 2006, among the Corporation, Durus Life Sciences Master Fund Ltd. and the other signatories thereto, and such default remains unremedied for a period of ninety (90) days following the date that the Corporation first receives notice or otherwise becomes aware of its default;

2. the Corporation fails to deliver the required number of Conversion Shares within ten (10) days of receipt by it from a holder of Series B Preferred of a notice requesting conversion of any Series B Preferred into Common Stock as contemplated in Section 4(b) below, or the Corporation gives written notice to any holder of Series B Preferred of

the Corporation's intention not to comply, as required, with a request for conversion of any Series B Preferred into Common Stock;

3. the occurrence of a "Change of Control" as defined in Section 2(b);

4. the Corporation or any subsidiary thereof becomes insolvent, fails to pay, or admits its inability to pay, its debts as they become due, whether at stated maturity or otherwise, voluntarily ceases to conduct its business in the ordinary course or takes any action to effectuate or authorize any of the foregoing; and

(i) any indebtedness of the Corporation or any subsidiary (whether for borrowed money or otherwise) in aggregate principal amount in excess of $1,000,000 shall be accelerated and declared immediately due and payable.

(b) REDEMPTION AT OPTION OF HOLDER UPON TRIGGERING EVENT OR PUT DATE.

(i) Upon the occurrence of a Triggering Event, a holder of Series B Preferred shall have the right to require that the Company redeem all or a portion of the Series B Preferred held by such holder at a price per Series B Preferred share equal to the greater of (A) the Series B Liquidation Preference and (B) the product of (1) the number of Conversion Shares into which such share of Series B Preferred is convertible at the then applicable Conversion Price and (B) the closing price of the Common Stock on the principal securities exchange, quotation system or securities market on which the Common Stock is then traded on the trading day immediately preceding such Triggering Event (the "Optional Redemption Price").

(ii) At any time on or after March __, 2013 (the "Put Date"), the holders of not less than a majority of the voting power of the Series B Preferred then outstanding shall have the right to require that the Corporation redeem all of the then outstanding Series B Preferred at a price per share of Series B Preferred equal to the Series B Liquidation Preference (the "Put Redemption Price").

(c) MECHANICS OF REDEMPTION AT OPTION OF HOLDER.

(i) Within two (2) business days after the occurrence of a Triggering Event, the Corporation shall deliver written notice thereof via facsimile and overnight courier ("Notice of Triggering Event") to each holder of Series B Preferred.

(ii) At any time after the earlier of such holder's receipt of a Notice of Triggering Event and such holder becoming aware of a Triggering Event, any holder of Series B Preferred then outstanding may require the Corporation to redeem an amount up to all of such holder's Series B Preferred by delivering written notice thereof via facsimile and overnight courier ("Notice of Optional Redemption") to the Corporation, which Notice of Optional Redemption shall indicate the number of shares of Series B Preferred that such holder is electing to have redeemed.

(iii) At any time after the Put Date, the holders of not less than a majority of the voting power of the Series B Preferred then outstanding shall have the right to require that the Corporation redeem all of the then outstanding Series B Preferred by delivering written notice thereof via facsimile and overnight courier (a "Put Notice") to the Corporation.

(d) PAYMENT OF OPTIONAL REDEMPTION PRICE. Upon the Corporation's receipt of a Notice of Optional Redemption from any holder(s) of Series B Preferred, the Corporation shall within one (1) business day of such receipt notify each holder of Series B Preferred by facsimile of the Corporation's receipt of such notice(s). The Corporation shall pay the Optional Redemption Price to each holder of Series B Preferred that delivers a Notice of Optional Redemption to the Corporation on the fifth (5th) business day after the Corporation's receipt of the Notice of Optional Redemption (the "Optional Redemption Date"); provided that the holder of Series B Preferred submitting a Notice of Optional Redemption shall have surrendered the certificates of the shares of Series B Preferred to be redeemed, duly endorsed, at the principal executive offices of the Corporation or of any transfer agent for the Series B Preferred. From and after the Optional Redemption Date, unless there shall have been a default in the payment of the Optional Redemption Price, all rights of the holders of shares of Series B Preferred submitted for redemption on the Optional Redemption Date (except the right to receive the Optional Redemption Price without interest upon surrender of the certificates of the shares of Series B Preferred to be redeemed) shall cease with respect to such shares, and such shares thereafter shall not be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the Corporation is unable to redeem all of the Series B Preferred submitted for redemption, the Corporation shall redeem a pro rata amount from each holder based on the number of Series B Preferred shares submitted for redemption by such holder relative to the total number of Series B Preferred shares submitted for redemption by all holders. The shares of Series B Preferred not so redeemed shall remain

outstanding and entitled to all the rights and preferences contained in this Certificate of Designation. At any time when additional funds of the Corporation are available for the redemption of shares of Series B Preferred, such funds will immediately be used to redeem the balance of the shares of Series B Preferred that the Corporation has become obligated to redeem on an Optional Redemption Date, but that the Corporation has not redeemed.

(e) PAYMENT OF PUT REDEMPTION PRICE. Upon the Corporation's receipt of a Put Notice from the holders of Series B Preferred, the Corporation shall within one (1) business day of such receipt notify each holder of Series B Preferred by facsimile of the Corporation's receipt of such notice. The Corporation shall pay the Put Redemption Price to each holder of Series B Preferred on the fifth (5th) business day after the Corporation's receipt of the Put Notice (the "Put Redemption Date"); provided that each such holder of Series B Preferred shall have surrendered the certificates of the shares of Series B Preferred to be redeemed, duly endorsed, at the principal executive offices of the Corporation or of any transfer agent for the Series B Preferred. Any shares of Series B Preferred not submitted for redemption following the delivery of a Put Notice to the Corporation shall remain outstanding and entitled to all the rights and preferences contained in this Certificate of Designation; provided, however, that the certificates of any such shares of Series B Preferred may at any time (but in no event more frequently than once per calendar quarter by any individual holder of Series B Preferred) after the Put Redemption Date be submitted to the Corporation for redemption at the Put

Redemption Price. From and after the Put Redemption Date, unless there shall have been a default in the payment of the Put Redemption Price, all rights of the holders of shares of Series B Preferred submitted for redemption on the Put Redemption Date (except the right to receive the Put Redemption Price without interest upon surrender of the certificates of the shares of Series B Preferred to be redeemed) shall cease with respect to such shares, and such shares thereafter shall not be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the Corporation is unable to redeem all of the Series B Preferred submitted for redemption on the Put Redemption Date, the Corporation shall redeem a pro rata amount from each holder based on the number of Series B Preferred submitted for redemption by such holder relative to the total number of Series B Preferred shares submitted for redemption by all holders. The shares of Series B Preferred not so redeemed shall remain outstanding and entitled to all the rights and preferences contained in this Certificate of Designation. At any time when additional funds of the Corporation are available for the redemption of shares of Series B Preferred, such funds will immediately be used to redeem the balance of the shares of Series B Preferred that the Corporation has become obligated to redeem on the Put Redemption Date, but that the Corporation has not redeemed.

(f) No shares of Series B Preferred shall be redeemed in whole or in part under this Section 3 at any time that such redemption is prohibited by the Delaware General Corporation Law.

4. CONVERSION. The holders of Series B Preferred shall have conversion rights as follows (the "Conversion Rights"):

(a) RIGHT TO CONVERT. Each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of original issuance of such share, at the office of the Corporation or any transfer agent for the Series B Preferred, into such number of fully paid and nonassessable shares of Common Stock ("Conversion Shares") as is determined by dividing the Original Issue Price, plus any accrued but unpaid dividends, for each such share of Series B Preferred by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial conversion price per share for shares of Series B Preferred shall be equal to One Dollar ($1.00) (the "Conversion Price"); provided, however, that the Conversion Price for the Series B Preferred shall be subject to adjustment as set forth in Section 4(c).

(b) MECHANICS OF CONVERSION. Before any holder of Series B Preferred shall be entitled to convert such holder's Series B Preferred into shares of Common Stock, such holder shall surrender the certificate(s) thereof, duly endorsed, at the principal executive offices of the Corporation or of any transfer agent for the Series B Preferred, and shall give written notice to the Corporation at such office of the election to convert the same and stating therein the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series B Preferred a certificate(s) for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt by the Company of the shares of Series B Preferred to be converted, and the person(s) or entit(ies)

entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock on such date.

(c) CONVERSION PRICE ADJUSTMENTS OF SERIES B PREFERRED. The Conversion Price of the Series B Preferred shall be subject to adjustment from time to time as follows:

(i) ADJUSTMENT OF CONVERSION PRICE. If the Corporation shall issue, at any time after the Purchase Date, any Additional Stock, as defined below, without consideration or for a consideration per share less than

the closing price of the Common Stock on the principal securities exchange, quotation system or securities market on which the Common Stock is then traded on the trading day immediately preceding the date of issuance of such Additional Stock (the "Market Price"), then the Conversion Price for such Series B Preferred in effect immediately after each such issuance of Additional Stock shall be adjusted to a price determined by multiplying such Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding and deemed outstanding pursuant to Section 4(c)(iv) (not including shares excluded from the definition of Additional Stock pursuant to Section 4(c)(ii)(B)) immediately prior to such issuance of Additional Stock plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such existing Market Price and the denominator of which shall be the number of shares of Common Stock outstanding and deemed outstanding pursuant to Section 4(c)(iv) (not including shares excluded from the definition of Additional Stock pursuant to Section 4(c)(ii)(B)) immediately prior to such issuance of Additional Stock plus the number of shares of such Additional Stock.

(ii) DEFINITION OF "ADDITIONAL STOCK". "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(c)(iv)) by the Corporation after the Purchase Date, other than:

(A) Common Stock issued pursuant to a transaction described in Section 4(d) hereof;

(B) shares of Common Stock issued or deemed issued to employees, officers, consultants or directors of the Corporation pursuant to a stock option plan or restricted stock purchase plan approved by the Compensation Committee of the Board, including the approval of the members of the Compensation Committee elected or otherwise designated by holders of Series B Preferred.

(C) shares of Common Stock issued pursuant to the exercise, conversion or exchange of convertible or exercisable securities outstanding on and as of the Purchase Date;

(D) shares of Common Stock deemed to have been issued pursuant to Section 4(c)(iv) or issuable upon the issuance or exercise of warrants to purchase shares of Common Stock issued by the Corporation and purchased by holders of Series B Preferred;

(E) shares of Common Stock deemed to have been issued pursuant to Section 4(c)(iv) or issuable upon the issuance or conversion of the Series B Preferred; and

(F) shares of Common Stock issued or issuable in connection with any transaction where such securities so issued or issuable are excepted from the definition "Additional Stock" by the affirmative vote of the holders of a majority of the voting power of the outstanding Series B Preferred.

(iii) DETERMINATION OF CONSIDERATION. In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board in good faith.

(iv) DEEMED ISSUANCES OF COMMON STOCK. In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(c):

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(c)(iii)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (to the extent then convertible or exchangeable, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights, plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(c)(iii)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series B Preferred, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(D) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series B Preferred, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(E) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(c)(iv)(A) and 4(c)(iv)(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(c)(iv)(C) or 4(c)(iv)(D).

(v) NO FRACTIONAL ADJUSTMENTS; NO INCREASED CONVERSION PRICE. No adjustment of the Conversion Price for the Series B Preferred shall be made in an amount less than one cent per share of Series B Preferred, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections 4(c)(iv)(C) and or 4(c)(iv)(D), no adjustment of such Conversion Price pursuant to this Section 4(c) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(d) STOCK SPLITS AND DIVIDENDS. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for, or shall otherwise cause, the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock

Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series B Preferred shall be appropriately

decreased so that the number of shares of Common Stock issuable on conversion of each share of such Series B Preferred shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time.

(e) REVERSE STOCK SPLITS. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series B Preferred shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(f) OTHER DISTRIBUTIONS. In the event the Corporation shall declare a distribution payable in securities of other entities, evidences of indebtedness issued by the Corporation or other persons or entities, assets (excluding cash dividends) or options or rights not referred to in Section 4(d), then, in each such case for the purpose of this Section 4(f), the holders of Series B Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution, and such distributions (to the extent such distributions have previously not been paid to the holders of the shares of Series B Preferred) shall be deemed to be accrued dividends for shares of the Series B Preferred.

(g) RECAPITALIZATIONS AND MERGERS. If at any time or from time to time there shall be a recapitalization of the Corporation or a merger or consolidation of the Corporation with or into another entity or sale of the Corporation's assets or stock (other than a subdivision or combination provided for elsewhere in Section 2 or this Section 4) provision shall be made so that the holders of Series B Preferred shall thereafter be entitled to receive upon conversion of such Series B Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization, merger, consolidation or sale transaction. In any such case,

appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Series B Preferred after the recapitalization, merger, consolidation or sale transaction to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Series B Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(h) NO IMPAIRMENT. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such actions as may be necessary or

appropriate in order to protect the Conversion Rights of the holders of Series B Preferred against impairment.

(i) NO FRACTIONAL SHARES AND CERTIFICATE AS TO ADJUSTMENTS.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series B Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one half being rounded upward). The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Preferred the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series B Preferred pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series B Preferred at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series B Preferred.

(j) NOTICES OF RECORD DATE AND EXTRAORDINARY TRANSACTIONS. In the event of any taking by the Corporation of a record of the holders of any

class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or in the event of a proposed liquidation, recapitalization, merger or sale involving the Corporation, the Corporation shall mail to each holder of Series B Preferred, at least twenty (20) days prior to the record date or date of the proposed transaction, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or the nature of the proposed transaction and the proposed date of consummation of such transaction.

(k) RESERVATION OF STOCK ISSUABLE UPON CONVERSION. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred, such number of its shares of Common Stock as shall be equal to 120% of the maximum number of shares of Common Stock necessary from time to time to effect the conversion of all outstanding shares of Series B Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall be below such an amount, in addition to such other remedies as shall be available to the holder of Series B Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment

to the Certificate of Incorporation. Notwithstanding the foregoing, the Corporation shall not be obligated to issue any shares of Common Stock upon conversion of shares of Series B Preferred if the issuance of such shares of Common Stock would cause the Corporation to exceed that number of shares of Common Stock that the Corporation may issue upon conversion of Series B Preferred without breaching the Company's obligations under the rules or regulations of the principal securities exchange, quotation system or market on which the Common Stock is traded at the time, unless the Corporation (i) obtains the approval of its stockholders as required by the rules or regulations of such principal exchange, quotation system or market or (ii) obtains an opinion of counsel, reasonably satisfactory to the holders of Series B Preferred holding a majority of the voting power of the outstanding Series B Preferred, that such approval is not required.

(l) LIMITATION ON NUMBER OF CONVERSION SHARES. The Corporation shall not be obligated to issue any shares of Common Stock upon conversion of shares of Series B Preferred after the aggregate number of shares of Common Stock previously issued by the Corporation upon (i) the conversion of shares of

Series B Preferred no matter the sub series and (ii) the exercise of any warrants to purchase shares of Common Stock issued by the Corporation and purchased by holders of Series B Preferred has exceeded the Nasdaq Conversion Limitation (as defined below), except that such limitation shall not apply from and after such time as the Corporation obtains Shareholder Approval (as defined below) for issuances of Common Stock upon conversion of shares of Series B Preferred in excess of such amount. In the event the Corporation receives on the same date a notice requesting conversion of shares of Series B Preferred from more than one holder of Series B Preferred and the Corporation can convert some, but not all, of such shares of Series B Preferred, the Corporation shall convert from each holder electing to have shares of Series B Preferred converted at such time a pro rata amount of such holder's Series B Preferred shares submitted for conversion based on the number of shares of Series B Preferred submitted for conversion on such date by such holder relative to the number of all shares of Series B Preferred submitted for conversion on such date. The Nasdaq Conversion Limitation shall mean [6,425,476] shares of Common Stock or such other amount as Nasdaq shall determine is the applicable limitation under Marketplace Rule 4350(i)(1)(D). Shareholder Approval shall mean the approval of the Corporation's stockholders as may be required by the applicable rules and regulations of Nasdaq, including Marketplace Rule 4350(i)(1)(D).

5. Voting Rights.

(a) GENERAL. The holder of a share of Series B Preferred of a given sub series shall have the right to one (1) vote for each share of Common Stock into which such share of Series B Preferred would be converted (i) assuming that the Conversion Price for such share of Series B Preferred is equal to the closing price of the Common Stock on the Nasdaq Capital Market (or other principal securities exchange or automated quotation system on which the Common Stock is then traded) on the earlier of (x) the date that an agreement is entered into between the Corporation and the holder of such share of Series B Preferred for the purchase of such share of Series B Preferred and (y) the date that such share of Series B Preferred is issued and (ii) taking into account any limitation under Section 4(l) on the number of shares of Common Stock into which such share of Series B Preferred could then be converted. With respect to such vote and except as otherwise expressly provided herein or as required by

applicable law, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock as a single class, with respect to any matter upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis shall be rounded to the nearest whole

number (with one-half being rounded upward).

(b) ELECTION OF DIRECTORS. So long as 2,500 shares of Series B Preferred remain outstanding, the holders of the Series B Preferred shall be entitled, voting separately as a single class, to elect one (1) member of the Board at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of such director. The holders of shares of Common Stock and Series B Preferred shall be entitled, voting together in accordance with Section 5(a) hereof, to elect the remaining directors of the Corporation at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such directors, to fill any vacancy caused by the resignation or death of such directors and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of any such directors.

6. PROTECTIVE PROVISIONS.

So long as any shares of Series B Preferred are outstanding, the Corporation shall not, and shall not permit any of its subsidiaries to, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds (2/3) of the then outstanding shares of Series B Preferred, voting separately as a single class:

(a) alter or change, whether by merger, consolidation or otherwise, the rights, preferences or privileges of the shares of Series B Preferred so as to affect adversely such shares of Series B Preferred;

(b) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred;

(c) alter or change the Certificate of Incorporation, as amended to date, or the Bylaws of the Corporation or the certificate of incorporation or bylaws (or equivalent organizational documents) of any subsidiary of the Corporation, so as to affect the rights, preferences or privileges of the Series B Preferred;

(d) authorize or issue, or obligate itself to issue, whether by merger, consolidation or otherwise, any equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series B Preferred with respect to dividends, liquidation, winding up, dissolution or redemption;

(e) incur any indebtedness in excess of $500,000 individually or

$2,000,000 in the aggregate;

(f) effect any reclassification or recapitalization of the outstanding capital stock of the Corporation;

(g) effect any "Change of Control" transaction described in Section 2(b);

(h) effect any redemption, repurchase, acquisition or retirement for value of any capital stock or options of the Corporation, except for any such redemption or repurchase approved by the Board, including the approval of Board members elected or otherwise designated by holders of Series B Preferred;

(i) declare or pay any dividend or make any other distribution on the capital stock of the Corporation;

(j) enter into a new transaction with an officer or director of the Corporation, except for any such transaction approved by the Compensation Committee of the Board, including the approval of the members of the Compensation Committee elected or otherwise designated by holders of Series B Preferred;

(k) increase the authorized number of Preferred Stock or issue any additional shares of Preferred Stock;

(l) increase or decrease the authorized number of directors of the Corporation; or

(m) enter into any contract, agreement or understanding obligating the Corporation or any of its subsidiaries to do any of the foregoing.

7. STATUS OF REDEEMED OR CONVERTED STOCK. In the event any shares of Series B Preferred shall be redeemed or converted as contemplated in this Certificate of Designation, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation, and the Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

8. NOTICES. Any notice required by the provisions of this Certificate of Designation to be given to the holders of shares of Series B Preferred shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its, his or her address appearing on the books of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be executed by its duly authorized officer this [__]th day of [_____], 2006.

AKSYS, LTD.

By: _____

[_____], Secretary

Exhibit 12

INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "AGREEMENT") is entered into as of _____ __, 2006, by and among AKSYS, LTD., a Delaware corporation (the "COMPANY"), DURUS LIFE SCIENCES MASTER FUND LTD., a Cayman Islands company ("DURUS"), and ARTAL LONG BIOTECH PORTFOLIO LLC, a Delaware limited liability company ("ARTAL"). Durus and Artal are collectively referred to herein as the "EXISTING INVESTORS," and each is individually referred to as an "EXISTING INVESTOR."

WHEREAS, in connection with the Securities Purchase Agreement by and among the Company and Durus of even date herewith (the "PURCHASE AGREEMENT"), the Company has agreed, upon the terms and subject to the conditions set forth in the Purchase Agreement, to issue and sell to Durus at the Initial Closing, as defined in the Purchase Agreement, (i) 5,000 shares of the Company's Series B Convertible Preferred Stock ("INITIAL PREFERRED SHARES"), the terms of which are set forth in the certificate of designation for such series of preferred stock in the form attached as Exhibit A to the Purchase Agreement (the "CERTIFICATE OF DESIGNATION"), and which Initial Preferred Shares shall be convertible into shares of the Company's common stock (the "COMMON STOCK") pursuant to the terms of the Certificate of Designation (such shares of Common Stock to be received upon the conversion of the Initial Preferred Shares are referred to herein as the "INITIAL CONVERSION SHARES"), and (ii) warrants (the "INITIAL WARRANTS") to purchase 5,000,000 shares of Common Stock at an initial exercise price of $1.10 per share (the "INITIAL WARRANT SHARES" and, together with the Initial Conversion Shares and the Initial Warrants, the "INITIAL SECURITIES");

WHEREAS, the Purchase Agreement provides that after the Initial Closing, Durus will have the option, in its sole discretion, to purchase up to an additional $15,000,000 of the Company's Series B Convertible Preferred Stock (the "ADDITIONAL PREFERRED SHARES") convertible into Common Stock (the "ADDITIONAL CONVERSION SHARES") and warrants (the "ADDITIONAL WARRANTS") to purchase shares of Common Stock (the "ADDITIONAL WARRANT SHARES" and, together with the Additional Conversion Shares and the Additional Warrants, the "ADDITIONAL REGISTRABLE Securities") from the Company at one or more Subsequent Closings, as defined in the Purchase Agreement;

WHEREAS, contemporaneously with the execution and delivery of the Purchase Agreement, Durus and the Company also are executing and delivering a loan agreement, substantially in the form attached as Exhibit D to the Purchase Agreement (the "LOAN AGREEMENT"), pursuant to which the Company will be issuing certain notes to Durus (the "NOTES");

WHEREAS, Durus also currently holds 21,216,664 shares of Common Stock (the "DURUS SHARES") and a warrant (the "DURUS WARRANT") to purchase 281,454 shares of Common Stock at an exercise price of $3.25 per share (the "DURUS

WARRANT SHARES" and, together with the Durus Shares and the Durus Warrants, the "DURUS SECURITIES");

WHEREAS, Artal currently holds 498,100 shares of Common Stock (the "ARTAL SHARES") and an unsecured subordinated promissory note in the principal amount of $322,000 (the "ARTAL NOTE") issued by the Company to Artal pursuant to that certain Note Purchase Agreement, dated

as of February 23, 2004, by and among the Company and Artal, and pursuant to the Artal Note the Company has the right to elect, in lieu of repayment in cash of all or any portion of the principal due under the Artal Note, to repay such amount of principal in Common Stock of the Company (the "NOTE SHARES"), subject to the terms and conditions of the Artal Note.

WHEREAS, the Company has previously registered certain Durus Securities and the Artal Shares on a registration statement on Form S-3, Registration No. 333-114396, filed by the Company with the Securities and Exchange Commission (the "SEC") on May 13, 2004 (the "EXISTING REGISTRATION STATEMENT"); and

WHEREAS, in connection with the execution and delivery of the Purchase Agreement and the other Transaction Documents (as defined in the Purchase Agreement), the Company has agreed to provide rights to the Existing Investors as provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Existing Investors hereby agree as follows:

1. DEFINITIONS.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "ADDITIONAL REGISTRABLE SECURITIES" means the (i) Additional Registrable Securities and (ii) any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to the Additional Conversion Shares or the Additional Warrant Shares, including as a result of any share split, share dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversions of the Additional Preferred Shares or exercise of the Additional Warrants.

(b) "AFFILIATE" means, with respect to any Person, any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person. For purposes of this definition, the term "CONTROL" (and correlative terms) means the power, whether by contract, equity ownership or otherwise, to direct the policies or management

of a Person.

(c) "BENEFICIAL OWNER" and "BENEFICIALLY OWN" mean, with respect to any Person, any securities (i) which such Person or any of such Person's Affiliates beneficially owns, directly or indirectly; (ii) which such Person or any of such Person's Affiliates, directly or indirectly, has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing); or (iii) which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate thereof) with which such Person (or any of such Person's Affiliates) has any

agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting or disposing of any voting securities of the same issuer.

(d) "BUSINESS DAY" means any day other than Saturday, Sunday or any other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(e) "EFFECTIVE DATE" means the date that the Registration Statement (as defined below) has been declared effective by the SEC.

(f) "EFFECTIVENESS DEADLINE" means (i) with respect to the Registration Statement to be filed hereunder covering the New Registrable Securities (as defined below), the date which is 60 days after the Initial Closing, or if there is any review of such Registration Statement by the SEC, 120 days after the Initial Closing, (ii) with respect to the Registration Statement or Registration Statements to be filed hereunder covering the Additional Registrable Securities, the date which is 60 days after the Subsequent Closing relating to Additional Registrable Securities, or if there is any review of such Registration Statement by the SEC, 120 days after such Subsequent Closing and (iii) with respect to the Registration Statement to be filed hereunder covering the Note Shares, the date which is 60 days after the issuance of such Note Shares, or if there is any review of such Registration Statement by the SEC, 120 days after the issuance of such Note Shares.

(g) "EXISTING REGISTRABLE SECURITIES" means the Durus Securities registered on the Existing Registration Statement and the Artal Shares and any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to such Durus Shares, the Artal Shares or the Durus Warrant Shares, including as a result of any share split, share dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversions of the Durus Warrants.

(h) "FILING DEADLINE" means (i) with respect to the Registration Statement to be filed hereunder covering the New Registrable Securities, thirty (30) Business Days following the Initial Closing, (ii) with respect to the Registration Statement or Registration Statements to be filed hereunder covering the Additional Registrable Securities, within thirty (30) Business Days following the Subsequent Closing relating to such Additional Registrable Securities and (iii) with respect to the Registration Statement to be filed hereunder covering the Note Shares, thirty (30) Business Days following the issuance of the Note Shares.

(i) "INVESTORS" mean the Existing Investors and any of their transferees or assignees who receive or acquire Registrable Securities and who are entitled to the benefit of this Agreement as provided in Section 6 hereof.

(j) "NEW REGISTRABLE SECURITIES" means (i) the Initial Securities and (ii) any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to the Initial Conversion Shares or the Initial Warrant Shares, including as a result of any share split, share dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversions of the Initial Preferred Shares or exercise of the Initial Warrants.

(k) "1933 ACT" means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

(l) "1934 ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC thereunder.

(m) "PERSON" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(n) "REGISTER," "REGISTERED," and "REGISTRATION" refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(o) "REGISTRABLE SECURITIES" means the New Registrable Securities, the Additional Registrable Securities, the Existing Registrable Securities and the Note Shares.

(p) "REGISTRATION STATEMENT" means a registration statement or registration statements of the Company filed under the 1933 Act covering the Registrable Securities.

(q) "RULE 415" means Rule 415 under the 1933 Act or any successor rule providing for the offering of securities on a continuous or delayed basis.

(r) "WARRANT SHARES" means the Initial Warrant Shares, the Additional Warrant Shares and the Durus Warrant Shares.

2. REGISTRATION OF NEW REGISTRABLE SECURITIES.

2.1 Mandatory Registration.

(a) The Company shall use its best efforts to prepare, and, as soon as practicable, but in no event later than the applicable Filing Deadline, file with the SEC a Registration Statement on Form S-3 covering the resale of all of the New Registrable Securities and the issuance of the Initial Warrant Shares to be acquired upon exercise of the Initial Warrants. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration that is reasonably acceptable to Durus. The Registration Statement prepared pursuant hereto shall register for resale 10,000,000 shares of Common Stock and all of the Initial Warrants, and shall register the issuance of 5,000,000 shares of Common Stock upon exercise of the Initial Warrants. The Registration Statement, to the extent allowable under the 1933 Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of or otherwise pursuant to the Initial Preferred Shares and exercise of the Initial Warrants to prevent dilution resulting from stock splits, stock dividends or similar transactions. The Company shall use its reasonable best efforts to have the Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the respective Effectiveness Deadline.

(b) In the event of any Subsequent Closings, the Company shall use its best efforts to prepare, and, as soon as practicable thereafter, but in no event later than the applicable Filing Deadline, file with the SEC a Registration Statement on Form S-3 covering the resale of all the Additional Registrable Securities relating to each such Subsequent Closing and the issuance of the Additional Warrant Shares to be acquired upon exercise of the Additional Warrants issued at each such Subsequent Closing. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration that is reasonably acceptable to Durus. The Registration Statement, to the extent allowable under the 1933 Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of or otherwise pursuant to the Additional Preferred Shares and exercise of the Additional Warrants to prevent dilution resulting from stock splits, stock dividends or similar transactions. The Company shall use its reasonable best efforts to have each such Registration Statement declared effective by the SEC as soon as practicable after each such Subsequent Closing, but in no event later than the applicable Effectiveness Deadline.

(c) In the event of the issuance of Note Shares, the Company shall use its best efforts to prepare, and, as soon as practicable thereafter, but in no event later than the applicable Filing Deadline, file with the SEC a Registration Statement on Form S-3 covering the resale of all of the Note Shares. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration that is reasonably acceptable to holders of a majority in interest of the Note Shares. The Registration Statement prepared pursuant hereto shall register for resale all of the Note Shares. The Company shall use its reasonable best efforts to have such Registration Statement declared effective by the SEC as soon as practicable after the issuance of the Note Shares, but in no event later than the applicable Effectiveness Deadline.

(d) In the event that Durus distributes or otherwise transfers any of its Registrable Securities to its investors or members, the Company shall use its best efforts to prepare, and, as soon as practicable, file with the SEC a Registration Statement on Form S-3 covering the resale of all of such Registrable Securities by such investors or members upon the written request of Durus. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration that is reasonably acceptable to a majority of such investors or members. The Company shall not be required to effect a registration pursuant to this Section 2.1(d) if (i) the Company has previously effected two (2) registrations pursuant to this Section 2.1(d), and such registrations have been declared or ordered effective, or (ii) the Company receives such written request from Durus more than five (5) years after the date hereof.

2.2 Legal Counsel.

(a) Subject to Section 5 hereof, Durus shall have the right to select one legal counsel to review and oversee any registration pursuant to Sections 2.1(a) or 2.1(b), which shall be designated in writing by Durus ("DURUS LEGAL COUNSEL").

(b) Subject to Section 5 hereof, holders of a majority in interest of the Artal Shares shall have the right to select one legal counsel to review and oversee any registration pursuant to Section 2.1(c), which shall be designated in writing by such holders ("ARTAL LEGAL COUNSEL" and, together with Durus Legal Counsel, "LEGAL COUNSEL").

(c) The Company and Legal Counsel shall reasonably cooperate with each other in regards to the performance of the Company's obligations under this Agreement.

2.3 Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement.

If (i) a Registration Statement covering the New Registrable Securities or the Additional Registrable Securities required to be covered thereby and required to be filed by the Company pursuant to this Section 2 is (A) not filed with the SEC on or before the applicable Filing Deadline (a "FILING FAILURE") or (B) filed with the SEC but not declared effective by the SEC on or before the applicable Effectiveness Deadline (an "EFFECTIVENESS FAILURE") or (ii) on any day after the Effective Date sales of all of such Registrable Securities required to be included on such Registration Statement cannot be made (other than during an Allowable Grace Period (as defined in Section 3.19)) pursuant to such Registration Statement (including, without limitation, because of a failure to keep such Registration Statement effective, to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a suspension or delisting of the Common Stock on its principal trading market or exchange, or to register a sufficient number of shares of Common Stock) (a "MAINTENANCE FAILURE") then, as partial relief for the damages to any holder by reason of any such delay in or reduction of its ability to sell the underlying shares of Common Stock (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of New Registrable Securities or Additional Registrable Securities, as applicable, relating to such Registration Statement an amount in cash equal to one percent (1%) of the aggregate purchase price of such Investor's Initial Preferred Shares and Initial Warrants or Additional Preferred Shares and Additional Warrants, respectively, on each of the following dates: (i) on every thirtieth day (pro rated for periods totaling less than thirty days) after a Filing Failure until such Filing Failure is cured; (ii) on every thirtieth day (pro rated for periods totaling less than thirty days) after an Effectiveness Failure until such Effectiveness Failure is cured; and (iii) on every thirtieth day (pro rated for periods totaling less than thirty days) after a Maintenance Failure until such Maintenance Failure is cured; PROVIDED, that the maximum amount payable by the Company pursuant to this Section 2.3 with respect to such Registration Statement shall not exceed 10% of the aggregate purchase price of such Investor's Registrable Securities included in such Registration Statement. The payments to which a holder shall be entitled pursuant to this Section 2.3 are referred to herein as "REGISTRATION DELAY PAYMENTS." Registration Delay Payments shall be paid on the earlier of (I) the last day of each calendar month during which such Registration Delay Payments are incurred and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest, from the date the Registration Delay Payment was due until the date such Registration Delay Payment is paid in full, at the rate of ten percent (10%) per annum. Notwithstanding anything to the contrary herein, the Company shall not be required to pay any Registration Delay Payments to the extent that such registration is required to be made pursuant

to a Registration Statement on Form S-1 for the sole reason that Form S-3 is unavailable to such registration.

2.4 Request for Acceleration.

The Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of the Registration Statement will be made by the staff of the SEC or that the staff has no further comments on the Registration Statement, as the case may be, and (ii) the approval of Legal Counsel in accordance with Section 3.2 (which approval shall be immediately sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than 48 hours after the submission of such request.

3. REGISTRATION OBLIGATIONS WITH RESPECT TO ALL REGISTRABLE SECURITIES.

The Company shall have the following obligations with respect to the registration of the Registrable Securities:

3.1 Maintain Effectiveness of Registration Statements.

(a) The Company shall keep the Registration Statements covering the Registrable Securities, including the Existing Registration Statement, effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which all of the Investors may sell all of the Registrable Securities covered by all of the Registration Statements in any period of three months pursuant to Rule 144 (or any successor thereto) promulgated under the 1933 Act and (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by all Registration Statements (or, in the case of the Warrants, the date on which each such Warrant shall have otherwise terminated pursuant to its terms) (the "REGISTRATION PERIOD"); PROVIDED, HOWEVER, that the Registration Period with respect to any Registration Statement filed pursuant to Section 2.1(d) shall be until the earlier of (i) the date as of which all investors and members of Durus that own Registrable Securities covered by such Registration Statement may sell all of the Registrable Securities covered by such Registration Statement in any period of three months pursuant to Rule 144 (or any successor thereto) promulgated under the 1933 Act and (ii) the date on which all investors and members of Durus that own Registrable Securities covered by such Registration Statement shall have sold all of the Registrable Securities covered by such Registration Statement. The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading.

(b) Subject to Section 3.19 of this Agreement, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, or prepare and file with the SEC a new Registration Statement, as may be necessary to effect the provisions of Section 3.1 and to otherwise keep such Registration Statement effective at all times during the

Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. The Company shall use its best efforts to prepare and file with the SEC a prospectus supplement or, if required, a post-effective amendment to the Existing Registration Statement as soon as practicable following the Initial Closing to effect the provisions of Section 3.1. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3.1(b)) by reason of the Company filing a report on Form 10-Q, Form 10-K or any analogous report under the 1934 Act, the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC within two Business Days of the day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

3.2 Review of Registration Statements.

(a) To the extent applicable, the Company shall (A) permit Durus Legal Counsel to review and comment upon (i) Registration Statements covering the New Registrable Securities, the Additional Registrable Securities or the Existing Registrable Securities at least five (5) Business Days prior to its filing with the SEC (and for at least two (2) Business Days after any final, material changes are made to any draft thereof) (provided that the Filing Deadline shall be extended by the time taken by Durus Legal Counsel beyond such specified periods in exercising its right to review such Registration Statements pursuant to this Section 3) and (ii) all amendments and supplements to such Registration Statements within a reasonable number of days prior to their filing with the SEC, and (B) not file any such Registration Statement or amendment or supplement thereto in a form to which such Durus Legal Counsel reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of any such Registration Statement or any amendment or supplement thereto without the prior approval of Durus Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Durus Legal Counsel, without charge, (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any such Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of any such Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Durus Legal Counsel in performing the Company's obligations pursuant to this Section 3.

(b) To the extent applicable, the Company shall (A) permit Artal Legal Counsel to review and comment upon (i) a Registration Statement cover the Artal Shares at least five (5) Business Days prior to its filing with the SEC (and for at least two (2) Business Days after any final, material changes are made to any draft thereof) (provided that the Filing Deadline shall be extended by the time taken by Artal Legal Counsel beyond such specified periods in exercising its right to review such Registration Statement pursuant to this Section 3) and (ii) all

amendments and supplements to such Registration Statement within a reasonable number of days prior to their filing with the SEC, and (B) not file any such Registration Statement or amendment or supplement thereto in a form to which Artal Legal Counsel reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of such Registration Statement or any amendment or supplement thereto without the prior approval of Artal Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Artal Legal Counsel, without charge, (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any such Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of any such Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Artal Legal Counsel in performing the Company's obligations pursuant to this Section 3.

3.3 Copies of Registration Statements.

To the extent applicable, the Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the SEC, at least one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by the Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

3.4 "Blue Sky" Laws.

The Company shall use its reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the

resale by Investors of the Registrable Securities covered by a Registration Statement and the issuance of the Warrant Shares upon exercise of the Warrants under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions, including preparing and filing new registrations and qualifications in applicable jurisdictions, as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; PROVIDED, HOWEVER, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3.4, (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The

Company shall promptly notify each Investor who holds Registrable Securities and the Legal Counsel for such Investor pursuant to Section 2.2 of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of such Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

3.5 Notice of Certain Events.

The Company shall notify each Investor (and such Investor's Legal Counsel pursuant to Section 2.2) in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which (i) the prospectus included in a Registration Statement covering such Investor's Registrable Securities includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), or (ii) the representations and warranties made by the Company herein or in connection with a Registration Statement cease to be true and correct in all material respects, and in each such case, subject to Section 3.19, promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission and deliver one (1) copy of such supplement or amendment to such Legal Counsel and each Investor (or such other number of copies as such Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify such Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to such Legal Counsel and each Investor by

facsimile or e-mail on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

3.6 Stop Orders and Ineffectiveness of Registration Statement

(a) The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify each Investor who holds Registrable Securities being sold pursuant to such Registration Statement and such Investor's Legal Counsel pursuant to Section 2.2 of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(b) If a Registration Statement ceases to be effective for more than 30 days for any reason at any time during the Registration Period, the Company shall file with the SEC an additional Registration Statement (the "SUBSEQUENT REGISTRATION STATEMENT") covering all of the Registrable Securities not sold under the Registration Statement that has ceased to be effective (the "INITIAL REGISTRATION STATEMENT"). If a Subsequent Registration Statement is filed with the SEC, the Company shall use reasonable best efforts to cause the Subsequent Registration

Statement to be declared effective by the SEC as soon as practicable after such filing and to keep such Subsequent Registration Statement continuously effective for the duration of the Registration Period in accordance with the terms of this Agreement.

3.7 Ineligibility for Form S-3.

In the event that Form S-3 is not available for the continued registration of the resale of Registrable Securities hereunder or the issuance of the Warrant Shares upon exercise of the Warrants, the Company shall (i) register the resale of the Registrable Securities and the issuance of the Warrant Shares on another appropriate form reasonably acceptable to holders of a majority in interest of the Registrable Securities prior to the time at which such Form S-3 will no longer be available for such continued registration or, if later, as soon as practicable following the determination by the Company's outside legal counsel that such Form S-3 is no longer available for such continued registration, and (ii) undertake to register such Registrable Securities and Warrant Shares on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3

covering the Registrable Securities has been declared effective by the SEC. Notwithstanding the foregoing, the Company shall use its best efforts to take any actions reasonably necessary to maintain its eligibility to use Form S-3 to permit the resale of the Registrable Securities and the issuance of the Warrant Shares.

3.8 Sufficient Number of Shares Registered.

In the event the number of shares available under a Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement, the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover all of such Registrable Securities as of the trading day immediately preceding the date of the filing of such amendment or new Registration Statement. Such amendment or new Registration Statement shall be filed as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its reasonable best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. The calculation set forth above in this Section 3.8 shall be made without regard to any limitations on the conversion of the Initial Preferred Shares or Additional Preferred Shares or the exercise of the Warrants, and such calculation shall assume that the Initial Preferred Shares and the Additional Preferred Shares are then convertible into shares of Common Stock at the then prevailing conversion rate of such shares and that the Warrants are then exercisable for shares of Common Stock at the then prevailing exercise price therein.

3.9 Underwriter Status and Related Matters.

(a) At the reasonable request of any Existing Investor, or at the reasonable request of any other Investor that may be required under applicable securities laws to be described in the Registration Statement as an underwriter, the Company shall furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily

given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investor, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in customary form, scope and substance for similar offerings, addressed to the Investors.

(b) At the reasonable request of any Existing Investor, or at the reasonable request of any other Investor that may be required under applicable securities laws to be described in the Registration Statement as an underwriter,

the Company shall make available for inspection by (i) such Investor, (ii) such Investor's Legal Counsel pursuant to Section 2.2 and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "INSPECTORS"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "RECORDS"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; PROVIDED, HOWEVER, that each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement of which the Inspector has knowledge. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(c) Any underwriters and broker-dealers entering into underwriting or distribution agreements with the Existing Investors in connection with any Registration Statement or sale, transfer or other distribution in connection therewith may be selected only by the Existing Investors, subject to approval by the Company, which shall not be unreasonably withheld. The Company agrees that it shall enter into such underwriting or distribution agreement, provided the terms of such agreement are commercially reasonable.

3.10 Disclosure of Information Concerning Investors.

The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation

of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

3.11 Listing of Registrable Securities.

The Company shall use its best efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all of the Registrable Securities covered by a Registration Statement on the NASDAQ National Market or NASDAQ Capital Market, or (iii) if, despite the Company's best efforts to satisfy the preceding clause (i) or (ii) the Company is unsuccessful in satisfying the preceding clause (i) or (ii), to secure the inclusion for quotation on the OTC Bulletin Board for such Registrable Securities and, without limiting the generality of the foregoing, to use its best efforts to arrange for at least two market makers to register with the National Association of Securities Dealers, Inc. ("NASD") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3.11.

3.12 Unlegended Certificates.

To the extent applicable, the Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

3.13 Transfer of Registrable Securities.

If requested by an Investor, the Company shall as soon as practicable after receipt of notice from such Investor and subject to Section 3.19 hereof, (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor

holding any Registrable Securities.

3.14 Governmental Agencies.

The Company shall use its best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

3.15 Delivery of Earnings Statement.

The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement.

3.16 Compliance with Laws.

The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

3.17 Confirmation.

To the extent applicable, within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC.

3.18 Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("RULE 144"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit the Company's obligations under Section 4.2 of the

Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and

documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

3.19 Blackout Period.

Notwithstanding anything to the contrary herein, at any time after a Registration Statement has been declared effective by the SEC, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board (as defined in Section 7.1), in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "GRACE PERIOD"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed thirty (30) consecutive days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of seventy-five (75) days and the first day of any Grace Period must be at least five (5) trading days after the last day of any prior Grace Period (each, an "ALLOWABLE GRACE PERIOD"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3.6(a) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3.5 with respect to the information giving rise thereto unless such material, non-public information is no longer applicable.

4. OBLIGATIONS OF THE INVESTORS.

(a) At least seven (7) Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to

the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3.6(a) or 3.19 or the first sentence of Section 3.5, such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3.6(a) or the first sentence of Section 3.5 or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3.6(a) or the first sentence of Section 3.5 and for which the Investor has not yet settled.

5. EXPENSES OF REGISTRATION.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company. The Company shall also reimburse the Existing Investors for the fees and disbursements of Legal Counsel in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement. In addition, the Company shall pay the Existing Investors' reasonable costs (include legal fees) incurred in connection with the successful enforcement of the Existing Investors' rights hereunder.

6. ASSIGNMENT OF REGISTRATION RIGHTS.

The rights under this Agreement to cause the Company to register Registrable Securities pursuant to Sections 1 through 4 of this Agreement shall be automatically assignable by any Investor to any transferee of all or any portion of such Investor's Registrable Securities if: (i) such Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company; (ii) the Company is furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) the transferee or assignee agrees in writing with the Company to be bound by the provisions contained herein to the same extent as such Investor; and (iv) such transfer shall have been conducted in accordance with all applicable federal and state securities laws.

7. COMPANY BOARD OF DIRECTORS

7.1 Board Representation.

The Company shall take all corporate action necessary to appoint to the Board of Directors of the Company (the "BOARD"), promptly upon the Initial Closing of the sale of the Initial Securities to Durus pursuant to the Purchase Agreement, four individuals designated by Durus (each, an "INVESTOR DESIGNEE"), one of which shall also be designated to serve as the

Chairman of the Board. Subject to Section 7.5 hereof, from and after the Initial Closing, Durus shall have the continuing right to designate such number of Investor Designees as necessary to constitute a majority of the members of the Board and to designate the Chairman of the Board. Each Investor Designee shall serve until the annual meeting of the Company's stockholders at which the term of the class to which such Investor Designee has been appointed expires, and until his or her respective successor is elected and qualified or until his or her earlier death, resignation or removal from office. Unless Durus advises the Board in writing of one or more replacement Investor Designees for the Company's next annual or special meeting of stockholders at which directors are elected and the term of one or more of the Investor Designees expires, then the Investor Designee(s) for any such meeting shall be deemed to be the incumbent Investor Designee(s). Such written notice by Durus shall be provided to the Board at least seven (7) days prior to the date of the filing with the SEC of the proxy statement relating to such meeting. The Company shall provide to Durus in writing the filing date of such proxy statement at least thirty (30) days prior to such filing date.

7.2 Executive Committee.

At the Initial Closing, an executive committee of the Board (the "EXECUTIVE COMMITTEE") comprised of three directors shall be created and the Company shall take all actions so that three Investor Designees are appointed to serve on the Executive Committee. The Chief Executive Officer of the Company shall serve as an advisory member of the Executive Committee. The Executive

Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company when (a) the Executive Committee reasonably determines that action on a particular matter requires immediate attention and that a meeting of the whole Board could not be arranged within the period of time required to fully address such matter or (b) the Executive Committee is otherwise prescribed such power with respect to one or more matters by resolution of the whole Board; PROVIDED, HOWEVER, that the Executive Committee shall not have any power or authority over matters which by law need whole Board approval or approval of the Audit Committee, Compensation Committee or Nominating Committee of the Board. The affirmative vote of a majority of the members of the Executive Committee must approve a particular matter for it to be the act of the Executive Committee. If the affirmative vote of a majority of the members of the Executive Committee on a particular matter submitted to the Executive Committee for approval cannot be obtained, such matter shall be submitted to the whole Board for approval. Notwithstanding the foregoing, whole Board approval shall be required to approve (i) any operating or capital expenditure or series of related expenditures exceeding $1,000,000, unless such expenditure or expenditures were specifically approved by the Board as a part of the Company's annual budget, (ii) the nomination of members for election to the Board upon the recommendation of the Nominating Committee, and (iii) transactions between the Company, on the one hand, and Durus or any Affiliate of Durus, on the other hand. Written or printed notice stating the place, day and hour of any meeting of the Executive Committee and the purpose or purposes for which the meeting is called shall be delivered to each member of the Executive Committee so that it is received by such member not less than one day before the date of the meeting. Any action required or permitted to be taken at a meeting of the Executive Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Executive Committee.

7.3 Other Committees.

At the Initial Closing, the Company shall take all necessary action so that the Investor Designees selected by Durus are appointed to serve as members constituting at least a majority of each other committee of the Board, including the Audit Committee, the Compensation Committee and the Nominating Committee, subject to applicable law and NASDAQ requirements.

7.4 Certain Officers.

Subject to Section 7.5 hereof, at and after the Initial Closing, the Company shall not, without the approval of Durus, make any nominations of individuals for election to the offices of Chief Executive Officer and Chief Financial Officer of the Company.

7.5 Continuation of Rights.

(a) So long as Durus Beneficially Owns at least fifty percent (50%) or

more of the Company's outstanding shares of Common Stock (including shares owned by Durus prior to the Initial Closing), (A) Durus shall be entitled to, in accordance with the provisions hereof, (i) designate such number of Investor Designees as necessary to constitute a majority of the members of the Board, (ii) designate three Investor Designees to serve on the Executive Committee, and (iii) designate Investor Designees to serve as members constituting a majority of the members of each other committee of the Board, and (B) the Company shall not, without Durus' approval, (i) appoint or designate a person to serve as the Chairman of the Board or (ii) nominate the Chief Executive Officer and the Chief Financial Officer.

(b) As long as Durus is entitled to designate Investor Designees in accordance with this Section 7, the Company agrees to continue to cause such Investor Designees (or their respective successors designated by Durus) to be nominated for election to the Board at each annual or special meeting of stockholders at which directors are elected after the Initial Closing when the term of office of any Investor Designee expires. To the extent the Company's proxy statement for any meeting of stockholders includes a recommendation regarding the election of any other nominees to the Board, the Company agrees to include a recommendation that the stockholders also vote in favor of the Investor Designee(s) that are nominated for election to the Board in accordance with this Section 7.

7.6 Vacancies.

If, following an election or appointment to the Board or committee thereof pursuant to this Section 7, any Investor Designee shall resign or be removed or be unable to serve for any reason prior to the expiration of his or her term as a director of the Company, a member of the Executive Committee and any other applicable committee, then Durus shall have the right to fill such vacancy with a replacement Investor Designee, and the Company shall cause such replacement Investor Designee to be appointed to the Board and the Executive Committee and any other applicable committee to fill the unexpired term of the Investor Designee who such new Investor Designee is replacing.

7.7 Costs and Expenses.

The Investor Designees shall be entitled to receive the same compensation and reimbursement of expenses, and to participate in the same benefit and incentive plans, as the Company provides members of the Board generally and, to the extent applicable to such Investor Designee, non-employee members of the Board generally. In addition, the Company will pay all reasonable out-of-pocket expenses incurred by Investor Designees in connection with their participation in meetings of the Board (and committees thereof) and the Boards of Directors (and committees thereof) of the subsidiaries of the Company.

7.8 Directors' Indemnification.

(a) The Corporation shall obtain and cause to be maintained in effect, with financially sound insurers, a policy of directors and officers' liability insurance in such amount and upon such terms as are reasonably acceptable to Durus until at least six years following the date on which (i) Durus is no longer entitled to nominate a director pursuant to Section 7.5 and (ii) no Investor Designees serve as directors of the Company.

(b) The Company's Restated Certificate of Incorporation ("CERTIFICATE OF INCORPORATION") or Amended and Restated By-Laws ("BY-LAWS"), or both, shall to the fullest extent permitted by law provide for indemnification of, and advancement of expenses to, and limitation of the personal liability of, (i) Durus and the Investor Designees for, in each case, the actions of such Investors Designees as directors of the Company, and (ii) the other directors of the Company for their actions as directors of the Company, which provisions shall not be amended, repealed or otherwise modified in any manner adverse to the directors until at least six years following the date on which (i) Durus is no longer entitled to nominate a director pursuant to Section 7.5 and (ii) no Investor Designees serve as directors of the Company.

7.9 Series B Preferred Director.

Notwithstanding anything herein to the contrary, the Company and the Board shall approve of and shall take all actions as may be necessary to elect the director that the holders of the Series B Preferred Stock of the Company are entitled to cause the nomination and election of pursuant to Article III.5(b) of the Certificate of Designation. In addition, for so long as Durus or its Affiliates own at least fifty percent (50%) of the outstanding shares of Series B Preferred Stock and the holders of Series B Preferred Stock of the Company are entitled to elect a director pursuant to Article III.5(b) of the Certificate of Designation, (i) one of the Investor Designees shall be the director elected by the holders of the Series B Preferred Stock pursuant to Article III.5(b) of the Certificate of Designation, and (ii) Durus or its Affiliates, as the case may be, shall have the right to designate such Investor Designee elected by the holders of the Series B Preferred Stock as a member of any or all committees of the Board, subject to applicable law and NASDAQ requirements.

7.10 Certificate of Incorporation; By-Laws.

To the fullest extent permitted by law, the Company shall ensure that the Company's Certificate of Incorporation and By-Laws as in effect immediately following the Initial Closing do not, at any time thereafter, conflict in any respect with the provisions of this Agreement. In

addition, the Company agrees that it will not amend its By-Laws or adopt a resolution in accordance with its By-Laws to change the size of the Board to a size other than seven members without the approval of a majority of the Investor Designees.

7.11 Performance

Notwithstanding anything to the contrary set forth in this Section 7, the Board shall be entitled to act in accordance with its fiduciary obligations to the Company under applicable law, and shall be entitled to take such actions as are necessary to comply with applicable law, with respect to the performance of the Company's obligations under this Agreement

8. COVENANTS OF THE COMPANY

8.1 Inspection.

(a) The Company shall permit each Existing Investor holding any shares of Registrable Securities, at such Existing Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be reasonably requested by the Existing Investor; PROVIDED, HOWEVER, that the Company shall not be obligated pursuant to this Section 8.1 to provide access to any information that it reasonably considers to be a trade secret or similar confidential information, unless such Existing Investor executes a confidentiality and nondisclosure agreement prior to any such visit and inspection.

(b) The Company shall provide Durus at least five (5) Business Days' notice of any regular meeting of the Board and, if requested by Durus, the agenda items for such meeting.

8.2 Delivery of Financing Statements and Other Reports.

The Company shall deliver to Durus the following:

(a) Unless filed with the SEC through the EDGAR system and available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports and Quarterly Reports on Form 10-K, 10-KSB, 10-Q or 10-QSB, any interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements for any period, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, which Annual Reports shall be accompanied by a report and opinion thereon of a firm of independent certified public accountants of recognized national standing;

(b) As soon as available and in any event not later than 30 days prior to the end of each fiscal year of the Company, a budget approved by the Board, prepared on a monthly and quarterly basis, such budget to be prepared in accordance with U.S. generally accepted accounting principles, consistently applied ("GAAP"), and on a fair and reasonable basis and in good faith, and to be based on estimates and assumptions believed by the Company to be fair and reasonable as of the time made and from the best information then available to the Company in the light of the current and reasonably foreseeable business conditions; and

(c) Promptly from time to time, such other information relating to the financial condition, business, prospects or corporate affairs of the Company as Durus may from time to time reasonably request, or promptly after transmission or occurrence (but in any event within 10 days) other reports, press releases and non-routine communications with stockholders or the financial community generally, any reports filed by the Company or its officers, directors and representatives with any securities exchange or the SEC and notice of any event which would have a material adverse effect on the Company's results of operations, business, prospects or financial condition or on Durus' investment, PROVIDED, HOWEVER, that the Company shall not be obligated under this Section 8.2(c) to provide information that it deems in good faith to be a trade secret or similar confidential information, and PROVIDED, FURTHER, that the Company may require Durus to execute a confidentiality and nondisclosure agreement prior to disclosure of any information.

8.3 Right of First Refusal upon Sale of Company.

(a) Before the Company proposes to sell the Company or greater than thirty percent (30%) of the fully diluted capital stock of the Company (the "OFFERED SHARES") to a third party (a "PROPOSED ACQUIRER") or the Company otherwise accepts a bona fide offer from a Proposed Acquirer to acquire the Company or the Offered Shares, whether such sale or acquisition is by sale of stock, merger, sale of substantially all of the Company's assets or otherwise, the Company shall transmit such proposal or offer (the "OFFER NOTICE") to Durus who shall have the right, as described herein, to acquire the Company or the Offered Shares on terms and conditions, including price, at least as favorable to Durus as the terms and conditions applying to the Proposed Acquirer. The Offer Notice shall disclose the identity of the Proposed Acquirer, the terms and conditions, including price, of the proposed sale, and any other material facts relating to the proposed sale. If the consideration is readily marketable, the fair market value thereof shall be determined on the date of the Offer. Otherwise, the value shall be determined by mutual agreement of the Company and Durus, and, if no agreement is reached, then the value shall be determined by a third party mutually agreeable to the Company and Durus. Notwithstanding the foregoing, the rights described in this Section 8.3(a) shall not apply to any transaction in which the Company will acquire another business entity, by merger or otherwise, and in which the stockholders of the Company immediately prior to the acquisition will hold a majority of the voting securities of the resulting entity immediately after the acquisition.

(b) If Durus elects to purchase the Offered Shares, Durus shall communicate such election in writing ("WRITTEN ELECTION") to the Company within thirty (30) days of the date that Durus received the Offer Notice. The Written Election shall, when taken in conjunction with the Offer Notice, be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares. The closing of the sale of the Offered Shares to Durus pursuant to this Section 8.3 shall be made at the offices of the

Company on the thirtieth (30th) day following receipt by the Company of the Written Election (or if such 30th day is not a Business Day, then on the next succeeding Business Day).

(c) If the Company has not received a Written Election from Durus within thirty (30) days of the date that Durus receives the Offer Notice, or if at any time during that period Durus indicates in writing its decision not to purchase the Offered Shares, the Company

may accept the offer of the Proposed Acquirer. Any such sale shall be to the Proposed Acquirer at not less than the price, and upon other terms and conditions, if any, not more favorable to the Proposed Acquirer than those specified in the Offer Notice. In the event the Company has not sold the Offered Shares within ninety (90) days of the date of the Offer Notice, the Company shall not thereafter sell the Offered Shares without first offering such Offered Shares to Durus in the manner provided in this Section 8.3.

8.4 Notice of Litigation

The Company will provide notice to each Existing Investor upon the filing of any material action, suit or proceeding by or against the Company.

8.5 Preservation of Existence, Etc.

The Company will, and will cause each of its subsidiaries to, maintain and preserve its legal existence, its rights to transact business and all other rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties, and become or remain, and cause each of its subsidiaries to become or remain, duly qualified and in good standing in the jurisdiction of its formation and in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

8.6 Payment of Taxes, Etc.

The Company will promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Company or any subsidiary; PROVIDED, HOWEVER, that any such tax, assessment, charge or levy need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the Company shall have set aside on its books adequate reserves with respect thereto, and provided, further, that the Company will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose to be paid when due, or in conformance with customary trade terms or otherwise in accordance with policies related thereto adopted by the Board.

8.7 Maintenance of Insurance.

The Company will, and will cause each of its subsidiaries to, carry and maintain in full force and effect, at its own expense and with financially sound and reputable insurance companies, insurance in such amounts, with such deductibles and covering such risks as is customarily carried in accordance with sound business practice by companies engaged in the same or similar businesses and owning similar properties in the localities where the Company or such subsidiary operates, and in any event in amount, adequacy and scope satisfactory to the Board.

8.8 Keeping of Records and Books of Account.

The Company will, and will cause each of its subsidiaries to, keep adequate records and books of account, in which complete entries will be made in accordance with GAAP reflecting all financial transactions of the Company and its subsidiaries.

8.9 Compliance with Requirements of Governmental Authorities.

The Company will, and will cause each of its subsidiaries to, comply with the requirements of all applicable laws, rules, regulations and orders of any governmental agency or authority.

8.10 Maintenance of Properties, Etc.

The Company will, and will cause each of its subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition and otherwise in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear excepted.

8.11 Licenses.

The Company will, and will cause each of its subsidiaries to, obtain and maintain, and to take all action necessary to timely renew, all licenses, permits, authorizations, consents, filings, exemptions, registrations and other governmental approvals of any governmental agency or authority necessary in connection the operation and proper conduct of its business and ownership of its properties.

8.12 Protection of Intellectual Property Rights.

The Company will, and will cause each of its subsidiaries to, protect, defend and maintain the validity and enforceability of its intellectual property. The Company shall require all employees and consultants to enter into the Company's standard form of proprietary information and inventions agreement.

8.13 Restrictions on Certain Corporate Actions.

The Company shall not, and shall not permit any of its subsidiaries to, directly or indirectly, take any of the following actions without the approval of the Board, including a majority of the Investor Designees:

(a) change the size of the Board to a number of directors other than seven (7) or otherwise alter or change the Company's By-Laws;

(b) declare or pay dividends or make other distributions on the capital stock of the Company;

(c) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Common Stock or any series of Preferred

Stock; PROVIDED, HOWEVER, that this restriction does not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or other provision of services to the Company;

(d) approve any material change in the Company's principal line of business or business plan;

(e) approve or enter into any agreement to which any officer, director, employee or stockholder of the Company is directly or indirectly a party or beneficiary (other than the payment of salary or related compensation in the ordinary course of business or any compensation approved by the Compensation Committee of the Board), including any employee benefit, bonus or stock plan if such will provide more benefits than are then provided to such person;

(f) grant any individual options in excess of 1% of the issued and outstanding shares of Common Stock of the Company or change the Company's stock option plan to increase the number of options thereunder to an amount greater than 10% of the outstanding shares of Common Stock;

(g) terminate or approve the hiring or termination of the Company's Chief Executive Officer or the Chief Financial Officer or any other officer of equivalent or senior status;

(h) approve the Company's annual and periodic budgets and business plans;

(i) incur any indebtedness in excess of $500,000 individually or $2,000,000 in the aggregate

(j) enter into any agreement, contract or other financial commitment in excess of $1,000,000 individually or in the aggregate;

(k) permit to exist any mortgage, deed of trust, pledge, security interest, assignment, charge, encumbrance, lien or other type of preferential arrangement on any property of the Company with a value in excess of $1,000,000;

(l) effect any transaction described in Section 2(b) of the Company's Certificate of Designation, or effect any reclassification or recapitalization of the outstanding capital stock of the Company; and

(m) issue any press releases or marketing materials or make any other written public announcement or disclosure concerning the Company, except where not practicable if immediate disclosure is required under applicable law.

8.14 Termination of Certain Covenants.

Sections 8.3 through 8.14 of this Agreement shall terminate and be of no further force or effect at such time at which Durus Beneficially Owns less than fifty percent (50%) or more of the Company's outstanding shares of Common Stock.

9. INDEMNIFICATION.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, stockholders, members, partners, managers, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "INDEMNIFIED PERSON"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several, (collectively, "CLAIMS") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("INDEMNIFIED DAMAGES"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("BLUE SKY FILING"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein

not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "VIOLATIONS"). Subject to Section 9(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 9(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto;

(ii) shall not be available to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the prospectus made available by the Company, including a corrected prospectus, if such prospectus or corrected prospectus was timely made available by the Company pursuant to Section 3.3; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 6.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 9(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "INDEMNIFIED PARTY"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 9(c), such Investor will

reimburse any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; PROVIDED, HOWEVER, that the indemnity agreement contained in this Section 9(b) and the agreement with respect to contribution contained in Section 10 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; PROVIDED FURTHER, HOWEVER, that the Investor shall be liable under this Section 9(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 6. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 9(b) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 9 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 9, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; PROVIDED, HOWEVER, that an Indemnified Person or Indemnified

Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if (i) in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding or (ii) the indemnifying party shall have failed promptly to assume the defense of such proceeding or shall have failed to employ counsel reasonably satisfactory to such Indemnified Person or Indemnified Party; PROVIDED FURTHER, that the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for all such Indemnified Persons or Indemnified Parties, respectively. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in

interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall cooperate reasonably with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, PROVIDED, HOWEVER, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 9, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnification required by this Section 9 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(f) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

10. CONTRIBUTION.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 9 to the fullest extent permitted by law; PROVIDED, HOWEVER, that:

(i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 9 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

11. NO INCONSISTENT AGREEMENTS OR ACTIONS.

The Company agrees that it shall not hereafter enter into any agreement or take any action that conflicts with the rights granted to the Investors in this Agreement, and the Company shall not effect the registration of any shares of its capital stock other than Registrable Securities at any time during the first year of the Registration Period without the prior written consent of Durus. Notwithstanding the foregoing, nothing herein shall prevent or limit the Company's ability to effect the registration of its capital stock relating to any employee benefit plan on Form S-8 (or any substitute form that may be adopted by the SEC).

12. LOCKUP

To the extent timely requested by an underwriter or broker-dealer in an offering by the Existing Investors pursuant to a Registration Statement, the Company agrees not to effect any offer, sale or other distribution of any of its capital stock, including any private placement, or to pledge, contract or otherwise obligate itself to do so, during the period beginning 30 days before the ending of the number of days reasonably requested by such underwriter or broker-dealer (but not to exceed 180 days) after such offering (except as part of such offering, if permitted, or pursuant to one or more registration statements relating to any employee benefit plan on Form S-8 or any substitute form that may be adopted by the SEC).

13. AMENDMENT OF REGISTRATION RIGHTS.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company, Durus and the holders of a majority in interest of the Registrable Securities; PROVIDED, HOWEVER, that any such amendment or waiver that would have an adverse and disproportionate effect on the holders of the Note Shares must be approved by a majority of the holders in interest of the Note Shares. Any amendment or waiver effected in accordance with this Section 13 shall be binding upon each Existing Investor and the Company. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of this Agreement unless the same consideration also is

offered to all of the parties to this Agreement. Notwithstanding the foregoing, the rights specifically granted in this Agreement to Durus under Section 7 and Section 8.3 shall not be assignable by Durus without the prior written consent of the Company.

14. ENTIRE AGREEMENT; TERMINATION OF EXISTING REGISTRATION RIGHTS AGREEMENT.

This Agreement, the other Transaction Documents (as defined in the Purchase Agreement) and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede and terminate all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof, including the Registration Rights Agreement dated as of February 23, 2004 by and among Durus, Artal and the Company.

15. MISCELLANEOUS.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Aksys, Ltd.
Two Marriott Drive
Lincolnshire, Illinois 60069
Attn: _____
Telecopy: (847) ___-____

Telephone: (847) ___-____

With a copy to:

Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601
Attn: Keith S. Crow, P.C.
Telecopy: (312) ___-____
Telephone: (312) ___-____

If to Durus, to:

Durus Life Sciences Master Fund Ltd.
c/o International Fund Services (Ireland) Limited
3rd Floor, Bishops Square
Redmonds Hill
Dublin 2, Ireland
Attn: Susan Byrne
Telecopy: (011) 35-31-707-5113
Telephone: (011) 35-31-707-5013

With copies to:

Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105
Attn: Gavin B. Grover
Telecopy: (415) 268-7522
Telephone: (415) 268-7113

-and-

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attn: Paul N. Roth
Telecopy: (212) 593-5955
Telephone: (212) 756-2000

If to Artal, to:

Artal Long Biotech Portfolio LLC
c/o Artal Alternative Treasury Management
19A Rue de la Croix-d'or
Geneva
Switzerland
Attn: _____

With a copy to:

Shartsis, Friese & Ginsburg LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Attn: Carolyn Gorman, Esq.
Telecopy: (415) 421-2922
Telephone: (415) 421-6500

If to any Investor other than Durus or Artal, to such address as may hereafter be designated in writing by such Investor to the other parties hereto.

Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) In order to attract and retain the most qualified individuals who are involved in the Company's industry and who understand the Company's business, the parties hereto agree that Durus may designate as Investor Designees pursuant to Section 7 hereof individuals who (i) may participate or will participate, directly or through Durus and its Affiliates, in businesses that compete with, or are substantially the same as the business of the Company or its subsidiaries, (ii) may have an interest in, participate with, and serve as directors, officers or employees of other Persons engaged in businesses that compete with, or are substantially the same as, the business of the Company or its subsidiaries and (iii) may develop business opportunities for Durus, Durus' Affiliates or the Investor Designees, other than in each case individuals who are also employees of the Company or any of its subsidiaries. Although the parties hereto do not anticipate any overlap in terms of corporate opportunities of the businesses in which Durus or the Investor Designees are or will be involved and the business of the Company and its subsidiaries, in order to enable the Company to attract the most qualified individuals as members of the Board, the Company wishes to, and hereby does, renounce any interest or expectancy of the Company in, or in being offered an opportunity to participate in,

any Excluded Opportunity. An "EXCLUDED OPPORTUNITY" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which

otherwise comes into the possession of, (i) an Investor Designee who is not an employee of the Company or any of its subsidiaries, or (ii) Durus or any partner, member, director, stockholder, employee, Affiliate or agent of Durus, other than an individual who is an employee of the Company or any of its subsidiaries (collectively, "COVERED PERSONS"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

(e) Subject to Section 15(d), the Investor Designees, Durus and Durus' Affiliates may engage or invest independently or with others, in any business activity of any type or description, including without limitation those that might be the same as or similar to the businesses of the Company or its subsidiaries, and neither the Company, any subsidiary of the Company, nor any other stockholder of the Company shall have any right in or to such business activities or ventures or to receive or share in any income or proceeds derived therefrom.

(f) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(g) Subject to the requirements of Section 6, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference

only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the holders of a majority in interest of the Registrable Securities; PROVIDED, HOWEVER, that any consent or other determination the result of which would have an adverse and disproportionate effect on the Existing Investors must be consented to or determined by, as the case may be, the Existing Investors.

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The parties hereto acknowledge that money damages would not be an adequate remedy at law if any party fails to perform in any material respect any of its obligations hereunder, and accordingly agree that each party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to specific performance of the obligations of any other party under this Agreement, without the posting of any bond, in accordance with the terms and conditions of this Agreement, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law. Except as otherwise provided by law, a delay or omission by a party hereto in exercising any right or remedy accruing upon any such breach shall not impair the right or remedy or constitute a waiver of or acquiescence in any such breach. No remedy shall be exclusive of any other remedy. All available remedies shall be cumulative.

(o) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this

Agreement is intended to confer any obligations on any Investor vis-a-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

IN WITNESS WHEREOF, the Existing Investors and the Company have caused their respective signature page to this Investor Rights Agreement to be duly executed as of the date first written above.

AKSYS, LTD.

By: _____
Name:
Title:

DURUS LIFE SCIENCES MASTER FUND LTD.

By: _____
Name:
Title:

ARTAL LONG BIOTECH PORTFOLIO LLC

By: Artal Alternative Treasury Management
Its: Managing Member

By: _____
Name:
Title:

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS
(continued)

AKSYS, LTD.

INVESTOR RIGHTS AGREEMENT

Dated as of March __, 2006

Exhibit 13

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement"), dated as of _____, 2006, is made between AKSYS, LTD., a Delaware corporation (the "Company"), and DURUS LIFE SCIENCES MASTER FUND LTD., a Cayman Islands Exempted Company ("Durus"), and any other lender that may be named on the signature pages of this Agreement from time to time by assumption of the obligation of Durus to make any portion of the loans contemplated by this Agreement in whole or in part or by assignment to such lender of any of the loans previously made under this Agreement by Durus or another lender (together with Durus, each a "Lender" and, collectively, the "Lenders").

The Company has requested the Lenders to make a term loan to the Company in an aggregate principal amount of $15,778,000 on the closing date hereof and additional term loans thereafter in an aggregate principal amount of up to $5,000,000. The Lenders are severally but not jointly willing to make such loans to the Company upon the terms and subject to the conditions set forth in this Agreement.

Accordingly, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01 CERTAIN DEFINED TERMS.. As used in this Agreement (including in the recitals hereof), the following terms shall have the following meanings:

"$10.778 MILLION CLOSING DATE LOAN" has the meaning set forth in Section 2.02(a)(ii).

"ADDITIONAL COMMITMENT" means, at any point in time, an aggregate loan commitment amount of $5,000,000 MINUS (i) the aggregate initial principal amount of all Additional Loans previously made hereunder, and MINUS (ii) any reductions in the Additional Commitment amount pursuant to Section 2.05(b). Where the context so requires, Additional Commitment shall mean the obligation of the Additional Loan Lender to make its Additional Loan up to such amount on the terms and conditions set forth in this Agreement.

"ADDITIONAL COMMITMENT AVAILABILITY EXPIRY DATE" has the meaning set forth in Section 2.01(b).

"ADDITIONAL LOAN" has the meaning set forth in Section 2.01(b).

"ADDITIONAL LOAN BORROWING DATE" has the meaning set forth in Section

2.02(b).

"ADDITIONAL LOAN LENDER" means Durus, or in the case of the assignment by Durus of its obligation to make any portion of the Additional Loan under this Agreement, such other lender that may be named on the signature pages of this Agreement from time to time by assumption of the obligation of Durus to make any portion of the Additional Loan contemplated by this Agreement.

"ADDITIONAL LOAN MATURITY DATE" means, unless the Additional Loans are sooner paid in accordance with the terms of this Agreement or the Notes, December 31, 2007.

"AFFILIATE" means any Person which, directly or indirectly, controls, is controlled by or is under common control with another Person. For purposes of the foregoing, "control," "controlled by" and "under common control with" with respect to any Person shall mean the possession, directly or indirectly, of the power (i) to vote 10% or more of the securities having ordinary voting power of the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"BANKRUPTCY CODE" means Title 11 of the United States Code entitled "Bankruptcy."

"BRIDGE LOAN" means the loan made by Durus to the Company pursuant to the Bridge Loan Agreement and the Note entered into and as defined therein.

"BRIDGE LOAN AGREEMENT" means the Bridge Loan Agreement dated as of March 31, 2006 between the Company and Durus.

"BUDGET" means the budget of the Company dated _____, 2006 approved by the Board of Directors of the Company and furnished to and approved by the Majority Lenders in a letter agreement of even date herewith, and any budget supplementing and superseding such budget in accordance with Section 5.01(a)(iii), and any modifications thereto, in each case, as approved by the Board of Directors of the Company and the Majority Lenders.

"BUSINESS DAY" means a day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

CHANGE OF CONTROL" means the occurrence of any of the following: (a) the acquisition, directly or indirectly, by any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of beneficial ownership of more than 35% of the aggregate outstanding voting power of the capital stock of the Company (excluding, however, the acquisition of such voting power as the result of any transaction or series of related transactions pursuant to which Durus distributes securities of the Company to its stockholders, limited partners or

other interest holders); (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of at least a majority of the directors of the Company then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Company; (c) in one transaction or one or more series of related transactions (i) the Company sells, transfers, leases or otherwise disposes of, or parts with control of, all or substantially all of its assets to another Person, or (ii) any entity merges with or consolidates with or into the Company or a subsidiary of the Company in a transaction pursuant to which the Company's stockholders immediately prior to such transaction, or series of related transactions, own less than 50% of the outstanding voting

stock (on an as-converted to common stock basis) of the surviving, continuing or purchasing entity (or parent or subsidiary, if any) immediately after the transaction or series of related transactions; or (d) the Company shall cease to own and control, directly or indirectly, 100% of the aggregate voting capital stock of and other voting ownership interests in each Guarantor.

"CLOSING DATE" has the meaning set forth in Section 3.01.

"CLOSING DATE COMMITMENT" means, as to any Lender, the amount set forth opposite its name on Schedule 1 under the heading "Closing Date Commitment," or, where the context so requires, the obligation of such Lender to make its Loan up to such amount on the terms and conditions set forth in this Agreement.

"CLOSING DATE LOAN" has the meaning set forth in Section 2.01(a).

"CLOSING DATE LOAN MATURITY DATE" means, unless the Closing Date Loan is sooner paid in accordance with the terms of this Agreement or the Notes, December 31. 2007.

"COLLATERAL" means the property described in the Collateral Documents, and all other property now existing or hereafter acquired which may at any time be or become subject to a Lien in favor of the Lenders or any Collateral Agent pursuant to the Collateral Documents or otherwise, securing the payment and performance of the Obligations.

"COLLATERAL ACCESS AGREEMENT" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Company's or its Subsidiaries' books and records, equipment or inventory, in each case, in form and substance reasonably satisfactory to the Majority Lenders.

"COLLATERAL AGENT" means any collateral agent appointed by the Majority Lenders.

"COLLATERAL AGENCY AGREEMENT" means any collateral agency agreement or other interinvestor agreement among the Lenders and any Collateral Agent, in form and substance satisfactory to them, providing for the duties and responsibilities of a collateral agent in connection with the Collateral Documents.

"COLLATERAL DOCUMENTS" means the Collateral Agency Agreement, any Pledge Agreement, any Security Agreement, any other agreement pursuant to which the Company, any Guarantor or any other Person provides a Lien on its assets in favor of the Lenders or any Collateral Agent securing payment and performance of the Obligations and all filings, documents and agreements made or delivered pursuant thereto.

"COMMITMENT" means the Closing Date Commitment and the Additional Commitment, as the case may be.

"COMPANY" has the meaning set forth in the recital of parties to this Agreement.

"DEFAULT" means an Event of Default or an event or condition which with notice or lapse of time or both would constitute an Event of Default.

"DOLLARS" and the sign "$" each means lawful money of the United States.

"DURUS" has the meaning set forth in the recital of parties to this Agreement.

"ENVIRONMENTAL LAWS" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with (including consent decrees), any governmental agencies or authorities, in each case relating to or imposing liability or standards of conduct concerning public health, safety and environmental protection matters.

"ERISA" means the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"ERISA AFFILIATE" means each business or entity which is, or within the last six years was, a member of a "controlled group of corporations", under "common control" or an "affiliated service group" with the Company or any Guarantor within the meaning of Section 414(b), (c) or (m) of the Internal

Revenue Code, required to be aggregated with the Company or any Guarantor under Section 414(o) of the Internal Revenue Code, or is, or within the last six years was, under "common control" with the Company or any Guarantor, within the meaning of Section 4001(a)(14) of ERISA.

"ERISA EVENT" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (iii) a withdrawal by the Company, any Guarantor or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of the Company, any Guarantor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Company, any Guarantor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (vi) the imposition of liability on the Company, any Guarantor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by the Company, any Guarantor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan

or the failure to make any required contribution to a Multiemployer Plan; (viii) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (ix) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company, any Guarantor or any ERISA Affiliate thereof; (x) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code with respect to any Pension Plan; (xi) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which the Company, any Guarantor or any Subsidiary thereof may be directly or indirectly liable; (xii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit

rule under Section 401(a) of the Internal Revenue Code by any fiduciary or disqualified person for which the Company, any Guarantor or any ERISA Affiliate thereof may be directly or indirectly liable; (xii) the occurrence of an act or omission which could give rise to the imposition on the Company, any Guarantor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xiii) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against the Company, any Guarantor or any Subsidiary thereof in connection with any such plan; (xiv) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (xv) the imposition of any lien on any of the rights, properties or assets of the Company, any Guarantor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA or to Section 401(a)(29) or 412 of the Internal Revenue Code; or (xvi) the establishment or amendment by the Company, any Guarantor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Guarantor.

"EVENT OF DEFAULT" has the meaning set forth in Section 6.01.

"EXCHANGE ACT" means the Securities Exchange Act of 1934.

"FIVE MILLION CLOSING DATE LOAN" has the meaning set forth in Section 2.02(a).

"GAAP" means generally accepted accounting principles, consistently applied.

"GUARANTOR" means any guarantor of the Obligations.

"GUARANTOR DOCUMENT" means the Guaranty of any Guarantor and all other documents, agreements and instruments delivered to the Lenders by such Guarantor under or in connection with its Guaranty.

"GUARANTY" means the Guaranty of a Guarantor, in form and substance satisfactory to the Majority Lenders.

"INDEBTEDNESS" of any Person means, without duplication (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase

price of property or services, (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the

acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP for the periods covered thereby, is classified as a capital lease, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above. For purposes hereof; "Contingent Obligations" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

"INSOLVENCY PROCEEDING" means (i) any case, action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"INTERNAL REVENUE CODE" means the Internal Revenue Code of 1986, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"IRS" means the Internal Revenue Service or any successor thereto.

"LENDER" has the meaning set forth in the recital of parties to this Agreement.

"LIEN" means any mortgage, deed of trust, pledge, security interest, assignment, deposit arrangement in the nature of a security interest, charge or encumbrance, lien (statutory or otherwise) or other type of preferential arrangement (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing or any agreement to give any security interest; but not including a financing statement filed by a lessor in respect of an operating lease not

intended as security).

"LOAN DOCUMENTS" means this Agreement, the Notes, the Collateral Documents, any Guaranty, any other Guarantor Documents and all other certificates, documents, agreements and instruments delivered to the Lenders under or in connection with this Agreement.

"LOAN" means any Closing Date Loan and the Additional Loans.

"MAJORITY LENDERS" means at any time Lenders holding at least 51% of the then aggregate unpaid principal amount of the Loans plus the unused portion of the Additional Commitment, or, if no such principal amount is then outstanding, Lenders having at least 51% of the aggregate Commitments.

"MATERIAL ADVERSE EFFECT" means any event, matter, condition or circumstance (including any such event, matter, condition or circumstance which would occur upon notice or lapse of time or both) which (i) has or would reasonably be expected to have a material adverse effect on (A) the business, prospects, properties, assets, operations, results of operations or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (B) the intellectual property of the Company and its Subsidiaries, taken as a whole, (C) the transactions contemplated in the Loan Documents or the other Transaction Documents (as defined in the Securities Purchase Agreement), or by the agreements and instruments to be entered into in connection herewith or therewith, or (D) the authority or ability of the Company to perform its obligations under the Loan Documents or the other Transaction Documents, or (ii) materially adversely affects the legality, validity, binding effect or enforceability of any of the Loan Documents or the other Transaction Documents, the rights and remedies of the Lenders or any Collateral Agent thereunder, or the validity, perfection or priority of any Lien granted to the Lenders or any Collateral Agent under any of the Collateral Documents.

"MATERIAL CONTRACT" means, (i) each contract or agreement listed in Schedule 2 hereto, and (ii) all other contracts or agreements material to the business, properties, assets, operations, results of operations or condition (financial or otherwise) or prospects of the Company and its Subsidiaries entered into after the date hereof.

"MATURITY DATE" means the Additional Loan Maturity Date and the Closing Date Loan Maturity Date, as the case may be.

"MULTIEMPLOYER PLAN" means a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) to which the Company, any Guarantor or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

"NET CASH PROCEEDS" means when used in respect of any sale of assets of, issuance of any debt or equity securities of, or the receipt of proceeds

upon the incurrence of Indebtedness for borrowed money of, the Company or any Subsidiary, the gross proceeds in cash or cash equivalents received by the Company or such Subsidiary (including such proceeds subsequently received in respect of noncash consideration initially received and amounts initially placed in escrow that subsequently become available) from such disposition, issuance or incurrence of Indebtedness, less all direct costs and expenses incurred or to be incurred in connection therewith, and all federal, state, local and foreign taxes assessed or to be assessed, in connection therewith.

"NOTE" means a promissory note made by the Company in favor of a Lender evidencing Loans made by such Lender, substantially in the form of EXHIBIT A.

"OBLIGATIONS" means the indebtedness, liabilities and other obligations of the Company and any Guarantor to the Lenders or any Collateral Agent under or in connection with this Agreement, the Notes and the other Loan Documents, including the Loans, all interest accrued thereon, all fees due under this Agreement and all other amounts payable by the Company to any Lender or any Collateral Agent thereunder or in connection therewith, whether now or hereafter existing or arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and including interest that accrues after the commencement by or against the Company or any Guarantor of any Insolvency Proceeding naming such Person as the debtor in such proceeding.

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"PENSION PLAN" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Company, any Guarantor or any ERISA Affiliate thereof or to which the Company, any Guarantor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA.

"PERMITTED LIENS" means: (i) Liens in favor of the Lenders or any Collateral Agent; (ii) the existing Liens listed in SCHEDULE 2; (iii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and which are adequately reserved for in accordance with GAAP, PROVIDED the same does not have priority over any of the Lender's Liens and no notice of tax lien has been filed of record; (iv) Liens of materialmen, mechanics, warehousemen, carriers or employees or other similar Liens provided for by mandatory provisions of law and securing obligations either not delinquent or being contested in good faith by appropriate proceedings, PROVIDED (A) such Liens do not have priority over any of the Lender's Liens and do not in the aggregate materially impair the use or value of the property or risk the loss or forfeiture thereof and (B) with

respect to delinquent amounts being contested in good faith by appropriate proceedings, the aggregate amount secured by such Liens does not at any time exceed $100,000; (v) Liens consisting of deposits or pledges to secure the performance of bids, trade contracts, leases, public or statutory obligations, or other obligations of a like nature incurred in the ordinary course of business (other than for Indebtedness); (vi) restrictions and other minor encumbrances on real property which do not in the aggregate impair the use or value of such property or risk the loss or forfeiture thereof, (vii) Liens arising from judgments in circumstances not constituting an Event of Default under Section 6.01(i); and (viii) any non-exclusive licenses or sublicenses of intellectual property granted to others in the ordinary course of business of the Company which are permitted under this Agreement and do not interfere with the business of the Company and any interest or title of a licensor under any license permitted by this Agreement.

"PERSON" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or any other entity of whatever nature or any governmental agency or authority.

"PLAN" means (i) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by the Company, any Guarantor or any Subsidiary thereof or to which the Company, any Guarantor or any Subsidiary thereof has ever made, or was obligated to make, contributions, (ii) a Pension Plan, or (iii) a Qualified Plan.

"PLEDGE AGREEMENT" means a Stock Pledge Agreement among the Company, or any Guarantor, and the Lenders, in form and substance satisfactory to the Majority Lenders.

"PRO RATA SHARE" means, as to any Lender at any time, the percentage equivalent (expressed as a decimal) at such time of the aggregate principal amount of such Lender's Loans divided by the aggregate principal amount of the Loans then held by all Lenders (or, if no such principal amount is then outstanding, such Lender's Commitment divided by the combined Commitment of all Lender's). The initial Pro Rata Share of each Lender is set forth opposite such Lender's name in SCHEDULE 1 under the heading "Pro Rata Share."

"QUALIFIED PLAN" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Company, any Guarantor or any ERISA Affiliate thereof or to which the Company, any Guarantor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

"RESPONSIBLE OFFICER" means, with respect to any Person, the chief executive officer, the president or the chief financial officer of such Person, or any other senior officer of such Person having substantially the same

authority and responsibility.

"SEC" means the Securities and Exchange Commission.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SECURITIES PURCHASE AGREEMENT" means the Securities Purchase Agreement, dated as of the date hereof, among the Company and the investors listed on signature pages thereof.

"SECURITY AGREEMENT" means a Security Agreement among the Company (or any Guarantor) and the Lenders, in form and substance satisfactory to the Majority Lenders.

"SOLVENT" means, as to any Person at any time, that (i) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (ii) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (iii) such

Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

"SUBORDINATED DEBT" means the Indebtedness of the Company to Artal Long Biotech Portfolio LLC pursuant to the Subordinated Note Purchase Agreement, and any other Indebtedness of the Company or any Subsidiary subordinated to the Obligations, incurred or outstanding and subject to a Subordination Agreement.

"SUBORDINATION AGREEMENT" means the notes issued to Artal Long Biotech Portfolio LLC pursuant to the Subordinated Note Purchase Agreement, and any other subordination agreement with respect to Subordinated Debt among the Company, the applicable creditor(s) and the Lenders, in form and substance satisfactory to the Majority Lenders and on terms satisfactory to the Majority Lenders.

"SUBORDINATED NOTE PURCHASE AGREEMENT" means that certain Note Purchase Agreement, dated as of February 23, 2004, by and among the Company, Durus Life Sciences Master Fund Ltd and Artal Long Biotech Portfolio LLC.

"SUBSIDIARY" means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock or other equity interest is owned directly or indirectly by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

"UNITED STATES" and "U.S." each means the United States of America.

SECTION 1.02 INTERPRETATION. In the Loan Documents, except to the extent the context otherwise requires: (i) any reference to an Article, a Section, a Schedule or an Exhibit is a reference to an article or section thereof, or a schedule or an exhibit thereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the Section or subsection in which the reference appears; (ii) the words "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement or any other Loan Document as a whole and not merely to the specific Article, Section, subsection, paragraph or clause in which the respective word appears; (iii) the meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined; (iv) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation;" (v) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, amendments and restatements and other modifications thereto (including any extensions or renewals), but only to the extent such amendments, amendments and restatements and other modifications are not prohibited by the terms of the Loan Documents; (vi) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to; (vii) any table of contents, captions and headings are for convenience of reference only and shall not affect the construction of this Agreement or any

other Loan Document; and (viii) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

ARTICLE II
THE LOANS

SECTION 2.01 THE LOANS.

(a) Closing Date Loans. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make a term loan (each a "Closing Date Loan" and collectively, the "Closing Date Loans") to the Company on the Closing Date, in the principal amount of its Closing Date Commitment.

(b) Additional Loans. The Additional Loan Lender agrees, on the terms and conditions hereinafter set forth, to make additional term loans (each an

"Additional Loan" and collectively, the "Additional Loans") to the Company from time to time on any Business Day during the period commencing the day after the Closing Date until December 31, 2006 (the "Additional Commitment Availability Expiry Date"), in an aggregate principal amount up to but not exceeding its Additional Commitment.

(c) No Reborrowing. Any amount of the Loans repaid may not be reborrowed.

SECTION 2.02 BORROWING PROCEDUR FOR LOANS.

(a) Closing Date Loans. Upon fulfillment of the applicable conditions set forth in Article III, Durus shall make the Closing Date Loan available to the Company as follows: (i) $5,000,000 (or such greater amount as represents the outstanding principal amount of the Bridge Loan as of the Closing Date and all accrued and unpaid interest thereon as of such date) shall be applied to roll over (and amend and restate) the Bridge Loan, without novation, into a Closing Date Loan made by Durus (the "Five Million Closing Date Loan"), and (ii) $10,778,000 of the outstanding principal amount of the notes held by Durus pursuant to the Subordinated Note Purchase Agreement shall be surrendered to the Company and cancelled in exchange for $10,778,000 principal amount of Closing Date Loan (the "$10.778 Million Closing Date Loan").

(b) Additional Loans. Each Additional Loan shall be made upon written notice from the Company to the applicable Additional Loan Lender obligated to make such loan, which notice shall be received by the Additional Loan Lender not later than 12:00 noon (New York time) at least five (5) Business Days prior to the proposed borrowing date of such Additional Loan (each an "Additional Loan Borrowing Date"). Such notice of borrowing shall be irrevocable and binding on the Company and shall specify the proposed Additional Loan Borrowing Date (which shall be no earlier than the third Business Day following receipt of such notice by the Additional Loan Lender), the amount of the borrowing (which shall be at least $500,000 or a greater amount in increments of $50,000), and payment instructions with respect to the funds to be made available to the Company. Upon fulfillment of the applicable conditions set forth in Article III, the Additional Loan Lender shall make the Additional Loan available to

the Company in same day funds, or such other funds as shall separately be agreed upon by the Company and the Additional Loan Lender, in accordance with the payment instructions provided to the Lenders.

SECTION 2.03 NOTES. As additional evidence of the Indebtedness of the Company to the Lenders resulting from the Loan made by such Lenders, the Company shall execute and deliver to (i) each Lender pursuant to Article III, a Note, dated the Closing Date, in the principal amount of the Closing Date Loan made by such Lender on the Closing Date (or, in the case of the Bridge Loan rolled over into a Closing Date Loan, made on the borrowing date thereof), and (ii) the Additional Loan Lender on each Additional Loan Borrowing Date, pursuant to

Article III, a Note, dated such Additional Loan Borrowing Date, in the principal amount of the Additional Loan made by the Additional Loan Lender on such Additional Loan Borrowing Date. The Lenders shall record in their internal records the dates and amounts of the Loan made by them, the amount of principal and interest due and payable to the Lenders from time to time hereunder, the increase to principal as a result of interest added thereto from time to time hereunder, each payment of principal and interest and the resulting unpaid principal balance of the Loans. Any such recordation shall be conclusive absent manifest error of the accuracy of the information so recorded. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Company hereunder and under the Notes to pay any amount owing with respect to the Loans.

SECTION 2.04 INTEREST.

(a) Interest Rate; Interest Payment Dates. Subject to subsection (b) below, the Company shall pay to each Lender interest on the unpaid principal amount of the Loans made by such Lender (as such principal amount may be increased as a result of the provisions of this Section) from the date of such Loans until the maturity thereof, at a rate per annum equal at all times to 7%, quarterly in arrears on the last Business Day in each quarter, on the date of any prepayment of such Loan, and at maturity. Except as otherwise provided herein, in lieu of payment in cash of any interest due and payable on the Loans, on each interest payment date any and all such interest payable shall be paid by adding an amount equal to the aggregate accrued but unpaid interest payable with respect to such interest payment date to the principal amount of the Loans. Notwithstanding the foregoing, upon written notice to the Lenders made at least five (5) Business Day prior to the applicable interest payment date, the Company may pay in cash all interest due and payable on the Loans with respect to any interest payment dates specified in such notice.

(b) Default Rate of Interest. In the event that any amount of principal of or interest on any Loan, or any other amount payable hereunder or under the Loan Documents, is not paid in full when due (whether at stated maturity, by acceleration or otherwise), the Company shall pay interest on such unpaid principal, interest or other amount, from the date such amount becomes due until the date such amount is paid in full, payable on demand, at a rate per annum which is equal at all times to 3% higher than the rate of interest set forth in Section 2.04(a). Payment of any such interest at the rate described above shall not constitute a waiver of any Event of Default and shall be without prejudice to the right of the Lenders to exercise any of its rights and remedies under the Loan Documents.

(c) Computations. All computations of interest hereunder shall be made on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days occurring in the period for which any such interest is payable.

(d) Highest Lawful Rate. In no event shall the Company be obligated to

pay the Lenders interest, charges or fees at a rate in excess of the highest rate permitted by applicable law.

SECTION 2.05 TERMINATION AND REDUCTION OF THE ADDITIONAL COMMITMENT.

(a) Termination of Additional Commitment. On the Additional Commitment Availability Expiry Date any remaining Additional Commitment shall terminate in full.

(b) Mandatory Reduction of Additional Commitment. Upon the issuance and sale of any debt or equity securities by the Company, or the incurrence of Indebtedness for borrowed money by the Company on or before the Additional Commitment Availability Expiry Date, the Additional Commitment shall automatically be reduced by an amount equal to the Net Cash Proceeds therefrom; PROVIDED, HOWEVER that no such reduction shall required upon (i) any such issuance, sale or incurrence pursuant to the transactions contemplated by this Agreement and the Securities Purchase Agreement and the other documents entered into in connection therewith, or (ii) any such issuance and sale of equity securities of the Company pursuant to a stock option plan or restricted stock purchase plan approved by the Compensation Committee of the Company's Board of Directors, including the approval of the members of the Compensation Committee elected or otherwise designated by Durus.

SECTION 2.06 REPAYMENT OF THE LOANS. The Company shall repay to each Lender the outstanding principal amount of the Loans made by such Lender in full on the applicable Maturity Date.

SECTION 2.07 PREPAYMENT OF THE LOANS.

(a) Optional Prepayments. The Company may, upon written notice to each Lender at least five (5) Business Days prior to the proposed prepayment date, prepay the outstanding amount of the Loans in whole or in part, without premium or penalty, at any time and from time to time; PROVIDED, that any prepayment shall be in a principal amount of at least $500,000 or a greater amount in increments of $50,000. The notice given of any such prepayment shall specify the date and amount of the prepayment. If the notice of prepayment is given, the Company shall make such prepayment and the prepayment amount specified in such notice shall be due and payable on the date specified therein, with accrued and unpaid interest to such date on the amount prepaid. Partial prepayments of the Loans shall be applied (y) FIRST, the outstanding principal amount of the Additional Loans, and (z) SECOND, the outstanding principal amount of the other Loans.

(b) Mandatory Prepayments.

(i) Subject to clause (iii), upon the sale, transfer or other disposition of any assets (or group of related assets) by the Company or any Subsidiary outside of the ordinary course of its business, the Company shall, within one Business Day of the Company's or such

Subsidiary's receipt of the proceeds thereof, prepay the outstanding principal amount of the $10.778 Million Closing Date Loan, together with accrued and unpaid interest to the date of such prepayment on the amount so prepaid, in an amount equal to 100% of the Net Cash Proceeds therefrom; PROVIDED, HOWEVER, that any such prepayment shall not be required if the Net Cash Proceeds from such sale, transfer or other disposition, when added to the Net Cash Proceeds arising from all other such transactions in the same fiscal year, is less than $100,000.

(ii) Subject to clause (iii), within one Business Day of receipt by the Company of the Net Cash Proceeds from a financing described in Section 2.05(b), (and, if received by the Company on or prior to the Additional Commitment Availability Expiry Date, to the extent such Net Cash Proceeds exceed the unused Additional Commitment) the Company shall prepay the outstanding principal amount of the $10.778 Million Closing Date Loan together with accrued and unpaid interest to the date of such prepayment on the amount so prepaid, in an amount equal to 100% of the Net Cash Proceeds therefrom; PROVIDED, HOWEVER that no such prepayment shall required upon (A) any such issuance and sale of equity securities pursuant to the transactions contemplated by the Securities Purchase Agreement and the other documents entered into in connection therewith, or (ii) any such issuance and sale of equity securities of the Company pursuant to a stock option plan or restricted stock purchase plan approved by the Compensation Committee of the Company's Board of Directors, including the approval of the members of the Compensation Committee elected or otherwise designated by Durus.

(iii) Notwithstanding anything therein to the contrary, the aggregate principal amount required to be prepaid under clauses (i) and (ii) shall be limited to an amount equal to the aggregate outstanding principal amount of the Additional Loans.

(iv) The Company shall give the Lenders at least ten Business Days prior written notice of any event that would cause the Loans to be prepaid under this Section 2.07(b).

(v) The provisions of this Section 2.07(b) and Section 2.05(b) shall not be deemed to be implied consent to any such sale, transfer or other disposition or such issuance, sale or incurrence otherwise prohibited by the terms and conditions of this Agreement.

SECTION 2.08 PAYMENTS.

(a) Payments. The Company shall make each payment under the Loan Documents, unconditionally in full without set-off, counterclaim or, to the extent permitted by applicable law, other defense, and free and clear of, and without reduction for or on account of, any present and future taxes or withholdings, and all liabilities with respect thereto. Subject to Section 2.04(a), each payment shall be made not later than 12:00 noon (New York time) on the day when due to each Lender in Dollars and in same day funds, or such other funds as shall be separately agreed upon by the Company and the Lenders, in accordance with the Lenders' payment instructions.

(b) Extension. Whenever any payment hereunder shall be stated to be due, or whenever any interest payment date or any other date specified hereunder would otherwise occur, on a day other than a Business Day, then, except as otherwise provided herein, such

payment shall be made, and such interest payment date or other date shall occur, on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder.

(c) Application. After the exercise of remedies provided for in Section 6.02 (or after the Loans have automatically become immediately due and payable as set forth in Section 6.02) each payment by or on behalf of the Company hereunder shall, unless a specific determination is made by the Majority Lenders with respect thereto, be applied (i) FIRST, to any fees, costs, expenses and other amounts (other than principal and interest) due the Lenders under the Loan Documents; (ii) SECOND, to accrued and unpaid interest due the Lenders; and (III) THIRD, to principal due the Lenders.

(d) Pro Rata Treatment. Except as otherwise provided in this Agreement, each payment (including each prepayment) by the Company on account of the principal of and interest on the Loans and on account of any fees shall be made ratably in accordance with the respective Pro Rata Shares of the Lenders.

SECTION 2.09 RIGHT OF SET-OFF. Upon the occurrence and during the continuance of any Event of Default each Lender hereby is authorized at any time and from time to time, without notice to the Company (any such notice being expressly waived by the Company), to set off and apply any obligations or indebtedness at any time owing by such Lender to the Company against any and all of the then due Obligations of the Company now or hereafter existing under this Agreement and the other Loan Documents, irrespective of whether or not such Lender shall have made any demand under this Agreement or any such other Loan Document. The Lender agrees promptly to notify the Company after any such set-off and application made by the Lender; PROVIDED that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 2.09 are in addition to other rights and remedies (including other rights of set-off) which such Lender may have.

SECTION 2.10 OBLIGATIONS SEVERAL. The obligations of the Lenders under the Loan Documents are several and not joint. The failure of any Lender or any Collateral Agent to carry out its obligations thereunder shall not relieve any other Lender or any Collateral Agent of any obligation thereunder, nor shall any Lender or any Collateral Agent be responsible for the obligations of, or any action taken or omitted by, any other Person hereunder or thereunder. Notwithstanding anything to the contrary in this Section 2.10, if Durus shall have assigned all or any part of its Additional Loan Commitment and any such assignee shall fail to make its portion of the Additional Loans as and when required hereunder, then Durus shall promptly make such Additional Loans to the

Company, which amount shall be included in the calculation of Durus' Pro Rate Share; PROVIDED, HOWEVER that nothing herein shall be deemed a waiver by Durus of any claim, right or remedy it may have against such defaulting Additional Lender with respect to such Additional Lender's failure to make such Additional Loans. Nothing contained in any Loan Document shall be deemed to cause any Lender or any Collateral Agent to be considered a partner of or joint venturer with any other Lender or Lenders, any Collateral Agent, any Guarantor or the Company.

SECTION 2.11 SHARING. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Loans made by it (other than pursuant to a provision hereof providing for non-pro rata treatment) in excess of its Pro Rata Share of payments on account of the Loans obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders, without recourse, such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them in accordance with the respective Pro Rata Shares of the Lenders; PROVIDED, HOWEVER, that if all or any portion of such excess payment is thereafter recovered by or on behalf of the Company from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. The Company agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.11 may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Company in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.11 shall be required to implement the terms of this Section 2.11.

ARTICLE III
CONDITIONS PRECEDENT

SECTION 3.01 CONDITIONS PRECEDENT TO THE CLOSING DATE LOANS. The obligation of each Lender to make its Closing Date Loan on the date of the borrowing hereunder (the "Closing Date") shall be subject to the satisfaction of each of the following conditions precedent before or concurrently with the making of the Loans:

(a) Loan Documents. The Lenders shall have received the following Loan Documents: (i) this Agreement and the Notes required hereunder with respect to the Closing Date Loans, executed by the Company; and (ii) the Collateral Documents and the Guarantees of each Subsidiary of the Company as of the Closing Date, executed by each of the respective parties thereto.

(b) Documents and Actions Relating to Collateral. The Lenders shall have received, in form and substance satisfactory to them, results of such Lien searches as they shall reasonably request, and evidence that all filings, registrations and recordings have been made in the appropriate governmental

offices, and all other action requested by the Majority Lenders has been taken, which shall be necessary to create, in favor of any Collateral Agent or the Lenders, a perfected first priority Lien on the Collateral.

(c) Additional Closing Documents. The Lenders shall have received the following, in form and substance satisfactory to the Majority Lenders:

(i) certificates of one or more nationally recognized insurance brokers or other insurance specialists acceptable to the Majority Lenders, dated as of a recent date prior to the Closing Date, certifying the insurance maintained by the Company and any Guarantor as required hereunder and under the Collateral Documents is in full force and effect;

(ii) evidence that all (A) authorizations or approvals of any governmental agency or authority, and (B) as requested by the Majority Lenders, approvals or

consents of any other Person (including the consent of any party to a Material Contract to the grant of a security interest therein to Lenders), required in connection with the execution, delivery and performance of the Loan Documents shall have been obtained;

(iii) (A) a certificate evidencing the formation and good standing of the Company and each Guarantor in each such Person's jurisdiction of formation issued by the Secretary of State (or equivalent) of such jurisdiction of formation as of a date within five (5) days prior to the Closing Date, and (B) a certificate evidencing the Company's and each Guarantor's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which such Person conducts business and is required to so qualify, as of a date within five (5) days of the Closing Date.

(iv) a certificate of the Secretary or other appropriate officer of the Company, dated the Closing Date, certifying (A) copies of the articles or certificate of incorporation, and bylaws, or other applicable organizational documents, of the Company and the resolutions and other actions taken or adopted by the Company authorizing the execution, delivery and performance of the Loan Documents, and (B) the incumbency, authority and signatures of each officer of the Company authorized to execute and deliver the Loan Documents and act with respect thereto; and

(v) a certificate of the Secretary or other appropriate officer of each Guarantor, dated the Closing Date, certifying (A) copies of the articles or certificate of incorporation, and bylaws, or other applicable organizational documents, of such Guarantor and the resolutions and other actions taken or adopted by such Guarantor authorizing the execution, delivery and performance of its Guarantor Documents, and (B) the incumbency, authority and signatures of each officer of such Guarantor authorized to execute and deliver its Guarantor

Documents and act with respect thereto.

(d) Consummation under the Securities Purchase Agreement. Before or concurrently with the making of the Closing Date Loans (i) the conditions precedent to the Initial Closing under (and as defined in) the Securities Purchase Agreement shall have been satisfied (or waived as provided therein) and (ii) the transactions contemplated by the Initial Closing shall have been consummated.

(e) Budget. The Majority Lenders shall have approved the Budget.

(f) [OTHER CONDITIONS PRECEDENT--INCLUDING THOSE DETERMINED AS A RESULT OF DUE DILIGENCE]

SECTION 3.02 CONDITIONS PRECEDENT TO THE ALL LOANS. The obligation of each Lender to make its Loan shall also be subject to the satisfaction of each of the following conditions precedent:

(a) Notice and Certificate. In the case of a borrowing constituting an Additional Loan (i) the proceeds of the Five Million Closing Date Loan shall have been used in full to fund operations in accordance with the Budget, and (ii) the Company has sought to raise additional funds through the issuance and sale of debt or equity securities of the Company and the incurrence of additional Indebtedness for borrowed money, during the period from the

Closing Date to the date of such certificate (it being understood that the amount of the Additional Loan Commitment shall be reduced by the Net Cash Proceeds received from any such alternative financing), and (iii) the Company shall have given its notice of borrowing to the Additional Loan Lender as provided in Section 2.02, accompanied by a certificate of a Responsible Officer of the Company certifying that the foregoing conditions in clauses (i) and (ii) of this Section 3.02(a) have been satisfied.

(b) Representations and Warranties; No Default. On the date of the borrowing of such Loans, both before and after giving effect thereto and to the application of proceeds therefrom: (i) the representations and warranties contained in Article IV and in the other Loan Documents shall be true, correct and complete in all material respects on and as of the date of the Loans as though made on and as of such date; and (ii) no Default shall have occurred and be continuing or shall result from the making of the Loans. The giving of any notice of borrowing and the acceptance by the Company of the proceeds of the Loans shall be deemed a certification to the Lenders that on and as of the date of the Loans such statements are true.

(c) Additional Documents. The Lenders shall have received, in form and substance satisfactory to the Majority Lenders such additional approvals, documents and other information as the Majority Lenders may reasonably request.

(d) Fees and Expenses. The Company shall have paid all fees and invoiced costs and expenses then due hereunder and under this Agreement and the other Loan Documents

(e) Legal Opinion. The Lenders shall have received an opinion of legal counsel to the Company and any Guarantor, dated the Closing Date, in form and substance satisfactory to the Majority Lenders.

(f) No Event of Default. There shall be in existence no event, circumstance or conditions that with notice, lapse of time or other action constitutes or would be reasonably expected to constitute a Material Adverse Effect or any other Event of Default under this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

The Representations and Warranties of the Company set forth in Section 2 of the Securities Purchase Agreement shall be applicable to this Agreement and are incorporated herein by this reference, MUTATIS MUTANDIS, and made a part of this Agreement as if fully set forth herein, including for purposes of this Article IV, all capitalized terms used in such representations and warranties.

ARTICLE V
COVENANTS

SECTION 5.01 REPORTING COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents) or the Lenders shall have any Commitments, the Company agrees that:

(a) Financial Statements and Other Reports. The Company will furnish to the Lenders:

(i) Unless filed with the SEC through the EDGAR System and available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its annual reports and quarterly reports on Form 10-K and 10-Q, any interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements for any period, any current reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, which annual reports shall be accompanied by a report and opinion thereon of a firm of independent certified public accountants of recognized national standing acceptable to the Majority Lenders and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(ii) within one (1) Business Day of the filing of any annual report and quarterly report referred to clause (i), a certificate of a

Responsible Officer of the Company in form and substance satisfactory to the Lenders stating whether any Default exists on the date of such certificate, and if so, setting forth the details thereof and the action which the Company is taking or proposes to take with respect thereto; and

(iii) as soon as available and in any event not later than 30 days prior to the end of each fiscal year of the Company, an operating budget for the Company and its Subsidiaries approved by the Board of Directors of the Company for the upcoming fiscal year, in form and substance satisfactory to the Majority Lenders, such budget to be prepared in accordance with GAAP and on a fair and reasonable basis and in good faith, and to be based on estimates and assumptions believed by the Company to be fair and reasonable as of the time made and from the best information then available to the Company in the light of the current and reasonably foreseeable business conditions.

(b) Additional Information. The Company will furnish to the Lenders:

(i) promptly after the Company has knowledge or becomes aware thereof, notice of the occurrence of any Default;

(ii) prompt written notice of all actions, suits and proceedings before any governmental agency or authority or arbitrator pending, or to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries, including any actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the best of the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries, or with respect to the ownership, use, maintenance and operation of their respective

properties, relating to Environmental Laws, which (A) involve an aggregate liability equal to $50,000 or more, or (B) otherwise would reasonably be expected to have a Material Adverse Effect;

(iii) promptly after submission to any governmental agency or authority, all documents and information furnished to such governmental agency or authority in connection with any investigation of the Company or any Guarantor other than routine inquiries by such governmental agency or authority;

(iv) prompt written notice of any ERISA Event affecting the Company or any ERISA Affiliate (but in no event more than ten (10) Business Days after such event), together with a copy of any notice with respect to such event that may be required to be filed with a governmental agency or authority and any notice delivered by a governmental agency or authority to the Company or any ERISA Affiliate with respect to such event;

(v) as soon as possible and in any event within ten (10) Business Days after execution, receipt or delivery thereof, copies of material notices that the Company or any Subsidiary delivers or receives in connection with any

Material Contract;

(vi) prompt written notice of any other condition or event which has resulted, or that could reasonably be expected to result, in a Material Adverse Effect;

(vii) prompt notice of (A) any material change in the composition of the Company's and its Subsidiaries' intellectual property, taken as a whole, (B) the registration (or filed application for registration) of any copyright, patent or trademark not previously disclosed in writing to the Lenders, and (C) any event that materially adversely affects the value of the Company's and its Subsidiaries' intellectual property;

(viii) promptly after the Company has knowledge or becomes aware thereof, notice of any deviation from the Budget, other than DE MINIMIS deviations therefrom;

(ix) within three (3) Business Day after release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries,

(x) Unless filed with the SEC through the EDGAR System and available to the public through the EDGAR system, copies of any notices, reports and other information made available or given to the shareholders of the Company generally, and copies of all other reports or filings, if any, by the Company or any of its Subsidiaries with the SEC or any national securities exchange; contemporaneously with the making available or giving thereof to the shareholders or the filing with the SEC or such other national securities exchange; and

(xi) such other statements, budgets, forecasts, projections, reports, or other information respecting the operations, properties, business or condition (financial or otherwise) of the Company or its Subsidiaries (including with respect to the Collateral) as the Majority Lenders may from time to time reasonably request, in form and substance reasonably satisfactory to the Majority Lenders.

Each notice pursuant to clauses (i) through (viii) of this subsection (b) shall be accompanied by a written statement by a Responsible Officer of the Company setting forth details of the occurrence referred to therein and the action which the Company is taking or proposes to take with respect thereto.

SECTION 5.02 FFIRMATIVE COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents) or the Lenders shall have any Commitments, the Company agrees that:

(a) Preservation of Existence, Etc. The Company will, and will cause

each of its Subsidiaries to, maintain and preserve its legal existence, its rights to transact business and all other rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties, except in connection with any transactions expressly permitted by Section 5.03, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in the jurisdiction of its formation and in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(b) Reporting Status. The Company will timely file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(c) Listing. The Company will use its best efforts to obtain and maintain the listing and trading of the Common Stock (as defined in the Securities Purchase Agreement) on the NASDAQ Capital Market or, in lieu thereof, the NASDAQ National Market, and the Company will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the NASDAQ Capital Market or the NASDAQ National Market, as the case may be, and other exchanges or quotation systems, as applicable. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the NASDAQ Capital Market.

(d) Payment of Taxes, Etc. The Company will, and will cause each of its Subsidiaries to, timely file all tax returns and reports, and to pay and discharge (i) all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, all trade accounts payable in accordance with usual and customary business terms, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Company or any Subsidiary, except to the extent such taxes, fees, assessments or governmental charges or levies, or such trade accounts or claims, are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (ii) all other lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and (iii) all permitted Indebtedness, as and when due and payable, except to the extent any trade accounts are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

(e) Maintenance of Insurance. The Company will, and will cause each of its Subsidiaries to, carry and maintain in full force and effect, at its own expense and with financially sound and reputable insurance companies (not

Affiliates of the Company), insurance in such amounts, with such deductibles and covering such risks as is customarily carried in accordance with sound business practice by companies engaged in the same or similar businesses and owning similar properties in the localities where the Company or such Subsidiary operates, and in any event in amount, adequacy and scope satisfactory to the Board of Directors of the Company.

(f) Keeping of Records and Books of Account. The Company will, and will cause each of its Subsidiaries to, keep adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all financial transactions of the Company and its Subsidiaries.

(g) Inspection Rights. The Company will at any reasonable time and from time to time, at the Company's expense, (i) permit any Lender designated by the Majority Lenders, or any of such designated Lender's agents or representatives, to visit and inspect any of the Collateral or other properties of the Company and its Subsidiaries and to examine and make copies of and abstracts from the records and books of account of the Company and its Subsidiaries, and to discuss the business affairs, finances and accounts of the Company and any such Subsidiary with any of the officers, employees or accountants of the Company or such Subsidiary, and (ii) and permit such designated Lender or any of its agents or representatives to conduct periodic audits of the Collateral at such frequencies as the Majority Lenders shall deem appropriate; PROVIDED, that so long as no Event of Default shall have occurred and be continuing, such inspections and audits for which the Company shall be charged shall be limited to two (2) in any one calendar year. In furtherance of the foregoing, the Company hereby authorizes and will cause each of its Subsidiaries to authorize, its and each Subsidiaries' independent accountants to discuss the business affairs, finances and accounts of such Person with the agents and representatives of such designated Lender in accordance with this Section.

(h) Compliance with Laws, Agreements, Etc. The Company will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations and orders of any governmental agency or authority, including all Environmental Laws and ERISA, and the terms of any Material Contract and, to the extent such non-compliance could reasonably be expected to have a Material Adverse Effect, any other indenture, contract or instrument to which it may be a party or under which it or its properties may be bound.

(i) Maintenance of Properties, Etc. The Company will, and will cause each of its Subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition and otherwise in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear excepted.

(j) Licenses. The Company will, and will cause each of its Subsidiaries to, obtain and maintain, and to take all action necessary to timely renew, all licenses, permits, authorizations, consents, filings, exemptions, registrations and other governmental approvals of any governmental agency or

authority necessary or useful in connection with the execution,

delivery and performance of the Loan Documents, the consummation of the transactions therein contemplated or (except where the failure to do so could not reasonably be expected to result in liabilities or obligations in excess of $10,000 individually or in the aggregate at any time outstanding) the operation and proper conduct of its business and ownership of its properties.

(k) Protection of Intellectual Property Rights. Except, in the case of clauses (i) and (iii), if reasonably and in good faith determined by the Board of Directors of the Company that such intellectual property is of negligible economic value to the Company or its Subsidiaries, the Company will, and will cause each of its Subsidiaries to: (i) protect, defend and maintain the validity and enforceability of its intellectual property; (ii) promptly advise the Lenders in writing of any infringements of its intellectual property; and (iii) not allow any intellectual property to be abandoned, forfeited or dedicated to the public without the Majority Lenders' written consent.

(l) Use of Proceeds. The Company will use the proceeds of the Loans solely (i) in exchange for the surrender and cancellation of subordinated Indebtedness issued pursuant to the Subordinated Note Purchase Agreement, (ii) to roll over the Bridge Loan and accrued and unpaid interest thereon into a Closing Date Loan, and (ii) to fund business operations in accordance with the Budget. No part of such proceeds will be used for "purchasing" or "carrying" any "margin stock", or for any purpose which violates, or which would be inconsistent with, the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System. The Company shall hold the cash proceeds from the Five Million Closing Date Loan, in a segregated bank account apart from other cash assets of the Company which account shall be subject to an account control agreement in favor of the Lenders, and shall use such Five Million Closing Date Loan proceeds only after it has expended all of the Company's other cash and cash equivalents including any investments or other liquid assets; provided, however that the Company shall not be required to so expend any restricted cash or cash equivalents held at, and for the benefit of, JPMorgan Chase Bank, NA, to secure the Company's reimbursement obligation as of the date hereof with respect to a letter of credit issued by JPMorgan Chase Bank, NA, for the benefit of Two Lincolnshire Office Venture, LLC in connection with the Company's lease of the premises at Two Marriott Drive, Lincolnshire, Illinois, provided that in no event shall the amount of such restricted cash or cash equivalents be increased without approval of the Majority Lenders.

(m) Additional Subsidiaries. (i) Promptly after the date the Company incorporates, creates or acquires any additional Subsidiary, and, in any event, within two Business Days following receipt by the Company from the Lenders of a security agreement and a guaranty of the Obligations each in form and substance satisfactory to the Majority Lenders, the Company shall cause such Subsidiary to execute and deliver such guaranty and security agreement to the Lenders; (ii) within five days after the date such Subsidiary becomes a Subsidiary, the

Company shall (A) deliver to Lenders a supplement to the Security Agreement executed by the Company referencing such new Subsidiary, and (B) cause such Subsidiary to have executed and filed any UCC-1 financing statements furnished by the Lenders in each jurisdiction in which such filing is necessary to perfect the security interest of the Lenders in the Collateral of such Subsidiary and in which the Majority Lenders request that such filing be made; (iii) additionally, the Company and such Subsidiary shall have executed and delivered to the Lenders such other items as reasonably requested by the Majority Lenders in connection with

the foregoing, including resolutions, incumbency and officers' certificates, opinions of counsel, search reports and other certificates and documents; and (iv) the Majority Lenders may elect in their sole discretion to waive any such collateral delivery requirement set forth in this subsection (m) for any Subsidiary that will remain a dormant or shell Subsidiary. The Lenders agree to waive any such requirement in the case of any non-U.S. Subsidiary (or in the case of a stock pledge, to require the pledge of not more than 65% of the capital stock or other ownership interests of any such Subsidiary constituting a direct (I.E., "first tier") non-U.S. Subsidiary), if any adverse tax consequences under applicable U.S. tax law would result therefrom. The provisions of this subsection (m) shall not be deemed to be implied consent to any such organization, creation or acquisition of any additional Subsidiary otherwise prohibited by the terms and conditions of this Agreement.

(n) Subordination. The Company will cause all Specified Indebtedness now or hereafter owed by it to any Person to be subordinated in right of payment and security to the Indebtedness and other Obligations owing to the Lenders in accordance with a Subordination Agreement. As used herein, "Specified Indebtedness" means all Indebtedness owing to any of its Affiliates (other than the Lenders) and Indebtedness of the types referred to in clauses (i), (iii), (iv), (v) and (vi) of the definition of "Indebtedness" herein and all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in such clauses (i), (iii), (iv), (v) and (vi), but shall not include the Indebtedness listed on SCHEDULE 2 (other than the Indebtedness under the Subordinated Note Purchase Agreement).

(o) Responsible Officer Change. If any Responsible Officer ceases to hold such office with the Company, the Company shall replace such Responsible Officer with a replacement satisfactory to the Majority Lenders within 60 days after such Responsible Officer's departure from the Company.

(p) Further Assurances and Additional Acts. The Company will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as the Majority Lenders shall deem necessary or reasonably appropriate to effectuate the purposes of the Loan Documents, and promptly provide the Lenders with evidence of the foregoing satisfactory in form and substance to the Majority Lenders.

(q) Collateral Access Agreements. On or prior to the date that is [30] days after the Closing Date, the Company will deliver to the Lenders Collateral Access Agreements with respect to each of the following locations: (i) [2 Marriott Drive, Lincolnshire, IL 60069; (ii) (ii) Optimum Warehousing and Distribution, 450 Barclay Blvd., Lincolnshire, IL 60069, and (iii) Ameriwater, 1257 Stanley Ave., Dayton, OH 45404, (iv)] _____ [INSERT OTHERS DEPENDING ON VALUE OF COLLATERAL AT THE LOCATION].

(r) Third Party Consents. On or prior to the date that is 30 days after the Closing Date, the Company will deliver to the Lenders all consents, approvals and authorizations from third Persons required under any Material Contract or other document necessary for the grant in the Loan Documents of any Lien in favor of the Lenders as requested by, and in form and substance satisfactory to, the Majority Lenders.

SECTION 5.03 NEGATIVE COVENANTS. So long as any of the Obligations shall remain unpaid (other than inchoate indemnity obligations and any other obligations which by their terms are to survive the termination of the Loan Documents) or the Lenders shall have any Commitments, the Company agrees that:

(a) Indebtedness. The Company will not, and will not permit any of its Subsidiaries to, create, incur, assume or otherwise become liable for or suffer to exist any Indebtedness, other than: (i) Indebtedness of the Company to the Lenders hereunder; (ii) the existing Indebtedness listed on SCHEDULE 2; (iii) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Company's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP; (iv) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by the Company or any such Subsidiary in the ordinary course of business; and (v) Indebtedness of the Company to the extent the Net Cash Proceeds of such Indebtedness (A) automatically reduce the Additional Commitment in accordance with Section 2.05(b) or (B) are paid to the Lenders within one Business Day of receipt thereof for prepayment of the Loans in accordance with Section 2.07(b)(ii) and Section 2.07(b)(iii).

(b) Liens; Negative Pledges. The Company will not, and will not permit any of its Subsidiaries to, (i) create, incur, assume or suffer to exist any Lien upon or with respect to any of its properties, revenues or assets, whether now owned or hereafter acquired, other than Permitted Liens, and (ii) enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties, revenues or assets, whether now owned or hereafter acquired.

(c) Change in Nature of Business. The Company will not, and will not permit any of its Subsidiaries to, engage in any line of business different from those lines of business carried on by it at the date hereof.

(d) Restrictions on Fundamental Changes. The Company will not, and will not permit any of its Subsidiaries to, merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, or agree to do any of the foregoing, except that any of the Company's wholly owned Subsidiaries may merge with, consolidate into or transfer all or substantially all of its assets to the Company and in connection therewith such Subsidiary may be liquidated or dissolved.

(e) Sales of Assets. The Company will not, and will not permit any of its Subsidiaries to, sell, lease, transfer, or otherwise dispose of, or part with control of (whether in one transaction or a series of transactions) any assets (including any shares of stock in any Subsidiary or other Person), except: (i) sales or operating leases of, or other dispositions of, inventory, and the license, sublicense and grant of distribution and similar rights, each in the ordinary course of business; (ii) sales or other dispositions of assets in the ordinary course of business which have become worn out, obsolete or no longer useful to the Company's business, or which are promptly being replaced to the extent provided in the Budget; and (iii) any other sales or other dispositions of assets for fair consideration outside the ordinary course of business

(A) to the extent provided in the Budget, or (B) so long as the Net Cash Proceeds of such sale or disposition are paid to the Lenders within one Business Day of receipt thereof for prepayment of the Loans in accordance with Section 2.07(b)(i).

(f) Distributions. (i) The Company will not declare or pay any dividends in respect of the Company's capital stock or other equity interests, or purchase, redeem, retire or otherwise acquire for value any of its capital stock or other equity interests now or hereafter outstanding, return any capital to its shareholders as such, or make any distribution of assets, shares of capital stock, warrants, rights, options, obligations or securities thereto to its shareholders as such, or permit any of its Subsidiaries to purchase, redeem, retire, or otherwise acquire for value any stock of the Company, or make any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of its capital stock now or hereafter outstanding. (ii) The Company will not permit any Subsidiary of the Company to grant or otherwise agree to or suffer to exist any consensual restrictions on the ability of such Subsidiary to pay dividends and make other distributions to the Company, or to pay any Indebtedness owed to the Company or transfer properties and assets to the Company.

(g) Loans and Investments. The Company will not, and will not permit any of its Subsidiaries to, purchase or otherwise acquire the capital stock or other equity interests, assets (constituting a business unit), obligations or

other securities of or any interest in any Person, or otherwise make any loan, advance or extend any other credit to, guarantee the obligations of or make any additional capital contributions or other investments in any Person, or commit or agree to any of the foregoing, other than investments (i) listed in Schedule 2 hereto, (ii) in connection with extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business, and (iii) received in connection with any Insolvency Proceeding in respect of any customers or suppliers.

(h) Transactions with Related Parties. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly enter into any transaction with any Affiliate unless (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtained in an arm's length transaction with a non-affiliated Person, and (ii) transactions disclosed to and approved by the Majority Lenders.

(i) ERISA. The Company shall not, and shall not permit any of its ERISA Affiliates to: (i) terminate any Pension Plan so as to result in liability to the Company or any ERISA Affiliate: (ii) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a liability to any ERISA Affiliate; (iii) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any liability to the Company or any ERISA Affiliate; (iv) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could result in any liability to any ERISA Affiliate; (v) permit the present value of all nonforfeitable accrued benefits under any Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan; or (vi) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Lender of

any of its rights under this Agreement, the Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Internal Revenue Code; and, in the case of clauses (i) through (v), individually or in the aggregate, to the extent such liability (or such excess in the case of clause (v)) exceeds $100,000.

(j) Limitation on Issuance of Capital Stock. The Company shall not, and shall not permit any of its Subsidiaries to issue or sell or enter into any agreement or arrangement for the issuance and sale of, any shares of its capital stock, any securities convertible into or exchangeable for its capital stock or any warrants, except (i) any such issuance and sale of equity securities of the Company pursuant to a stock option plan or restricted stock purchase plan approved by the Compensation Committee of the Company's Board of Directors,

including the approval of the members of the Compensation Committee elected or otherwise designated by Durus provided that the aggregate amount thereof issued during any fiscal year is not in excess of $100,000 (the value of any such stock option to be determined by multiplying the exercise price by the number of shares subject to such stock option), and (ii) to the extent the Net Cash Proceeds of such issuance or sale (A) automatically reduce the Additional Commitment in accordance with Section 2.05(b) or (B) are paid to the Lenders within one Business Day of receipt thereof for prepayment of the Loans in accordance with Section 2.07(b)(ii).

(k) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc. The Company shall not, and shall not permit any of its Subsidiaries to (i) amend, modify or otherwise change the Budget or any other statement, budget, forecast, projection and operating plan and report delivered to the Lenders, unless approved by its Board of Directors and the Majority Lenders; (ii) amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, or would otherwise be adverse to the Lenders or the issuer of such Indebtedness in any respect, (iii) except for the Obligations, make any voluntary or optional payment, prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness, or refund, refinance, replace or exchange any Indebtedness, or make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any outstanding Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing, (iv) amend, modify or otherwise change any of its organizational documents, or (v) amend, modify or otherwise change any material provision of any Material Contract, or accelerate, terminate or cancel any Material Contract other than at the direction of the Board of Directors.

(l) Redemption of Subordinated Debt. The Company shall not, and shall not permit any of its Subsidiaries to (i) agree to or permit any amendment, modification or waiver of any provision of any agreement related to any Subordinated Debt (including any amendment, modification or waiver pursuant to an exchange of other securities or instruments for outstanding

Subordinated Debt), except as permitted by any Subordination Agreement with respect thereto, or (ii) make any voluntary or optional payment or repayment on, redemption, conversion, exchange or acquisition for value of, or any sinking fund or similar payment with respect to, any Subordinated Debt, except as permitted by any Subordination Agreement.

(m) Other Changes. The Company shall not, and shall not suffer or permit any of its Subsidiaries to (i) make any expenditures in respect of (A) any lease or any sale and leaseback (real or personal property) other than rental payments under real property and personal property leases set forth in Schedule 2 or otherwise provided for in the Budget, (B) any purchase or other acquisition of any fixed or capital assets or any other assets other than expenditures in the ordinary course of business consistent with past practices not in excess of $50,000 individually or in the aggregate or otherwise set forth in the Budget, or (C) any other expenditures except in the ordinary course of business consistent with past practices and set forth in the Budget, (ii) enter into any new contract, agreement, indenture, license or instrument or enter into any other transaction except on commercially reasonable terms, in the ordinary course of business consistent with past practices, (iii) establish any new Plan or change any Plan except as required by law, (iv) have any material loss of customers of the Company or its Subsidiaries except for potential loss of customers who are outside of a PHD operating district established at the direction of the Board of Directors of the Company or as contemplated in the Budget, or (v) except as contemplated by the Budget, increase the compensation of any existing employee, officer, director or consultant, or to pay or award any bonus, incentive compensation, service award or other like benefit to any employee (to the extent all such bonus, incentive compensation, service award or other like benefit paid or awarded to employees exceed $50,000), officer, director or consultant, or to make any severance or termination payments, or enter into or amend any severance agreement with, any employee, officer or director, or enter into any new employment, consulting, non-competition, retirement, parachute or indemnification agreement with any officer, director, employee or agent, or modify any such existing agreement.

(n) Accounting Changes. The Company shall not, and shall not suffer or permit any of its Subsidiaries to, make any change in accounting treatment or reporting practices, except as required or permitted by GAAP, or change its fiscal year or that of any of its consolidated Subsidiaries.

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.01 EVENTS OF DEFAULT. Any of the following events which shall occur shall constitute an "Event of Default":

(a) Payments. The Company shall fail (i) to pay when due any amount of principal of, or interest on, the Loans or any Notes, or (ii) to pay any other amount payable under any of the Loan Documents within three (3) Business Days after written demand therefor.

(b) Representations and Warranties. Any representation or warranty by the Company or any Guarantor under or in connection with the Loan Documents shall prove to have been incorrect in any material respect when made or deemed

made.

(c) Failure by Company to Perform Certain Covenants. The Company shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01 or Section 5.03, or clauses (a), (e), (g), (l), (m), (q) or (r) of Section 5.02.

(d) Failure by Company to Perform Other Covenants. The Company shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed and any such failure shall remain unremedied for a period of 12 days from the occurrence thereof (unless the Majority Lenders determine that such failure is not capable of remedy).

(e) Insolvency; Voluntary Proceedings. The Company, any Guarantor or any Subsidiary thereof (i) ceases or fails to be Solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing.

(f) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against the Company, any Guarantor or any Subsidiary thereof, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of such Person's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 30 days after commencement, filing or levy; (ii) the Company, any Guarantor or any Subsidiary thereof admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) the Company, any Guarantor or any Subsidiary thereof acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business.

(g) Dissolution, Etc. The Company, any Guarantor or any of their respective Subsidiaries shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), except to the extent expressly permitted by Section 5.03, (ii) suspend its operations, or (iii) take any action to authorize any of the actions or events set forth above in this subsection (g).

(h) Default Under Other Agreements. (i) The Company, any Guarantor or any of their respective Subsidiaries shall fail (A) to make any payment of any principal of, or interest or premium on, any Indebtedness (other than in respect of the Loans) having an aggregate principal amount (including undrawn committed or available amounts) of more than $100,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable notice or grace period, if any, specified in the agreement or instrument relating to such Indebtedness as of the

date of such

failure; or (B) to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such Indebtedness, when required to be performed or observed, or any other event shall occur or condition shall exist under any such agreement or instrument, and such failure, event or condition shall continue after the applicable, notice or grace period, if any, specified in such agreement or instrument, if the effect of such failure, event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; (ii) any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or (iii) there is a default under any Material Contract and such default results in the right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of the Company's, any Guarantor's or any of their respective Subsidiaries' obligations thereunder, to terminate, cancel or amend such Material Contract, or to refuse to renew such Material Contract pursuant to an automatic renewal right therein, or any Material Contract terminates other than in accordance with its terms or with the approval of the Board of Directors of the Company.

(i) Judgments. (i) Any judgment or order for the payment of money in excess of, individually or in the aggregate, $100,000 shall be rendered against the Company, any Guarantor or any of their respective Subsidiaries; or (ii) any non-monetary judgment or order shall be rendered against the Company, any Guarantor or any such Subsidiary involving an aggregate amount in excess of $100,000; and in each case there shall be any period of 10 consecutive days during which such judgment continues unsatisfied or during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

(j) Material Adverse Effect. Any event, matter, condition or circumstance occurs (including any such event, matter, condition or circumstance which would occur upon notice or lapse of time or both) which has or would reasonably be expected to have a Material Adverse Effect.

(k) Failure by Guarantor to Perform Covenants; Invalidity of Guaranty. Any Guarantor shall fail to perform or observe any term, covenant or agreement contained in its Guaranty on its part to be performed or observed, or any default shall occur under the Guaranty, and any such failure or default shall continue after the applicable grace period, if any, specified in its Guaranty as of the date of such failure, or any "Event of Default" as defined in such Guaranty shall have occurred; or any Guaranty or any other Guarantor Document shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Guarantor or any other Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder.

(l) Collateral Documents. The Company shall fail to perform or observe any term, covenant or agreement contained in the Collateral Documents on its part to be performed or observed and any such failure shall remain unremedied beyond the grace period, if any, specified therein (unless the Majority Lenders determine that such failure is not capable of remedy), or any "Event of Default" as defined in any Collateral Document shall have occurred; or any of the Collateral Documents after delivery thereof shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or the Company or any other Person

shall contest in any manner the validity or enforceability thereof, or the Company or any other Person shall deny that it has any further liability or obligation thereunder; or any of the Collateral Documents for any reason, except to the extent permitted by the terms thereof, shall cease to create a valid and perfected first priority Lien subject only to Permitted Liens in any of the Collateral purported to be covered thereby.

(m) ERISA. There shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of the Company, any Guarantor or any ERISA Affiliate thereof in excess of $100,000 during the term of this Agreement; or there exists, an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA) individually or in the aggregate under all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds $100,000.

(n) Change in Control. A Change in Control shall have occurred unless consented to in writing by the Majority Lenders.

(o) Subordination. Any Subordination Agreement shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, any Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Indebtedness hereunder shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any Subordination Agreement.

(p) Consents, Etc. Any law, decree, license, permit, consent, authorization, registration or approval now or hereafter necessary to enable the Company or any Guarantor to comply with its obligations incurred in the Loan Documents shall be modified in a manner that has an adverse effect on the Loans and the Loan Documents, revoked, withdrawn or withheld or shall cease to remain in full force and effect.

SECTION 6.02 EFFECT OF EVENT OF DEFAULT. If any Event of Default shall occur and be continuing: (i) the Additional Loan Lender may by notice to the Company, (A) declare the Additional Commitments of the Additional Loan Lender to be terminated, whereupon the same shall forthwith terminate, and (B) declare the entire unpaid principal amount of the Additional Loans and any Notes related

thereto, all interest accrued and unpaid thereon and all other Obligations with respect thereto to be forthwith due and payable, whereupon the Additional Loans and any such Notes, all such accrued interest and all such other Obligations shall become and be forthwith due and payable; and (ii) the Majority Lenders may by notice to the Company, (A) declare the Closing Date Commitments of the Lenders to be terminated, whereupon the same shall forthwith terminate, and (B) declare the entire unpaid principal amount of the Closing Date Loans and any Notes related thereto, all interest accrued and unpaid thereon and all other Obligations to be forthwith due and payable, whereupon the Closing Date Loans and any such Notes, all such accrued interest and all such other Obligations shall become and be forthwith due and payable; in each case, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company, PROVIDED that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code, the result which would otherwise occur only upon giving of notice by the Additional Loan Lender or the Majority Lenders, as the case may be, to the Company as specified in clauses (i)

and (ii) shall occur automatically, without the giving of any such notice. If any Event of Default shall occur and be continuing, whether or not the actions referred to in clauses (i) and (ii) have been taken, the Majority Lenders may (A) exercise any or all of the Lenders' and/or any Collateral Agent's rights and remedies under the Collateral Documents, and (B) proceed to enforce all other rights and remedies available to the Lenders and any Collateral Agent (acting on behalf of the Lenders) under the Loan Documents and applicable law.

ARTICLE VII
MISCELLANEOUS

SECTION 7.01 AMENDMENTS AND WAIVERS. Except as otherwise provided herein or in any other Loan Document, (i) no amendment to any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by the Company (and/or any Guarantor or other party thereto, as applicable) and the Majority Lenders (or any Collateral Agent with the written consent of the Majority Lenders); and (ii) no waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by the Company, any Guarantor or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by any such Collateral Agent and the Majority Lenders (or such Collateral Agent with the consent of the Majority Lenders); PROVIDED, HOWEVER, that, notwithstanding anything to the contrary herein, any such amendment, waiver or consent relating to the Additional Commitment and the Additional Loans shall not require the consent of any Lender other than the Additional Loan Lender. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; PROVIDED, HOWEVER, that, unless in writing and signed by all of the Lenders (or by any Collateral Agent with the written consent of all the Lenders), no amendment, waiver or consent shall do any of the following: (i) increase the amount, or extend the stated

expiration or termination date, of the Closing Date Commitments of the Lenders; (ii) reduce the principal of, or interest on, the Closing Date Loans or any fee or other amount payable to the Lenders hereunder; (iii) postpone any date fixed for any payment in respect of principal of, or interest on, the Closing Date Loans or any fee or other amount payable to the Lenders hereunder (including the date of any mandatory prepayment hereunder); (iv) change the definition of "Majority Lenders" or any definition or provision of this Agreement requiring the approval of Majority Lenders or some other specified amount of Lenders; (v) consent to the assignment or transfer by the Company or any Guarantor of any of its rights and obligations under the Loan Documents; (vi) release any Guaranty or substantially all of the Collateral except as contemplated herein, in any Guaranty and in the Collateral Documents relating thereto; (vii) amend, modify or waive the provisions of Section 2.08(d), 2.10 or 2.11; or (viii) amend, modify or waive the provisions of this Section 7.01.

SECTION 7.02 NOTICES. All notices and other communications required or permitted hereunder or under the other Loan Documents shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) two (2) days after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the parties hereto at their respective addresses or facsimile

numbers set forth below their names on the signature pages hereof, or as notified by such party from time to time at least ten (10) days prior to the effectiveness of such notice.

SECTION 7.03 NO WAIVER; CUMULATIVE REMEDIES. No failure on the part of any Lender to exercise, and no delay in exercising, any right, remedy, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under the Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Lenders.

SECTION 7.04 COSTS AND EXPENSES; INDEMNITY.

(a) Costs and Expenses. The Company agrees to pay on demand: (i) the reasonable out-of-pocket costs and expenses of the Lenders, any Collateral Agent and any of their Affiliates, and the reasonable fees and disbursements of one counsel for the Lenders and such Collateral Agent (as designated by the Majority Lenders) in connection with the negotiation, preparation, execution, delivery and administration of the Loan Documents, and any amendments, modifications or waivers of the terms thereof, and the custody of the Collateral; (ii) all audit,

consulting, appraisal, search and similar costs, fees and expenses incurred or sustained by the Lender designated by the Majority Lenders to perform such actions, any Collateral Agent or any of their Affiliates in connection with the Loan Documents or the Collateral; (iii) all recording, filing and similar costs, fees and expenses incurred or sustained by any Lender, any Collateral Agent or any of their Affiliates in connection with the Loan Documents or the Collateral; and (iv) all costs and expenses of the Lenders, any Collateral Agent and their Affiliates, and fees and disbursements of counsel, in connection with (A) any Default, (B) the enforcement or attempted enforcement of, and preservation of any rights or interests under, the Loan Documents, (C) any out-of-court workout or other refinancing or restructuring or any bankruptcy or insolvency case or proceeding, and (D) the preservation, protection, sale or collection of, or other realization upon, any of the Collateral, including all expenses of taking, collecting, holding, sorting, handling, preparing for sale, selling, or the like, and other such expenses of sales and collections of Collateral.

(b) Other Charges. The Company also agrees to indemnify the Lenders and any Collateral Agent against and hold each of them harmless from any and all present and future stamp, transfer, documentary and other such taxes, levies, fees, assessments and other charges made by any jurisdiction by reason of the execution, delivery, performance and enforcement of the Loan Documents.

(c) Indemnification. Whether or not the transactions contemplated hereby shall be consummated, the Company hereby agrees to indemnify the Lenders, any Collateral Agent, any Affiliate thereof and their respective directors, officers, employees, agents, counsel and other advisors (each an "Indemnified Person") against, and hold each of them harmless from, any and all liabilities, obligations, losses, claims, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including the reasonable fees and disbursements of counsel to an Indemnified Person, which may be imposed on or incurred by any Indemnified Person, or asserted against any Indemnified Person by any third party or by

the Company or any Guarantor, in any way relating to or arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby or the Collateral, (ii) the Loans or the use or intended use of the proceeds thereof, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any Guarantor (the "Indemnified Liabilities"); provided that the Company shall not be liable to any Indemnified Person for any portion of such Indemnified Liabilities to the extent they resulted from such Indemnified Person's gross negligence or willful misconduct. If and to the extent that the foregoing indemnification is for any reason held unenforceable, the Company agrees to make the maximum contribution to the payment and

satisfaction of each of the Indemnified Liabilities which is permissible under applicable law

SECTION 7.05 SURVIVAL. All covenants, agreements, representations and warranties made in any Loan Documents shall, except to the extent otherwise provided therein, survive the execution and delivery of this Agreement, the making of the Loans and the execution and delivery of any Notes, and shall continue in full force and effect so long as any Lender has any Commitment, the Loans shall remain outstanding or any other Obligations remain unpaid or any obligation to perform any other act hereunder or under any other Loan Document remains unsatisfied. Without limiting the generality of the foregoing, the obligations of the Company under Section 7.04, and all similar obligations under the other Loan Documents (including all obligations to pay costs and expenses and all indemnity obligations), shall survive the repayment of the Loans and the termination of the Commitments.

SECTION 7.06 BENEFITS OF AGREEMENT. The Loan Documents are entered into for the sole protection and benefit of the parties hereto and their successors and assigns, and no other Person other than any Collateral Agent and the Indemnified persons referred to in Section 7.04(c) shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, any Loan Document.

SECTION 7.07 Binding Effect; Assignment.

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Company and the Lenders and thereafter shall be binding upon, inure to the benefit of and be enforceable by the Company, each Lender and their respective successors and assigns.

(b) Assignment. The Company shall not have the right to assign its rights and obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of the Lenders. Each Lender may sell, assign, transfer or grant participations in all or any portion of such Lender's rights and obligations hereunder and under the other Loan Documents to any Lender or other Person. In connection with any partial assignment, upon the request of the assigning Lender or the assignee, (i) the Company shall execute and deliver substitute Notes to the assigning Lender or the assignee, dated the effective date of such assignment, setting forth the principal amount of the Loans held by such assigning

Lender and assignee (after giving effect to the assignment), and containing other appropriate insertions, and the assigning Lender shall thereupon return the Note previously held by it; and (ii) Schedule 1 shall be deemed amended to reflect the adjustment of the Commitments and Pro Rata Shares of the Lenders resulting therefrom.

SECTION 7.08 GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN

ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (AS PERMITTED BY SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SIMILAR SUCCESSOR PROVISION)) WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE INTERNAL LAWS OF THE STATE OF NEW YORK TO THE RIGHTS AND DUTIES OF THE PARTIES.

SECTION 7.09 WAIVER OF JURY TRIAL. THE COMPANY AND THE LENDERS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THIS WAIVER BEING A MATERIAL INDUCEMENT FOR EACH SUCH PARTY TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 7.10 SUBMISSION TO JURISDICTION.

(a) For purposes of any suit, action or other legal proceeding relating to the Loan Documents or the enforcement of any provision of the Loan Documents, each party hereto hereby expressly and irrevocably submits and consents to the exclusive jurisdiction (unless waived by the Majority Lenders) of the courts of the State of New York sitting in the borough of Manhattan and the United States District Court for the Southern District of New York for the purposes of any such suit, action or legal proceeding, including to enforce any settlement, order or award; and agrees that such state and federal courts shall be deemed to be a convenient forum; and waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in such court any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that the Loan Documents or the subject matter thereof may not be enforced in or by such court.

(b) Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section by the courts of the State of New York sitting in the borough of Manhattan or the United States District Court for the Southern District of New York and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of New York or any other jurisdiction.

SECTION 7.11 ENTIRE AGREEMENT. The Loan Documents reflect the entire agreement between the Company and the Lenders with respect to the matters set forth herein

and therein and supersede any prior agreements, commitments, drafts, communication, discussions and understandings, oral or written, with respect thereto.

SECTION 7.12 PAYMENTS SET ASIDE. To the extent that any payment by or

on behalf of the Company is made to any Lender, or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code or other U.S. Federal, state or foreign liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws, or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred.

SECTION 7.13 SEVERABILITY. If any provision of any of the Loan Documents shall be prohibited by or invalid under any applicable law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of such Loan Document, or the validity or effectiveness of such provision in any other jurisdiction.

SECTION 7.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

SECTION 7.15 ACKNOWLEDGMENTS. This Agreement is intended to amend the Bridge Loan Agreement, without novation, and, solely for the convenience of reference, to restate it. All Loans outstanding under the Bridge Loan Agreement shall be Loans outstanding hereunder, and the Company ratifies, affirms and acknowledges all of its Obligations in respect of the Bridge Loan Agreement and the other Loan Documents thereunder. The Company acknowledges and agrees that any reference to the "Agreement" in the other Loan Documents shall mean and be references to the Bridge Loan Agreement as amended and restated by this Agreement. The Company hereby ratifies and reaffirms the validity and enforceability of all of the liens and security interests heretofore granted to the Lenders as collateral security for the Obligations, and acknowledges that all of such liens and security interests and all collateral heretofore pledged as security for the Obligations under the Bridge Loan Agreement and the Collateral Documents (as defined in the Bridge Loan Agreement) continues to be and remains collateral for the Obligations from and after the date hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

THE COMPANY:

AKSYS, LTD.

By _____
Name:
Title:

Address:

Two Marriot Drive
Lincolnshire, IL 60069
Attn:
Fax: 847-229-2080

WITH A COPY TO:

Keith S. Crow P.C.
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601
Fax: 312-861-2200

S-1.

THE LENDERS:

DURUS LIFE SCIENCES MASTER FUND LTD.

By _____
Name:
Title:

Address:

Durus Life Sciences Master Fund Ltd.
c/o International Fund Services (Ireland) Ltd.
3rd Floor, Bishops Square
Redmonds Hill
Dublin 2, Ireland
Attention: Susan Byrne
Fax: (011) 35-31-707-5013

WITH A COPY TO:

Gavin Grover, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Fax: 415-269-7522

AND WITH A COPY TO:

Paul N. Roth, Esq.
Schulte, Roth & Zabel
919 Third Avenue
New York, New York 10022
Fax: 212-593-5955

[OTHER LENDERS]

SCHEDULE 1
to the Loan Agreement

COMMITMENTS
AND PRO RATA SHARES

LENDER	CLOSING DATE COMMITMENT	ADDITIONAL COMMITMENT	PRO RATA SHARE
Durus Life Sciences Master Fund Ltd.	$ [15,778,000](1)	$5,000,000	100%
TOTAL	$[15,778,000](2)	$ 5,000,000	100%

(1) This amount will be greater than as indicated above as the Closing Date Commitment will include interest added to the principal of the Bridge Loan as of the Closing Date and accrued and unpaid interest thereon as of the Closing Date

(2) See footnote 1

Schedule 1.

Exhibit 14

EXHIBIT C

WARRANT AGREEMENT

Between

AKSYS, LTD.

And

Dated as of _____, 2006

This Agreement, dated as of [insert date], is between Aksys, Ltd., a Delaware corporation (the "Company"), and _____, as warrant agent (the "Warrant Agent").

RECITALS

WHEREAS, the Company has entered into a Securities Purchase Agreement (the "Purchase Agreement") dated as of March 31, 2006 by and between the Company and Durus Life Sciences Master Fund Ltd. (the "Investor");

WHEREAS, pursuant to the Purchase Agreement, the Company has agreed to sell to the Investor, and the Investor has agreed to acquire from the Company, (i) five thousand (5,000) shares of the Company's Series B Convertible Preferred Stock (the "Preferred Shares"), each of which Preferred Share is convertible into shares of the Company's common stock, par value $0.01 per share (the "Common Stock"), pursuant to the terms of the Certificate of Designation (such shares of Common Stock into which the Preferred Shares may be converted hereinafter referred to as the "Conversion Shares") and (ii) warrants (the "Warrants") to purchase at an initial exercise price of $1.10 per share five million (5,000,000) shares of Common Stock (the "Warrant Shares");

WHEREAS, pursuant to the Purchase Agreement, the Company has agreed to sell to the Investor or other persons or entities designated by the Investor (such other persons or entities designated by the Investor herein are collectively referred to with the Investor as the "Investors"), and the Investors have the option to purchase, in one or more installments, for an aggregate purchase price of up to $15,000,000, additional preferred shares and warrants containing substantially the same terms and conditions as the Preferred Shares and the Warrants except that the expiration date of such later issued warrants shall be five years from their original date of issue (any such later acquired preferred shares and warrants are herein collectively referred to with the initially issued Preferred Shares and Warrants as the "Preferred Shares" and the "Warrants", respectively, and the initially issued Warrants under the Purchase Agreement are sometimes referred to herein as the "Initial Warrants");

WHEREAS, the Company wishes to retain the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, transfer, exchange and replacement of the certificates evidencing the Warrants to be issued under this Agreement (the "Warrant Certificates") and the exercise of the Warrants;

WHEREAS, the Company and the Warrant Agent wish to enter into this Agreement to set forth the terms and conditions of the Warrants and the rights of the holders thereof ("Warrantholders") and to set forth the respective rights and obligations of the Company and the Warrant Agent; and

WHEREAS, each Warrantholder is an intended beneficiary of this Agreement with respect to the rights of Warrantholders herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth and for the purpose of defining the terms and provisions of the Warrants and the Warrant Certificates and the respective rights and obligations thereunder of the Company, the Warrantholders and the Warrant Agent, the parties hereto agree as follows:

SECTION 1. APPOINTMENT OF WARRANT AGENT

The Company appoints the Warrant Agent to act as agent for the Company in accordance with the instructions in this Agreement and the Warrant Agent accepts such appointment.

SECTION 2. DATE, DENOMINATION AND EXECUTION OF WARRANT CERTIFICATES

The Warrant Certificates (and the Form of Election to Purchase and the Form of Assignment to be printed on the reverse thereof) shall be in registered form only and shall be substantially in the form attached hereto as EXHIBIT A (the provisions of which are hereby incorporated herein), and may have such letters, numbers or other marks of identification or designation and such legends, summaries or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law, or with any rule or regulation made pursuant thereto, or with any rule or regulation of any stock exchange or automated quotation system on which the Common Stock (or other securities issuable upon exercise of the Warrants) or the Warrants may be listed, or to conform to usage. Each Warrant Certificate for the Initial Warrants shall entitle the registered holder thereof, subject to the provisions of this Agreement and of the Warrant Certificate, to purchase, on or before the close of business on _____, 2011 (the "Expiration Date"), and each Warrant Certificate for any later issued series of Warrants shall entitle the registered holder thereof, subject to the provisions of this Agreement and the Warrant Certificate, to purchase, on or before the date that is the first business day falling five years after the initial date of issuance of such later issued Warrants (and such date shall be the "Expiration Date" for such later issued series of Warrants), one fully paid and non-assessable share of Common Stock for each Warrant evidenced by such Warrant Certificate for $1.10 (the "Exercise Price), in each case subject to the adjustments provided in Section 6 hereof. Each Warrant Certificate issued to the Investors as described in the recitals, above, shall be dated the date of issuance thereof; and each other Warrant Certificate shall be dated the date on which the Warrant Agent receives valid issuance instructions from the Company or a transferring holder of a Warrant Certificate or, if such instructions specify another date, such other date.

For purposes of this Agreement, the term "close of business" on any given date shall mean 5:00 p.m., New York Time, on such date; provided, however, that if such date is not a business day, it shall mean 5:00 p.m., New York Time, on the next succeeding business day. For purposes of this Agreement, the term "business day" shall mean any day other than a Saturday, Sunday, or a day on which the New York Stock Exchange (or banking institutions in the state in which the Warrant Agent maintains the principal office in which it conducts business

related to the Warrants) are authorized or obligated by law to be closed.

Each Warrant Certificate shall be executed on behalf of the Company by its Chief Executive Officer or Chief Financial Officer, either manually or by facsimile signature printed thereon, and have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. Each Warrant Certificate shall be manually or by facsimile signature printed thereon countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any Warrant Certificate shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof by the Company, such Warrant Certificate, nevertheless, may be countersigned by the Warrant Agent, issued and delivered with the same force and effect as though the person who signed such Warrant Certificate had not ceased to be such officer of the Company.

Except as otherwise permitted by this Agreement, each Warrant (including each Warrant issued upon the transfer of any Warrant) shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THIS WARRANT AND ANY SECURITIES ACQUIRED UPON THE EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE SECURITIES LAWS. THIS WARRANT AND SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS."

SECTION 3. SUBSEQUENT ISSUE OF WARRANT CERTIFICATES

Subsequent to their original issuance, no Warrant Certificates shall be reissued except (i) Warrant Certificates issued upon transfer thereof in accordance with Section 4 hereof, (ii) Warrant Certificates issued upon any combination, split-up or exchange of Warrant Certificates pursuant to Section 4 hereof, (iii) Warrant Certificates issued in replacement of mutilated, destroyed, lost or stolen Warrant Certificates pursuant to Section 5 hereof, (iv) Warrant Certificates issued upon the partial exercise of Warrant Certificates pursuant to Section 7 hereof, and (v) Warrant Certificates issued to reflect any adjustment or change in the Exercise Price or the number or kind of shares or securities purchasable thereunder pursuant to Section 22 hereof.

The Warrant Agent is hereby irrevocably authorized to countersign and deliver, in accordance with the provisions of Sections 4, 5, 7 and 22, the new Warrant Certificates required for purposes thereof, and the Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for such purposes.

SECTION 4. TRANSFERS AND EXCHANGES OF WARRANT CERTIFICATES; COMPLIANCE WITH THE SECURITIES ACT

The Warrant Agent will keep or cause to be kept at its stock transfer office in _____ ("Stock Transfer Office") books for registration of ownership and transfer of the Warrant Certificates issued hereunder. Such registers shall show the names and addresses of the respective holders of the Warrant Certificates and the number of Warrants evidenced by each such Warrant Certificate.

The Warrant Agent shall, from time to time, promptly register the transfer of any outstanding Warrants in whole or in part in the books to be maintained by the Warrant Agent for that purpose, upon surrender of the Warrant Certificate evidencing such Warrants, with the Form of Assignment duly filled in and executed with such signature guaranteed by a financial institution that is a member of a Securities Transfer Association approved medallion program, such as STAMP, SEMP or MSP and such supporting documentation as the Warrant Agent or the Company may reasonably require, to the Warrant Agent at its Stock Transfer Office at any time on or before the Expiration Date, and upon payment to the Warrant Agent for the account of the Company of an amount equal to any applicable transfer tax. Payment of the amount of such tax may be made in cash, or by certified or official bank check, payable in lawful money of the United States of America to the order of the Company.

Upon receipt of a Warrant Certificate, with the Form of Assignment duly filled in and executed, accompanied by payment of an amount equal to any applicable transfer tax, the Warrant Agent shall promptly cancel the surrendered Warrant Certificate and countersign and deliver to the transferee a new Warrant Certificate for the number of full Warrants transferred to such transferee; provided, however, that in case the registered holder of any Warrant Certificate shall elect to transfer fewer than all of the Warrants evidenced by such Warrant Certificate, the Warrant Agent in addition shall promptly countersign and deliver to such registered holder a new Warrant Certificate or Certificates for the number of full Warrants not so transferred.

Any Warrant Certificate or Certificates may be exchanged at the option of the holder thereof for another Warrant Certificate or Certificates of different denominations, of like tenor and representing in the aggregate the same kind and number of Warrants, upon surrender of such Warrant Certificate or Certificates, with the Form of Assignment duly filled in and executed, to the

Warrant Agent, at any time or from time to time after the close of business on the date hereof and prior to the close of business on the applicable Expiration Date. The Warrant Agent shall promptly cancel the surrendered Warrant Certificate and deliver the new Warrant Certificate pursuant to the provisions of this Section.

Upon transfer of any Warrant, such Warrant shall be transferred free of any restrictive legend and registered in such name and in such denominations as specified by the transferor in question provided:

(i) The Warrant Agent receives written notice from the Company that a registration statement covering re-sales of the Warrants has been declared effective by the Securities and

Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), and written confirmation from the transferor in question that the resale of such Warrant was made pursuant to such effective registration statement; or

(ii) The Warrant Agent receives written notice from the Company that the re-sale of such Warrants may be effected under Rule 144 of the Securities Act or otherwise pursuant to an exemption from registration under the Securities Act.

Unless and until the Warrant Agent receives written notice from the Company that a registration statement covering resales of the Warrants has been declared effective by the Securities and Exchange Commission under the Securities Act, the Warrant Agent shall promptly notify the Chief Financial Officer of the Company in writing of any request that the Warrant Agent receives pertaining to the proposed transfer of any Warrant.

SECTION 5. MUTILATED, DESTROYED, LOST OR STOLEN WARRANT CERTIFICATES

Upon receipt by the Company and the Warrant Agent (i) of evidence reasonably satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of any Warrant Certificate, and (ii) in the case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and reimbursement to them of all reasonable expenses incidental thereto, and, (iii) in the case of mutilation, upon surrender and cancellation of the Warrant Certificate, then: the Warrant Agent shall countersign and deliver a new Warrant Certificate of like tenor for the same number of Warrants.

SECTION 6. ADJUSTMENTS AND LIMITATION OF NUMBER AND KIND OF SHARES PURCHASABLE AND EXERCISE PRICE

The number and kind of securities or other property purchasable upon exercise of a Warrant shall be subject to adjustment from time to time upon the occurrence, after the date hereof, of any of the following events:

A. COMMON STOCK DIVIDENDS AND DISTRIBUTIONS, SUBDIVISIONS, COMBINATIONS AND RECLASSIFICATIONS. In the event that the Company shall (i) pay a dividend or make a distribution on its outstanding shares of Common Stock using shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock, (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (iv) increase or decrease the number of shares of Common Stock outstanding by reclassification of its Common Stock, then the Exercise Price in effect immediately prior to such dividend, distribution, subdivision, combination or reclassification shall be adjusted to equal the product obtained by multiplying the Exercise Price by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately prior to such dividend, distribution, subdivision, combination or reclassification and the denominator of which is the number of shares of Common Stock outstanding after giving effect to such dividend, distribution, subdivision, combination or reclassification. Likewise, the number of shares of Common Stock

issuable upon exercise of each Warrant immediately prior to such Exercise Price adjustment shall be adjusted, effective simultaneously with the Exercise Price adjustment, to equal the product obtained by multiplying such number of shares of Common Stock by a fraction, the numerator of which is the Exercise Price per share immediately prior to such Exercise Price adjustment and the denominator of which is the Exercise Price per share in effect upon such Exercise Price adjustment, which adjusted number of shares of Common Stock shall be the number of shares of Common Stock issuable upon exercise of the Warrant until further adjusted as provided herein. An adjustment made pursuant to this Section 6A shall become effective immediately after the dividend or distribution date retroactive to the record date in the case of a dividend or distribution of shares of Common Stock, and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

B. DIVIDENDS AND OTHER DISTRIBUTIONS. In the event that the Company shall pay on its outstanding shares of Common Stock (i) any dividend or other distribution (including any dividend or distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of cash, evidences of its indebtedness, shares of its capital stock or any other properties or securities or (ii) any options, warrants or other rights to subscribe for or purchase any of the foregoing (other than, in the case of clause (i) and (ii) above, (x) any dividend or distribution described in Section 6A, and (y) any rights, options, warrants or securities described in Section 6C or Section 6D), then the number of shares of Common Stock issuable upon the

exercise of each Warrant immediately prior to the record date for any such dividend or distribution shall be increased to a number determined by multiplying the number of shares of Common Stock issuable upon the exercise of such Warrant immediately prior to such record date by a fraction, the numerator of which shall be the Market Price (as defined below) per share of Common Stock on such record date, and the denominator of which shall be such Market Price per share of Common Stock on such record date less the sum of (x) the amount of cash, if any, dividended or distributed per share of Common Stock and (y) the then fair value (as reasonably determined in good faith by the Company's Board of Directors, whose determination shall be evidenced by a board resolution filed with the Warrant Agent, a copy of which will be sent to Warrantholders upon request) per share of Common Stock of the dividend or distribution consisting of evidences of indebtedness, shares of stock, securities, other property, warrants, options or subscription or purchase rights. In the case of any such dividend or distribution, subject to Section 6H, the Exercise Price shall be adjusted to a number determined by dividing the Exercise Price immediately prior to the record date for such dividend or distribution by the fraction set forth in the preceding sentence. As used herein, "Market Price" shall be the arithmetic mean of the last reported sale prices of the Common Stock for the ten (10) consecutive trading days ending on the date for which the Market Price is being calculated, such sale prices as reported by the primary exchange on which the Common Stock is traded, if the Common Stock is traded on a national securities exchange, or by Nasdaq, if the Common Stock is traded on a Nasdaq automated quotation system, or, if not listed on Nasdaq or traded on any such exchange, the average of the bid and asked price per share on Nasdaq or, if such quotations are not available, the fair market value per share of the Common Stock as reasonably determined in good faith by the Board of Directors of the Company. Such adjustments shall be made, and shall only become effective, whenever any dividend or distribution is made. Notwithstanding the foregoing, the Company shall not be required to make an adjustment pursuant to this Section 6B,

if at the time of any such dividend or distribution, the Company makes the same distribution to Warrantholders as it makes to holders of Common Stock pro rata based on the number of shares of Common Stock for which a Warrantholder's Warrants are exercisable (whether or not currently exercisable). No adjustment shall be made pursuant to this Section 6B which shall have the effect of decreasing the number of shares of Common Stock issuable upon exercise of a Warrant or increasing the Exercise Price thereof.

C. ISSUANCE OF COMMON STOCK OR RIGHTS OR OPTIONS. In the event that the Company shall issue shares of Common Stock, or rights, options or warrants to acquire shares of Common Stock, or securities convertible or exchangeable into shares of Common Stock, for consideration per share of Common Stock that is less than the Market Price per share of Common Stock as of the issuance date of such shares, or entitling the holders of such rights, options, warrants or

convertible or exchangeable securities to subscribe for or purchase shares of Common Stock at a price that is less than the Market Price per share of Common Stock as of the issuance date of such rights, options, warrants or convertible or exchangeable securities, the number of shares of Common Stock issuable upon the exercise of each Warrant immediately after such issuance date shall be adjusted by multiplying the number of shares of Common Stock issuable upon exercise of such Warrant immediately prior to such issuance date by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately preceding the issuance of such shares, rights, options, warrants or convertible or exchangeable securities plus the number of additional shares of Common Stock to be issued in such transaction or which may be issued upon exercise of such rights, options or warrants or conversion of such convertible or exchangeable securities, and the denominator of which shall be the number of shares of Common Stock outstanding immediately preceding the date for the issuance of such shares or rights, options, warrants or convertible or exchangeable securities plus the total number of shares of Common Stock which the aggregate consideration expected to be received by the Company upon the issuance of such shares of Common Stock and the exercise, conversion or exchange of such rights, options, warrants or convertible or exchangeable securities (as reasonably determined in good faith by the Company's Board of Directors, whose determination shall be evidenced by a board resolution filed with the Warrant Agent, a copy of which will be sent to Warrantholders upon request) would purchase at the Market Price per share of Common Stock as of the date of such issuance. Subject to Section 6H, in the event of any such adjustment, the Exercise Price of each Warrant shall be adjusted to a number determined by dividing the Exercise Price immediately prior to such date of issuance by the fraction set forth in the foregoing sentence. No adjustment to the number of Warrant Shares issuable upon the exercise of a Warrant or to the Exercise Price shall be made as a result of (i) the issuance of any Warrants (or the later exercise thereof) in accordance with the terms of the Purchase Agreement as the same may be amended from time to time, (ii) the exercise, conversion or exchange of any right, option, warrant or convertible or exchangeable security, in accordance with its terms at the time of the issuance of such right, option, warrant or convertible or exchangeable security, whether or not the issuance thereof previously resulted in an adjustment to the number of Warrant Shares issuable upon the exercise of the Warrants or to the Exercise Price pursuant to this Section 6C, (iii) the issuance of any Preferred Shares (or the later conversion thereof) in accordance with the terms of the Purchase Agreement as the same may be amended from time to time, or (iv) the issuance, award, exercise, conversion or exchange of shares of Common Stock or options to acquire shares of

Common Stock under any employee or director benefit plan of the Company approved by the Company's Board of Directors if such issuance, award, exercise, conversion or exchange is made to, by, or for the benefit of officers,

directors, employees or consultants of the Company in accordance with such employee or director benefit plan. Such adjustment shall be made, and shall only become effective, whenever such shares or such rights, options, warrants or convertible or exchangeable securities are issued. No adjustment shall be made pursuant to this Section 6C which shall have the effect of decreasing the number of shares of Common Stock issuable upon exercise of each Warrant or increasing the Exercise Price.

D. FUNDAMENTAL TRANSACTIONS; LIQUIDATION.

(a) Except as provided in Section 6D(b), in the event of a Fundamental Transaction (as defined in the next sentence), each Warrantholder shall have the right to receive upon exercise of the Warrants the kind and amount of shares of capital stock or other securities or property which such Warrantholder would have been entitled to receive upon completion of or as a result of such Fundamental Transaction had such Warrant been exercised immediately prior to such event or prior to the relevant record date for any such entitlement (regardless of whether the Warrants are then exercisable). "Fundamental Transaction" shall mean any transaction or series of related transactions by which the Company consolidates with or merges with or into another corporation or entity or sells, assigns, transfers, leases, conveys or otherwise disposes of all or substantially all of its properties and assets to any other person or entity or group of affiliated persons or entities or is a party to a merger or binding share exchange which reclassifies or changes its outstanding Common Stock. Unless Section 6D(b) is applicable to a Fundamental Transaction, the Company shall provide that the surviving or acquiring person, corporation or entity (the "Successor Company") in such Fundamental Transaction will enter into an agreement (a "Supplemental Warrant Agreement") with the Warrant Agent confirming the Warrantholders' rights pursuant to this Section 6D(a) and providing for adjustments, which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6. Any such Supplemental Warrant Agreement shall further provide that such Successor Company will succeed to and be substituted for every right and obligation of the Company in respect of this Agreement and the Warrants. The provisions of this Section 6D(a) shall similarly apply to successive Fundamental Transactions involving any Successor Company.

(b) In the event of (i) a Fundamental Transaction with another person, corporation or entity (other than a subsidiary of the Company) where consideration to the holders of Common Stock in exchange for their shares is payable solely in cash or (ii) the dissolution, liquidation or winding-up of the Company, the Warrantholders of the Warrants shall be entitled to receive, upon surrender of their Warrant Certificates, such cash distributions on an equal basis with the holders of Common Stock or other securities issuable upon exercise of the Warrants, as if the Warrants had been exercised immediately prior to such event, less the Exercise Price. In the event of any Fundamental Transaction described in this Section 6D(b), the Successor Company and, in the event of any dissolution, liquidation or winding-up of the Company, the Company, shall deposit promptly with the Warrant Agent the funds, if any, necessary to pay the Warrantholders of the Warrants the amounts to which they are entitled as described above. After such funds and the surrendered Warrant Certificates are

received, the Warrant Agent shall make payment to the Warrantholders by delivering a check in such amount as is appropriate (or, in the

case of consideration other than cash, such other consideration as is appropriate) to such party as it may be directed in writing by the Warrantholders surrendering such Warrant Certificates.

E. OTHER EVENTS. If any event occurs as to which the foregoing provisions of this Section 6 are not strictly applicable or, if strictly applicable, would not, in the good faith judgment of the Company's Board of Directors, fairly and adequately protect the purchase rights of the Warrants in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make such adjustments in the application of such provisions, in accordance with such essential intent and principles, as shall be reasonably necessary, in the good faith opinion of the Board of Directors, to protect such purchase rights as aforesaid, but in no event shall any such adjustment have the effect of increasing the Exercise Price or decreasing the number of shares of Common Stock issuable upon exercise of the Warrants.

F. SUPERSEDING ADJUSTMENT. Upon the expiration of any rights, options, warrants or conversion or exchange privileges which resulted in adjustments pursuant to this Section 6, if any thereof shall not have been exercised, the number of Warrant Shares issuable upon the exercise of each Warrant shall be readjusted pursuant to the applicable section of Section 6 as if (i) the only shares of Common Stock issuable upon exercise of such rights, options, warrants, conversion or exchange privileges were the shares of Common Stock, if any, actually issued upon the exercise of such rights, options, warrants or conversion or exchange privileges and (ii) shares of Common Stock actually issued, if any, were issuable for the consideration actually received by the Company upon such exercise plus the aggregate consideration, if any, actually received by the Company for the issuance, sale or grant of all such rights, options, warrants or conversion or exchange privileges whether or not exercised and the Exercise Price shall be readjusted inversely; provided, however, that no such readjustment (except by reason of an intervening adjustment under Section 6A) shall have the effect of decreasing the number of Warrant Shares issuable upon the exercise of each Warrant, or increasing the Exercise Price, by an amount in excess of the amount of the adjustment initially made in respect of the issuance, sale or grant of such rights, options, warrants or conversion or exchange privileges.

G. MINIMUM ADJUSTMENT. The adjustments required by the preceding sections of this Section 6 shall be made whenever and as often as any specified event requiring an adjustment shall occur, except that no adjustment of the Exercise Price or the number of shares of Common Stock issuable upon exercise of the Warrants that would otherwise be required shall be made unless and until such

adjustment either by itself or with other adjustments not previously made increases or decreases by at least 1% of the Exercise Price or the number of shares of Common Stock issuable upon exercise of the Warrants immediately prior to the making of such adjustment. Any adjustment representing a change of less than such minimum amount shall be carried forward and made as soon as such adjustment, together with other adjustments required by this Section 6 and not previously made, would result in a minimum adjustment. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence. In computing adjustments under this Section 6, fractional interests in Common Stock shall be taken into account to the nearest one-hundredth of a share.

H. NOTICE OF ADJUSTMENT. Whenever the Exercise Price or the number of shares of Common Stock and other property, if any, issuable upon exercise of the Warrants is adjusted, as herein

provided, the Company shall deliver to the Warrant Agent a certificate of a firm of independent accountants selected by the Board of Directors (who may be the regular accountants employed by the Company) setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated (including a description of the basis on which (i) the Board of Directors determined the then fair value of any evidences of indebtedness, other securities or property or warrants, options or other subscription or purchase rights and (ii) the Market Price of the Common Stock was determined, if either of such determinations were required), and specifying the Exercise Price and the number of shares of Common Stock issuable upon exercise of the Warrants after giving effect to such adjustment. The Company shall promptly cause the Warrant Agent, at the Company's expense, to mail a copy of such certificate to each Warrantholder in accordance with Section 23. The Warrant Agent shall be entitled to rely on such certificate and shall be under no duty or responsibility with respect to any such certificate, except to exhibit the same from time to time, to any Warrantholder desiring an inspection thereof during reasonable business hours. The Warrant Agent shall not at any time be under any duty or responsibility to any Warrantholder to determine whether any facts exist which may require any adjustment of the Exercise Price or the number of shares of Common Stock or other stock or property issuable on exercise of the Warrants, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed in making such adjustment or the validity or value of any shares of Common Stock, evidences of indebtedness, warrants, options, or other securities or property.

I. ADJUSTMENT TO WARRANT CERTIFICATE. The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Section 6, and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same number of shares of Common Stock issuable upon exercise of

the Warrants as are stated in the Warrant Certificates initially issued pursuant to this Agreement. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

J. LIMITATION ON NUMBER OF WARRANT SHARES. The Company shall not be obligated to issue any shares of Common Stock upon the exercise of any Warrants after the aggregate number of shares of Common Stock previously issued by the Company upon (i) the exercise of Warrants and (ii) the conversion of Preferred Shares issued by the Company and purchased by holders of Warrants has exceeded the Nasdaq Conversion Limitation (as defined below), except that such limitation shall not apply from and after such time as the Company obtains Shareholder Approval (as defined below) for issuances of Warrant Shares upon the exercise of Warrants in excess of such amount. In the event the Company receives on the same date a notice requesting the exercise of Warrants from more than one holder of Warrants and the Company can exercise some, but not all, of the Warrants presented for exercise, the Company shall exercise from each holder electing to exercise Warrants at such time a pro rata amount of such holder's Warrants submitted for exercise based on the number Warrants submitted for exercise on such date by such holder relative to the number of all Warrants submitted for exercise on such date. The Nasdaq Conversion Limitation shall mean [6,425,476] shares of Common Stock or such other amount as

Nasdaq shall determine is the applicable limitation under Marketplace Rule 4350(i)(1)(D). Shareholder Approval shall mean the approval of the Company's stockholders as may be required by the applicable rules and regulations of Nasdaq, including Marketplace Rule 4350(i)(1)(D).

SECTION 7. EXERCISE OF WARRANTS

The registered holder of any Warrant Certificate may exercise the Warrants evidenced thereby, in whole or in part from time to time at or prior to the close of business on the Expiration Date, subject to the provisions of Section 9, at which time the Warrant Certificates shall be and become wholly void and of no value. Warrants may be exercised by their holders as follows:

A. Exercise of Warrants shall be accomplished upon surrender of the Warrant Certificate evidencing such Warrants, with the Form of Election to Purchase on the reverse side thereof duly filled in and executed, to the Warrant Agent at its Stock Transfer Office, together with payment to the Company of the Exercise Price (as of the date of such surrender) of the Warrants then being exercised and an amount equal to any applicable transfer tax and, if requested

by the Company, any other taxes or governmental charges which the Company may be required by law to collect in respect of such exercise. Payment of the Exercise Price and other amounts may be made by wire transfer of same day funds to an account in a bank designated by the Company for such purpose, or by certified or bank cashier's check, payable in lawful money of the United States of America to the order of the Company, or by any combination of such methods. No adjustment shall be made for any cash dividends, whether paid or declared, on any securities issuable upon exercise of a Warrant. The Warrant Agent shall deposit or invest any and all funds received in connection with the exercise of the Warrants in federally insured, interest bearing accounts with a financial institution or institutions designated by the Warrant Agent. The Warrant Agent shall have no liability with respect to the performance of any such investments other than, in the case of funds deposited in accounts maintained by the Warrant Agent, the liability of the Warrant Agent to its depositors in such accounts generally. The Company shall be entitled to the interest, if any, on funds deposited with the Warrant Agent. At the request of the Company, the Warrant Agent shall remit any funds held by it as a result of the exercise of the Warrants to the Company.

B. Upon receipt of a Warrant Certificate, with the Form of Election to Purchase duly filled in and executed, accompanied by payment of the Exercise Price of the Warrants being exercised (and an amount equal to any applicable transfer tax and, if requested by the Company, any other taxes or governmental charges which the Company may be required by law to collect in respect of such exercise), the Warrant Agent shall promptly request from the Company's transfer agent with respect to the securities to be issued and shall promptly, and in any event within five business days thereof, deliver to or upon the order of the registered holder of such Warrant Certificate, in such name or names as such registered holder may designate, a certificate or certificates for the number of full shares of the securities to be purchased, together with cash made available by the Company pursuant to Section 8 hereof in respect of any fraction of a share of such securities otherwise issuable upon such exercise. If the Warrant is then exercisable to purchase property other than securities, the Warrant Agent shall take appropriate steps to cause such property to be delivered as soon as practicable to or upon the order of the registered holder of such Warrant Certificate. In addition, if it is required by law and upon instruction by the

Company, the Warrant Agent will deliver to each Warrantholder a prospectus which complies with the provisions of Section 10 of the Securities Act of 1933, as amended, and the Company agrees to supply the Warrant Agent with a sufficient number of prospectuses to effectuate that purpose.

C. In case the registered holder of any Warrant Certificate shall exercise fewer than all of the Warrants evidenced by such Warrant Certificate, the Warrant Agent shall promptly countersign and deliver to the registered holder of

such Warrant Certificate, or to his duly authorized assigns, a new Warrant Certificate or Certificates evidencing the number of Warrants that were not so exercised.

D. Each person in whose name any certificate for securities is issued upon the exercise of Warrants shall for all purposes be deemed to have become the holder of record of the securities represented thereby as of, and such certificate shall be dated, the date upon which the Warrant Certificate was duly surrendered in proper form and payment of the Exercise Price (and of any applicable taxes or other governmental charges) was made; provided, however, that if the date of such surrender and payment is a date on which the stock transfer books of the Company are closed, such person or entity shall be deemed to have become the record holder of such shares as of, and the certificate for such shares shall be dated, the next succeeding business day on which the stock transfer books of the Company are open (whether before, on or after the Expiration Date) and the Warrant Agent shall be under no duty to deliver the certificate for such shares until such date. The Company covenants and agrees that it shall not cause its stock transfer books to be closed for a period of more than twenty (20) consecutive business days except upon consolidation, merger, sale of all or substantially all of its assets, dissolution or liquidation or as otherwise required by law.

SECTION 8. FRACTIONAL INTERESTS

The Company shall not be required to issue any Warrant Certificate evidencing a fraction of a Warrant or to issue fractions of shares of securities on the exercise of the Warrants. If any fraction (calculated to the nearest one-hundredth) of a Warrant or a share of securities would, except for the provisions of this Section, be issuable on the exercise of any Warrant, the Company shall, at its option, either purchase such fraction for an amount in cash equal to the current value of such fraction computed on the basis of the Market Price, except that for all purposes of this Section 8, the time periods set forth in the definition thereof shall be the trading day immediately preceding the day upon which such Warrant Certificate was surrendered for exercise in accordance with Section 7 hereof or issue the required, fractional Warrant or share. By accepting a Warrant Certificate, the holder thereof expressly waives any right to receive a Warrant Certificate evidencing any fraction of a Warrant or to receive any fractional share of securities upon exercise of a Warrant, except as expressly provided in this Section 8.

SECTION 9. RESERVATION AND LISTING OF EQUITY SECURITIES

The Company covenants that it will at all times reserve and keep available, free from any pre-emptive rights, out of its authorized and unissued equity securities, solely for the purpose of

issuance upon exercise of the Warrants, 120% of such number of shares of equity securities of the Company, including the Common Stock, as shall then be issuable upon the exercise of all outstanding Warrants ("Equity Securities"). The Company covenants that all Equity Securities which shall be so issuable shall, upon such issue, be duly authorized, validly issued, fully paid and non-assessable.

The Company covenants and agrees that from and after the date hereof: (a) it will use its best efforts to prepare and file with the Securities and Exchange Commission a registration statement and the prospectuses used in connection therewith as may be necessary to keep such registration statement effective with respect to the resale of the Warrants and Equity Securities and the issuance of the Equity Securities to be delivered upon the exercise of the Warrants and, to the extent required under applicable law, to keep such registration statement current from the date of issuance thereof through the final Expiration Date or until such earlier time as no Warrants remain outstanding; (b) as expeditiously as possible, it will register or qualify the Equity Securities to be delivered upon exercise of the Warrants under the securities or Blue Sky laws of each jurisdiction in which such registration or qualification is necessary and use its best efforts to maintain all such registrations or qualifications in effect from the date of issuance thereof through the final Expiration Date or until such earlier time as no Warrants remain outstanding; provided, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to general service of process in any jurisdiction where it is not now so subject; (c) it will pay all expenses incurred by the Company in complying with this Section 9, including, without limitation, (i) all registration and filing fees, (ii) all printing expenses, (iii) all fees and disbursements of counsel for the Company and independent public accountants, (iv) all NASD and Blue Sky fees and expenses (including fees and expenses of counsel in connection with any Blue Sky surveys), and (v) the entire expense of any special audits incident to or required by any such registration; and (d) it will use its best efforts to list for quotation on the Nasdaq Capital Market, or such other over-the-counter quotation system on which the Common Stock may at any time be listed, or on any national securities exchange on which the Common Stock may at any time be listed, the Equity Securities, and will maintain such listing so long as any other shares of Equity Securities are so listed; and the Company shall use its best efforts to so list on the Nasdaq Capital Market, or such other over-the-counter quotation system, or each national securities exchange, and shall maintain such listing of, any other shares of capital stock of the Company issuable upon the exercise of the Warrants if and so long as any shares of capital stock of the same class are traded on the Nasdaq Capital Market or such over-the-counter quotation system or listed on such national securities exchange, and any such quotation or listing will be at the Company's expense; provided, however, that in no event shall such Equity Securities be issued, and the Company is authorized to refuse to honor the exercise of any Warrant, if such exercise would result, in the opinion of the Company's Board of Directors, upon advice of counsel, in the violation of any law; provided, however, that the foregoing proviso shall not affect or in any way limit the obligations of the Company pursuant to clauses (a) and (b) of

this paragraph.

SECTION 10. REDUCTION OF EXERCISE PRICE BELOW PAR VALUE

The Company shall not take any action that would cause an adjustment pursuant to Section 6 hereof to reduce the Exercise Price required to purchase one share of capital stock below the then par value (if any) of a share of such capital stock, unless and until the Company shall have taken any corporate action which, in the opinion of its counsel, is necessary in order that the Company may validly and legally issue fully paid and non-assessable shares of such capital stock.

SECTION 11. PAYMENT OF CERTAIN TAXES

The Company covenants and agrees that it will pay when due and payable any and all federal and state documentary stamp and other original issue taxes which may be payable in respect of the original issuance of the Warrant Certificates, or any shares of Common Stock or other securities upon the exercise of Warrants. The Company shall not, however, be required (i) to pay any tax which may be payable in respect of the transfer and delivery of Warrant Certificates or the issuance or delivery of certificates for Common Stock or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered for purchase or (ii) to issue or deliver any certificate for shares of Common Stock or other securities upon the exercise of any Warrant Certificate until any such tax shall have been paid, all such taxes being payable by the holder of such Warrant Certificate at the time of surrender.

SECTION 12. NOTICE OF CERTAIN CORPORATE ACTION

In case the Company after the date hereof shall propose (i) to take a record of the holders of any class of securities for the purpose of determining the holders thereof that are entitled to receive any dividend or other distribution, rights to subscribe for or to purchase any shares of any class of its capital stock or any other securities or property, any evidences of its indebtedness or assets, or any other rights, warrants or options, (ii) to issue any shares of its capital stock or rights, options or warrants entitling to subscribe for shares of such capital stock or securities convertible or exchangeable or exercisable for shares of such capital stock (other than any such issuances under any employee or director benefit plan of the Company approved by the Company's Board of Directors), (iii) to effect any capital reclassification or reorganization, or any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or any sale, lease, transfer or other disposition of all or substantially all of its property and assets, or the liquidation, voluntary or involuntary dissolution or winding-up of the Company, or (iv) the commencement

by any "person" or "group" (within the meaning of Section 13(d) and Section 14(d) of the Securities Exchange Act of 1934 (the "Exchange Act")) of a BONA FIDE tender offer or exchange offer in accordance with the rules and regulations of the Exchange Act to purchase shares of Common Stock of the Company, then, in each such case, the Company shall file with the Warrant Agent, and the Company, or the Warrant Agent on its behalf and at the Company's request, shall provide to all registered holders of the Warrant Certificates notice of such proposed action or event, which notice shall specify the date on which the books of the Company shall close or a record be taken for such dividend, distribution or offer of rights or options, or the date on which such issuance, reclassification,

reorganization, consolidation, merger, sale, lease, transfer, other disposition, liquidation, voluntary or involuntary dissolution, winding-up or tender offer shall take place, commence, or be completed, as the case may be, and which shall also specify any record date for determination of holders of Common Stock entitled to vote thereon or participate therein, and as of which the holders of record of the Company's Common Stock (or other securities) shall be entitled to exchange their shares of such Common Stock (or other securities) for the securities or other property deliverable upon such reorganization, reclassification, recapitalization, consolidation, merger, sale, lease, transfer, other disposition, dissolution, liquidation, winding-up, tender offer or other event, and shall set forth such facts with respect thereto as shall be reasonably necessary to indicate any adjustments in the Exercise Price and the number or kind of shares or other securities, cash or property purchasable upon exercise of Warrants which will be required as a result of such action, if applicable. Such notice shall be filed and provided in the case of any action covered by clause (i) above, at least 10 days prior to the record date for determining holders of the Common Stock for purposes of such action or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record are to be entitled to such offering; and, in the case of any action covered by clauses (ii) through (iv) above, at least 20 days prior to the earlier of the date on which such issuance, reclassification, reorganization, consolidation, merger, sale, lease, transfer, other disposition, liquidation, voluntary or involuntary dissolution or winding-up, exchange or tender offer is expected to become effective or be completed and the date on which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, sale, transfer, other disposition, liquidation, voluntary or involuntary dissolution or winding-up, exchange or tender offer. Notwithstanding the foregoing, the Company's obligation to provide notice under this Section 12 is subject and subordinate to the Company's legal obligations regarding the handling and dissemination of material non-public information under the Securities Act, the rules and regulations of the quotation system or securities exchange on which the Common

Stock may at any time be listed and other applicable law.

Failure to give any notice or any defect therein shall not affect the legality or validity of any transaction listed in this Section 12.

SECTION 13. DISPOSITION OF PROCEEDS ON EXERCISE OF WARRANT CERTIFICATES, ETC.

The Warrant Agent shall account promptly to the Company with respect to Warrants exercised and concurrently pay to the Company all moneys received by the Warrant Agent for the purchase of securities or other property through the exercise of such Warrants.

The Warrant Agent shall keep copies of this Agreement available for inspection by Warrantholders during normal business hours at its Stock Transfer Office. Copies of this Agreement may be obtained upon written request addressed to the Warrant Agent at its Stock Transfer Office.

SECTION 14. WARRANTHOLDER NOT DEEMED A STOCKHOLDER

No Warrantholder, as such, shall be entitled to vote, receive dividends or be deemed the holder of Common Stock or any other securities of the Company which may at any time be issuable on the exercise of the Warrants represented thereby for any purpose whatsoever, nor shall anything contained herein or in any Warrant Certificate be construed to confer upon any Warrantholder, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value or change of stock to no par value, consolidation, merger, conveyance or otherwise), or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 12 hereof), or to receive dividends or subscription rights, or otherwise, until such Warrant Certificate shall have been exercised in accordance with the provisions hereof and the receipt by the Warrant Agent of the Exercise Price and any other amounts payable upon such exercise.

SECTION 15. RIGHTS OF ACTION

All rights of action in respect to this Agreement are vested in the respective registered holders of the Warrant Certificates; and any registered holder of any Warrant Certificate, without the consent of the Warrant Agent or of any other holder of a Warrant Certificate, may, on its own behalf for its own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, its right

to exercise the Warrants evidenced by such Warrant Certificate, for the purchase of shares of the Common Stock in the manner provided in the Warrant Certificate and in this Agreement.

SECTION 16. AGREEMENT OF HOLDERS OF WARRANT CERTIFICATES

Every holder of a Warrant Certificate by accepting the same consents and agrees with the Company, the Warrant Agent and with every other holder of a Warrant Certificate that:

A. The Warrant Certificates are transferable on the registry books of the Warrant Agent only upon the terms and conditions set forth in this Agreement; and

B. The Company and the Warrant Agent may deem and treat the person in whose name the Warrant Certificate is registered as the absolute and lawful owner of the Warrant (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) for all purposes whatsoever and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

SECTION 17. CANCELLATION OF WARRANT CERTIFICATES

In the event that the Company shall purchase or otherwise acquire any Warrant Certificate or Certificates after the issuance thereof, such Warrant Certificate or Certificates shall thereupon be delivered to the Warrant Agent and be canceled by it and retired. The Warrant Agent shall also cancel any Warrant Certificate delivered to

it for exercise, in whole or in part, or delivered to it for transfer, split-up, combination or exchange. Warrant Certificates so canceled shall be delivered by the Warrant Agent to the Company from time to time, or disposed of in accordance with the instructions of the Company.

SECTION 18. CONCERNING THE WARRANT AGENT

The Company agrees to pay to the Warrant Agent from time to time, on demand of the Warrant Agent, reasonable compensation for all services rendered by it hereunder and also its reasonable expenses, including counsel fees, and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense, incurred without gross negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with the acceptance and administration of this Agreement.

SECTION 19. MERGER OR CONSOLIDATION OR CHANGE OF NAME OF WARRANT AGENT

Any corporation into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the corporate trust business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor warrant agent under the provisions of Section 21 hereof. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

SECTION 20. DUTIES OF WARRANT AGENT

The Warrant Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Warrant Certificates, by their acceptance thereof, shall be bound:

A. The Warrant Agent may consult with counsel satisfactory to it (who may be counsel for the Company or the Warrant Agent's in-house counsel), and the opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken, suffered or omitted by it in good faith and in accordance with such opinion; provided, however, that the Warrant Agent shall have exercised reasonable care in the selection of such counsel. Fees and expenses of such counsel, to the extent reasonable, shall be paid by the Company.

B. Whenever in the performance of its duties under this Agreement, the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chief Executive Officer or the Chief Financial Officer of the Company and delivered to the Warrant Agent; and such certificate shall be full authorization to the Warrant Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

C. The Warrant Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct.

D. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrant Certificates (except its countersignature on the Warrant Certificates and such statements or recitals as describe the Warrant Agent or action taken or to be taken by it or its obligations hereunder) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

E. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor shall it be responsible for the making of any change in the number of shares of Common Stock for which a Warrant is exercisable required under the provisions of Section 6 or responsible for the manner, method or amount of any such change or the ascertaining of the existence of facts that would require any such adjustment or change (except with respect to the exercise of Warrant Certificates after actual notice of any adjustment of the Exercise Price); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be validly issued, fully paid and non-assessable.

F. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or take any other action likely to involve expense unless the Company or one or more registered holders of Warrant Certificates shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred. All rights of action under this

Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery of judgment shall be for the ratable benefit of the registered holders of the Warrant Certificates, as their respective rights or interests may appear.

G. The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

H. The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer or the Chief Financial Officer of the Company, and to apply to such officers for advice or instructions in connection with the Warrant Agent's duties, and it shall not be liable for any action taken or suffered or omitted by it in good faith in accordance with instructions of any such officer.

I. The Warrant Agent will not be responsible for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrant Certificates to be complied with by the Company.

J. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys, agents or employees or for any loss to the Company resulting from such neglect or misconduct; provided, however, that reasonable care shall have been exercised in the selection and continued employment of such attorneys, agents and employees.

K. The Warrant Agent will not incur any liability or responsibility to the Company or to any holder of any Warrant Certificate for any action taken, or any failure to take action, in reliance on any notice, resolution, waiver, consent, order, certificates or other paper, document or instrument reasonably believed by the Warrant Agent to be genuine and to have been signed, sent or presented by the proper party or parties.

L. The Warrant Agent will act hereunder solely as agent of the Company in a ministerial capacity, and its duties will be determined solely by the provisions hereof. The Warrant Agent will not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own negligence, bad faith or willful conduct.

SECTION 21. CHANGE OF WARRANT AGENT

The Warrant Agent may resign and be discharged from all further duties and liabilities under this Agreement (except liabilities arising as a result of the Warrant Agent's own negligence, bad faith or willful misconduct) upon 30 days prior notice in writing mailed, by registered or certified mail, to the Company. The Company may remove the Warrant Agent or any successor warrant agent upon 30 days prior notice in writing, mailed to the Warrant Agent or successor warrant agent, as the case may be, by registered or certified mail. If the Warrant Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Warrant Agent and shall, within 15 days following such appointment, give notice thereof in writing to each registered holder of the Warrant Certificates. If the Company shall fail to make such appointment within a period of 15 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent, then the holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent. Any new Warrant Agent, whether appointed by the Company or by such a court, shall be a bank or trust company having capital and surplus of not less than $10,000,000 or a stock transfer company that is a registered transfer agent under the Exchange Act. After appointment and execution of a copy of this Agreement in effect at that time, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the former Warrant Agent shall deliver and transfer to the successor Warrant Agent, within a reasonable time, any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Failure to give any notice provided for in this Section, however, or any defect therein shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor warrant agent, as the case may be.

SECTION 22. ISSUANCE OF NEW WARRANT CERTIFICATES

Notwithstanding any of the provisions of this Agreement or the several Warrant Certificates to the contrary, the Company may, at its option, issue new Warrant Certificates in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price or the number or kind of shares purchasable under the several Warrant Certificates made in accordance with the provisions of this Agreement.

SECTION 23. NOTICES

Notice or demand pursuant to this Agreement to be given or made on the Company by the Warrant Agent or by the registered holder of any Warrant Certificate shall be sufficiently given or made (A) upon delivery if sent by

personal delivery or courier, (B) when sent, if sent by confirmed facsimile during normal business hours of the recipient, if not, then on the next business day, or (C) by first-class certified or registered mail, postage prepaid, return receipt requested, in each case addressed (until another address is filed in writing by the Company with the Warrant Agent) as follows: Aksys, Ltd., Two Marriott Drive, Lincolnshire, Illinois 60069, Attention: Chief Financial Office, Tel: 847-229-2020, Fax: 847-229-2080.

Subject to the provisions of Section 21, any notice pursuant to this Agreement to be given or made by the Company or by the holder of any Warrant Certificate to or on the Warrant Agent shall be sufficiently given or made (A) upon delivery if sent by personal delivery or courier, (B) when sent, if sent by confirmed facsimile during normal business hours of the recipient, if not, then on the next business day, or (C) by first-class certified or registered mail, postage prepaid, return receipt requested, in each case addressed (until another address is filed in writing by the Warrant Agent with the Company) as follows: [Insert Address of Warrant Agent].

Any notice or demand authorized to be given or made to the registered holder of any Warrant Certificate under this Agreement shall be sufficiently given or made (A) upon delivery if sent by personal delivery or courier, (B) when sent, if sent by confirmed facsimile during normal business hours of the recipient, if not, then on the next business day, or (C)by first-class certified or registered mail, postage prepaid, return receipt requested, in each case addressed to the last address of such holder as it shall appear on the registers maintained by the Warrant Agent (until another address is filed in writing by such holder with the Warrant Agent).

SECTION 24. MODIFICATION OF AGREEMENT

The Company and the Warrant Agent, without the consent of any Warrant holder, may supplement this Agreement in order to make any changes in this Agreement which the Warrant Agent has been advised by counsel (i) are required to cure any ambiguity or to correct any defective or inconsistent provision or clerical omission or mistake or manifest error contained herein, (ii) add to the covenants and agreements of the Company or the Warrant Agent in the Warrants such further covenants and agreements thereafter to be observed or (iii) result in the surrender of any right or power reserved to or conferred upon the Company or the Warrant Agent in the Warrants, but which changes or corrections do not or will not adversely affect, alter or change the rights, privileges or immunities of the registered holders of Warrants. In addition, this Agreement may be modified, supplemented or altered with the consent in writing of the holders of Warrants representing not less than 50% of the Warrants then outstanding, except that no change in the number or nature of the securities purchasable upon the exercise of any Warrant, or increase in the applicable Exercise Price therefor, or acceleration of the Expiration Date shall be made without the consent in writing of the registered holder of each Warrant. For the purposes of any

amendment, modification or waiver hereunder, Warrants held by the Company shall be disregarded.

Any modification or amendment made in accordance with this Agreement will be conclusive and binding on all present and future holders of Warrant Certificates whether or not they have consented to such modification or amendment or waiver and whether or not notation of such modification or amendment is made upon such Warrant Certificates. Any instrument given by or on behalf of any holder of a Warrant Certificate in connection with any consent to any modification or amendment made in accordance with this Agreement will be conclusive and binding on all subsequent holders of such Warrant Certificate.

As of the date hereof, this Agreement contains the entire and only agreement, understanding, representation, condition, warranty or covenant between the parties hereto with respect to the matters herein, supersedes any and all other agreements between the parties hereto relating to such matters, and may be modified or amended only by a written agreement signed by both parties hereto pursuant to the authority granted by the first sentence of this Section.

SECTION 25. SUCCESSORS

All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

SECTION 26. GOVERNING LAW

This Agreement and each Warrant Certificate issued hereunder shall be governed by and construed in accordance with the laws of the State of New York, without reference to principles of conflict of laws.

SECTION 27. TERMINATION

This Agreement shall terminate as of the close of business on the final Expiration Date, or such earlier date upon which all Warrants shall have been exercised or redeemed, except that the Warrant Agent shall account to the Company as to all Warrants outstanding and all cash held by it as of the close of business on the final Expiration Date.

SECTION 28. NO IMPAIRMENT

The Company will not, by amendment of its governing documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this

Agreement and the Warrants, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholders against impairment. The Company will take such further action as may be necessary or appropriate to effectuate the purposes and intent of this Agreement and the Warrants including execution and delivery of such further documents and, instruments and agreements as may be required to carry out the purposes and intention of this Agreement and the Warrants. In furtherance and not in limitation of the foregoing, the Company (i) will not increase the par value of any Warrant Shares above the amount payable therefore on such exercise, (ii) will take all such action as may be reasonably necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares on the exercise of the Warrants, (iii) will not close its shareholder books or records in any manner which interferes with the timely exercise of the Warrants and (iv) will, to the extent that the Warrantholder is not able to exercise any Warrants for the full number of shares subject to such Warrants for any reason, then the Company shall take such further action as may be necessary to facilitate such exercise, and failing the ability of the Warrantholder to exercise in full, the Company shall take such further action as may be necessary to give the Warrantholder the economic benefit of the Warrants including payment to the Warrantholder of the value of the Warrants upon the expiration of the Warrant or at the time of any merger, acquisition or other Fundamental Transaction in an amount equal to the value of the Common

Stock that the Warrantholder would have received upon such exercise of the Warrants in full less the applicable Exercise Price.

SECTION 29. BENEFITS OF THIS AGREEMENT

Nothing in this Agreement or in the Warrant Certificates shall be construed to give to any person or entity other than the Company, the Warrant Agent, the registered holders of the Warrant Certificates and their respective successors and assigns hereunder, any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent, the registered holders of the Warrant Certificate and their respective successors and assigns hereunder.

SECTION 30. DESCRIPTIVE HEADINGS

The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof

SECTION 31. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of

which shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

AKSYS, LTD.

By: _____
Name:
Title:

_____

By: _____
Name: _____

Title: _____

EXHIBIT A

THIS WARRANT AND ANY SECURITIES ACQUIRED UPON THE EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS.

VOID AFTER 5:00 P.M. NEW YORK TIME ON _____, 20__

WARRANTS TO PURCHASE COMMON STOCK

W_____ _____ Warrants

AKSYS, LTD.

CUSIP [INSERT NUMBER]

THIS CERTIFIES THAT FOR VALUE RECEIVED _____ or its registered assigns, is the registered holder of the number of Warrants ("Warrants") set forth above. Each Warrant initially entitles the registered holder thereof to purchase from Aksys, Ltd., a corporation incorporated under the laws of the State of Delaware (the "Company"), subject to the terms and conditions set forth hereinafter and in the Warrant Agreement (as hereinafter defined), one fully paid and non-assessable share of Common Stock, $0.001 par value, of the Company ("Common Stock") upon presentation and surrender of this Warrant Certificate with the Subscription Form on the reverse hereof duly executed, at any time prior to 5:00 p.m., New York Time, on _____, 20__, at the stock transfer office of _____, Warrant Agent of the Company (the "Warrant Agent"), or of its successor warrant agent or, if there be no successor warrant agent, at the corporate offices of the Company, and upon payment of the Exercise Price (as defined in the Warrant Agreement) paid either in cash, or by certified or official bank check, payable in lawful money of the United States of America to the order of the Company. Each Warrant initially entitles the holder to purchase one share of Common Stock for $1.10. In the event of certain contingencies provided for in the Warrant Agreement, the Exercise Price or the number and kind of securities or other property for which the Warrants are exercisable are subject to adjustment or modification.

This Warrant Certificate is subject to all of the terms, provisions and conditions of the Warrant Agreement, dated as of _____, 2006 ("Warrant Agreement"), between the Company and the Warrant Agent, to all of which terms, provisions and conditions the registered holder of this Warrant Certificate consents by acceptance hereof. The Warrant Agreement is incorporated herein by reference and made a part hereof and reference is made to the Warrant

Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities of the Warrant Agent, the Company and the holders of the Warrant Certificates. Copies of the Warrant Agreement are available for inspection at the stock transfer office of the Warrant Agent or may be obtained upon written request addressed to the Company at Two Marriott Drive, Lincolnshire, IL 60069, Attention: President and Chief Executive Officer.

The Company shall not be required upon the exercise of the Warrants evidenced by this Warrant Certificate to issue fractions of Warrants, Common Stock or other securities, but shall make adjustment therefor in cash on the basis of the current market value of any fractional interest as provided in the Warrant Agreement.

The Company has agreed in the Warrant Agreement that, among other things: it will use its best efforts to prepare and file with the Securities and Exchange Commission a registration statement and the prospectuses used in connection therewith as may be necessary to keep such registration statement effective with respect to the resale of the Warrants and Equity Securities and the issuance of the Equity Securities to be delivered upon the exercise of the Warrants and, to the extent required under applicable law, to keep such registration statement current from the date of issuance thereof through the final Expiration Date (as defined in the Warrant Agreement) or until such earlier time as no Warrants remain outstanding; and (b) as expeditiously as possible, it will register or qualify the Equity Securities to be delivered upon exercise of the Warrants under the securities or Blue Sky laws of each jurisdiction in which such registration or qualification is necessary and use its best efforts to maintain all such registrations or qualifications in effect from the date of issuance thereof through the final Expiration Date or until such earlier time as no Warrants remain outstanding; provided, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to general service of process in any jurisdiction where it is not now so subject. However, the Company will not be required to honor the exercise of Warrants if, in the opinion of the Board of Directors upon advice of counsel, the sale of securities upon such exercise would be unlawful; provided, further, that the foregoing provisos shall not affect or in any way limit the obligations of the Company pursuant to clauses (a) and (b) of this paragraph.

This Warrant Certificate, with or without other Certificates, upon surrender to the Warrant Agent, any successor warrant agent or, in the absence of any successor warrant agent, at the corporate offices of the Company, may be exchanged for another Warrant Certificate or Certificates evidencing in the aggregate the same number of Warrants as the Warrant Certificate or Certificates so surrendered. If the Warrants evidenced by this Warrant Certificate shall be exercised in part, the holder hereof shall be entitled to receive upon surrender hereof another Warrant Certificate or Certificates evidencing the number of Warrants not so exercised.

No holder of this Warrant Certificate, as such, shall be entitled to vote, receive dividends or be deemed the holder of Common Stock or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose whatsoever, nor shall anything contained in the Warrant Agreement or herein be construed to confer upon the holder of this Warrant Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting

thereof or give or withhold consent to any corporate action (whether upon any

recapitalization, issuance of stock, reclassification of stock, change of par value or change of stock to no par value, consolidation, merger, conveyance or otherwise) or to receive notice of meetings or other actions affecting stockholders (except as provided in the Warrant Agreement) or to receive dividends or subscription rights or otherwise until the Warrants evidenced by this Warrant Certificate shall have been exercised and the receipt by the Warrant Agent of the Exercise Price.

The Company shall not be required to issue or deliver any certificate for shares of Common Stock or other securities upon the exercise of Warrants evidenced by this Warrant Certificate until any tax which may be payable in respect thereof by the holder of this Warrant Certificate pursuant to the Warrant Agreement shall have been paid, such tax being payable by the holder of this Warrant Certificate at the time of surrender.

This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

This Warrant Certificate shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be duly executed, manually or by facsimile signatures of the proper officers of the Company and a facsimile of its corporate seal to be imprinted hereon.

Dated: _____, 2006.

AKSYS, LTD.

By:

President and Chief Executive Officer

Attest:

Secretary

Countersigned

_____, as Warrant Agent

By:

Authorized Officer

[FORM OF REVERSE OF WARRANT CERTIFICATE]

SUBSCRIPTION FORM

To Be Executed by the Registered Holder
in Order to Exercise Warrants

The undersigned Registered Holder hereby irrevocably elects to exercise _____ of the Warrants represented by this Warrant Certificate, and to purchase the securities issuable upon the exercise of such Warrants, and requests that certificates for such securities shall be issued in the name of:

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

[please print or type name and address]

and be delivered to

[please print or type name and address]

and if such number of Warrants shall not be all the Warrants evidenced by this Warrant Certificate, that a new Warrant Certificate for the balance of such Warrants be registered in the name of, and delivered to, the Registered

Holder at the address stated below.

If applicable, the undersigned represents that the exercise of the Warrants evidenced hereby was solicited by a member of the National Association of Securities Dealers, Inc. If not solicited by an NASD member, please leave blank or write "unsolicited" in the space below.

(Name of NASD Member)

Dated: ---

Address

Taxpayer Identification Number

Signature Guaranteed

THE SIGNATURE TO THE ASSIGNMENT OR THE SUBSCRIPTION FORM MUST CORRESPOND TO THE NAME AS WRITTEN UPON THE FACE OF THIS WARRANT CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER, AND MUST BE GUARANTEED BY A MEMBER OF THE MEDALLION STAMP PROGRAM.

ASSIGNMENT

To Be Executed by the Registered Holder
in Order to Assign Warrants

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

[please print or type name and address]

of the Warrants represented by this Warrant Certificate, and hereby irrevocably constitutes and appoints Attorney to transfer this Warrant Certificate on the books of the Company, with full power of substitution in the premises.

Dated:

Signature Guaranteed

THE SIGNATURE TO THE ASSIGNMENT OR THE SUBSCRIPTION FORM MUST CORRESPOND TO THE NAME AS WRITTEN UPON THE FACE OF THIS WARRANT CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER, AND MUST BE GUARANTEED BY A MEMBER OF THE MEDALLION STAMP PROGRAM.